

Can I Affiliate? Key Issues and Considerations When Contemplating Hospital Affiliation Strategies

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Before we begin...

Successful convergence requires strategy, structure, and compliance



Agenda

1. Current Trends in Hospital Mergers and Acquisitions
2. Affiliation Legal Structures
3. Key Strategic Considerations
4. “Loosely Affiliated” Structures
5. Highly Integrated Affiliation Structures
6. Regulatory Considerations – Attorney General

Trends

Hospital affiliation activity has been a bit of a rollercoaster

- 72 hospital mergers and acquisitions in 2024 (most since 2020)
- Significantly cooled off in 2025 (but rebounded in Q4 of '25)
- Q1 of 2026 has been very active



Trends (cont'd)

Key drivers of hospital merger and acquisition activity have been consistent for community hospitals

- Financial distress (30.6% of all affiliations in 2024 and 43.5% in 2025)
 - Not just smaller, community hospitals – average annual revenue of the seller hospital was \$401M ('24) and \$345M ('25)
- Reimbursement pressures, labor costs, IT costs, supply costs, higher cost of capital
- Physician recruitment challenges
- Access to capital
- IT resource needs
- Complex regulatory requirements

Trends (cont'd)

- It's not just smaller, independent systems looking to sell
- For hospitals / systems not in distress, getting ahead of cuts beginning in 2027 from One Big Beautiful Bill
- Portfolio rationalization among larger systems is also driving M&A activity
 - Exit an underperforming market
 - Failure or inability to execute strategic initiatives
 - Redirection of resources
- Opportunity for regional systems to increase scale

Trends (cont'd)

2025 by the numbers:

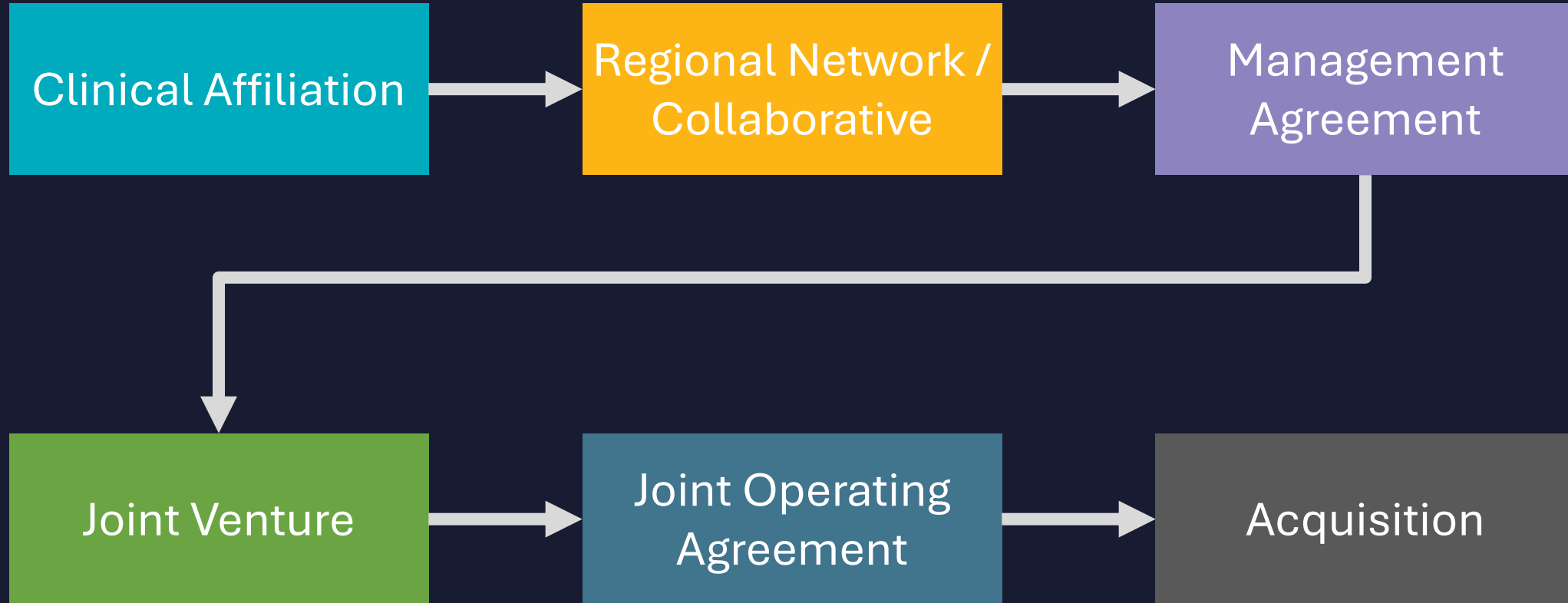
Figure 2: 2025 hospital & health system transactions by the numbers

