

The Due Diligence Imperative in the Era of Value-Based Reimbursement

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Presenter Bio

Todd A. Zigrang, MBA, MHA, FACHE, CVA, ASA is the President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 25 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 2,000 transactions and joint ventures involving acute care hospitals and health systems; physician practices; ambulatory surgery centers; diagnostic imaging centers; accountable care organizations, managed care organizations, and other third-party payors; dialysis centers; home health agencies; long-term care facilities; and, numerous other ancillary healthcare service businesses. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.



Mr. Zigrang is the co-author of the “*Adviser’s Guide to Healthcare – 2nd Edition*” (AICPA, 2015), numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Guide to Valuing Physician Compensation and Healthcare Service Arrangements* (BVR/AHLA); *The Accountant’s Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies*; *Business Appraisal Practice*; and, *NACVA QuickRead*. Additionally, Mr. Zigrang has served as faculty before professional and trade associations such as the American Bar Association (ABA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Presenter Bio

Jessica L. Bailey-Wheaton, Esq., serves as Vice President and General Counsel of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions, and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services.



She serves on the editorial boards of NACVA's *The Value Examiner* and of the American Health Lawyers Association's (AHLA's) *Journal of Health & Life Sciences Law*. Additionally, she is the current Chair of the American Bar Association's (ABA) Young Lawyers Division (YLD) Health Law Committee and the YLD Liaison for the ABA Health Law Section's Membership Committee. She has previously presented before the ABA, NACVA, and the National Society of Certified Healthcare Business Consultants (NSCHBC).

Ms. Bailey-Wheaton is a member of the Missouri and Illinois Bars and holds a J.D., with a concentration in Health Law, from Saint Louis University School of Law, where she served as Fall Managing Editor for the *Journal of Health Law & Policy*.

Session Overview

- Unique Characteristics of the U.S. Healthcare Industry
- Overview of Due Diligence Process
 - General Research
 - Specific Research
- Due Diligence in the Context of the “Four Pillars”
 - Regulatory
 - Reimbursement
 - Competition
 - Technology
- Conclusion

Unique Characteristics of the U.S. Healthcare Industry

Unique Characteristics of U.S. Healthcare Industry

- Third Party Payor System
 - Federal government is “*Price Setter*”
 - Reimbursement does not rise or fall to reflect supply and demand
- Barriers to Entry
- Complex, Overlapping Regulatory Scheme
 - On federal, state, and even local levels

