



Three key steps to successfully marketing and selling dialysis facilities

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THE MAKEUP OF THE DIALYSIS INDUSTRY has been very dynamic in recent years. The large dialysis organizations, or LDOs, have engaged in multiple mergers that have changed the landscape of the industry. In addition to mergers of the major chains and the resulting large-scale divestitures of the merged entities' facilities, we continue to see acquisitions of smaller pro-

grams by the large and mid-sized chains. Despite the recent consolidation among the LDOs, there is still significant interest in dialysis facility acquisitions. In addition, a number of new companies have emerged, providing alternatives for potential sellers of dialysis programs.

Although the process for selling a dialysis program varies, we have identified three critical steps for selling facilities.

- The owner must make a thoughtful assessment of whether to sell, coupled with a strong initial marketing of the programs to viable purchasers.
- He/she must do a rigorous assessment of the potential purchaser (including purchase price).
- Finally, the owner must participate in negotiating the deal.

This article briefly addresses each of those steps.

Determining whether to sell and market the program

Dialysis facilities owners choose to sell their programs for a number of reasons. Factors typically include the owner's desire to become less involved in the day-to-day operations of the program. In the case of physician owners, this can be triggered by a desire to focus more on patient care and less on administrative duties, or a desire to scale back in all aspects of professional life with an eye toward retirement. Another motivating factor can be the owner's desire or need for liquidity and/or desire to focus on other business opportunities outside of dialysis. A third factor can be the owner's desire to turn a program over to an entity who may be better suited to run the program and make the program more successful for the owner's patients. Finally, owners often simply feel it is the best time to sell based on then-current market conditions.

While there are benefits to selling a dialysis program, owners need to also



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consider the drawbacks if they remain involved in the operations of the clinic(s). First, once the program is sold, the owners will surely give up a significant amount of control in the business—even if the owners are going to continue on in a joint venture relationship with the purchaser. For physician owners who are going to continue to practice and likely serve as medical directors to the facilities, it is important they realize that their control over operational and administrative decisions will be limited. Although the level of involvement definitely increases in a continuing joint venture situation, and the purchaser's inclination to consult the former owner in major decisions varies among purchasers (and often depends on the nature of the continuing relationship between the old and new owners), it is unlikely that selling owners will have input on staffing decisions, major equipment decisions, expansion decisions, or other items not strictly clinical in nature.

Owners should also consider the impact that the change in ownership will have on their patients and staff. The transition from one owner to another can be very healthy for a program, leading to more efficient and smooth operations and bringing in up-to-date equipment and technology. However, the transition from one provider/employer to another can also be a stressful time for patients and long-time staff.

Clinic for sale

Once a decision has been made to sell, a number of critical steps must be taken to ensure that the program is marketable. First, the owners and key trusted employees must do an extensive internal review of performance and operations. Owners will often also engage with an outside unbiased party, such as an attorney, industry consultant, or accountant, to help assess the pre-sale status of the program. Such analysis should identify the strengths and weaknesses of the program from a financial and operational perspective. If the review exposes significant issues (such as a failing reimbursement relationship,

the potential loss of a number of patients due to competitive or other forces, etc.), the owner should then assess whether such problems can be corrected prior to marketing the program to potential purchasers. If such problems can be addressed expeditiously and without significant cost, it may be wise to do so to ensure that the program is in the best shape possible, which can ultimately lead to a higher purchase price.

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Unless the owner has already determined the purchaser of the program through prior discussions, many owners will work with an outside consultant to prepare an offering circular. The circular highlights the aspects of the program that are important for potential purchasers—background information about the program, including details about the owners and the referring physicians; a description of the market area and potential competitors; and a breakdown of critical financial information, such as patient census, treatment numbers, and revenues and income. An offering circular may also highlight other noteworthy aspects of the program that the owner feels is important for potential purchasers to know.

Once the offering circular is prepared, the owner and the owner's advisors will determine to whom it should be sent. Typically, the offering circular would be delivered to all large and medium-sized chains with an acquisition model. Additionally, depending on the location of the program and the owner's desire to joint venture with the purchaser, the offering circular may be sent to a number of other medium-sized to smaller chains with a joint venture model. Once the potential purchasers receive the offering circular, there is

typically a brief period of review and follow-up questioning by the potential purchasers as they determine their interest in the program. During this time, the potential purchasers will likely not be doing extensive due diligence off-site or on-site beyond reviewing the materials delivered and having a limited amount of follow up questions answered. This may vary if one of the potential purchasers and the owner had previously

engaged in discussions and established a rapport—and if the owner feels comfortable with the potential purchaser coming onsite. Following this period of review, the potential purchasers will typically indicate their interest in the program and offer a purchase price.

