Practical considerations for managing compliance, legal and operational risk with joint venture relationships

Presented by:
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Welcome and introductions

Eric Overman
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Eric has over 19 years of public and industry accounting and advisory experience and has provided a full range of risk management and compliance advisory services to clients in the health industry. His experience includes providing internal audit, risk management and compliance advisory support pertaining to third parties, joint ventures and other partnerships, including developing third-party and joint venture risk management approaches and evaluating organizations' oversight and management of the related risks to doing business with these entities.

Mary Wolbert
Vice President, Chief Compliance and Risk Officer
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Milwaukee, Wisconsin
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Mary joined Froedtert Health in 1994 as the Director of Health Information Management. Before assuming her current position in 2006 as VP, Chief Compliance and Project Officer, Mary was the Chief Compliance Officer. Mary holds a Master of Project Management degree from Keller Graduate Institute and a bachelor’s degree in Medical Record Administration from the University of Wisconsin. Mary is a member of the American Health Information Management Association, Health Care Compliance Association and the Project Management Institute.
Session objectives

Understand common risk and compliance challenges with joint venture (JV) relationships within the health sector

Walk through example approaches for managing joint venture risk and relevant compliance requirements

Discuss how to practically and effectively embed these risk management approaches into day-to-day operations to achieve desired performance and compliance results

Discussion topics

Current state environment
Risk considerations related to JVs
Approaches for managing JV risks and compliance requirements
JV risk management case study: Froedtert Health
Considerations for sustaining effective JV risk management
Q&A/closing comments
Current state environment

Extra ... extra! Read all about it! New JV and partnership relationships within the health sector continue to form ...
Current state environment

… to respond to various industry opportunities, including, but not limited to:

- Expanding market presence
- Increasing access to physicians/patients/members
- Accessing innovative technologies and processes
- Improving quality, value and underlying cost structures
- Mitigating competitive advances

These opportunities present additional risk and compliance concerns, including, but not limited to:

**Risk concerns:**
- Cultural barriers/misalignment of goals with the JV/partnership
- Lack of governance and control between the entities
- Failure to realize expected/desired benefits
- Noncompliance with applicable laws and regulations

**Compliance concerns:**
- Federal antitrust laws
- Centers for Medicare Medicaid Services (CMS) compliance
- Health Information Portability & Accountability Act (HIPAA) compliance
- Physician Self-Referral Law (Stark) compliance
Current state environment

... which is driving the need for improved management of JVs

- Are our JV's strategies aligned with our business strategy?
- Is the money spent with our JVs creating value?
- Are our business needs being met by our JVs? How comfortable are we with the resiliency of our JVs?
- What are our key risks and how can we mitigate them? Is the JV complying with relevant laws and regulations?
- How effective are our JVs at protecting against information security attacks?
- How do we have insights into critical incidents, threats and vulnerabilities affecting our JVs environment?
- How are our JVs managing their human resources?
- Are our JVs' strategies aligned with our business strategy?
- Is the money spent with our JVs creating value?
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- How are our JVs managing their human resources?

Risk considerations related to JVs
Risk considerations related to JVs

By their very nature, JVs and partnerships are third parties, and like other third parties (e.g., suppliers, services providers), JVs must be effectively managed to reduce risk to the organization.

Risk considerations related to JVs

JVs pose a diverse set of risks to any organization in the health sector if not appropriately managed.

Increased regulatory focus

- Effective, proactive risk management is an area of increased focus by auditors and regulatory agencies across the industry.
- Regulatory requirements laid by CMS, Stark, HIPAA, PCI-DSS, FDA, EU GDPR and such other related statutes make JV risk management even more critical and complex.

Extensive dependence on JVs

- In some instances, key operational, financial and compliance-related activities are increasingly placed in the hands of JVs.
- There is significant growth in integrated technologies and critical/sensitive data exchanged with JVs.

Significant changes in existing business landscape

- JVs are sometimes managed across the organization, creating potential gaps and overlaps in performance and risk management.
- More organizations have focused on establishing initiatives to increase enterprise risk management focus regarding JVs.
## Risk considerations related to JVs

There are several benefits to effectively managing JV risks ...

