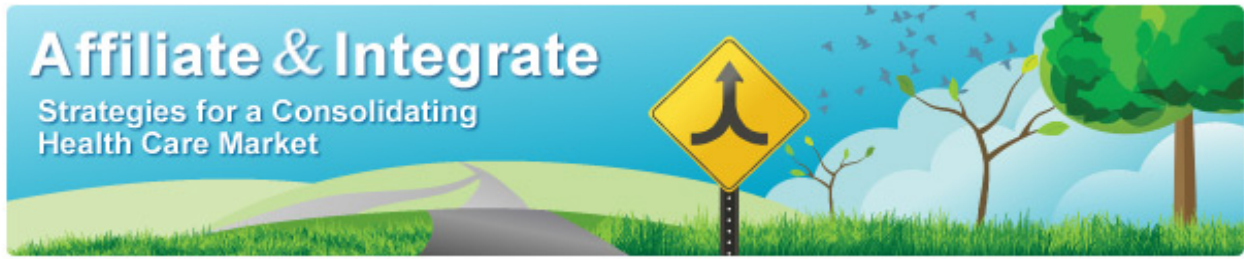


# Affiliate & Integrate

Strategies for a Consolidating Health Care Market



## In This Issue

Spring 2012

Low margins, tightening capital markets, increased competition, physician alignment challenges, and uncertainty regarding health care reform are several of the forces bearing down on hospitals and health systems. These pressures are compelling providers to evaluate their chances to survive in their current organizational form and consider a sale to a for-profit organization.

## Market Watch



The sale of Detroit Medical Center (DMC) to Vanguard Health Systems, Inc., was completed in 2011. Under terms of the final

HEALTH STRATEGIES  
& SOLUTIONS, INC.



## Cash-Strapped Health Care Organizations Seek Opportunities to be Acquired by For-Profit Organizations

Health care providers are in the midst of a major wave of consolidation with a large number of financially fragile providers emerging as the dust settles from the economic downturn and changing market dynamics. Gaps in financial performance and position between the haves and the have-nots have broadened, with a disproportionate impact on small, inner-city, and rural organizations. More and more hospitals and health systems are and will become cash-strapped and on the brink of economic failure or bankruptcy, and will ultimately seek acquirers or partners. For-profit partners are one strategic option under consideration.

### Key Considerations for Board and Leadership

Non-profit law permits board members to act in the best interest of the organization and to rely upon information provided from internal and external sources. A board member's duty is to make a good faith decision, relying upon information provided by others within their areas of expertise and placing the interests of the organization above personal interests.

### Process Recommendations for Non-Profit Organizations Considering a For-Profit Partner: 10 Key Elements

When considering opportunities to be acquired, non-profit organizations should establish a clear process that the board and other stakeholders will follow. Ten key elements to consider are listed below. These elements are often the focus of regulatory review by local, state, and federal officials.

**1. Make certain that board members are aware of and act consistent with applicable non-profit and charities laws.** Consult legal counsel and involve them throughout the process. Consider the antitrust implications of any proposed

purchase agreement, Vanguard acquired all DMC assets, including eight hospitals, for approximately \$368 million in cash. Vanguard agreed to keep all of DMC's hospitals open for at least 10 years, and to invest an estimated \$350 million for routine capital improvement and an additional \$500 million on specific capital projects during the first five years of ownership. Vanguard also agreed to keep in place a policy for charity, indigent, and uncompensated care that is at least equivalent to the DMC's current policy.

## Relevant Reading

### HS&S M&A Outlook 2012: Five Key Trends

e-newsletter by Kathy McCarthy

### Consolidation in the Health Care Delivery Sector

presentation to the Healthcare Leadership Network of the Delaware Valley by Robert Hill and Alan Zuckerman

### Healthcare Mergers

transaction.

**2. Be sure to follow the obligations of due care in the course of negotiating and agreeing upon terms for the proposed transaction.** Due care refers to the fiduciary responsibility for board members to gather appropriate information, act in good faith, and exercise reasonable judgment.

