CNA
We can show you more.®

VP 2017 ISSUE 2

Mergers and Acquisitions: Five Strategies to Achieve Integration

Mergers and acquisitions (M&As) are a frequent occurrence in the healthcare industry, with hospitals the second most active sector behind aging services. Indicators suggest that healthcare M&A activity will continue at a vigorous pace for the foreseeable future. (See the box on page 2 for a more detailed look at transaction trends.)

Whether a transaction takes the form of a merger, joint venture or affiliation, a comprehensive transition plan must be implemented if the new entity or partnership is to achieve the full benefits of clinical and operational integration, while minimizing associated patient/resident safety issues and liability exposures. This edition of *Vantage Point*® offers five basic strategies to prevent and mitigate culture clashes, stakeholder push-back, miscommunication, unexpected clinical risks, mass staff turnover and other common hazards on the road to organizational consolidation.

Vantage Point® is going digital in 2018. If you would like to receive future issues of the electronic newsletter, visit **go.cna.com/HCsubscribe** to register for a subscription. Thank you for your continued readership.

CNA OFFERS A NEW GUIDE TO MANAGING MERGER AND ACQUISITION RISKS

Healthcare industry consolidations can be fraught with risk and uncertainty. To help our insureds manage these exposures, CNA is proud to offer *After the Merger: A Self-assessment Tool to Evaluate and Manage Integration Risks.*

This new publication, available only from CNA, examines a broad array of merger-related exposures, including operational, strategic, clinical/patient safety, human resources, regulatory, financial and technological. It also contains a compilation of useful resources for organizations contemplating or undergoing a change in ownership or affiliation. The resource, which is part of our ongoing client education and risk control effort, complements the information presented in this edition of *Vantage Point*®.

To request a copy of *After the Merger*, please call 1-866-262-0540 or contact your CNA healthcare risk control consultant.

GENERAL HEALTHCARE AND HOSPITAL MERGER AND ACQUISITION ACTIVITY

- **Total healthcare activity in 2016:** 939 transactions totaling $71.7 billion, down slightly from 952 deals in 2015. Source: "US Health Services Deals: Insights Year-end 2016," issued by PricewaterhouseCoopers LLP, 2017.
- **Hospital activity in 2016:** 102 hospital merger and purchase transactions, signaling a 55 percent increase since 2010. Source: "Hospital Merger and Acquisition Activity Continues Upward Trend, According to Kaufman Hall Analysis," *Health System Management*, January 24, 2017.
- **Acquisition of physician groups by hospitals:** 119 acquisitions in 2016, representing a 385 percent leap in total deal value relative to the preceding year. Source: "US Health Services Deals: Insights Year-end 2016."
- **Fourth quarter 2016 indicators:** Up 35 percent from fourth quarter 2015, pointing to a continued active M&A market into 2017. Source: "Mergers and Acquisitions Report," issued by ClearRidge®, March 2017.

1. PROACTIVELY ADDRESS CULTURAL AND PROCEDURAL DIFFERENCES.

Merging organizations that appear compatible on paper may turn out to differ substantially in terms of corporate values, leadership styles and overall mission, as well as operational processes, systems and staff competencies. Clashes may ensue when entities prematurely impose a unified modus operandi upon two or more disparate sets of staff and providers.

To avoid post-merger conflicts, administrators must identify key procedural and cultural differences early on in the due diligence process. (See "Due Diligence: A Checklist of Essential Steps" on page 7.) The following methods can be useful in helping parties understand one another:

- **Conduct executive leadership interviews** to discover managerial styles and priorities.
- **Use employee surveys** to discern accepted behaviors, attitudes and priorities.
- **Interview patients and families** to see how the organizations are perceived.
- **Observe clinical staff performing their jobs** and note similarities and differences between the two workforces.
- **Map out processes** to depict how tasks are completed.
- **Create "decision maps"** to illustrate managerial processes and levels of accountability.

Supported by these findings, leaders can anticipate cultural inconsistencies and put in place an integration agenda that addresses barriers, sets priorities and establishes expectations. (For more information on ways to bridge transactional culture gaps, see Katzenbach, J., Kronley, C. and Steffen, I. "Cultural Change that Sticks: Start with What's Already Working." *Harvard Business Review*, July-August 2012.)

Merging organizations that appear compatible on paper may turn out to differ substantially in terms of corporate values, leadership styles and overall mission, as well as operational processes, systems and staff competencies.

2. DRAFT A CLEAR VISION STATEMENT.

Merging organizations are rarely a perfect fit from the beginning. The process of drafting the new vision statement is an opportunity to candidly address the differences between the combining organizations that became apparent during the pre-merger due diligence and evaluation phase of the transaction. By drafting the vision statement prior to finalizing the transaction, leaders can better envision the benefits and possibilities offered by the merger, while also finding means to bridge gaps and forge a new, combined culture.