<table>
<thead>
<tr>
<th>What</th>
<th>How</th>
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</table>
| Risk mitigation and reduction | - Identification of JV landscape (including contracts) and risks affecting the organization  
                              | - Development and implementation of appropriate risk management strategies 
                              | - Establishment of ongoing monitoring of JV risk and compliance |
| Increased efficiency          | - Standardization in managing JV risks across the organization  
                              | - Eliminates overlapping and or redundant JV risk management practices performed across the organization 
                              | - Reduction in cost of managing risks, contributing to sustainable growth |
| Governance of emerging risks  | - Clearly defined framework and model to manage JV risks  
                              | - Proactive identification and management of emerging risk indicators and regulatory requirements 
                              | - Defined processes and documented procedures, leading to consistent application of risk management procedures |
| Greater risk insights to drive performance | - Risk governance that becomes forward-looking and can influence strategic decisions vs. dealing with the consequences  
                                            | - Improved visibility into risks posed by JVs, enabling better decision making |

... as well as consequences, if JV risks are not managed well

<table>
<thead>
<tr>
<th>What</th>
<th>How</th>
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| Inadequate consumer protection controls | - Controls are not aligned to regulatory requirements  
                                             | - Breach of data and data loss could result in fines and other regulatory ramifications |
| Unclear roles and responsibilities throughout JV life cycle | - Operating model, roles and responsibilities are not clearly defined  
                                                              | - Lack of clear communication and interaction breakdowns between stakeholders |
| Inadequate coverage across all risk domains | - JV risk management activities conducted do not cover all applicable risk domains |
| Incomplete or inconsistently applied inherent risk model | - Inherent risk models are not consistently executed  
                                                      | - Information collected is not accurate or complete  
                                                      | - Risk models are not transparent |
| Onerous assessment activities focused on low-risk areas | - A risk-based approach is not applied to JVs  
                                                      | - Increased assessment fatigue and untimely issue closure |
Risk considerations related to JVs

Certain specific risks are important for health care organizations to consider as part of their JV risk management program:

<table>
<thead>
<tr>
<th>Risk</th>
<th>Definition</th>
<th>Potential impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulatory risk</td>
<td>Risk that a JV fails to comply with a required regulation, thus causing your company to be out of compliance</td>
<td>► Regulator fines or censure</td>
</tr>
<tr>
<td>Service risk</td>
<td>Risk that a JV fails to meet your needs as a company from a service delivery perspective</td>
<td>► Service disruption</td>
</tr>
<tr>
<td>Exit strategy risk</td>
<td>Risk that the business would suffer a negative impact should the relationship with the JV need to be exited from and commonly, internally controlled via a formal exit strategy</td>
<td>► Poor quality</td>
</tr>
<tr>
<td>Security and privacy risk</td>
<td>Risk that an organization’s data is lost or security is compromised</td>
<td>► Legal action</td>
</tr>
<tr>
<td>Financial risk</td>
<td>Risk that the JV cannot continue to operate as a financially viable entity</td>
<td>► Penalties</td>
</tr>
<tr>
<td>Business continuity risk</td>
<td>Risk that a JV may fail to continue business as usual for the organization</td>
<td>► Cyber breaches (e.g., PHI, PII, IP)</td>
</tr>
<tr>
<td>Country risk</td>
<td>Risk that the business will be affected from operating in a specific country, including legal/regulatory, geopolitical and socioeconomic considerations</td>
<td>► Malicious activities</td>
</tr>
<tr>
<td>Reputational risk</td>
<td>Risk that the organization’s reputation will be adversely affected should there be a failed event at its JV</td>
<td>► Revenue loss</td>
</tr>
</tbody>
</table>

Approaches for managing JV risk and compliance requirements
Approaches for managing JV risk and compliance requirements

JV risk and compliance management is an extension of an organization's enterprise risk management (ERM) program:

- ERM provides a framework for risk management, which typically involves identifying particular events or circumstances relevant to the organization’s objectives, assessing them in terms of likelihood and magnitude of impact, determining a response strategy and monitoring progress.
- ERM is evolving to address the needs of various stakeholders, who want to understand the broad spectrum of risks facing complex organizations to ensure they are appropriately managed.
- ERM enables management to effectively deal with uncertainty and associated risk and opportunity, enhancing the capacity to build value.
- Value is maximized when management sets strategy and objectives to strike an optimal balance between growth and return goals and related risks, and efficiently and effectively deploys resources in pursuit of the entity’s objectives.

Approaches for managing JV risk and compliance requirements

- A simple, practical approach to managing JVs is similar to other risk management programs:
  - Third party
  - Business continuity
  - Information security
- The approach should be cyclical in nature, aligned to the rhythm of the business
Approaches for managing JV risk and compliance requirements

► An inventory of JVs helps to define the total population and justify risk management requirements.
► Key data points to understand/collect as it pertains to the JV:
  ► Percentage of ownership
  ► Board representatives
  ► Accountable executives and/or designated leaders responsible for relationship
  ► Financial terms of relationship (e.g., balance sheet investment, JV revenue)
  ► Other data points (e.g., JV supports clinical/nonclinical activities)
► Inventory should be updated annually.