Total announced transactions	46
Number of announced transactions in Q4 2025	17
Breakdown of transactions by smaller party annual revenue	
• Less than \$100 million	10
• Between \$100 million and \$500 million	24
• Between \$500 million and \$1 billion	7
• Greater than \$1 billion (“mega mergers”)	5
Not-for-profit/for-profit deals	
• Not-for-profit acquiring not-for-profit	34
• Not-for-profit acquiring for-profit	11
• For-profit acquiring for-profit	1
• For-profit acquiring not-for-profit	–
Transactions involving:	
• Religiously affiliated seller	6
• Governmental seller	7
• Financially distressed seller	20

Source: Kaufman, Hall & Associates, LLC

Overview of Affiliation Structures

The Affiliation Spectrum



Overview of Affiliation Structures (cont'd)

The Affiliation Spectrum (restated)

THE CONTINUUM OF STRATEGIC PARTNERSHIP STRUCTURES

The structures of strategic partnerships range from loosely integrated contractual arrangements to fully integrated arrangements, with varying levels of commitment and financial alignment possible in many structures.



Source: Allen, P.M., Finnerty, M.J., Gish, R.S., et al., "Guide to Health Care Partnerships for Population Health Management and Value-based Care," Health Research & Educational Trust and Kaufman, Hall & Associates, LLC, June 2016. Accessed at www.hpoe.org.

Key Strategic Considerations

Identify key needs and desires and/or issues to be addressed to inform which affiliation structure may be most beneficial:

- Capital needs
- Retention of core / specialty services
- Service line enhancement
- Physician recruitment
- Enhanced IT capabilities
- Population health management / risk-based contracting
- Staff retention and training

Key Strategic Considerations (cont'd)

Consider the importance of the following objectives:

- Extent of desired integration (financial, clinical and operational)
- Extent of local control to be retained / importance of “independence”
- Long-term stability
- Long-term flexibility
- Barriers to execution / closing – timeliness issues
- Cultural alignment

“Loosely Affiliated” Structures

Reasons to Pursue “Loosely Affiliated” Transactions

- For the hospital seeking a partner:
 - Opportunity to maintain local control
 - Establish economic efficiencies without a full-blown sale
 - Access to policies, best practices and protocols

- For the “buyer” / service provider:
 - An opportunity to create a pathway for a future acquisition
 - Secure referral networks
 - Defensive move against competitors
 - Ability to manage risk

“Loosely Affiliated” Structures (cont’d)

Reasons to Pursue “Loosely Affiliated” Transactions (cont’d)

- Less regulatory burden
- Fewer third-party consents
- Less intensive diligence
- Easier to get to the finish line

“Loosely Affiliated” Structures (cont’d)

Benefits and Disadvantages

Benefits

- Efficiency/benefit of combined efforts
- Integration without transfer of assets/stock
- Sharing of knowledge/experience
- Trading expertise – leveraging strengths of each other
- *Collaboration* of professionals and executives rather than *hierarchy*
- Allows for growth into greater collaboration or even merger/acquisition

Disadvantages

- Lack of managed care leverage if not clinically integrated
- Requires trust – must ensure that partner is motivated and committed to the affiliation
- Complex legal hurdles
- Difficulties with IT integration
- Culture clash

“Loosely Affiliated” Structures (cont’d)