**3. Assess and negotiate fair market value.** This should include completion of an independent valuation analysis, marketing related to a potential sale, a request for proposal process, and use of adequate professional assistance.

**4. Consider whether the proposed transaction is in the public interest.** This should include evaluation of the impact that a transaction will have on access to health care services and provision of charity care services, as well as any other impact on community benefits.

**5. Consider alternatives to any proposed transaction with a for-profit partner.** This should include potential acquisition offers from non-profit organizations, as well as competitive bids from other for-profit organizations. Be aware that the price to be paid by the purchaser of the business does need not be the primary factor considered by the board.

**6. Solicit input from various constituencies** (e.g., physicians, management, employees, unions, vendors, and other parties). Avoid conflicts of interest from all parties.

**7. Negotiate and secure commitments** related to local governance, specific-purpose donor contributions and pledges, minimum level of capital expenditures, continuation of care and non-closure as related to facilities and selected services, minimum period prior to any resale or transfer of a majority interest in the hospital, and other important factors related to your organization's mission

**8. Evaluate the financial performance and position of the purchasing organization** as well as their ability to finance the transaction and fund ongoing commitments

**9. Analyze any severance arrangements for departing executives**

**10. Specify the intent for the creation and disposition of charitable trust assets**

In addition, organizations should keep in mind the following guidelines for written and oral communication.

**and Acquisitions:  
Strategies for  
Consolidation**  
article in *Frontiers of  
Health Services  
Management* by Alan  
Zuckerman

## Upcoming Events

Join Alan  
Zuckerman for a  
two-day ACHE  
cluster

**Advanced Strategic  
Planning to  
Transform Your  
Organization  
August 22-23 in  
Washington, DC**

Move beyond the  
basics of developing a  
strategic plan by  
learning to make your  
plans more targeted,  
gain support, and  
facilitate successful  
implementation  
through ongoing  
strategic  
management.

## Antitrust Guidelines for Written and Oral Communications

Words, Phrases and Conduct to Avoid	Reason to Avoid
<b>Guilty Words</b> "Destroy after reading," "no copies," "for your eyes only"	Cast suspicion on the activity
<b>Power Words</b> "Control," "dominate," "dominance," "dominant position"	Suggest abuse of power
<b>Negotiating Power</b> "Increased bargaining power," "dominant position," "leverage," "clout"	Suggest power to increase profits
<b>Phrases Suggesting No Realistic Competitors</b> "Only seller," "essential seller"	Suggest no choice and power to raise prices
<b>Words of Destruction</b> "Eliminate," "destroy," "obliterate," "annihilate"	Suggest an intent to destroy or injure
<b>Words Defining Markets or Market Share</b> "75% of the [Product X] market"	Make market sound too narrow from an antitrust perspective
<b>Words Suggesting Agreement Rather than Competition</b> "Collaborate," "collaboration," "gentlemen's agreement," "partnering"	May imply an unlawful conspiracy
<b>Words Suggesting Elimination or End of Competition</b> "Eliminate the competition," "no choice but to buy ..."	Imply unreasonable restraint or an anticompetitive effect
<b>Words of Exclusion or Boycott</b> "Exclude," "avoid," "boycott," "united front"	Suggest an anticompetitive intent or effect
<b>Words Suggesting Power to Raise Prices</b> "Enhance the bottom line," "increase profits," "leverage"	Suggest an intent to raise prices

Source: McDermott, Will, and Emery, 2009.

By engaging in and following a process that includes the key elements noted above, leadership of a non-profit organization can achieve results that are fair and reasonable and in the best interest of the constituents they serve. This will also facilitate review and approval processes by regulatory authorities. Given the magnitude of the challenges that some non-profit hospitals face and the prospect of a more challenging competitive environment in the future, consideration of a sale to a for-profit organization may be the best way for board members to ensure continued provision of health care services for the communities they serve.

***For more information on the sale of non-profit health care organizations to for-profit organizations, contact Robert Hill at 215-399-1856 or [rhill@hss-inc.com](mailto:rhill@hss-inc.com).***

**HS&S is getting a fresh, new look!**

Stay tuned for our new website launch,  
set to occur later this spring.

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