A strong, realistic vision statement succinctly communicates to employees, medical staff, patients and community partners what the new organization hopes to accomplish. Such a statement provides meaningful answers to the fundamental question, *"How will the differing strengths and emphases of the merging organizations improve our patients' healthcare experience?"*

While vision statements vary, most involve the following four elements:

1. **Articulating an end goal,** e.g., "To be the regional provider of choice for a wide range of patients, now and in the future."
2. **Emphasizing unique strengths,** e.g., "The depth, experience and skill of our newly combined medical staff permit us to offer patients innovative, multifaceted care options."
3. **Announcing a new or modified organizational identity,** e.g., "Introducing ABC Health System: Two great names in medical care come together to better serve patients."
4. **Reinforcing underlying purpose and mission,** e.g., "We remain dedicated to promoting and improving the health and well-being of our patients, and to providing high-quality care with a human touch."

For more vision statement drafting tips, see Tingum, J. "Examples of Vision Statements in the Health Care Industry," published by the *Houston Chronicle*. Also, see "How to Write a Good Vision Statement," on Cascade Strategy Blog.

3. COMMUNICATE ON A DAILY BASIS.

Healthcare mergers often become stressful for all parties, as rumors fly and uncertainty mounts. A strategic communication plan emphasizing frequent, two-way dialogue between leaders and providers, staff and other stakeholders is essential to achieve acceptance and engagement. A variety of media and methods should be utilized for this purpose, such as town halls, informal meetings, publications, group emails, websites, webinars, chat rooms, blogs and dedicated social media platforms.

The following communication practices can help minimize ambiguity and maintain morale:

- **Develop a timeline and action plan for communications.** By planning ahead, organizations can coordinate messages in a consistent manner across all lines and departments. The plan should include dates for communicating milestones, such as the announcement of executive leadership or benefit plan consolidation, as well as updates on more routine matters, such as system and process integration.
- **Dedicate a website to frequently asked questions.** Honest, timely responses to questions about the integration process reduce uncertainty and confusion among providers and staff members. Start by answering high-priority questions first, such as how staffing numbers, pay structure and the clinical environment will be affected. If queries cannot be answered at the moment, provide an honest estimate of when the information will be available. Encourage stakeholders to submit questions and post a running list of answers on a dedicated website throughout the integration period.
- **Select trusted employees from both organizations to be messengers.** Employees with questions about organizational change typically turn to departmental managers and human resources representatives. By empowering these individuals to address staff members' issues and concerns on a daily, informal basis, leaders can help improve the workplace atmosphere.
- **Prepare for "leaks."** Despite the best effort to control and time messages, information on merger progress will occasionally be disclosed prematurely, and rumors will spread. Organizations should prepare in advance for these eventualities, responding swiftly with authorized messages delivered in person, by voicemail or via "e-blasts."

SUGGESTED AREAS OF PRE-MERGER RISK ASSESSMENT:

- Medical staff credentialing, privileging and peer review
- Perinatal services, neonatal intensive care and infant security
- Emergency department services
- Surgical services, including bariatric surgery
- Behavioral health and acute psychiatric services
- Physician practices
- Ambulatory care
- Adverse event reporting
- Risk management and performance improvement programs/plans

For additional advice on detecting potential exposures, see "Identifying Hidden Liabilities" on page 5.

Risk managers, hospital executives and governing board members are responsible for ensuring that, after the merger, all combined settings continue to provide safe patient care.

4. ASSESS HIGH-RISK CLINICAL SERVICES FOR STRENGTHS AND DEFICIENCIES.

Risk managers, hospital executives and governing board members are responsible for ensuring that, after the merger, all combined settings continue to provide safe patient care. This involves conducting targeted assessments of areas and procedures associated with a higher rate of incidents and claims. (See box to the left.) The assessment process should include the following general concerns, among others:

- **Are merger-related exposures adequately addressed** by existing risk transfer arrangements?
- **What new risks are associated with merged physician groups,** and is the combined entity adequately prepared to manage them?
- **How will the merger affect patient privacy,** and are there sufficient safeguards in place to minimize these risks?
- **Are health information technology systems compatible** and, if not, what will be required to integrate them?
- **What are the regulatory implications of the consolidation,** and is the merged entity positioned to comply with state and federal requirements?

Once the on-site risk assessments are completed, and concerns and deficiencies are noted, the risk management team can prioritize essential actions, which may include:

- Integrating electronic healthcare record systems.
- Selecting preferred documentation formats.
- Implementing electronic safeguards to protect patient privacy when transferring healthcare information among recently merged facilities.
- Consolidating clinical policies and procedures related to delivery of patient care.
- Streamlining operations and systems that support clinical care processes.
- Clarifying responsibilities, integrating programs and reducing duplication of effort in the areas of quality assurance and risk management.
- Scheduling relevant instructional activities, including in-service educational seminars.

