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BEST PRACTICES

VOL. 22
WINTER 2021-22

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BRINGING A UNIQUE UNDERSTANDING OF KEY ISSUES FACING THE HEALTHCARE INDUSTRY

FROM THE EDITOR - EDWARD MCWILLIAMS, CPA

The healthcare continuum continues to change, and the COVID pandemic has done a lot to accelerate that change. Over the last two years, we have seen dramatic changes in:

- ***How healthcare is delivered:*** *Increase in Telehealth, increased reliance on clinics for primary care, nontraditional providers entering the marketplace, and more*
- ***The patient's role in healthcare:*** *Healthcare continues to become more patient centric, focused on providing more responsive and convenient service with lower levels of wait time*
- ***The increase in technology in healthcare:*** *The internet of things is going to continue to increase interconnectivity of devices and allow for a more fluid flow of information and monitoring*
- ***An increase in collaboration and consolidation in the industry:*** *With the continued push to managed care and the increases in efficiencies brought about by technology and the decentralization of medicine, there has been an increase in interest in medical practices and talent*

This is just the tip of the iceberg. We expect continued change in the medical profession brought about by changes in technology, advances in medicine, and the continued push of corporate America into the practice of medicine. During 2021, Amazon jumped firmly into the medical field *(see article on page 3)*, bringing with them a rapid delivery model, in-home flexibility, round the clock access, and very deep pockets. With the healthcare industry now over $4.1 trillion and growing at near double-digit rates, other large players are sure to follow.

It is going to be important for providers to adapt moving forward. They will need to be more connected to their patients, find ways to effectively collaborate to continue to provide more coordinated care, be more proactive in the process, and embrace technology at all levels: delivery of service, back-office functionality, patient communication and interaction, care coordination, and more.

These are both exciting and scary times … because these are times of change. Change is never easy, but it is what has driven this country and the practice of medicine for decades. This is just the next iteration. You've got this … and don't worry, we've got your backs. Let us know how we can help.

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EXIT STRATEGY:
3 TIPS FOR PRACTICES CONSIDERING A MERGER OR ACQUISITION

With the passage of the **Affordable Care Act (ACA)** and several large payor deals, the mid-late 2010s saw a flurry of Mergers and Acquisitions in the healthcare industry. Many major hospital groups were closing what felt like 2-3 deals a month for captive practices and other practices saw equity events with various private equity deals. Driven by an influx of cash as a result of COVID-19 stimulus, renewed investor interest (*particularly in digital health*) and practices that were looking to consolidate in order to better respond to the non-economic forces of the pandemic, during the second half of 2020 and throughout 2021 there has continued to be an increase in the number of deals for both practices and other healthcare-related industries. Before beginning down the road on M&A deals, here are some tips for potential sellers:

HAVE YOUR *"HOUSE IN ORDER"*

As part of any M&A activity, one of the key steps will be the purchaser's due diligence process. Being prepared prior to the start of any potential exit is critical for success. Prior to bringing in any outside party, a potential seller should first look to make sure they address any potential hurdles and they have proper records available. Sellers should make sure their compliance programs are up to date and all necessary regulatory matters are aligned. Provider compensation models should be reviewed and ensure that they are in writing. During the process purchasers will ask for substantial financial data that practices should make sure is available and complete. This may include historical financial statements, tax returns, billing and collection records, payor mix, referral sources, and more. Having your house in order prior to heading down the merger road can make the process both go smoother and help to identify and correct potential deal-breaking or changing items.

KNOW YOUR WORTH

During 2021 valuations for privately held entities broke all the norms, and healthcare was no different. The standard 3-5x EBITDA (*Earnings Before Interest Taxes Depreciation & Amortization*) has grown to 6-8x, maybe even higher in some cases depending on the nature and profitability of your practice. Each sale is specific on the facts and circumstances of the deal and nothing is guaranteed, but sellers should be optimistic on the potential selling price. As part of being prepared, sellers should also work to identify any non-recurring or one-time expenses. As a result of the COVID-19 pandemic, many practices may have incurred one-time costs for additional PPE or other expenses which should be isolated. Additionally, sellers should understand and quantify any ownership *"perks"* which a purchaser may not inherit, such as travel or meals. Further, practices that may be selling only a part of their operation will need to think about how to normalize any shared overhead expenses. Many times sellers may present financials *"as adjusted"* to show these items and increase selling price. Finally, if you are planning on selling, start the process early of reviewing your operations and developing ways to increase EBITDA. Increases in technology spends, cuts in redundant staff, elimination of unneeded rent, and overall streamlining of operations can go a long way in increasing your EBITDA and your buy-out.