Unique Characteristics of Healthcare Transactions

- Different Players

- Healthcare Entities

- Health Systems
 - Payors

- Non-Healthcare Entities

- Private Equity
 - Venture Capital

Unique Characteristics of Healthcare Transactions

- Different Purposes

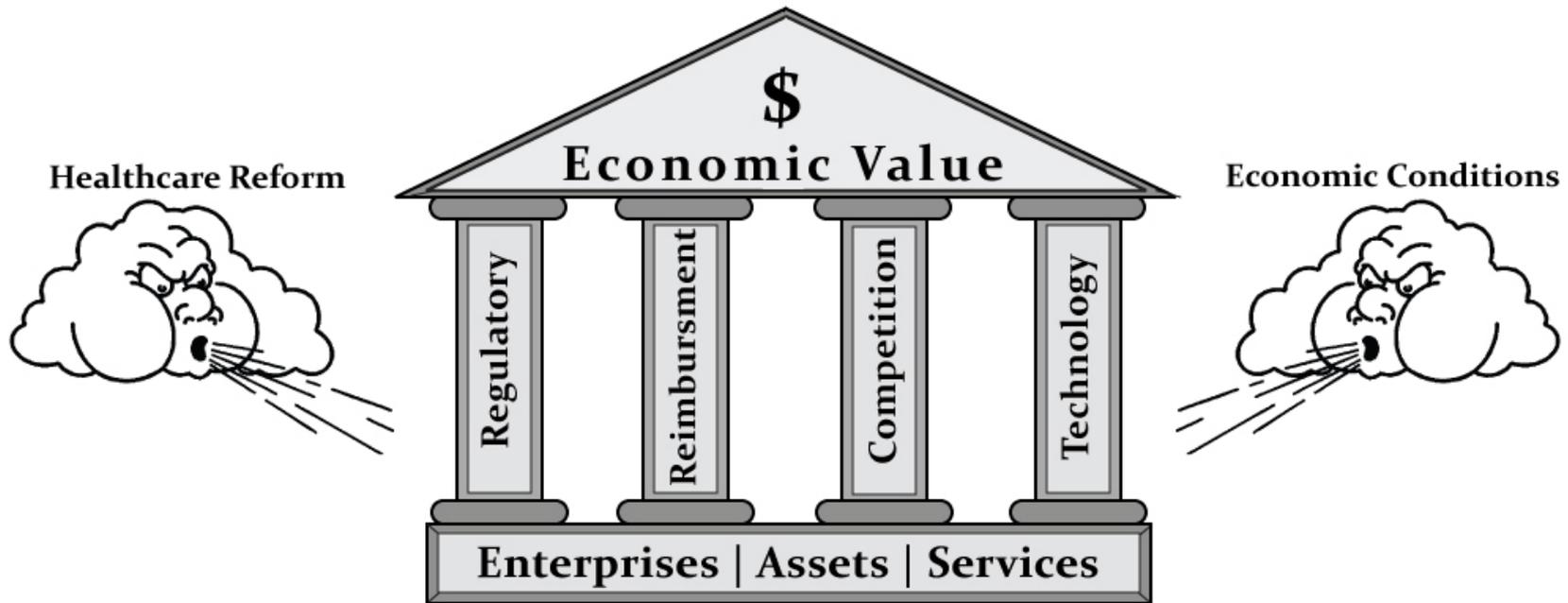
- Healthcare Entities

- Market share growth
- Meeting the mission
- Supplementing continuum of care

- Non-Healthcare Entities

- Stability of healthcare market
- Turnaround opportunities
- Opportunities for growth

Why is Due Diligence Important?



Due Diligence Overview

Due Diligence Overview

- Definition

- *“such a measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case”;*
- *“a fact-finding project....designed to find hidden risks”;* and,
- *“an investigation in order to support the purchase price of the business”*

Due Diligence Overview

- Role of the Healthcare Consultant
 - Collaborate and liaise with legal counsel, project managers, other financial advisors, and client decision makers
 - Engage early in the process
 - Process of engagement
 - Deliverable(s)
 - May be engaged to opine on a specific piece of transaction, or the entirety
 - Method of communication (due to attorney-client privilege concerns)
 - Access to relevant materials

Due Diligence Overview

- General Research

- Typically comprised of information and data related to:
 - *national and regional healthcare industry trends*
 - *reimbursement trends*
 - *competitive marketplace assessments*
 - *medical industry specialty and technological trends*
 - *transactional data*
 - *investment risk/return data*
 - *other research not specifically related to, or obtained from, the subject enterprise, asset, or service being appraised*

Due Diligence Overview

- Specific Research
 - Related to information particular to:
 - The historical *operational performance* and *financial condition* of the subject *enterprise, asset, or service*
 - The *pertinent clinical related data*
 - Typically obtained from the client or the appropriate contact designated by the client

