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Due diligence checklist

To avoid being the target of False Claims Act lawsuits, attorneys say private equity firms ought to make sure their companies are on the up and up prior to investing in them. That means extensive due diligence, often by third-party companies that specialize in the specific sector of healthcare the target company operates in.

"Diligence, diligence, diligence," said Mike Cole, managing director and healthcare industry leader of Alvarez & Marsal's transaction advisory group. "You can't know too much about this area, which is why our clients have a number of advisers, from the legal, accounting and operational perspectives, that are tackling all these issues at the same time."

If it's a healthcare provider, for example, the potential buyer might want to bring in third-party billers and coders.

Ultimately, liability in False Claims Act cases comes down to knowledge of noncompliance and failing to fix it despite having the power to do so.

Due diligence is an important part of that because it's when a buyer ideally would learn about any potential wrongdoing. Attorneys say it's important to preserve any documentation showing that issues raised during due diligence were resolved.

"I think it's crucial for any buyer or investor to understand what they're taking on," said Alice Harris, an attorney with Nexsen Pruet.

Here are key compliance areas to look for in due diligence, according to Harris and attorneys Jennifer Malinovsky and Ed White of Nelson Mullins Riley & Scarborough.

1. Physician contracting and compensation

- Are terms of employment agreements consistent with regulatory requirements?
- Is compensation reasonable and not tied to referral volume?

2. Material contracts and related party contracts

- Are they consistent with regulatory requirements?

3. Government investigations

- Is target company operating under corporate integrity agreements?
- Is target company under investigation by the DOJ, OIG or CMS?

4. Billing and coding review and audits

- Does target company perform coding and billing in-house or does it use a third party?
- Does target company conduct regular billing and coding audits?

5. Licensure, certifications, accreditations and regulatory compliance programs

- Are staff trained in relevant compliance areas?
- Are licenses, certifications and accreditations up to date?

6. HIPAA/HITECH and privacy matters

- Have regular risk assessments been conducted?
- Have any required Office for Civil Rights notifications occurred?

7. Tax matters for not-for-profit healthcare providers

- If applicable, does target company engage in activities that could negatively affect tax-exempt status?

---- **Index References** ----

Company: NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.; M INVEST PLC; THE UNITED STATES DEPARTMENT OF JUSTICE; CMS ENERGY CORPORATION; HITECH CORPORATION LIMITED; ALVAREZ AND MARSAL L.L.C.; NEXSEN PRUET, LLC; Office of the United Nations High Commissioner for Human Rights

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