WHAT ABOUT TAXES?

Taxes will play a major role in many M&A transactions. The exact taxation of the transaction can depend on many factors, and sellers should work with their advisors prior and during any transaction to understand the tax implications and to potentially identify any opportunities. Many of the transactions in the healthcare industry will be structured as a *"stock"* (*or equity equivalent*) sale, where the seller is selling the equity interest in the practice; this is particularly true when the EIN of the seller is crucial for ongoing operations by the buyer. If the buyer is an existing healthcare practice and the EIN of the provider is not necessary, many buyers will prefer an asset sale approach. While there can be many reasons for this, typically in an asset sale, the buyer is able to increase the depreciable basis of the assets and amortize any goodwill, thereby generating tax deductions; this is less beneficial for a seller as it will make some of the sale taxable at ordinary income rates. A seller will prefer a stock sale from a tax perspective, as this allows the seller to recognize capital gain (*a sale of a partnership (LLC) interest will, in substance, work like an asset sale for a seller*). As a buyer steps into the shoes of the seller, the additional amount paid above the asset basis of the seller's assets does not create a favorable tax asset and therefore this is less preferred by buyers. Often the structure of the deal (*asset vs stock*) can influence the purchase price, as a seller in an asset sale will look for a higher price given the increased tax burden.

Selling a business, particularly a healthcare practice, can be both a very stressful and exciting time. A seller that is prepared and armed with knowledge will be in the best position to maximize their selling price and minimize any complications along the way.

EDWARD McWILLIAMS, CPA
PARTNER

MEGA-SIZED NEW HEALTHCARE ENTRANTS

Money attracts more money. It's no secret. It should come as no surprise then that the $4.1 trillion (*yes, trillion*) American healthcare industry is now in the crosshairs of the world's largest and most profitable companies, each of whose stock is worth north of $1 trillion. Apple has its Apple Watch. Google has its Fitbit. And Amazon, besides aiming at healthcare retail, has Amazon Care, the clearest direct threat to smaller physician practices we've seen from this big-tech cohort.

During the summer of 2021, Amazon launched its nationwide telehealth platform for primary care services through an arrangement with Care Medical, itself a physician practice that will serve as Amazon's own care team. Initial reports were uncertain as to whether Amazon planned to market this service for profit, or simply as an option for its ever-growing workforce of nearly 800,000 now.

Whenever a trillion-dollar behemoth moves into your territory, you must take notice and plan to react.

Amazon has a multi-pronged approach to healthcare with Amazon Care, focused on telehealth and home-based care. Amazon care not only enables employers to provide access to high-quality medical care within 60 seconds, without wait times, 24/7, 365 days a year, but it also aims to promote home-based care, utilizing technology to increase patient monitoring models for chronic and post-acute care management and on-demand medical professionals coming right to patients' doors.

Amazon Care is being sold to employers as a supplementary workplace benefit, attached to existing health plans. Amazon is not an insurer (*yet*). But it aims to provide early and preventive medical care through on-demand virtual visits (*in-person in some regions*) and chat features to enrolled employees. This continues the trend of urgent care and telehealth amid major attempts to reduce hospital visits and admissions, thus effectively saving the entire medical system from further burdening already-stressed hospital capacity and wasting dollars. For employers facing constant increased premiums from their insurers, Amazon's hope is to decrease costlier medical visits and eventually pass on savings to plans and employers. For those companies enrolled in high-deductible plans, Amazon's cheaper model may result in less out-of-pocket payments. As more and more employees go remote, employers seeking to keep their employees healthy may find that Amazon Cares offers an attractive combination of speed, convenience, and personalization.

What's more troubling for existing traditional physicians is Amazon leveraging its vast resources to outcompete them on quality and speed of care. On-demand medical attention at literally any time on any day will be difficult for any private practice to compete with. Amazon has the cash to play loss-leader in this market while it learns how to further disrupt it. Remember this is a company that started by selling books online and now is the country's second-largest retailer, behind only Walmart. It certainly had bumps in the road to contend with, but it found its way. It might in healthcare as well.

