

## Are You Thinking about Selling (or Buying) a Health Services Business?

M&A Activity in the Health Services space is a hot area for the buying, selling, and investment in Healthcare Providers by competing businesses, investors, and private equity groups. Healthcare Providers, such as hospitals, managed care facilities, post-acute care facilities, physician practices, nursing homes, and ambulatory centers, are motivated in selling their Health Services Businesses for various reasons, including:

- **Financial Considerations**. To mitigate the increased cost of providing healthcare services.
- **Expansion of Services**. The desire to expand health service offerings to patients.
- **Infrastructural Improvements**. The need for greater access to more expensive and cutting edge infrastructural improvements.

If you are a Healthcare Provider contemplating a sale or purchase of a Health Services business, you should consider the following:

- **Transaction Structure**. The seller and buyer in an M&A transaction must determine whether to sell/purchase the assets (and certain liabilities) of the Company or if they wish to sell/purchase the stock of the Company. Each type of transaction has its advantages and disadvantages. While in an asset sale the buyer in the sale only acquires the assets and liabilities it chooses to acquire (except for those liabilities imposed by the buyer as a matter of law), the drawback is that the transaction is more complex and time consuming. A stock sale is where the seller sells the stock of the business and where assets and liabilities remain with the Company.
- **Taxation**. The transaction structure impacts the tax treatment of the sale. Depending on the structure of the transaction and the parties to the transaction, there may be double or single level taxation on one or more parties.
- **Preparation for a Sale**. The seller should consider marketing of the business, valuation of the company and its assets, identify and consider how to deal with issues of shared assets and employees of the business between affiliates and/or subsidiary companies, and start preparing disclosure for the due diligence process. In addition, the parties should consider the steps to ensure a smooth post- closing transition of ownership of the business once the transaction has closed.
- **The Transaction**. An M&A transaction follows the following process:
  1. **Entering into Preliminary Agreements**. A term sheet, letter of intent, and confidentiality/ non-disclosure agreement are all agreements that may begin the sale process.
  2. **Negotiation of Transaction Agreements**. This includes the negotiation of the purchase agreement, along with other transaction documents.

3. **Due Diligence**. During negotiation of the transaction documents, the seller must provide due diligence documentation and information to buyer.
4. **Consents and Approvals**. As a part of the transaction, there are corporate, contractual, and regulatory consents and approvals needed in order to complete the sale.
  - a. **Note: Healthcare Regulatory Process**. The buyer and the seller typically cooperate in efforts to obtain state and/or federal governmental consents and approvals to the transaction, if required. For example, in the State of New York, a Health Services Provider (e.g., hospital, nursing home or ambulatory surgery center) may need to obtain the approval of the New York Department of Health and file Bulk Sales taxes with the New York Department of Taxation and Finance. Furthermore, if the Health Services Provider is a not-for-profit organization, they will need to obtain Attorney General approval. Obtaining the various approvals can often be time consuming and beyond the parties' control.

The Health Care attorneys at Abrams Fensterman, LLP are experienced with M&A transactions in the healthcare space. Please reach out to us if you have questions regarding the buying and selling of a health care business.