

# Selling Your Practice: Advice for Any Transaction

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# Who is EBG?

## Firm Overview

### Epstein Becker Green

- Epstein Becker Green was **founded in 1973** exclusively as a health law firm dedicated to the success of the health care industry which remains the firm's focus today.
- The firm is highly regarded as a **legal pioneer in the health care and life sciences industry** and have been nationally influential on health regulatory issues and business solutions for over four decades.
- Epstein Becker Green attorneys have significant experience leading major health care company **mergers, acquisitions, sales and affiliations** on behalf of physician groups and investors across the country.



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24	Landmark Deals Per Year
172	Physician Deals Closed Since 2014
14	Offices Across the Country
250	Attorneys
120	Health Care Attorneys
70	Health Care Transactions Attorneys

- Supported by a deep multi-disciplinary team of healthcare regulatory, antitrust, reimbursement, tax, employment, benefits & real estate attorneys to assist in due diligence and all aspects of preparing groups for transactions and closings.
- Ranked among the top 10 firms in the 2017 *Modern Healthcare* "Largest Healthcare Law Firms" list.
- Ranked in Healthcare Nationwide and in the District of Columbia, New York, and New Jersey in 2018 by *Chambers USA*.

# EBG M&A Leadership

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Anjana is a Member of the Firm in the Health Care and Life Sciences practice, in the Newark and New York offices of Epstein Becker Green, and serves on the firm's National Health Care and Life Sciences Steering Committee. Her practice focuses on health care transactions and regulatory compliance counseling.

Anjana represents a diverse group of health care providers, including hospitals and health systems, large physician practices, federally qualified health centers (FQHCs), ambulatory surgery centers, radiology facilities, specialty pharmacies, post-acute care providers, venture capital and private equity funds and their health care portfolio companies, information technology companies specializing in health care products and services, and various other health care industry service providers and businesses.

Anjana represents her clients in a variety of business transactions, including mergers, acquisitions, consolidations, affiliations, joint ventures, physician-alignment transactions, MSOs, ACOs, IPAs, clinical integration networks, population health and direct contracting, and other strategic transactions designed to better position providers in the changing health care marketplace. She also actively represents clients in a variety of contractual matters, including professional services agreements, recruitment, and employment.

Anjana provides guidance and compliance strategies with respect to issues involving federal and state anti-kickback and self-referral laws; corporate compliance; corporate practice of medicine; HIPAA; licensure; certificate of need; and other federal and state health care regulatory compliance matters. In addition, she provides advice on the organization, governance, and operations of nonprofit and for-profit companies.

# Key Criteria for Pursuing a Strategic Affiliation or Transaction



# Overview of Diligence Process

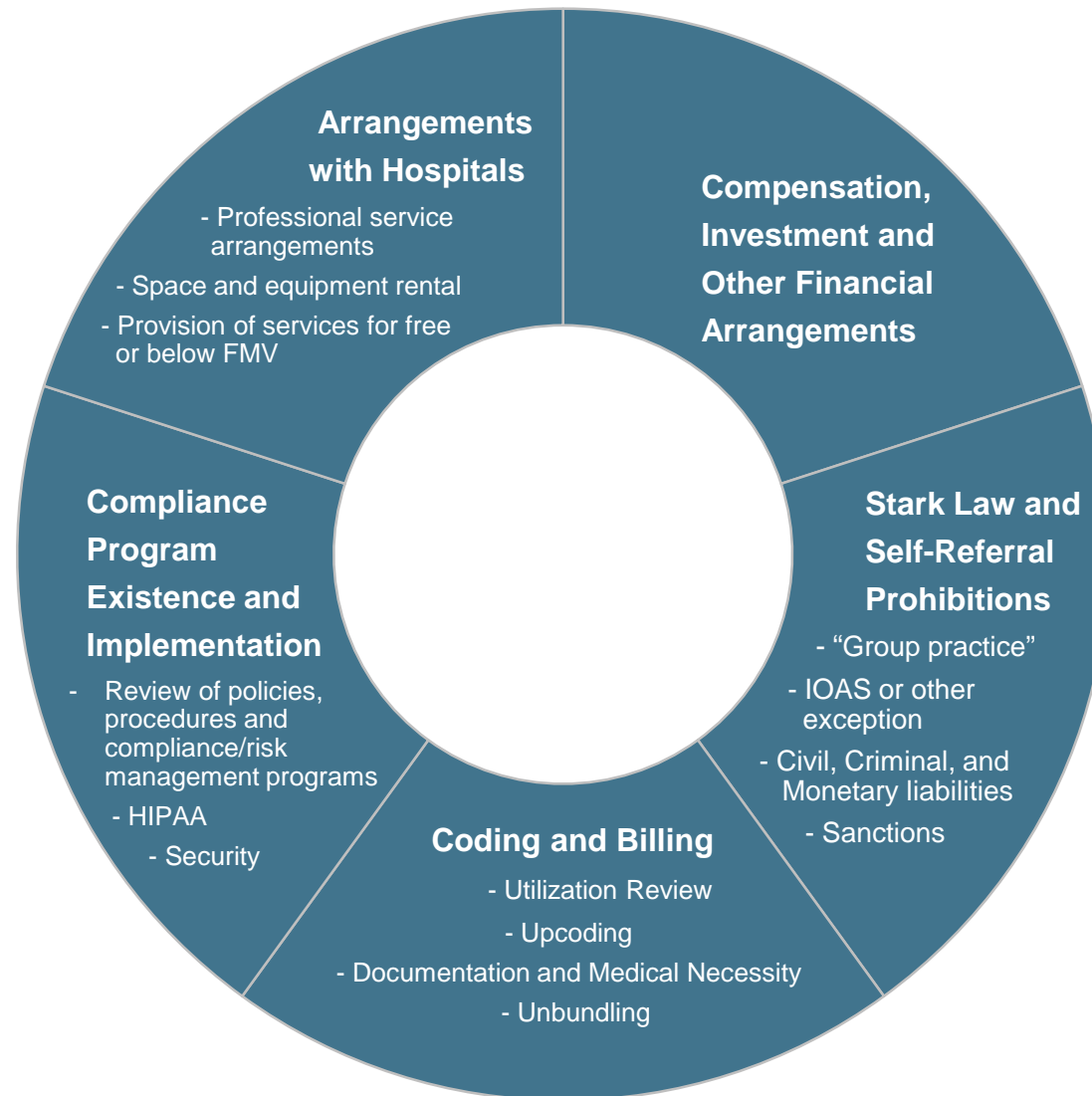
## What is “due diligence” and why is it important to buyers?