Due Diligence Overview

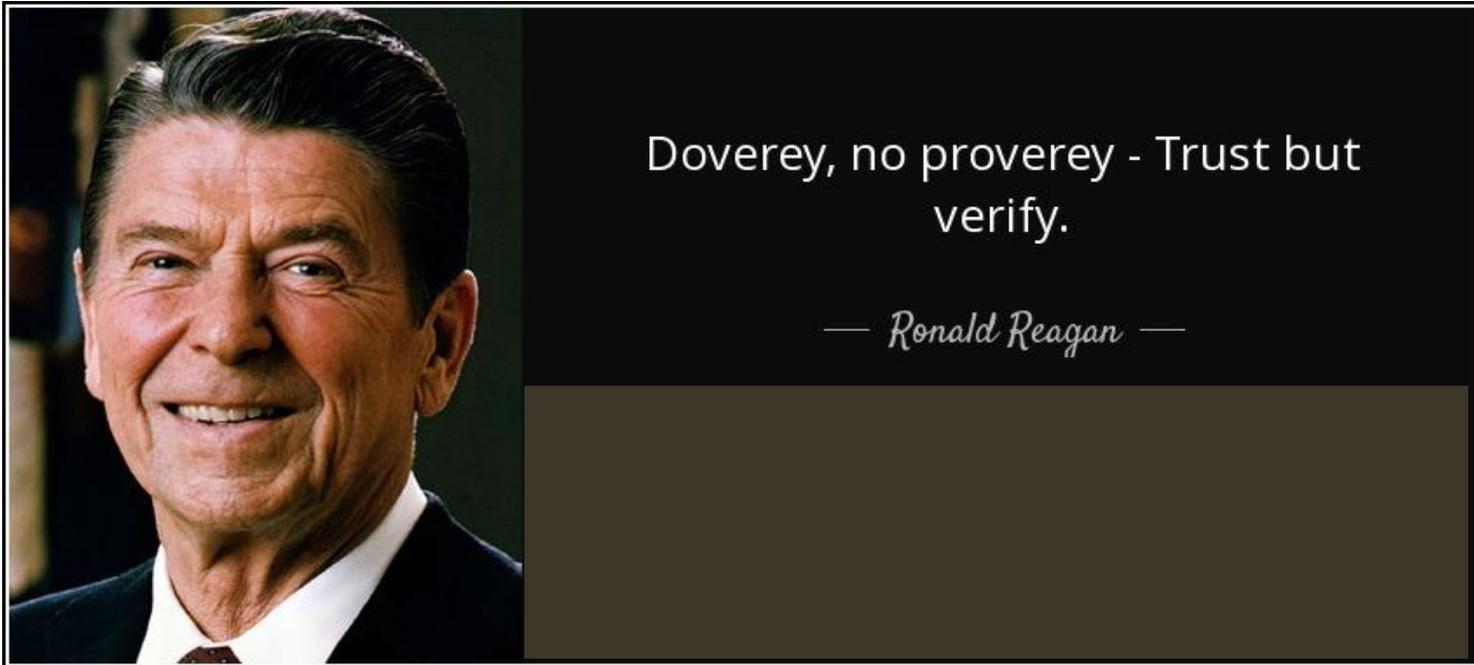
- Benchmarking – Serves several purposes in healthcare engagements:
 - Offers insight into the enterprise and practitioner performance as it relates to the rest of the market (e.g., allowing organizations to find where they “rank” among competitors, and as a means for continuous quality improvement)
 - Objectively evaluates performance indicators on the enterprise and practitioner levels
 - Indicates variability, extreme outliers, and prospects

Due Diligence Overview

- Benchmarking – Serves several purposes in healthcare engagements:
 - Identifies areas that require further attention and possible remediation (e.g., re-distributing resources and staff, and increasing operating room utilization)
 - Promotes quality and efficiency improvement (e.g., improving average length of stay and other clinical efficiency measures)
 - Provides enterprises with a value metric system to determine if they comply with legal standards for *fair market value* and *commercial reasonableness*

Due Diligence Overview

- Due Diligence Process



Due Diligence Overview

- Due Diligence Process
 - Restate and adjust subject enterprise specific financial data received to:
 - Facilitate *industry benchmark comparisons* of the specific line item allocations of the Subject Entity's financial statements to comparable industry indicated benchmark norms for those line items
 - Reflect the *true economic operating performance* and *financial status* of the subject enterprise

Due Diligence Overview

- Due Diligence Process
 - Determine the extent and the probability of the continuity of the subject business's benefit stream and competitive advantage into the future
 - 3 credos to “*discover the truth*”:
 - “*Be Skeptical*”
 - “*D&D: Disclose and Disclaim*”
 - “*Follow the Scientific Method*”

Reimbursement

Due Diligence – Reimbursement

- *Healthcare reimbursement*: The payment received by providers for the services that they render to patients, most of which reimbursement is received from third party payors, e.g., public (government) and private (commercial) payors
 - Public payor prevalence often results in their acting as a *price setter*
 - Paradigm shift in the healthcare reimbursement environment
 - Volume to Value

Due Diligence – Reimbursement

- General Research
 - Reimbursement benchmarking
 - Reimbursement rates may differ based on whether:
 - Payor is public or private
 - Services being provided are in an inpatient or outpatient setting; and/or,
 - Reimbursement at issue relates to *professional* or *technical* component
 - Upon an assessment of these factors, the analyst can then determine the type of reimbursement benchmark survey data that is most appropriate

Due Diligence – Reimbursement

- General Research

- Reimbursement benchmarking

- Some of the information that the analyst may want to determine in order to facilitate the benchmarking analysis may include, but not is limited to:

- Medicare payments in the base year
 - Medicare reimbursement rates on a specific date (of the project)
 - Projected Medicare reimbursement for the next 3 - 5 years
 - Medicaid to Medicare fee index
 - Commercial insurance reimbursement rates