Use of “Loosely Affiliated” Structures as Part of a Phased Transaction

- Phase 1 – getting to know each other
- Phase 2 – getting married
- Phase 2 can be structured as a mandatory or permissive next step
- Key considerations
 - Breadth and depth of the programs being undertaken in Phase 1
 - Degree of success in Phase 1
 - Partner’s willingness to invest capital in Phase 1
 - Due diligence rigor in Phase 1
 - Extent of business and strategic planning undertaken to execute on Phase 1

“Loosely Affiliated” Structures (cont’d)

Clinical Affiliations

- Designed to address specific needs
- Do not facilitate a high level of integration
- Can be a precursor to a more developed relationship
- Common terms:
 - Consulting or other oversight services for a service line or performance of an administrative function
 - Sharing of clinical protocols / quality programs
 - Naming / branding / licensing rights
 - Joint recruitment
 - Exclusivity
 - Rights of first refusal

“Loosely Affiliated” Structures (cont’d)

Regional Network / Collaborative

- Hospitals sometimes choose to loosely affiliate via “networks” vs. the pursuit of a more highly integrated affiliation
- Maintaining independence while getting some of the benefits of an outright acquisition
- Has many different labels – “Affiliation”, “Alliance”, “Collaborative”, “Cooperative”
- Very flexible and variable in structure depending on the parties’ needs and desires

“Loosely Affiliated” Structures (cont’d)

Regional Network / Collaborative (cont’d)

- Common features:
 - Group purchasing
 - Shared EMR or other IT
 - ACOs / CINs
 - Sharing of residency / training
 - Sharing of specialists
 - Joint research / clinical trials
 - Joint marketing
 - Population health strategies

“Loosely Affiliated” Structures (cont’d)

Management Agreement

- Often used when there is an inability to sell
- Used as an opportunity for diligence and turnaround by a potential buyer
- Right of first refusal
- Utilize performance metrics

Highly Integrated Affiliation Structures

Advantages

- Access to capital
- Shared services and overhead efficiencies
- Enhanced access to care and quality
- Broader population health management capabilities
- Compliance best practices and standardization
- Supplies and services joint contracting
- Labor management
- IT infrastructure

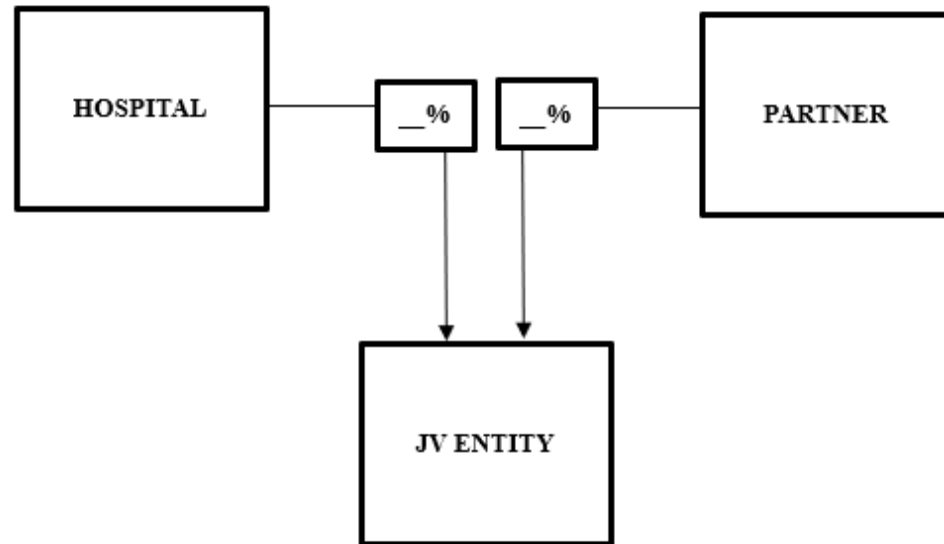
Highly Integrated Affiliation Structures (cont'd)

Disadvantages

- Time consuming / can be difficult to execute
- Loss of control / independence
- Loss of identify / culture
- Integration struggles
- Difficult to exit / unwind
- Contingent commitments

Highly Integrated Affiliation Structures (cont'd)

