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HCCA®
Health Care Compliance
Association

Constructing an Effective, Compliance-Centered Due Diligence Approach

HCCA Enforcement Conference

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Presented by:

Susan St. John, Attorney – Florida Healthcare Law Firm

Zach Simpson, Attorney – Florida Healthcare Law Firm

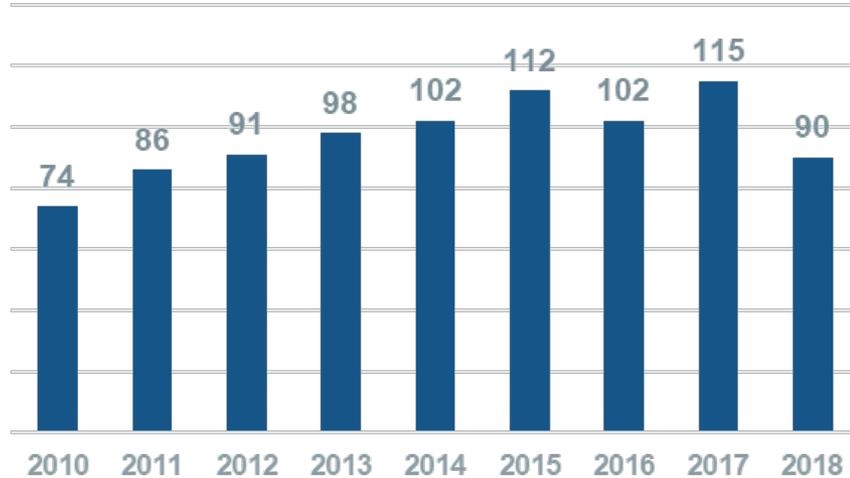
Kristen Davidson, Senior Manager – PYA, P.C.

Agenda

1. Mergers and Acquisitions (M&A) Trends
2. Due Diligence Phases and Players
3. Case Studies of Lessons Learned and Common Pitfalls
4. Questions

Hospital M&A Activity

Total Deal Volume



Emergence of Private Equity in Healthcare

Healthcare has led all sectors in total returns since 1990

265

2017 healthcare private equity deals (29% increase from 2016)

86% Increase in Physician Employment

increase in hospital ownership of physician practices from 2012 – 2015

~44%

of the healthcare deal value was in the provider sector, totaling \$18.9B

Source: The Advisory Board

Source: Bain & Company: Global Healthcare Private Equity and Corporate M&A Report 2018



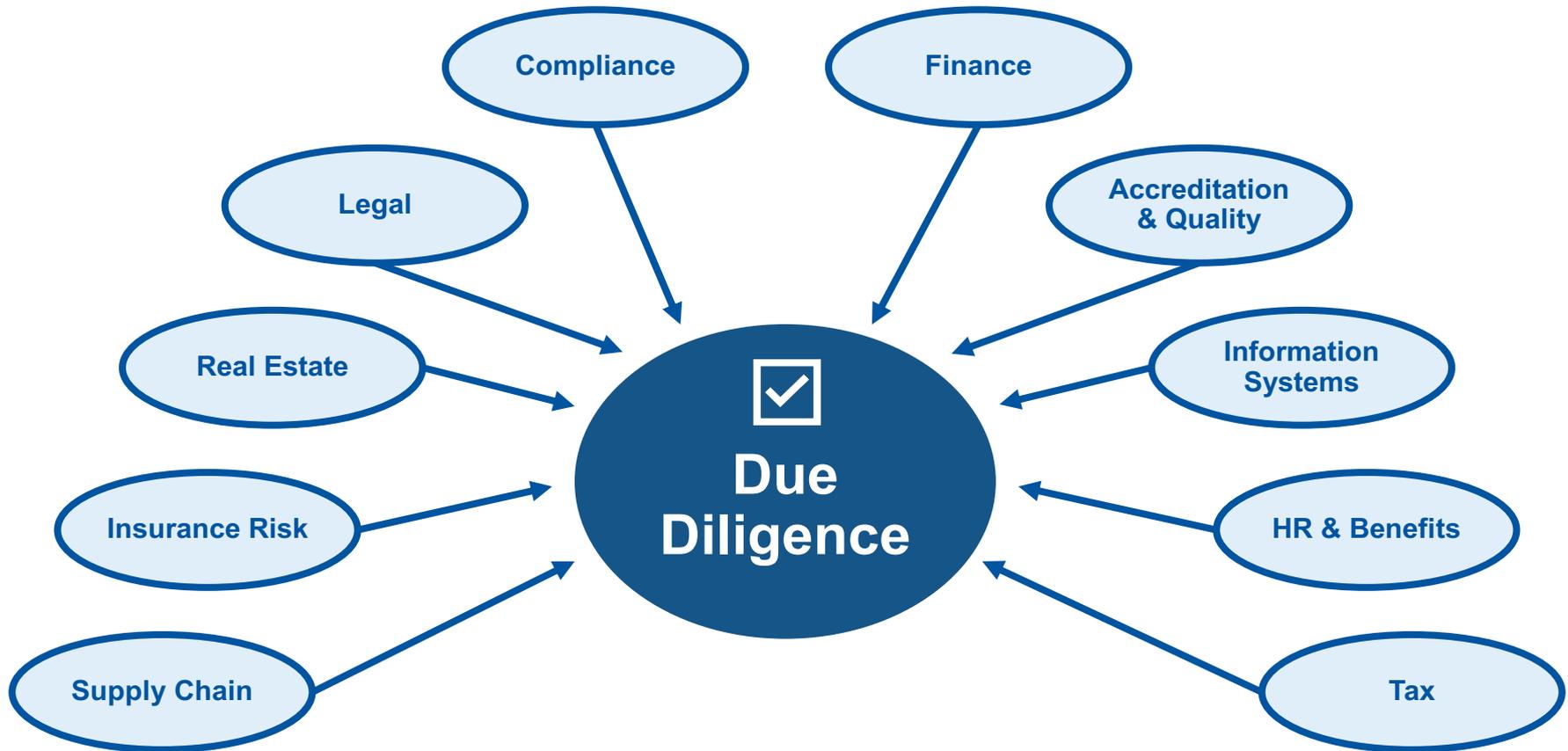
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Due Diligence Phases and Players

