

Katten Health Care Symposium: M&A, Joint Ventures and Private Equity in Health Care: 2022 Deal Trends in Review

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The health care mergers and acquisitions (M&A) market continues to be a private equity draw, with investors making significant investments in standalone platforms and platform add-on transactions. Also at the fore are strategic private equity investments in joint ventures with non-controlling strategic investors adding value to overall joint-venture platforms. This relatively new model is increasingly popular in an environment focused on value-based care initiatives and risk-based programs.

Over the past four years, the market has experienced an uptick in specialty platforms such as urology, dermatology, ophthalmology, gastroenterology and orthopedics. As these standalone specialties mature, secondary transactions for these established platforms are on the rise. At the same time, new single-specialty platforms and multi-specialty platforms are emerging. Amid a booming specialty market featuring physician/provider models, there is growing interest in opportunities and development of in-home patient care and tech-enabled care solutions.

Economic Impact on the Health Care Deal Market

From an M&A perspective, the market has not shown signs of a slowdown as a result of inflation, fear of recession, or various supply chain issues impacting other sectors. While the market may be less active than in last year's fourth quarter, activity remains high and is very seller-friendly. However, certain sectors have seen artificial acceleration of earnings and revenue because of the impact of the COVID-19 pandemic, which at times has created a disconnect in expectations and negotiations between buyers and sellers. While these factors have not significantly impacted deal volume, there is an expectation that there will be further normalization of deal multiples due to increasing interest rates and the cost of capital.

Trends in Representation and Warranty Insurance

Increased policy prices and expanding coverage exclusions (including billing and coding, data privacy, etc.) have led to a decrease in the use of representation and warranty insurance. Because of this trend, there is an uptick in more fully negotiated indemnification provisions to address situations where representation and warranty insurance is determined not to be available or favorable for a given transaction.

Tips and Strategies in the Current Environment

Many of the pitfalls that parties face in today's market can be mitigated early in the life of a transaction. Taking these three steps can minimize risk:

- Work with sophisticated counsel and advisors.
- Avoid rushing into the market.
- Begin third-party sell-side diligence to get in front of issues that may arise during traditional diligence.

Cautionary tales are plenty, with recent examples of physician practices going to market too aggressively with pro forma adjustments. This can cause buyers to question the sustainability of the acquisition. Another example: targets are not addressing special tax planning and structural needs up front with respect to entering or exiting practice partners. Other common transaction missteps include regulatory and legal matters becoming gating items from a timing perspective (i.e., certificates of need, antitrust considerations, etc.). While true show-stopping diligence items are rare, getting ahead of these potential pitfalls early is key to a transaction's overall success.

Katten's 2022 Health Care Symposium addressed these and other trends during a panel moderated by Lisa Atlas Genecov, partner and chair of Katten's Health Care Department. The panel, "Mergers, Acquisitions, Joint Ventures and Private Equity: Transaction Trends and Tips," featured Kevin Palamara, managing director of Provident Healthcare Partners, and Nathan Reisman, senior director of mergers and acquisitions of GI Alliance.

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