



HPE NEW YORK 2021 TOP TAKEAWAYS

PREPARE FOR TOMORROW: HOW GOVERNMENT ACTIONS WILL IMPACT THE MARKET

Kevin Miller—a partner at McDermott Will & Emery whose practice largely focuses on the securities, tax and regulatory aspects of complex transactions—moderated a panel during HPE New York 2021 that looked at how government actions will impact the market. The panel featured:

- Diane Daych, Managing Partner and Co-Founder, Granite Growth Health Partners
- Brian Fortune, Senior Managing Director, Farragut Square Group
- Mara McDermott, Vice President, McDermott+Consulting
- Alex Ruiz, Partner, McDermott Will & Emery
- Thomas Scully, General Partner, Welsh, Carson, Anderson & Stowe

1

Tax Increase Appears on the Horizon

While much legislative wrangling remains, a bill currently sitting with Congress portends that tax increases are on the table. Those increases are likely to include a five-point uptick in the capital gains tax, according to Ruiz, which would be assessed retroactively to mid-September if passed as presently authored. Other tax increases on the table include the highest bracket of the ordinary income tax rate (increasing from 37% to 39.6% in 2022) and changes to the 199A “pass-through” deduction. There is also discussion of a surtax of 3% on incomes over \$5 million.

2

Changes to S Corps

One potential benefit to the new tax laws would be a stipulation that allows for the conversion of S corporations to an LLC partnership structure—normally a taxable liquidation—on a tax-free basis under certain circumstances. That new stipulation, Miller pointed out, could be of particular benefit in many sales involving physician practices.

3

A New Narrative Is Necessary

A negative attitude in Washington, DC, toward private equity is often rooted in misconceptions, Daych opined. Private equity investment in healthcare providers allows for companies to scale in a way that improves quality and expands coverage basis to rural and marginalized populations. Highlighting

that type of work, which benefits patients and practices, needs to be a focal point for firms in combatting perceived negative associations between private equity and healthcare.

Growing Pension-Related Wealth

4

As the private sector enters into the formerly nonprofit healthcare world, another misconception that deserves attention is a general lack of understanding about who stands to benefit from this trend. Scully pointed to the fact that some of his biggest investors in taking healthcare providers from a nonprofit to a for-profit model have been pension funds. “We’re basically investment managers for the people,” he said. “So you can argue how much we should take off the top or how it works with the incentives,” he added, “but basically, pension funds invest in us because we have returns...that generally are a little better.”

A Hot Deal Market

5

As Washington, DC, and private equity prepare for healthcare in a post-pandemic world and foresee potential reforms to tax laws and government-run healthcare entities such as Medicare and Medicaid, the transaction market has been robust. Even with some potential tax complications imposed by the Biden administration and Congress, there is an expectation that the market will remain hot.

Areas for Sustained Growth

6

Medicare reimbursement and Medicaid enrollment remain deal wildcards, but Fortune noted that certain areas, such as post-acute care, remain ripe for growth regardless of the politics around healthcare. Another vertical that panelists touted is the potential for deals in physician services—treatments a licensed physician must administer or coordinate. Fortune also highlighted behavioral health as a growth area that will be impacted directly by the potential mental health hazards brought on by the pandemic.

Extending the Public Health Emergency?

7

The public health emergency designation is almost assured to run through CY 2021, as had been signaled by the Biden administration. As a new year approaches, the potential expiration of that designation could create a pandemic cliff for some aspects of the industry that have been funded by Medicare, Medicaid and other government programs. Extending the public health emergency designation isn’t improbable, but it’s difficult to read the legislative tea leaves. “Many stakeholders are looking [at] 2022 and what happens there [with the public health emergency designation],” McDermott said. “What’s hard about this time of year is that if the public health emergencies are extended, Congress isn’t going to really have their feet to the fire to make some of those policies permanent.”

Telehealth and Legislative Policy

8

One key area—telehealth for Medicare beneficiaries—the public health emergency has allowed for increased government subsidization. Policies will need to be put in place to make government reimbursement of telehealth services permanent. With widespread consumer satisfaction regarding telehealth services, McDermott noted that both Congress and the Biden administration will likely move to fund those services and increase access to telehealth for patients going forward.

Patient, Provider Wants

9

The expansion of telehealth is going to depend on the service, Fortune said. Telehealth in arenas that are helpful to the consumer may see increased coverage from private insurers and reimbursement from Medicare. Other aspects of care provision, such as physical therapy, that don't offer the same quality of service may not move forward in the realm of digital health at an expedited rate. In some verticals, both patients and providers—depending on the population and acuity level—favor a return to in-person services.

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