Note: General counsel may already have this information.

Approaches for managing JV risk and compliance requirements

Assess inherent and residual risks with JVs
► Risk models allow for the qualitative and quantitative assessment of risk, enabling an organization to focus efforts on monitoring higher levels of inherent risk and manage higher levels of residual risk.

Monitor

Inherent risk

Example risk domains:
► Information security
► Business criticality
► Financial
► Exit strategy
► Regulatory
► Location

Manage

Residual risk

Example controls/oversight considerations:
► Financial results
► Strategic plan
► Insurance coverage
► Compliance program
► IT security
► Corporate governance (e.g., conflict of interest reporting, hotlines)

Example risk domains:
► Information security
► Business criticality
► Financial
► Exit strategy
► Regulatory
► Location

Residual risk

► Issue management
► Risk treatment
► Residual risk calculation
► Reassessment time frame

Mature organizations are moving toward real-time management/monitoring of risks while leveraging residual risk or control effectiveness ratings to determine frequency of reviews as opposed to inherent risk and transactional events.
Approaches for managing JV risk and compliance requirements

Evaluate regulatory compliance requirements relevant to JVs

Increased regulatory scrutiny is driving the need for more effective management and oversight of JV relationships, particularly those that have a direct impact on patients and members.

Key governance/oversight items required to drive improved compliance at JVs, particularly those with less mature compliance programs in place:

- Understand the laws, regulations and internal policies applicable to JVs
- Map regulatory requirements to JV products or services
- Define scope of compliance oversight needed at the JV level
- Establish compliance monitoring requirements for highest-risk JV relationships

Representative regulatory requirements
- Stark, federal Anti-Kickback Statutes, anti-trust, CMS (e.g., Billing, Clinical, FDR), FDA, DEA, HIPAA, Medicare Shared Savings Program

Approaches for managing JV risk and compliance requirements

Establish risk management plans for JVs

A JV risk management plan is a consolidation of responsive risk and compliance management activities.

Key risks identified through the risk assessment process should drive what is captured on the risk management plan.

The risk management plan should be a working “tool” to help responsible parties (e.g., board representative, relationship owner) understand what is expected of them.

The plan can also be a useful tool for audit/compliance functions to audit against.

 JV risk management plan elements:
- Relevant risks
- Risk management considerations
- Sequential board monitoring and oversite activities

Example risk and compliance management activities:
- Obtain and review any relevant minutes or reports related to audit performed by the JV’s internal audit compliance or quality functions
- Obtain and review the JV’s financial statements (if applicable); board statements for any issues of liquidity or debt
- Obtain and review the results of any information security assessments completed by the JV
- Request and review JV’s business continuity plan and/or disaster recovery plan and understand how it has been updated and tested, and how the plans align to your plans
- Understand whether documentation is retained by the JV to support certification and licensing requirements, when applicable.
Establishing appropriate reporting of identified JV risks facilitates the effective monitoring of these risks while providing transparency and accountability regarding risks and issues, and taking appropriate measures to resolve issues. Reporting to senior leaders, the Audit/compliance committee and boards improves visibility of risk and compliance concerns that warrant additional attention/focus in the future.

Example reports to consider include:
- Consolidated JV risk profile
- Risk trending (prior year to current year) analysis
- JV risk and compliance oversight summary

**JV risk management case study:**
Froedtert Health
**JV risk management case study:**
**Froedtert Health**

**Situation:**
Increased growth of JV portfolio and previous risk issues drove the need for greater focus on JV risk management.

In 2015, Compliance/Risk Management/Legal leadership obtained support from the board, CEO and Compliance Committee to proceed with an ERM project that would build out the JV risk management program, which included:

- Developing an objective tool to track potential areas of risks and evaluate JVs for:
  - Fit
  - Performance
  - Compliance
- Reassessing leadership appointments
- Reviewing the role of appointed executives responsible for the JV relationships

**JV risk management “toolkit”**

- Utilizes ERM framework
- Interactive tool
- The tool:
  - Leverages a classification/tiering structure to assist in scoring each risk
  - Identifies key risk management considerations for each category
  - Suggests board monitoring/oversight activities that should be considered to minimize risks
  - Populates a risk management plan (using pre-defined risk management activities) based on key risk considerations
- Completed by Senior Executives and evaluated by Risk Management/Legal
- Presented to CEO for input, then presented to Compliance Committee and Board for awareness and oversight purposes
### JV risk management case study: Froedtert Health

