

Normally, when acquiring a provider, the purchaser pays a substantial amount of money. As a result, the purchaser should verify that it is not inheriting any surprises.

How a Pharmacy Can Make Itself Attractive to a Purchaser

Millions of homes are sold every year. Before the realtor brings the first prospective purchaser to look at the home, and before the first open house is held, the homeowner normally expends money and effort to make the home as attractive as possible.

This same concept holds true when the owner of a pharmacy wishes to sell it. The owner desires to obtain the optimal price for the pharmacy. Just like a homeowner needs to prepare his home for sale, the pharmacy needs to take several preparatory steps before seeking purchasers. These steps can be summarized as follows:

- Financial Statements. The pharmacy should have an outside CPA prepare a current balance sheet (statement of assets and liabilities) and a year-to-date profit and loss statement (statement of income and expenses).
- Income Tax Returns. The pharmacy should have copies of federal and state tax returns for the last three calendar or fiscal years.
- Billing Audit. The pharmacy should contract with an outside billing consultant for an on-site visit to conduct a mock audit of the pharmacy's documentation and billing procedures. A valid concern of a purchaser is whether the pharmacy's documentation (i.e., patient files) and billing procedures can withstand a third party payor audit and whether they are sufficient to allow the purchaser to safely continue billing after the sale takes place. If the purchaser has concerns about the pharmacy's documentation and billing procedures, then the purchaser may reduce its offering price in order to compensate for the concerns, delay the purchase, or refuse to close on the sale altogether. By having a mock audit performed, the pharmacy can clear up many of the purchaser's anticipated concerns in advance. If problems are discovered during the mock audit, then the pharmacy can address and resolve these problems before engaging in negotiations with the purchaser.
- Medicare Supplier Numbers. If the pharmacy provides DME, it needs to verify that it has an active Medicare supplier number for each of its locations.
- Medicaid Provider Numbers. If the pharmacy is a qualified provider to one or more state Medicaid programs, then it needs to verify that it has the requisite active Medicaid provider numbers.
- Employees and Independent Contractors. The pharmacy needs to examine its relationship with each individual who is involved in marketing on behalf of the pharmacy ("marketing rep"). If the pharmacy designates a marketing rep as an employee, then the pharmacy must assure itself that the marketing rep will be classified by the IRS as a bona fide employee. This allows the pharmacy to take advantage of the Employee Safe Harbor under the Medicare anti-kickback statute

and to pay the employee on a production basis. The Department of Justice (“DOJ”) and Office of Inspector General (“OIG”) are sensitive to sham employment arrangements. A pharmacy should avoid the use of independent contractor marketing reps, if possible. If the pharmacy nonetheless chooses to utilize independent contractor marketing reps, the pharmacy must comply (or substantially comply) with the Personal Services and Management Contracts Safe Harbor. Among other requirements, the compensation to the marketing rep must be fixed one year in advance and must be the fair market value equivalent of the rep's services.

- Referral Sources. The pharmacy needs to verify that it is not paying any remuneration to any referral source in exchange for referrals and/or arranging for referrals. Additionally, the pharmacy needs to be able to assure the purchaser that the referral sources are loyal to the pharmacy because of the excellent service the pharmacy has given over the years to its customers; that the referral sources’ loyalty is not limited to the individual owner of the pharmacy; and that, in all likelihood, the referral sources will continue to refer to the pharmacy once it is sold to the purchaser.
- Documentation. The pharmacy needs to verify that it has the appropriate documentation, especially prescriptions, in the patients’ files. The pharmacy needs to verify that it has properly executed Assignment of Benefits forms in the patients’ files. These tasks can be accomplished during a mock billing audit.
- Licenses and Permits. The pharmacy needs to verify that it has all requisite licenses, permits, registrations, and certificates of authority to conduct its business. These include pharmacy licenses, pharmacist-in-charge licenses, business licenses, occupational licenses, sales tax licenses, oxygen distributor licenses and DME licenses, issued by federal, state, county and/or city governmental entities.
- Audits, Reviews and Investigations. Preferably, before negotiating with a purchaser, the pharmacy needs to resolve any ongoing audit, review or investigation by a PBM, CMS, DOJ, OIG, IRS, or any other agency or entity. If such an audit, review or investigation cannot be successfully resolved prior to entering into negotiations with a purchaser, then the pharmacy needs to fully explain the audit, review or investigation to the purchaser and predict the outcome, including an estimate of the potential overpayment or settlement payment.
- Litigation. Preferably, before negotiating with a purchaser, the pharmacy needs to make a concerted effort to resolve any ongoing litigation. If the pharmacy is unable to do so, then it needs to be able to fully explain the details of the litigation to the purchaser.
- Customer Satisfaction. The pharmacy needs to verify that its customers are satisfied with the services they receive from the pharmacy. The purchaser will