Due Diligence – Reimbursement

- General Research

- Potential reimbursement benchmarking sources:

- American Hospital Directory
- Medicare Cost Reports
- Physician Compare (CMS)
- Provider compensation/
productivity survey data:
 - Medical Group Management Association (MGMA)
 - American Medical Group Association (AMGA)
- The relevant Medicare Fee Schedule from CMS
- The state’s workers’ compensation fee schedule(s)
- The state’s Medicaid fee schedule(s)
- GuideStar
- Definitive Healthcare
- FAIR Health
- The Henry J. Kaiser Family Foundation

Due Diligence – Reimbursement

- Specific Research

- The specific research and documents to be requested from the Subject Entity may include:
 - An aged schedule of accounts receivable with payor detail for the pertinent period
 - Productivity reports
 - A list of any Medicare, Medicaid, and/or other third party payor audits that have been performed or are pending for the Subject Entity, including the audit date and the outcome of the audit

Due Diligence – Reimbursement

- Pro Tip:
 - Instead of requesting and obtaining the data piecemeal from the Subject Entity, the analyst may request that the client, or the appropriate contact designated by the client, provide a “*data dump*” from the provider’s patient billing system
 - Will include most of the data required to analyze the reimbursement related to the Subject Entity
 - Most revenue cycle software packages allow this data to be exported to a Microsoft Excel or a .csv file

Due Diligence – Reimbursement

- Pro Tip:
 - Valuation analysts will often be asked to sign an agreement to be a Business Associate of the client for purposes of compliance with the *Health Insurance Portability and Accountability Act of 1996* (HIPAA)
 - Nonetheless, the analyst should request that any information provided not include any protected health information (PHI), e.g., patient name, social security number, address, date of birth
 - Information may include unique patient identification or medical record number, so long as it is not tied to PHI, and related to the information provided (e.g., productivity schedules)

Regulatory

Due Diligence – Regulatory

- With the 2010 passage of the ACA, providers are facing even more extensive regulatory scrutiny, much of which attention is focused on the increasing number of rules and the strict prosecution of *fraud and abuse* violations
 - Driving ongoing changes in the structure and financial operation of many healthcare provider enterprises, resulting in an even further increase in the pace of hospital/physician practice integration/transactional activities, as well as an increase in the number of physicians employed by hospitals
 - These increases have, in the past, served as a catalyst for enhanced regulatory scrutiny from the OIG, IRS, and DOJ, through the development of such initiatives as the *Fraud Enforcement and Recovery Act (FERA)* and the *Healthcare Enforcement Action Team (HEAT)*

Due Diligence – Regulatory

- General Research

- Federal and state fraud and abuse laws
- OIG advisory opinions, special fraud alerts, and work plans
- Federal and state antitrust laws
- Current and proposed U.S. healthcare reform legislation
- Federal and state licensure, certification, and accreditation regulations
- State *Certificate of Need* (CON) laws
- State *Corporate Practice of Medicine* (CPOM) laws
- Relevant state case law
- State provider taxes

Due Diligence – Regulatory

- Specific Research

- Requested documents and information specific to the Subject Entity may include:
 - Any documents (or drafts) that set forth the terms of transaction
 - Financial statements representing the Subject Entity’s financial operation and economic position for 3+ annual periods ending with valuation date
 - All licenses, certifications, accreditations, permits, and other regulatory approvals
 - The tax status of, and tax returns for, the Subject Entity
 - A summary and documents related to any pending litigation involving the Subject Entity
 - Membership structure of the Subject Entity
 - Any business performance reports prepared by/for entity related to regulatory position

Due Diligence – Regulatory

- Pro Tip

- In drafting your valuation report, consider the audience who will/may read it
 - Client
 - The Office of Inspector General (OIG)
- Especially in litigation support cases, or transaction involving shareholder sales, consider any local controlling laws/documents, e.g.:
 - Local laws that speak to discounts
 - The shareholder’s agreement treatment of *Fair Market Value*, discounts, etc.