Phases of Due Diligence



Due Diligence Players



Initial Due Diligence



- Registered Entity status
- State of registration
- Does the entity have a license, and if so, does the license have any tags against it?
- Principal and owners background search
- Background search of all practitioners and their license
- Were all mandatory disclosures made?
- Is there a state or federal moratorium that would impact the license?
- State Entity search (e.g., Agency for Health Care Administration)
- Cost savings by completing these steps first

Corporate Organization and Capital Structure

- Organizational documents
- Agreements and documents relating to financing, purchasing, subscriptions, contributions, and voting
- Restrictive documents impacting the issuance or resale of company assets or securities
- Agreements between members, officers, and affiliates
- List of current members
- List of all business names utilized
- Certificate of good standing

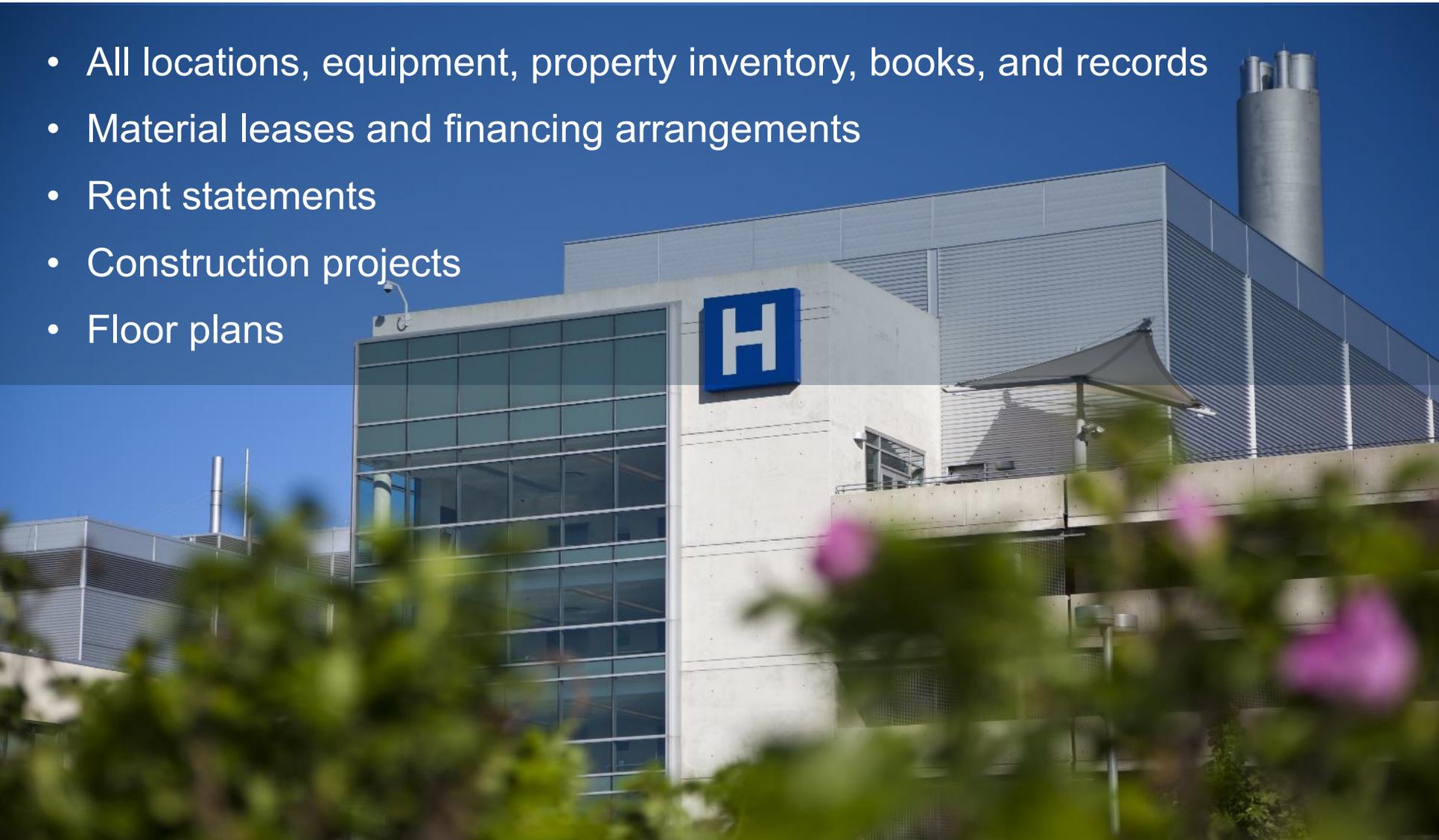


Real Estate



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- All locations, equipment, property inventory, books, and records
- Material leases and financing arrangements
- Rent statements
- Construction projects
- Floor plans



Commercial Matters



- All contracts, agreements, arrangements, and understandings
