Presentation Objectives

• Provide insight regarding the “3 Ws”
  – Why are we contemplating the sale?
  – What are we selling?
  – Who should we sell to?

• Inform you about the transactional process

Current Market Conditions

• Growth in the hospice industry fueled by:
  – Increasing number of senior citizens who are living longer; and
  – Enhanced awareness of the hospice benefit
• Due to the market factors increasing the need for hospice services, the number of hospice transactions also has increased
• Many buyers are for-profit enterprises
Evaluating the “Why” Factor

- Increased Market Competition
  - Homegrown/Small Nonprofit
  - Family Hospice
  - Governmental Agency
- Heightened Regulatory Scrutiny

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Evaluating the “Why” Factor

- Role of mission driven decision-making
- Importance of having full Board approval
- Timing

What are we selling?

- Asset transaction vs. stock transaction
- Assets include the tangible and intangible assets needed to operate the hospice business
  - License
  - CON
  - Medicare Provider Number & Agreement
Who should we sell to?

• Importance of working with a qualified party to identify prospects

• Use of Request For Proposal

• Confidentiality (and Nondisclosure) Agreement

Transaction Steps

• Typically a 5-Step Process
  – Letter of Intent
  – Due Diligence
  – Purchase Agreement & Ancillary Transaction Documents
  – Change of Ownership or “CHOW” Notifications
  – Transition of Operation

Purchase Agreement

• Basic Structure
  – Definitions (critical given potential to broaden reps & warranties in unexpected ways)
  – Scope of Purchased Assets/Liabilities
  – Representations & Warranties
  – Pre-Closing/Post-Closing Covenants
  – Closing Conditions
  – Medicare Provider Number
  – Indemnification
Scope of Assets/Liabilities

- Scope of Purchased Assets
  - All assets vs. specifically identified assets
  - Carve out transactions
- Scope of Assumed Liabilities
  - Must be carefully drafted to ensure each party is responsible for timeframe during which it operates the hospice

Representations & Warranties

- Three purposes of reps & warranties:
  - Disclosure: What is the Buyer purchasing? The disclosure schedules will flesh out details.
  - Allocation of risk: If the representation is untrue, the Seller may be required to return a portion of the purchase price.
  - Obligation to close: How does an untrue representation impact closing?

- Due Authority
- Third Party Consents
- Material Contracts
- Legal Proceedings
- Employees/Employee Benefits
- Insurance
- Health Care Compliance
- Taxes
- Compliance with Laws
Representations & Warranties

- Given by Seller (and some or all of its Owners)
- Qualifiers/Limitations
  - Limit to business being sold
  - Limit lookback period
  - Materiality qualifiers
  - Knowledge qualifiers
- Good disclosure schedules are key to mitigating risk

Covenants

- Actions that the parties agree to take or abstain from, either before or after closing
  - Is it better to have a simultaneous sign and close?
- Pre-Closing Covenants
  - Conduct of business
  - Exclusivity
  - Employee/benefits
- Post-Closing Covenants
  - Non-compete
  - Transition matters

Closing Conditions

- What must occur before the parties are obligated to close
- Delivery of ancillary documents and purchase price
  - Bill of Sale
  - Certificates
  - Third Party Consents
  - Assignment & Assumption Agreement
Medicare Provider Number

• Use of Medicare provider number of agreement between effective time of closing and issuance of Tie-In Notice (the “Transition Period”)

• Flow of funds during the Transition Period and process to reconcile accounts

• Cost report matters

Indemnification

• Provides a procedure for managing disputes and third party claims
• Indemnification typically provided for the following:
  – Breaches of reps and warranties
  – Breaches of covenants
  – Retained assets (in an asset transaction)

CHOW Notifications

• Regardless of the type of CHOW notification, it is critical that Seller and Buyer coordinate efforts to ensure continuity of care for patients

• Licensure
  – Buyer should have access to Seller’s most recent Licensure Renewal Application, and both parties should coordinate with Licensure Section to submit necessary information

• Medicare
  – 855A must be submitted to Palmetto GBA
  – Seller’s portion and Buyer’s portion can be submitted together
Transition of Operation

- Notice to patients/responsible family members
  - Content should be approved by both parties
  - Seller’s message to patient
  - History/background on Buyer
  - Personnel that will be available to care for patient post-closing

- Access to active patient records
  - Evaluate whether there is a short-term, limited need for Seller’s software system post-closing

Closing Thoughts

- Remember that it is a process that will take time and resources and that your chosen advisors are there to help with the transition

- Critical to notify personnel at the “right” time

- Stay focused on mission driven decision-making

Questions/Comments

Please ask, call me, or e-mail me with your questions or comments:

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