Joint Ventures



- Can be used for joint ownership and operation of hospital or other ancillary facilities
- Separate legal entity owned by 2 or more parties (commonly 2 hospital entities)
- Ownership percentage is based on the fair market value of capital / assets contributed to the JV by each party
- Profits allocated in accordance with ownership percentage

Highly Integrated Affiliation Structures (cont'd)

Joint Ventures (cont'd)

- Governance and ownership rights are delineated in the JV's operating agreement
 - Voting / board representation
 - Board decisions vs. decisions reserved to the owners
 - Non-competition, exclusivity and ROFR / ROFO rights
 - Defined exit rights

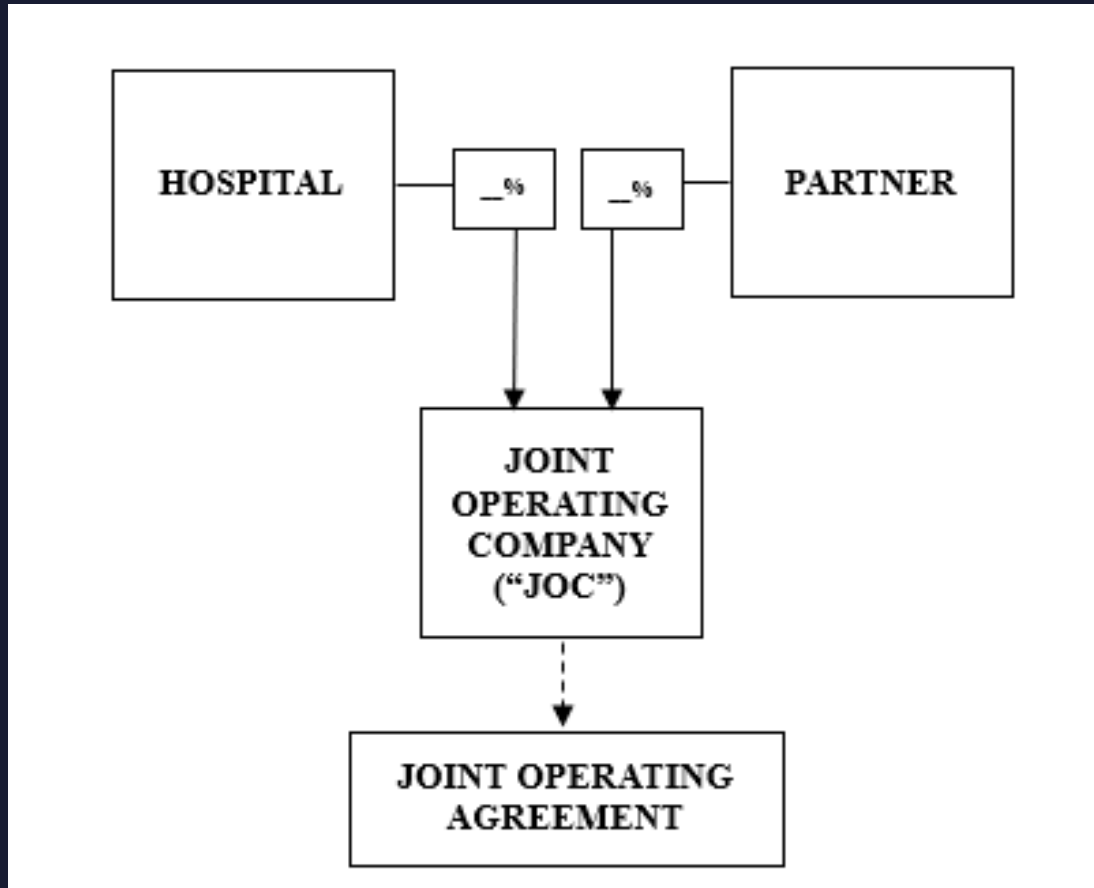
Highly Integrated Affiliation Structures (cont'd)

Joint Ventures (cont'd)