<table>
<thead>
<tr>
<th>Operational impact/criticality</th>
<th>Regulatory and compliance impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ease of replacement/impact on customers and patients</td>
<td>Regulatory requirements</td>
</tr>
<tr>
<td>Relationship management/reputational harm</td>
<td>Access to Froedtert facilities and/or assets (including IT systems), access to PHI, PII or IP</td>
</tr>
<tr>
<td>Impact on other strategic partners (e.g., Medical College of Wisconsin)</td>
<td></td>
</tr>
<tr>
<td>Degree to which Froedtert is contracting its operations to JV</td>
<td></td>
</tr>
<tr>
<td>Degree to which JV contracts its operations or management to third parties</td>
<td></td>
</tr>
<tr>
<td>Role in Froedtert strategy</td>
<td>Self-assessed level of management control/oversight</td>
</tr>
<tr>
<td>Nature and extent of Froedtert’s investment</td>
<td></td>
</tr>
<tr>
<td>At-risk revenue corresponding to Froedtert’s ownership stake</td>
<td></td>
</tr>
<tr>
<td>Legal structure (e.g., tax-exempt status)</td>
<td></td>
</tr>
</tbody>
</table>

Froedtert’s JV risk assessment approach includes the following criteria:

- Strategic/financial impact
- Management control activities

### JV risk assessment:

- Overall JV risk is calculated based on scores across three decision criteria:
  - Operational impact/criticality
  - Regulatory and compliance impact
  - Strategic/financial risk impact
- A score is also given based on management's self-assessed level of management control/oversight of the JV
JV risk management case study: Froedtert Health

JV risk rating process:
Risk ranking overview
► Risk ranking provides an initial means of prioritizing assessed risks based upon assessments of impact and likelihood
Risk ranking calculation steps
► Multiply the impact assessment and the likelihood assessment for each risk
► Reference the product against a range of values (see table below)
► Assign one of three risk rankings (high, medium or low) based upon referenced range

<table>
<thead>
<tr>
<th>Risk is ranked as ...</th>
<th>... if the product of Impact and Likelihood is ...</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>18.0–25.0</td>
</tr>
<tr>
<td>Moderate</td>
<td>Greater than 10, but less than 17</td>
</tr>
<tr>
<td>Low</td>
<td>Less than 8.0</td>
</tr>
</tbody>
</table>

JV risk tiering:
► Each area of risk is scored (high, moderate or low)
► Tiering criteria reference document is used to support the risk assessment process. Evaluation criteria includes:
► Strategic impacts
► Regulatory and compliance impacts
► Financial impacts
JV risk management case study: Froedtert Health

JV risk management considerations:
- For each decision criteria category, we created specific risk considerations that the executive should consider along with risk management strategies and suggested board monitoring activities that are tied directly to the level of risk.
- The risk management considerations are linked directly to the JV risk management plan.

JV risk management case study: Froedtert Health

JV risk management plan:
- Assigned to the appointed board member
- Checklist of items the executive should be watching, reviewing, inquiring about
- Established escalation process
- Annual review required (at a minimum)
Practical considerations for managing compliance, legal and operational risk with joint venture relationships

JV risk management case study: Froedtert Health

JV inherent risk ranking:

Inherent risk:

- The exposure to a risk that is intrinsic to the business in the current environment before the consideration of risk management and control activities that have been designed and implemented to specifically manage a given risk.
- Risk ranking provides an initial means of prioritizing assessed risks based upon assessments of impact and likelihood.
- Risk rankings are used to identify a risk’s position on a risk map (see chart to left).


JV residual risk ranking:

Residual risk:

- The exposure to a risk remaining after considering the effect of the existing risk management and control activities (e.g., inherent risk offset by the aggregate impact of risk management activities and controls equates to residual risk).
- Risk rankings are used to identify a risk’s position on a risk map (see chart to left).
JV risk management case study: Froedtert Health

Concluding thoughts:
► Clear visibility and awareness of ownership and accountabilities for managing JV risk exist.
► Comparison of results from 2016 to 2017 shows positive adoption from executives.
► Of the 20+ JV risk assessments completed in 2017, nearly 75% resulted in no or minor changes to risk levels (seen as a positive given the residual risk levels reported in 2016).
► Since implementing this program, we have had minimal issues or disruptions with our key JVs, and where necessary, executives are taking action to actively manage risks and issues as they arise, based on the guidance provided in their respective JV risk management plans.