Selecting a potential purchaser of the program

The price is a key consideration when selecting the ultimate purchaser of the program. A potential buyer uses a complex formula to determine a purchase price that takes into account the current patient census, the payer mix, or current reimbursement rates received by the owner, and current expenses. Through this analysis, the purchaser projects the income it can expect to achieve in future years.

Another component for buyers to consider will be the fee to the physicians affiliated with the owner for providing medical director services to the program. These fees are based on the number of facilities and other considerations of workload required of the medical director.

The sale of a dialysis program will typically be structured as an asset sale—the purchaser will buy the program assets rather than purchasing all or some of

the equity ownership from the existing owner. It is important to consider which assets the purchaser intends to acquire in the sale. For example, most potential purchasers will exclude accounts receivable from the purchased assets, meaning that the existing owner will retain accounts receivable for services provided prior to the selling date. However, this is not universal among potential purchasers and the seller should examine this prior to selecting an ultimate purchaser.

It is likely that at least some of the physicians affiliated with the owner will continue to provide medical director services to the facilities. Therefore, in addition to considerations of purchase price and medical director fee, it is important to consider non-financial factors. This includes the reputation of the purchaser for incorporating and responding to the needs of its attending physicians and patients, as well as its strategic plan for growth and/or consolidation of the facilities and the resources available to the purchaser to enhance patient care.

Additionally, as previously mentioned, some potential purchasers have a strictly joint venture model and will require the owner to retain a minority position of ownership in the program going forward. This may or may not be of interest to a potential seller and is a very important factor to consider when evaluating the various offers received.

Finally, potential purchasers almost universally require existing owners to sign non-compete covenants with the facility. Depending on the future desires and business plans of the owners, the parameters of the contract are additional factors to consider when selecting a purchaser. The owner should examine the geographic area covered by the covenant and the term (length of time) and activities covered by the covenant, e.g., whether vascular access is prohibited, etc. (see the Legal Angle column in the June 2006 issue of *NN&I* for more details on covenants).

Once the potential purchaser has been selected, the parties will typically negotiate and execute a formal letter of intent

governing the basic structure and key terms of the sale. The letter of intent will often include an exclusivity period during which time the owner may not negotiate with another potential purchaser for the sale of the facilities.

Consummating the sale

During this final key step, the parties negotiate the key documentation memorializing the terms of the agreement. Assuming the sale is structured as a sale of the program assets, the asset purchase agreement is the pivotal document addressing the rights and obligations of the party. The asset purchase agreement will address, among other things:

- the assets to be included and excluded from the sale.
- an allocation of the purchase price among various components of the assets (e.g., goodwill, fixed assets, covenant not to compete, inventory, etc.).
- various representations and warranties of the parties regarding their operations of the program in the past, in the case of the owner, and other items regarding the purchaser.
- various covenants to engage or refrain from engaging in certain actions (e.g., confidentiality, covenant not to compete, access to medical records, etc.).
- indemnification obligations of the parties (i.e., the parties obligations to indemnify one another in the event the other party is harmed by reason of the indemnifying party's operations of the program).

Other documents to be negotiated and executed include:

- the medical director agreement (which will address compensation, the allocation of duties among the parties, various covenants similar to those set forth in the asset purchase agreement, termination events, etc).
- new real estate leases or assignments of existing leases (depending on the ownership of the physician premises housing the facilities)
- a number of smaller ancillary docu-

ments addressing various finite components of the transfer of program assets, e.g., approval of the equity holders of the owner entity, bill of sale conveying the assets, assignments of the various contracts and obligations, transition services agreement addressing ongoing nonclinical services to be provided by the existing owners in some cases, etc.

During this time, the operations personnel of the potential purchaser will be engaging in more extensive due diligence to ensure that all information conveyed to the potential purchaser is accurate. They will also begin preparing the program's employees, patients, and physical premises for operation by the purchaser. This will involve extensive onsite activities and, at various strategic times, include all existing owner personnel. The timing for disclosure to staff and patients is unique to each situation and must be done in a manner most comfortable for the individual owners. During this time, the potential purchaser's operations personnel will also be addressing the various governmental approvals and regulatory filings necessary to complete the sale.

Following negotiation of the various documents, completion of diligence, and other regulatory transfer requirements, the parties will consummate the sale by executing documents and the payment of the purchase price to the owner. At that point, the purchaser (now the new owner) will take the reigns and begin operating the program.

Conclusion

The decision to sell one's business is very personal for an owner that has started the business and nurtured it to success. That decision is even more important in the health care industry, particularly in the context of a dialysis facility, where relationships with the patients and staff of the facility are longstanding and personal. Consequently, following a careful and well-organized process in the successful marketing and selling of a dialysis facility is imperative.