- Minority Interest Acquisitions
 - Another hospital / health system seeks to obtain a minority interest in another hospital / health system
 - Infusion of capital
 - Board representation
 - Opportunity to increase ownership stake
 - ROFR / ROFO rights
 - Defined exit rights
 - Often a precursor to full acquisition
 - Antitrust considerations

Highly Integrated Affiliation Structures (cont'd)

Joint Operating Companies



- Most commonly used for the joint operation of hospital facilities, not ancillary services
- Involves formation of a new entity (the “JOC” or “Joint Operating Company”) that is jointly owned and governed by participating entities
- The JOC oversees the joint activities of its participants
- Involves integration of operations without a transfer of assets
- Parties retain independent legal existence

Highly Integrated Affiliation Structures (cont'd)

Joint Operating Companies (cont'd)

- Function according to terms of a Joint Operating Agreement
- Sets forth how revenue / losses are accounted for and shared
- Governance structure of oversight of the JOC
 - Establishes budgets
 - Strategic plans

Highly Integrated Affiliation Structures (cont'd)

Acquisitions

- Merger
- Asset Purchase
- Member Substitution

Highly Integrated Affiliation Structures (cont'd)

Merger



- Hospital A merges with and into Hospital B
- Hospital A's separate corporate existence ceases to exist
- All of Hospital A's assets and liabilities are retained by Hospital B
- Executed pursuant to an Agreement of Merger
- Can be used on non-profit to non-profit acquisitions, non-profit to for-profit or for-profit to for-profit acquisitions

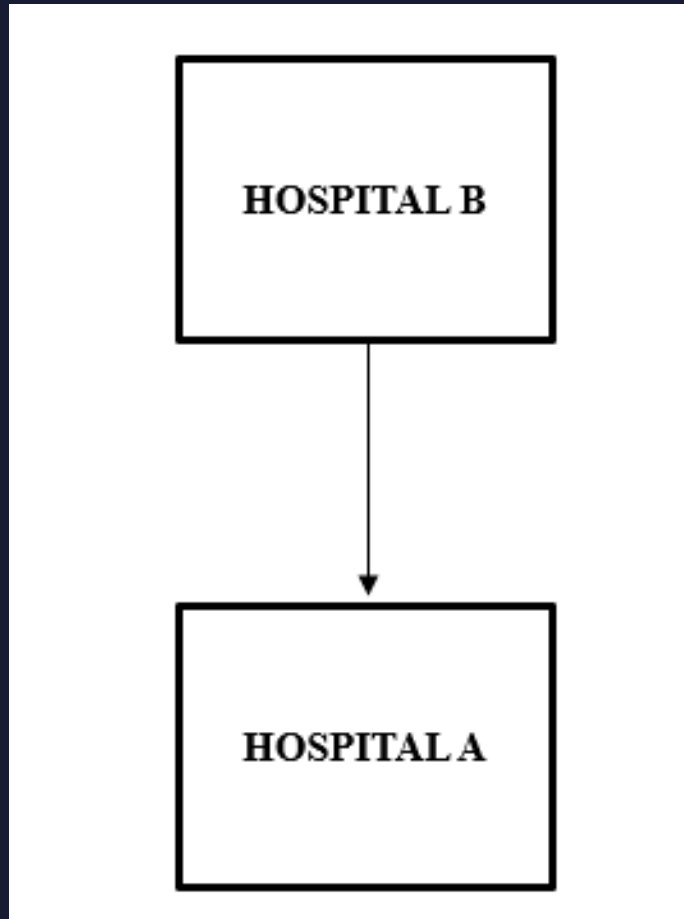
Highly Integrated Affiliation Structures (cont'd)

Asset Purchase



- Hospital A sells substantially all of its assets to Hospital B
- Hospital A (or a related entity) retains the purchase price proceeds
- Only selected liabilities of Hospital A are assumed by Hospital B
- Executed pursuant to an Asset Purchase Agreement
- Most commonly used when a for-profit is acquiring a non-profit or a non-profit is acquiring a for-profit

Highly Integrated Affiliation Structures (cont'd)



- Hospital B becomes the sole member of Hospital A
- Hospital A's separate corporate existence continues to exist
- All of Hospital A's assets and liabilities remain within Hospital A
- Executed pursuant to a Member Substitution Agreement
- Most common transaction structure in a non-profit to non-profit acquisition