- Referring physician lists
- Financial interests of referring providers
- Referral source agreements
- List of all patents and intellectual property
- Written policies relating to all commercial matters
- Copies of all insurance policies
- Bank accounts
- Vendor supplier list

Legal Due Diligence Considerations



- Legal concern evaluations
 - Contracts
 - Labor issues
 - Any allegations of violation of law and the resolution
 - Payor disputes, overpayment requests, and ongoing audits
 - Ongoing and threatened litigation in addition to all settlement agreements
 - Policies and procedures
 - Review of all forms utilized by entity
 - Government investigations
 - Liens on assets
 - Licensure and certification
 - Representation and warranties
 - Indemnification

Licensure, Registration, and Permits



Permits

Licenses

Registrations

Certificates

Accreditations

Violations list

Accreditation survey reports and responses to deficiencies

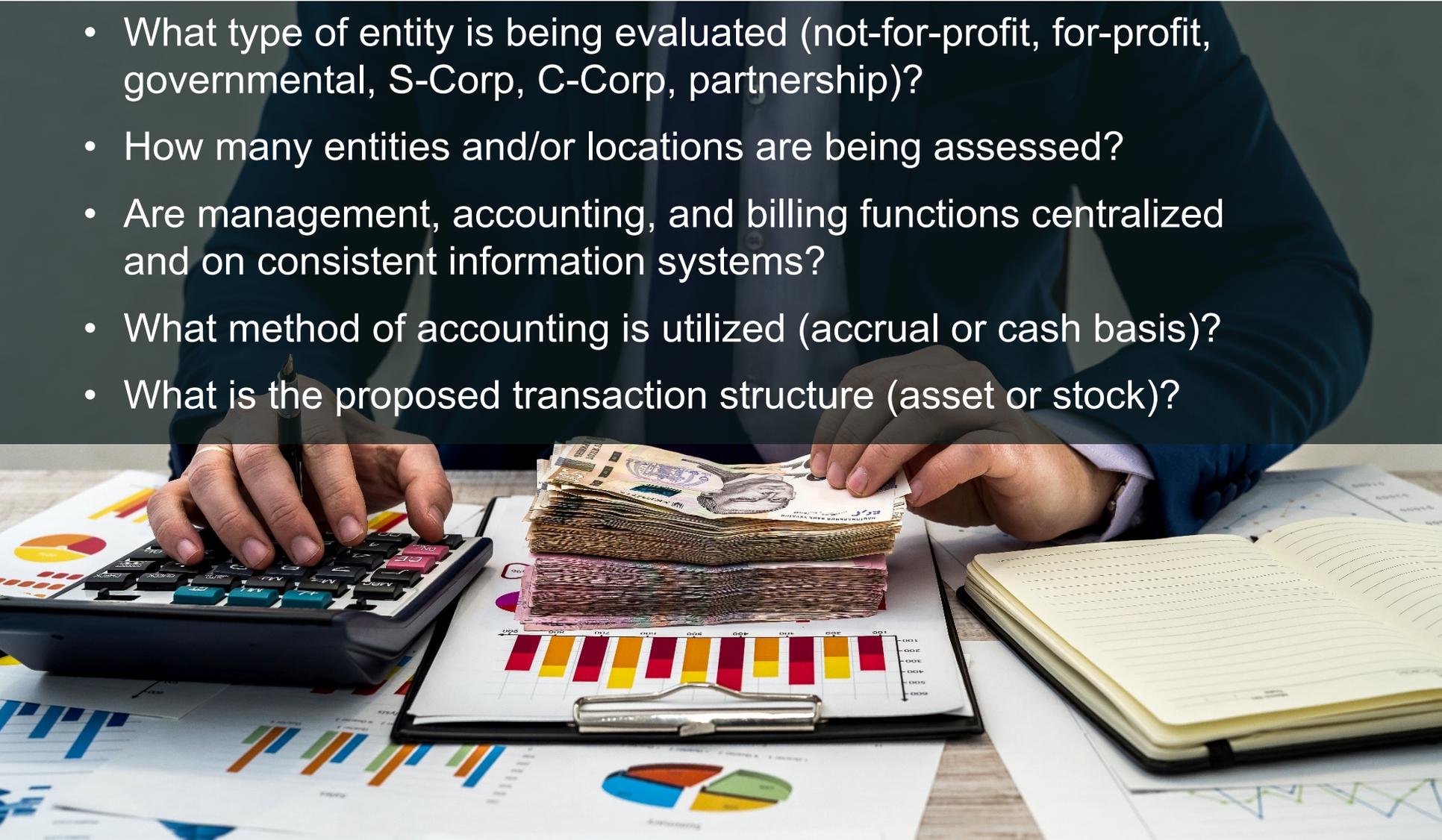
- Lists of all employees, officers, independent contractors, and consultants
- Employment agreements
- Documents relating to bonus, retirement, profit sharing, incentive compensation, and other benefits
- Payroll reports
- COBRA
- Loan arrangements
- Job descriptions and supervision
- Handbooks and policies and procedures