Competition

Due Diligence – Competition

- Michael Porter, MBA, PhD – All businesses operate within a competitive marketplace defined by an underlying structure comprised of the following five competitive forces:
 - Threat of new market entrants
 - Bargaining power of suppliers
 - Threat of substitute products or services
 - Bargaining power of buyers
 - Rivalry among existing firms

Due Diligence – Competition

- General Research
 - Develop working knowledge related to the competitive environment in the Subject Entity's location
 - Obtain data required to conduct a financial benchmarking study of the competitors in the geographic area proximate to the Subject Entity
 - Based on that data, reach a requisite understanding of the competition in the marketplace

Due Diligence – Competition

- General Research
 - Some of the valuation techniques for which general research is useful are:
 - Financial ratio benchmarking
 - A determination of the specific competitors in the market service area of the Subject Entity

Due Diligence – Competition

- General Research
 - Information that can assist the analyst in collecting pertinent data related to market service area includes:
 - Federal/state government antitrust laws applicable to the Subject Entity
 - CON laws of the state(s) in which the Subject Entity is located
 - Benchmarks for patient population
 - Physician information
 - Profiles of competitors
 - Financial information of competitors

Due Diligence – Competition

- General Research

- Sources of information that may contain this data include:

- American Hospital Directory (AHD)
- American Health Care Association (AHCA)
- United States Census Bureau, American Fact Finder
- Specific websites of the state in which the subject interest is located (e.g., Secretary of State website, state office of insurance regulation)
- US Securities and Exchange Commission (SEC), Electronic Data Gathering, Analysis, and Retrieval System (EDGAR), company filings,
- Risk Management Association (RMA) Annual Studies Financial Ratio Benchmarks
- Bizminer
- Microbilt Integra

Due Diligence – Competition

- Specific Research

- Patient location zip code distribution report
- Marketing plans and marketing materials
- Any market service area analysis for the Subject Entity, including documents and information addressing the origin (e.g., zip codes) of the Subject Entity’s patients
- Any utilization or demand forecast prepared by or for the Subject Entity
- Strategic plans of the subject interest, including documents or information which relate to any increased expansion into new geographic areas or service lines
- Copies of all licenses, certifications, accreditations, permits, and other regulatory approvals, including (if applicable) CONs

Due Diligence – Competition

- Pro Tip:
 - If the client does not have (or won't give) patient location zip code distribution reports or market service area analyses for the Subject Entity:
 - The analyst can, in the alternative, equate the market service area of the Subject Entity with the Metropolitan Statistical Area, county (or group of counties), or state, and find providers of similar services within the selected region
 - This process should be conducted with the cooperation of the management of the Subject Entity to insure that the selected geographical area conforms to the perceived footprint of the Subject Entity

Technology

Due Diligence – Technology

- Technology should be construed in its broadest sense when applied to the healthcare industry
- Medical technology should not be limited to the sophisticated machinery used by physicians to treat patients and map different parts of the body
 - Should also encompass the complex systems used to collect, maintain, and analyze patient data and various other processes
 - The technologies represented by these processes help improve patient clinical outcomes (and help physicians treat patients more efficiently), as well as enable cost reduction without compromising the quality of care

Due Diligence – Technology

- General Research

- Updates related to the *Health Information Technology for Economic and Clinical Health* (HITECH) Act
- Developments in Information Systems and Technology as it relates to the healthcare industry (including but not limited to, diagnostic and therapeutic technology, and management information technology)
- Costs of implementing various systems
- The type of technology prevalent in the area of expertise of the Subject Entity

Due Diligence – Technology

- General Research
 - Sources of information that may contain this data:
 - Office of the National Coordinator for Health Information Technology, HHS
 - Healthcare Information and Management Systems Society (HIMSS)
 - FutureScan
 - MedTech

Due Diligence – Technology

- Specific Research
 - Information on management information systems
 - A detailed inventory of owned and leased medical equipment and office equipment
 - The cost to build existing equipment or systems
 - A list of existing medical technology used by the Subject Entity
 - Capital budgets or forecasted statements prepared by the Subject Entity, listing the allocated capital expenditure for technological advancements

Due Diligence – Technology

- Pro Tip:
 - Analysts should undertake research to identify any potential future advancement that may disrupt (or enhance) the revenue-generating capabilities of the Subject Entity
 - An enterprise’s revenue stream may be dependent upon a specific technology, new sources of competition may arise from the development of new and improved technologies that render old methods obsolete
 - Example: Introduction of Nexium, “*The Purple Pill*,” which revolutionized treatment of bleeding ulcer patients
 - Significantly reduced both the need for surgery and the length of hospital stays
 - Diminished patient demand for surgical services from gastroenterologists and permanently affected ambulatory surgery centers (ASCs)