Highly Integrated Affiliation Structures (cont'd)

Acquired / Seller Hospital Key Considerations

- Governance Protections
- Firm Commitments / Consideration
- Meaningful Enforcement
- Exit / Unwind Rights

Highly Integrated Affiliation Structures (cont'd)

Acquired / Seller Hospital Key Considerations – Governance

- Retain some semblance of local control
 - Hospital CEO hiring, firing and evaluation
 - Medical Staff matters
 - Input / influence into budgetary matters
 - Input / influence into strategic matters
 - Input / influence into quality oversight and performance
 - Community outreach and philanthropy
- Obtain representation on the new parent entity's board for defined length of time

Highly Integrated Affiliation Structures (cont'd)

Acquired / Seller Hospital Key Consideration – Commitments / Consideration

- Purchase Price (if for profit purchaser)
- Capital
- Charity care
- Core services
- Enhanced services
- Personnel
- Executive leadership
- Non-divestiture
- Change of control protections
- Performance metrics

Highly Integrated Affiliation Structures (cont'd)

Acquired / Seller Hospital Key Considerations – Enforcement

- Post-transaction, the acquired hospital will need some independent body to oversee the buyer's adherence to the deal terms and, if necessary, enforce them
- Independent foundation or assembled advisory board
- Monitoring and auditing rights / access to information
- Access to pool of resources to hire professionals (accountants, consultants, attorneys)
- Monitoring / enforcement period

Highly Integrated Affiliation Structures (cont'd)

Acquired / Seller Hospital Key Considerations – Exit / Unwind Rights

- Opportunity to unwind the deal upon certain significant events
- Failure to fulfill key commitments
- Change of control within a defined period of time
- Repurchase / reconstitution if divestiture is pursued

Highly Integrated Affiliation Structures (cont'd)

Buyer Hospital Key Considerations

- Limited Governance Rights of Seller / Strong Governance for Buyer
- Flexible Commitments
- Limited to no Enforcement Rights
- No Opportunity to Exit / Unwind

Highly Integrated Affiliation Structures (cont'd)

Buyer Hospital Key Considerations – Governance

- Seller hospital to have very limited governance rights. A limited “local” board that is purely advisory in nature and focused on community relations
- Flexible commitment as to representation on parent board and time limited
- Strong reserved powers of parent with respect to governance of seller hospital
 - Capital and operating budgets
 - Strategic planning
 - Executive leadership hiring and firing
 - Debt issuances
 - Branding
 - Control / amendment of governance documents
 - Capital expenditures
 - Mergers / consolidations
 - Disposition of assets
 - Acquisitions / joint ventures

Highly Integrated Affiliation Structures (cont'd)

Buyer Hospital Key Considerations – Commitments

- Uncertainty of future – ability to modify commitments
- Commitments subject to Parent board budgetary considerations and market shifts
- Flexible timeframe in which to fulfill commitments
- Limited duration applied to commitments relating to core services / enhanced services and protection of personnel
- Flexibility to pursue its own affiliation transactions in the future

Highly Integrated Affiliation Structures (cont'd)

Buyer Hospital Key Considerations – Limited Enforcement Rights

- Render enforcement body toothless (limited audit rights, limited resources)
- Limited duration
- Manage expectations / impressions of enforcement body through participation in its activities

Highly Integrated Affiliation Structures (cont'd)

Buyer Hospital Key Considerations – No Exit or Unwind Rights

- Handcuffs ability to make strategic decisions
- Too complicated to unwind

Regulatory Considerations

- Antitrust
- Anti-Kickback
- Ohio Attorney General

Regulatory Considerations (cont'd)

Ohio Attorney General

- Reviews both non-profit to for-profit and non-profit to non-profit affiliations
- Notice of proposed transaction prior to closing
- Respond to request for information
 - Acquisition agreement
 - Financials
 - Deal summary
 - Description of consideration (including FMV analyses, if applicable)
 - Board affidavits
- Follow-up requests
- AG-imposed deal terms

Questions?