Financial Due Diligence



- What type of entity is being evaluated (not-for-profit, for-profit, governmental, S-Corp, C-Corp, partnership)?
- How many entities and/or locations are being assessed?
- Are management, accounting, and billing functions centralized and on consistent information systems?
- What method of accounting is utilized (accrual or cash basis)?
- What is the proposed transaction structure (asset or stock)?



Sample Focus Areas

Revenue

- ✓ Revenue recognition processes
- ✓ Historical cash to net revenue trends
- ✓ Key volume and operating metrics
- ✓ Payer mix trends
- ✓ Revenue trends by type of service
- ✓ Sources of other revenue
- ✓ Revenue concentration

Expenses

- ✓ Trended operating expenses
- ✓ Process for monthly accruals
- ✓ Historical expenses incurred to generate other revenue
- ✓ Lease accounting practices
- ✓ Key purchased services
- ✓ Cash to accrual adjustments, if applicable

Contingencies

- ✓ Outstanding suits or claims
- ✓ Governmental inquiries/audits
- ✓ Workers' compensation losses

Reimbursement, Billing, and Collections



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- Payor source lists
- Managed care agreements
- Accounts receivable
- Volume reports
- Referral reports
- Diagnosis reports
- Coding compliance documentation
- Self-audits



Compliance Implications



Governmental Inquiries/Audits



Financial impacts often include:

- Regulatory and legal penalties
- Payment refunds
- Material losses from failure to demonstrate compliance

Payor Audits



Identify potential errors and repayment obligations, as well as issues that need to be addressed post-transaction

Coding Practices



Violations of fraud and abuse laws such as the False Claims Act and others may result in non-payment of claims, Civil Monetary Penalties, exclusion from federal health care programs, and criminal and civil liabilities.

Operational Compliance



OIG and DOJ
Compliance Program Guidance



Compliance
Work Plan Status



Ongoing Monitoring and
Auditing



Covid-19 Emergency
Temporary Standard (ETS)



HIPAA



CLIA



OSHA

Additional Focus Areas of Diligence



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- Clinical operational assessment
- IT infrastructure and risk management





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Case Studies of Lessons Learned and Common Pitfalls



Questions

Thank you!



Susan L. St. John

JD

Attorney

susan@floridahealthcarelawfirm.com



Kristen Davidson

MHA, CCEP-I®, CHC®, CPHQ, RHIA®

Senior Manager

kdavidson@pyapc.com



Zach Simpson, Esq.

EMBA, JD

Attorney

zach@floridahealthcarelawfirm.com



pyapc.com

800.270.9629



**FLORIDA HEALTHCARE
LAW FIRM**

www.floridahealthcarelawfirm.com

(888) 455-7702