Of course, Amazon isn't alone in its endeavors to upend the traditionally-static healthcare industry. It's seemingly another actor in the play, as services get delivered closer to home and with less delay. The days of sitting in waiting rooms for hours are numbered.

What's a small provider to do? The overarching trend in the industry is clearly towards consolidation, which allows for leveraging pooled resources to combat the mega companies' forays. Short of that though, embrace change, and learn from the competition. Everything is becoming digitized. Your practice needs to continue to evolve and ensure that it's leveraging whatever technology it can to enhance patient experiences. Off-the-shelf software packages and cloud-based applications can plug into your electronic health records and provide unique and exciting features that your patients may respond well to. Up-to-date patient portals, virtual availability and visits, and extended hours are all ways to stay connected and increase patient engagement and loyalty. Affiliating with other groups to fill in gaps in service delivery helps as well. Relationships will always be important; obviously those with your patients are paramount, but with other providers as well. Partnering with urgent care facilities to tap into their extended hours may provide an avenue to keep patients that may have urgent needs. Leverage the technology that patients may be using in their daily lives as well. If they're staring at their Apple Watches all day long, monitoring their steps, heart rates, EKG's, etc., then develop care plans and describe to them what they should be aware of when self-monitoring. Encourage routine virtual check-ins to review their data and interpret it for them. Too many people self-diagnose or use Google searches to play doctor. Tap into your experience and knowledge base to keep your patients educated and informed, but still connected to and reliant on you. You need to differentiate yourself by staying close to your patients. The world is moving to healthcare built around patients, their life, and their schedules … you need to move with it. Lacking that differentiation, your patients will become low-hanging fruit for larger practices and the Amazons of the world.

MATTHEW BURKE, CPA, CFE
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YOU MAY NEED TO ESTABLISH A PENSION PLAN FOR YOUR STAFF

New regulations at both the NY City and NY State levels may now require employers, including physician practices, to establish a pension plan for the benefit of their employees.

SUMMARY – NY CITY REGULATIONS

On May 11, 2021, New York City Mayor De Blasio signed into law 888-A and 901-A, a New York City Local Law 51 and 52, respectively. Collectively known as the New York City *"Retirement Security for All"* legislation, these laws impose a mandatory auto-enrollment payroll deduction **Individual Retirement Account (IRA)** program for employees of private sector employers, which do not currently offer a retirement plan, and employ five or more employees *"whose regular duties occur in"* New York City. Employers are not required to contribute to these accounts. This legislation also establishes a retirement savings board (*Board*) to facilitate the implementation of the Program and tasks the New York City Comptroller with establishing an investment strategy and policy as well as directing the underlying investments and investment funds. The new law took effect on Monday, August 9, 2021, however the Board has up to two years to implement the Program.

BACKGROUND

"The impetus of the bill is that out of roughly 3.5 million private sector workers in New York City, only about 41% have access to an employer-sponsored retirement plan," said Matthew Thompson, CFP, CIMA, First Vice President and Senior Investment Management Consultant at Morgan Stanley. *"This is lower than the national average, which is estimated at approximately 53%, and down from NY City's average of 49% a decade ago."* Even more troubling, according to the NY City council who passed the bill, 40% of New Yorkers near retirement age have less than $10,000 saved for retirement. *"Automatic workplace retirement savings provide an easy pathway for workers to start building a safety net and grow the savings they need to take control of their future. Employees are 20 times more likely to save for retirement with automatic payroll deductions,"* said AARP New York State Director Beth Finkel.

ELIGIBILITY

Private sector employers in New York City are covered by the *"Retirement Security for All"* legislation if they:

1. *employ five or more employees whose regular duties occur in New York City;*
2. *have employed no fewer than five such employees without interruption for the previous calendar year;*
3. *have been in continuous operation for at least two years and*
4. *have not offered or maintained in the preceding two years a retirement plan as defined by the legislation.*

Employers are covered if:

1. *they are 21 years of age or older;*
2. *they are regularly scheduled to work at least 20 hours per week, and*
3. *their "regular duties occur in" New York City.*

DETAILS

Under the new legislation, the default employee contribute rate will be 5%, but will allow employees to opt out or adjust the rate as they deem fit, up to an annual IRA maximum of $6,000 (*or $7,000 for those 50 and above*). The plan is flexible, thus enabling employees to keep contributing to the plan or roll it into another retirement savings plans if need be. Similar to the requirements under **Employee Retirement Income Security Act of 1974 (ERISA)**, employers must remit funds deducted from the earnings of each eligible employee for deposit into the Program on the earliest practicable date, consistent with applicable rules, and distribute information about the Program to their employees. The employer is also required to retain records confirming compliance with the laws' requirements for at least three years.

