



Health Care

Selling Your Surgery Center--Tips From the Front

Scott Becker and Scott Downing

The market for selling a surgery center remains very hot as several companies continue to buy surgery centers. Further, a great number of owners of surgery centers increasingly express interest in selling a portion of their surgery center to obtain partial liquidity for their investment. While many of these potential surgery center transactions reach the letter of intent stage (a handshake), several of these do not close on the terms set forth in the letter of intent. This article provides a handful of tips and suggestions on how to help improve the chances of closing a desired deal and closing at the price originally agreed upon in the letter of intent.

- 1. Know Your Center.** Prior to putting a center up for sale, it is helpful for the center to update its own review of its business, compliance and strategic issues and concerns. Here, the sellers should understand which items/issues are important to a potential buyer. For example, has a coding and billing audit been performed? Does the center look as though it is coding and billing properly? Is the center too dependent on a few payors or on out-of-network business? Is it possible that a buyer may have concern that such business will not last and thus discount the price paid to the sellers. Is the center having disputes with its payors? Are the financial statements accurate and up to date? Do accrued revenues on the center's books accurately reflect the actual revenues that are likely to be collected (e.g., do the financial statements accurately reflect potential or expected contractual discounts, write-offs and anticipated bad debt). All of these questions should be answered prior to going to market.
- 2. A Transaction is Never Closed Until the Seller Receives the Money.** Sellers should be aware that a transaction is not closed until the money is paid and in the Seller's account. Thus, in all situations, sellers should continue to operate the center as though they are not sure whether a closing will happen. Centers should continue to recruit new physicians, continue to bill and account accurately and make all efforts to retain important staff. Essentially, no seller should bank on a closing.
- 3. Understand Your Back-Up Options.** As the market returns to having some depth in buyers, sellers should try and attempt to negotiate a relatively short time frame to close the deal with any buyer. Once a buyer is chosen, sellers should still understand which parties are likely to be backup options if this buyer backs out. Sellers should always act professionally and leave buyers who are not initially chosen on good terms. As in any other type of negotiation, one should not attempt to become emotionally attached with one buyer versus another. There are quality differences amongst buyers. However, sellers should be careful about becoming dependent on one buyer versus another.



4. **Understand the Types of Terms that will be Expected.** Physician partners in a surgery center should understand that the terms expected by a potential buyer (who is paying a substantial amount to own part of the center) will not be nearly as attractive as some of the terms in their current agreements. For example, the opportunity to be bought out for a variety of reasons, including retirement, may be more restricted and at a lower price than their current agreements allow. Further, non-compete covenants will likely be more strict. Finally, governance powers of the physicians are likely to change substantially in a manner giving the buyer much more control and the physicians much less say in operations going forward.
5. **Develop a Plan Regarding Non-Enthusiastic Partners.** In most situations, a buyer will want to make sure that the great majority of physicians are happy with the transaction. Moreover, sellers will want to assure that those physicians who are highly productive are pleased with the transaction. Early on in the negotiation process, the center should try and develop a consensus with such partners about the transaction and make sure they are on board with the rest of the partners. Where certain physicians will not agree with the rest of the partners or are not interested in doing any transaction, but the great majority of physician partners still desire to do so, sellers should ascertain how to move forward both with and without such disgruntled partners.
6. **Bring out the Bad Stuff.** While this can be done in a measured way, from an integrity standpoint and from a legal protection standpoint, it is important that a center inform the buyer of those items which can negatively impact a business. Typically, negotiations are lengthy and they become much easier when a sense of trust is developed at a relatively early stage. If one tries to hide an important factor about the business, it is likely that sooner or later this factor will be revealed. "Hiding the ball," will reduce the level of trust and make the negotiations, from then on, much more difficult. Further, in many situations, the failure to disclose certain negative factors, can serve as the basis for lawsuits and legal liability.
7. **Safe Harbor Compliance.** Prior to entering into a transaction, it is helpful to understand which of your physicians are compliant with the safe harbors under the fraud and abuse statute and which are not compliant. Buyers may be willing to offer exceptions for certain physicians who are not compliant. However, it is critical to be able to understand and address these issues up front so they do not cause more of a challenge in the negotiations than is necessary.

* * * *

These are several tips potential sellers should take into account when looking to sell their surgery center. The market for surgery centers is more robust than it has been in a couple of years. Should you have questions about the issues raised in this article or any other issues related to selling a surgery center, please feel free to contact Scott Becker (312.750.6016; sbecker@mcguirewoods.com) or Scott Downing (312.750-8910; sdowning@mcguirewoods.com).