- » Diligence requests ask for a TON of information and documents, such as:
  - › Financial records (e.g., P/L statements, billing and claims A/R, etc.)
  - › Organizational documents (e.g., certificates of incorporation, by-laws, shareholder or LLC member agreements)
  - › Litigation, investigations and audits
  - › Material contracts, for example:
    - › Professional service agreements (with hospitals, ASCs, etc.)
    - › Managed care contracts
    - › Employment agreements
    - › Debt (loans & capital equipment leases)
    - › Key real estate leases

## How do buyers analyze the produced due diligence materials?

- » Successor liability
- » Emphasis on compliance issues in health care billing and referral “arrangements”
- » Impact on “sustainability” of revenues and practice reputation

# Common Regulatory Issues in Physician Group Transactions



# The M&A Transactions Process: Regulatory and Clean-Up

Avoid issues during negotiations with investors by conducting pre-transaction assessments and “clean-up”

Detect and correct potential compliance and regulatory risks

- » Monitoring and auditing with regulatory risk areas in mind
- » Implement systems to ensure corrective action is working

Do not conceal potential compliance risks and violations in diligence!

- » NDA/Confidentiality Agreement/Common Interest Agreement.
- » Depending on the risk, the parties may address these problems with indemnification language and escrows and holdbacks



# Key Transaction Issues

## Payment of Purchase Price

- » If a PE “platform investment” in a physician group, may need to restructure in advance to MSO & allocate purchase price between practice and MSO
- » Rollover equity issues (see below)
- » Possible earn out — specific metrics and payment timing
- » Tax impact to physicians based on structure and components



## Terms of Rollover Equity (if applicable)

- » Same Class of equity (e.g., preferred vs. common)
- » Dilution protection in certain circumstances
- » Voting rights, board representation, etc.



## Terms of Ongoing Employment

- » Compensation and required productivity
- » Incentive bonus (based on achieving quality metrics and higher productivity)
- » Term (three years., five years., etc.)
- » Termination rights both ways (e.g., without cause and notice)

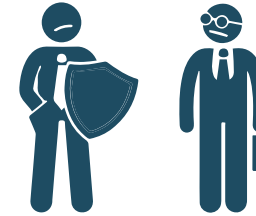




# Key Transaction Issues (continued)

## Indemnification Liability

- » Breach of representations and warranties (and survival periods)
- » Pre-closing liabilities and exposures
  - › Overpayments, audits, etc. (government and commercial payors)
  - › Employment (discrimination, harassment, wage and hour, etc.)



## Hold-Back/Escrow of Portion of Price to Collateralize Indemnification

- » What percentage?
- » How long?
- » Could be special amounts for certain identified liabilities
- » Terms of Release (e.g., staggered)



## Noncompete (Restrictive Covenant)

- » Typically five years in sale agreement (could be more)
- » Ongoing during employment agreement plus 1 or 2 year “tail”
- » Breadth of services
  - › Carveouts for medical directorships, teaching, consulting pharma & others, books, expert witness, inventions, unrelated investments, etc.
- » Geographic scope

