CASP: Mergers and Acquisitions in a Market Under Duress

Abstract:

In the wake of COVID-19, autism service providers, large and small, are finding it increasingly difficult to sustain their operations – and their professional staff – under declines in census, hours, billings, and revenues. In such circumstances, a sale or merger can be a lifeline that best serves your clients, staff, and you. In this call, we will discuss how to approach the market when your company is under duress. How do you balance the sometime competing interests of valuation, speed, and best fit? Which companies might be the best partners? How might you structure a deal? What should you be wary of? In short, how can you wrest the best possible outcome out of less than ideal circumstances?

Presentation Outline

1. Brief overview of Health Care Services M&A in the Time of COVID-19

2. Have You Done Everything to Stave off an Un-Pressured Sale?

a. Paycheck Protection Program

3. Decision making pivot points

a. What are they?

- **i. Value**
- **ii. Speed**
- **iii. Fit**: clinical, employees, personal goals and objectives

b. Prioritize

- i. Virtually every process and deal decision can be viewed through these pivot points

c. Interplay between and among decision making pivot points

- i. Any one pivot point can come at the expense of another
    1. Value can come at the expense of speed (and vice versa)
    2. Fit can come at the expense of value
    3. Speed can come at the expense of fit

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4. Abridged preparation

- a. **Financial statements** – 2019 and stub-period 2020
  - i. **Contribution to overhead approach**
    1. Revenues less direct costs and client facing step variable costs (supervising BCBAs)
    2. May not present other general and administrative expenses
    3. Best approach for strategic buyers that can “easily” absorb” administrative functions
    4. If value is tied to these elements, easier to sell;
       - a. requires less detailed financial due diligence (speed)
- b. **Detailed revenue and volume metrics**
  - i. Trends in revenues, census, hours, by program, by payor, by location
  - **ii. Single most important schedule if you tie deal to one or more of these metrics**
- c. Detailed headcount and salary schedule
- d. Contracts
- e. Research license transfer procedures as necessary
- f. Set-up Dropbox or like cloud filing system to upload due diligence items; Begin filling immediately

5. Buyers

- a. **Strategic vs. Financial Buyers**
  - i. **Highest valuation** likely to come from **proximal strategic buyers**
    1. Absorb client base without adding substantial back-office costs
  - ii. **Private equity** sponsored financial buyers; generally
    1. Require most amount of **information**
    2. High **due diligence** standards
    3. Long time **frame** to close
- a. **Number of buyers**
  - i. If at all possible, work with more than one buyer
    1. Loss of leverage
    2. **Loss of back-up buyers**
  - ii. If primary consideration is **time**
    1. Focus on strategics; preferably those with deal making experience
    2. If possible, a pool of five to seven
  - iii. If primary consideration is **value and you have time**
    1. Viable option to go broader and consider financial buyers

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iv. if primary consideration is **fit**, select buyers accordingly

b. Timing

i. Do not approach sequentially

ii. Work all buyers in parallel

6. Valuation

a. Historic metrics currently don't apply

b. To set, or not set, a price

i. Setting price

1. Pros

a. Faster engagement from buyers

b. If value is not the priority, and you set an opportunistic price, may attract more buyers

c. Likely best approach for inexperienced buyers

2. Cons

a. Takes longer

b. Frustrates buyers

c. Does not work well with inexperienced buyers

c. Strategic use of earnouts as a valuation strategy

i. Reduced risk to buyer can yield higher valuation

ii. Downside: confers more risk to seller

iii. Easier – and faster – to close

iv. Must be constructed extremely carefully

1. Performance targets must be explicitly detailed

2. Tie to volume measures rather than profits

a. Easier to define

b. Easier to control

c. Alternative: gross profits

3. Beware of performance "cliffs"

4. If multiple year, allow for cumulative treatment

5. Include dispute resolution in purchase agreement

d. Other consideration

i. If employee retention is important, must be detailed in an offer

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7. Structure/Letter of Intent

- **a. Get it in writing**
- b. Stock or asset transaction
- c. What assets are being acquired; What liabilities are being assumed
- d. Consider retaining the balance sheet
  - i. **Keeping working capital increases value**
  - **ii. Can reduce due-diligence requirements**
- **e. Price and payments terms, if any**
- f. Buyer will request period of **exclusivity**
  - i. If speed is an issue, **tread carefully** here;
    - 1. Tie to meeting deal benchmarks, notably **completion of financial due diligence**.
    - 2. If clearly priced **"opportunistically"**, **may** be able to get away with not granting exclusivity
      - a. "First buyer prepared to close at agreed upon price and terms wins the deal"
      - b. Alternatively, can offer lead buyer x% discount of negotiated price if they waive exclusivity

8. Other Miscellaneous Issues

- a. Engage an experienced health care transaction attorney
- b. Although you may want a deposit, you won't get one
- c. Try to not let a deal drag on – **BACKUPs**
- d. Be prepared to offer **indemnification**
  - i. The more **opportunistic** the pricing, the more limitations you can negotiate.
- e. Buyers will say they can close in 60 days; be prepared for 120

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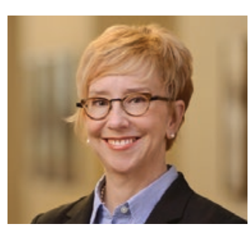

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