5. DEVELOP A PLAN TO RETAIN NURSING AND CLINICAL STAFF.

Following a merger, some clinical services may be consolidated, resulting in an influx of staff from different settings into one facility. However well anticipated, the merging of nursing and clinical staffs may not go smoothly, as duties and routines shift and some employees perceive (accurately or not) that they have lost rank or privileges. This may lead to reduced morale and high turnover.

A formal staff retention plan can help stabilize morale, minimize patient care lapses, improve compliance and control costs during the transitional period. The plan should encompass the following actions, among others:

- **Hold merger-related communication forums exclusively for nursing and clinical staff**, explaining the merger process and describing upcoming stages of integration.
- **Determine post-merger personnel and resource needs** and ensure that all shifts are adequately staffed and equipped.
- **Conduct one-on-one interviews with "new" staff members**, in order to ascertain their perceptions of the merger and gain insights into their clinical practice patterns.
- **Standardize clinical care policies and procedures, where applicable**, and provide in-service training sessions for staff on newly adopted protocols and pathways.
- **Initiate staff cross-training for new patient populations or expanded service lines** as soon as possible during the integration period.
- **Create a mentoring program that pairs new staff members with veterans**, who can coach and supervise both transferred and newly hired employees.
- **Appoint "conflict coaches" to newly merged settings** in order to provide support and address sources of friction. (Conflict coaches are individuals within the organization who have special training in dispute mediation and counseling.)

No mergers are easy, but healthcare mergers are especially complex and delicate, potentially involving a range of patient safety concerns and liability exposures that go well beyond standard financial due diligence. By considering issues of cultural "fit," emphasizing two-way communication, and addressing both clinical and employee issues, leadership can help defuse potential conflicts, minimize risk, and pave the way to full staff, system, process and service line integration.

Identifying Hidden Liabilities

Liabilities can emerge years after a transaction is finalized. The following tips can help merging healthcare organizations avoid unforeseen and potentially sizable loss exposures:

1. **Perform a systematic review of the other organization's insurance records and claim histories** during the pre-merger due diligence process, in order to identify future potential liability exposures.
2. **Calculate the potential impact of current combined insurance claims**, and address this risk by procuring adequate run-off policies and/or increasing reserves.
3. **Review indemnification language and other key insurance policy provisions** – including policy limits, deductibles, exclusions and riders – found in both organizations' contracts with business partners and service vendors.
4. **Compile and update all relevant contracts and insurance policies**, adding or changing names as necessary.
5. **Determine if additional liability, property and/or cyber coverage is needed for acquired physical assets**, as well as for new clinical services, increased inventories, information technology modifications and other integration-related exposures.
6. **Have legal counsel review the purchase agreement** to ensure that it allocates liability fairly.
7. **Report all due diligence findings in writing** to the executive leadership and governing board of the newly merged or acquiring entity.

Safeguarding Patient Privacy During Healthcare Transactions

The HIPAA Privacy Rule regulates the treatment of protected health information (PHI) in healthcare transactions involving covered entities. The following guidelines are designed to help prevent violations of HIPAA requirements during a merger or acquisition.

PRESERVE THE RIGHT TO TRANSFER PROTECTED HEALTH INFORMATION.

Databases, patient lists, clinical trial data, accounts receivable records and other files are valuable corporate assets, as is the PHI contained therein, and typically change hands during a merger. Therefore, a healthcare provider, which is defined as a "covered entity" under HIPAA, should expressly state in its "notice of privacy practices" that PHI may be used or disclosed as part of a transaction. The right to sell PHI in the context of a transaction also should be reiterated in all marketing materials, including websites and admission documents.

BE AWARE OF HIPAA PRIVACY RULE REGULATIONS AND EXEMPTIONS RELATING TO PATIENT AUTHORIZATIONS.

While HIPAA generally requires that patients authorize in writing any disclosure of their PHI, certain exemptions exist, such as the "healthcare operations exception." This provision of the Privacy Rule exempts authorization requirements for the sale, transfer, merger or consolidation of all or part of a covered entity to or with another covered entity. It does not apply to non-covered entities. For this reason, before disclosing PHI in a business context, healthcare leaders should consult with legal counsel regarding the HIPAA status of recipients. If bidders include equity firms, venture capital groups or other non-medical entities, limitations on disclosure must be scrupulously observed.

FORMALIZE RELATIONSHIPS WITH LEGAL AND OTHER ADVISORS BEFORE RELEASING PROTECTED HEALTH INFORMATION TO THEM.