Conclusion

Concluding Thoughts

- General Research
 - Obtaining and reviewing general research at the outset of the project is **crucial**
 - While the general research process provides the analyst with an adequate grasp of the body of knowledge applicable to a particular property interest being appraised, it is the efficacy of the analyst's subsequent application of generally accepted accounting approaches and methods to that data that determines the successful outcome of the engagement

Concluding Thoughts

- Specific Research

- In contrast to general research, *specific research* is directly related to, or obtained from, the subject *enterprise, asset, or service* being valued
- Additional subject-specific information may also be obtained through the site visit/management interview
- In some situations, the analyst might find it difficult to obtain the requested information and documents
- It is **instrumental** that the analyst be consistent and persistent in obtaining the relevant information and documents required to conduct the due diligence exercise within the valuation analysis

Concluding Thoughts

- Pro Tip - Client Communication strategies in obtaining specific research:
 - Determine pertinent contact from whom to obtain information and contact them directly
 - Arrange a phone call with the client or designated contact immediately after sending the document request to review the list, answer any questions, and discuss any potential problems with the availability or accessibility of documents
 - Send updated copies of document requests to client to remind them of the outstanding documents and information
 - In the event that the client encounters difficulty in procuring the requested documents, recommend alternative routes to obtain information or suggest substitute documents

Concluding Thoughts

- Pro Tip – Strategies to facilitate transmission of data:
 - Sign a Non-Disclosure Agreement and/or Common Interest Agreement with the party sending information
 - Engage through legal counsel so as to invoke Attorney-Client Privilege
 - Include attorney on communications
 - Add caveat to all communications and documents:
CONFIDENTIAL, ATTORNEY-CLIENT PRIVILEGED COMMUNICATION **PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT**
 - Give parties ability to upload documents through a confidential, secure data room/dropbox (instead of transmitting through email)

Concluding Thoughts

- General Research – Potential Sources:
 - Books and monographs
 - Journals and periodicals
 - Government agencies
 - Proprietary data aggregators and portals
 - Professional societies and trade associations
 - Conferences and webinars
 - Online databases
 - Academic and industry “*think tanks*” and research foundations

Concluding Thoughts

- Specific Research – Potential Sources Checklist:
 - Legal/Organizational Documents:
 - Articles of Incorporation, LLC Formation Agreements, Partnership Certifications, Certificates of Trust
 - Bylaws, Operating Agreements, Trust Agreements
 - Shareholder Agreements, Member Agreements, Partnership Agreements
 - Pertinent Executive Meeting Minutes
 - Existing Employment Agreements and Curriculum Vitae for Key Personnel
 - Real Property Lease Agreements
 - Personal Property Lease Agreements
 - Existing Buy-Sell Agreements
 - Existing Consulting or Management Services Agreements
 - Loan Agreements
 - Related Party Vendor/Supplier Agreements
 - Third Party Payor Agreements

Concluding Thoughts

- Specific Research – Potential Sources Checklist :
 - Transactional Documents:
 - Asset Purchase Agreements
 - Stock Purchase Agreements
 - Bills of Sale
 - Asset Contribution Agreements
 - Buy-Sell Agreements
 - Standstill Agreements
 - Non-Disclosure & Confidentiality Agreements
 - Letters of Intent
 - Transaction Term Sheets
 - Proposed Employment Agreements
 - Proposed Lease Agreements
 - Proposed Compensation Plan Details

Concluding Thoughts

- Specific Research Checklist

- Types of information obtained through site visits/management interviews:
 - History and Background Information
 - Premise/Location/Building Description
 - Transition to Electronic Medical Records
 - Quality of Staff and Depth of Management
 - Competitive Trend Analysis
 - Patient Base Trends
 - Managed Care Environment
 - Hospital Privileges and Facilities
 - Referral Sources and Patterns
 - Strength of Financial Management and Credit Collections Policy
 - Operational Efficiency Assessment
 - Future Plans, e.g., Growth, Transition to Value-Based Reimbursement

Concluding Thoughts

- The due diligence process of a healthcare transaction is a **critical** exercise for the valuation analyst
- Healthcare transactions are increasing in both size and complexity, resulting in emboldened efforts at regulatory review
- Requires the analyst to seek and obtain robust general and specific research data and information in conducting a complete and thorough due diligence process (that will withstand scrutiny) related to the subject property interest being appraised
- Independence vs. Advisory/Advocacy Roles
- **Size does not matter!**

Questions & Answers