ADMINISTRATION/OVERSIGHT

The law establishes a Retirement Savings Board to facilitate the implementation and jurisdiction of the program. The Board will consist of three appointees appointed by the Mayor, who will be tasked with determining the start date of the program, entering into contracts with financial service providers and administrators, creating a process for participation, and conduction education and outreach to employers, along with employees. The Board will also work closely with the Comptroller in selecting policies and investment strategies.

Additionally, the law states that the Mayor shall designate a government office or agency to enforce the program, and create a procedure that enables eligible employees to voice complaints of violations of the program, to such enforcement agency within one year of the date the employee learned of the alleged violation.

KEY POINTS

The language in the law enacting the program provides specifically that the Program is not intended to constitute an employee benefit plan covered by the **Employee Retirement Income Security Act of 1974 (ERISA)**. Furthermore, the Program will automatically terminate if the New York City Corporation Counsel certifies that there is a substantial likelihood that the law conflicts with, or is preempted by state or federal law, including ERISA, or constitutes an employee benefit.

The law does not provide for any employer contribution and does not provide for contributions by New York City.

Any employer who continuously fails to enroll eligible employees and/or properly remit funds into each individual plan will be subject to an increase in fines for each individual violation. The initial violation will be $250 per employer. If the employer violates the law within two years of the previous violation, the fine doubles to $500, and increases to $1,000 for any subsequent violations within that two-year window. Employers who fail to properly retain records will also be subject to a $100 fine for each violation. While these amounts seem nominal at first, employers should take not that these fines apply with respect to each eligible employee. Thus, if an employer violates the law across the board and with each individual employee, these fines swiftly add up to a substantial amount.

SUMMARY - NEW YORK STATE REGULATIONS

In April 2018, the New York State legislature approved the New York State Secure Choice Savings Program, a payroll deduction IRA retirement savings program, for employees who are not offered a plan through their employers. That program is voluntary.

The retirement-for-all mandate has now been extended to employers statewide. On June 7, 2021 the New York Senate approved NY A03213-A, which was subsequently signed into law by Governor Hochul. This law converts the state's existing voluntary IRA program (*above*) into a mandatory program for private-sector employers with 10 or more employees that do not currently offer a retirement program. *"This legislation is similar to the City's but requires that employees be auto enrolled into an IRA with a 3% minimum contribution rate,"* explained Thompson. *"The legislation also prohibits employers that currently offer retirement plans from terminating such plans in order to participate in the state program."*

Neither the State program nor the City program is yet running, however, the legislation enacting the city program provides that they City will discontinue its program if the state establishes a retirement savings program that requires *"a substantial portion of employers who would otherwise be covered"* by the City program to offer to their employees a savings program through payroll deduction or other method of contribution. Now that the State program is mandatory and likely will cover many of the same employers as the City program, the City may halt efforts to implement its program.

ALTERNATIVES

As part of the December 20th, 2019 **Setting Every Community Up for Retirement Enhancement (SECURE)** Act eligible employers may be able to claim a tax credit of up to $5,000, for three years, for the ordinary and necessary costs of starting a SEP, SIMPLE IRA, or qualified plan (*like a 401(k) plan*). 403(*b*) plans do not qualify for the tax credit. A tax credit reduces the amount of taxes you may owe on a dollar-for-dollar basis.

The credit is 50% of your eligible startup costs, up to the greater of:

- *$500 or*
- *The lesser of:*
  - *$250 multiplied by the number of* ***non-highly compensated employees (NHCEs)*** *who are eligible to participate in the plan*
  - *$5,000*

Eligible startup costs include the ordinary and necessary costs to setup and administer the plan and the costs to educate your employees about the plan. You can claim the credit for each of the first 3 years of the plan and may choose to start claiming the credit in the tax year before the tax year in which the plan becomes effective. However, you cannot both deduct the startup costs and claim the credit for the same expenses and you are not required to claim the allowable credit.

Additionally, an eligible employer that adds an auto-enrollment feature to their plan can claim a tax credit of $500 per year for a 3-year taxable period beginning with the first taxable year the employer includes the auto-enrollment feature.

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