Covered entities can disclose PHI to legal, banking and accounting advisors only after entering into a Privacy Rule-compliant business associate agreement with each individual advisor. Consult with legal counsel regarding federal requirements prior to drafting and executing business associate agreements.

LIMIT DISCLOSURE DURING THE DUE DILIGENCE PROCESS.

The healthcare operations exception to the HIPAA Privacy Rule requires that covered entities restrict shared PHI to the minimal amount necessary to achieve the intended purpose.

REVIEW AND ADHERE TO STATE PRIVACY REGULATIONS AS WELL AS HIPAA.

While the HIPAA Privacy Rule establishes a minimal federal threshold for securing PHI, it does not preempt state laws that impose more stringent nondisclosure requirements. The stricter rules should always be followed.

Due Diligence: A Checklist of Essential Steps

By conducting a comprehensive due diligence process, organizations can identify integration-related concerns and address them in a timely manner. The following checklist covers issues ranging from philosophical, operational and cultural compatibility to systems interface and regulatory compliance.

STEP	PRESENT YES/NO	COMMENTS
1. **Develop a strategic plan before beginning the due diligence process,** clarifying critical areas and important dates.		
2. **Include financial and legal advisors who have experience in healthcare mergers and acquisitions,** and who possess the expertise to prioritize consolidation-related issues, questions and risks.		
3. **Form a multidisciplinary team to examine the mission, values, organizational structure, practices and culture of the entity to be acquired,** in order to assess the overall compatibility of the two organizations.		
4. **Convene a meeting of both entities' leadership teams to jointly review policies, procedures and documentation practices in key areas,** such as confidentiality and privacy, medication safety and management, patient handoffs, equipment safety and maintenance, fire prevention and life safety, emergency preparedness, and violence and abuse prevention and response.		
5. **Conduct a thorough review of legal, financial, regulatory, employee and environmental matters,** obtaining copies of relevant contracts and proof of insurance certificates.		
6. **Assess the other entity's credentialing procedures,** as well as the competency of providers and medical directors.		
7. **Evaluate the data compilation and information technology (IT) systems of the other entity,** as well as their ability to generate monthly reports and analyze patient/resident outcomes and other clinical measures.		
8. **Determine the compatibility of existing IT systems** and review pre-existing IT vendor contracts, modifying or terminating services as necessary.		
9. **Hold regular status meetings** so that the team can identify key issues, address delays and initiate necessary follow-up measures.		
10. **Review the transaction agreement as necessary,** in order to clarify the rights and obligations of all parties and keep the due diligence process on track.		

QUICK LINKS

- "Best Practices for Healthcare Mergers and Acquisitions: How to Restructure and Modernize Active Directory and Exchange," a white paper published by Quest Software, Inc., 2016.
- "Identifying Issues in Facility and Provider Mergers and Acquisitions," issued by the American Health Information Management Association, updated 2012.
- "Managing Human Resources in Mergers and Acquisitions," issued by the Society for Human Resource Management, 2016. (Member access only.)
- Stafford, D. and Miles, L. "Integrating Cultures After a Merger," a publication of Bain & Company, 2013.

Would you like to read *Vantage Point®* online? Visit www.cna.com/healthcare, click on "Search CNA" in the top right-hand corner of the screen, type the article's full title in the search box and then click on the magnifying-glass icon.

CNA Risk Control Services

ONGOING SUPPORT FOR YOUR RISK MANAGEMENT PROGRAM

CNA provides a broad array of resources to help hospitals and healthcare organizations remain current on the latest risk management insights and trends. Bulletins, worksheets and archived webinars, as well as past issues of this newsletter, are available at **www.cna.com/riskcontrol**.

Your SORCE® for Education

CNA's School of Risk Control Excellence (SORCE®) offers complimentary educational programs that feature industry-leading loss prevention, loss reduction and risk transfer techniques. Classes are led by experienced CNA Risk Control consultants.

SORCE® *On Demand* offers instant access to our library of risk control courses whenever the need arises. These online courses utilize proven adult-learning principles, providing an interactive learning experience that addresses current regulatory requirements and liability exposures.

Allied Vendor Program

CNA has identified companies offering services that may strengthen a hospital's or healthcare organization's risk management program and help it effectively manage the unexpected. Our allied vendors assist our policyholders in developing critical programs and procedures that will help create a safer, more secure environment.

When it comes to understanding the risks faced by hospitals and healthcare organizations… **we can show you more.®**

Publisher
Rosalie Brown, RN, BA, MHA, CPHRM
Risk Control Director

Editor
Hugh Iglarsh, MA

For more information, please call us at 866-262-0540 or visit www.cna.com/healthcare.