Considerations for sustaining effective JV risk management
Considerations for sustaining effective JV risk management

Treating JV risk management like a process will create a more sustained program and reduce the risk the process becomes person dependent:
► Establish a charter or policy/procedural documentation
► Develop an annual work plan that demonstrates a regular “cadence” to the program
► Conduct regular internal audits/assessments of the overall program as well as risk management practices of individual JVs
► Provide training
  ► Board representative
  ► Relationship manager
► Establish risk management performance measures
  ► Change in risk profile from period to period
  ► On-time completion of risk assessments
  ► Zero significant internal audit findings

Consider benchmarks and other companies standards carefully
► Reliance on JVs differs from company to company
► The level of inherent risk of a specific JV differs
► Organizational structures and functional role definitions differ between companies

Key enablers for program effectiveness
► Ensure you have the highest capability and depth of experience in decision-making and oversight roles
► Processes should be easy to execute by the business units and easy to administer by the control functions
► Recurring communication and reporting are key, even if you are just starting out
► Ensure questions being asked to the business can be answered accurately with minimal ambiguity
► Contracts with JVs should drive your needed monitoring requirements
► Use JV risk management tools during due diligence and deal negotiation processes
Considerations for sustaining effective JV risk management

... and must be supported by an effective governance structure to drive accountability!

![Diagram showing governance structure]

**Board oversight**
- Approve establishment of new JV relationships
- Set and communicate culture of JV risk management
- Approve the JV risk management framework

**JV risk management committee oversight (e.g., audit committee, compliance committee)**
- Provide oversight of the use and management of critical and high-risk JV relationships

**Risk management**
- Establish policy
- Conduct independent review and testing
- Produce/monitor metrics
- Investigate/escalate violations

**Compliance**
- Monitor violation remediation
- Calibrate process/change management

**Legal**
- Establish internal controls
- Monitor adherence to regulatory requirements

**Business unit JV relationship/risk managers**
- Conduct day-to-day oversight of JV relationship
- Monitor JV’s performance on an ongoing basis
- Perform due diligence activities
- Assess JV risks annually
- Coordinate JV risk management activities
- Assist with ongoing monitoring activities

**Information technology and data**

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6

Q&A/closing comments
Closing comments … suggested next steps

► For those who already have a defined JV risk management program:
  ► Challenge the owners of the program (including yourself, if it’s you) on the comprehensiveness and sufficiency of the program
    ► Risk assessment approach, consistency, timeliness
    ► Appropriate oversight and accountability to drive execution
    ► Appropriate/periodic monitoring/auditing to independently validate execution
  ► Confirm inventory of JVs and JV representatives is current
► For those who do not have JV risk management program:
  ► Evaluate where JV risk is on your enterprise risk profile
  ► If the risk is a Top 5/Top 10 risk, discuss with key leaders (e.g., CEO, CFO) and your Audit/Compliance Committee to gain support for a more defined program
  ► Collaborate with ERM program owners (if they exist) to develop an organizational point of view around JV risk assessment tools
  ► Develop an inventory of JVs and JV representatives (if one is not in place)

Thank you, and safe travels home!
Appendices

References

About Froedtert Health

Froedtert Health is a member of The Froedtert & the Medical College of Wisconsin (MCW) regional health network, which is a partnership between Froedtert Health and the Medical College of Wisconsin to support a shared mission of patient care, innovation, medical research and education. Our health network operates eastern Wisconsin’s only academic medical center and adult Level I Trauma Center at Froedtert Hospital, Milwaukee, an internationally recognized training and research center engaged in thousands of clinical trials and studies. The Froedtert & MCW health network, which includes four community hospital campuses, more than 1,600 physicians and nearly 40 health centers and clinics, draws patients from throughout the Midwest and the nation. In our most recent fiscal year, outpatient visits exceeded 1.1 million, inpatient admissions to our hospitals were 49,250 and visits to our network physicians totaled 932,000.

In addition to Froedtert Hospital, the network includes Community Memorial Hospital, Menomonee Falls; and St. Joseph’s Hospital, West Bend. The health network represents the collaboration of Wisconsin’s largest multispecialty physician practice with two community-based physician groups. In October 2017, an existing affiliation with the former United Hospital System was expanded to include its Kenosha Medical Center, St. Catherine’s Medical Center and related clinics in the network.

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