

A panoramic view of a city skyline at sunset. The sky is filled with soft, orange and yellow clouds. Several skyscrapers are visible, some with their lights on. In the foreground, there is a dense line of green trees.

STRATEGIC AFFILIATIONS

New Models for Capital Financing

hfma™

massachusetts-rhode island chapter

THANK YOU TO OUR PLATINUM SPONSORS



hfma[™]

massachusetts-rhode island chapter

THANK YOU TO OUR GOLD SPONSORS

- Baker Newman Noyes
- Change Healthcare
- Deloitte & Touche LLP
- Gragil Associates, Inc.
- Latham & Watkins LLP
- Marcam Associates
- PROMEDICAL
- The CCS Companies
- Verrill
- Xtend Healthcare

THANK YOU TO OUR SILVER SPONSORS

- AccessOne
- Active & Balanced Healthcare Receivables, LLC
- BerryDunn
- EnableComp
- Healthcare Financial, Inc. (HFI)
- KPMG LLP
- PV Kent & Associates, P.C.



Verrill

Welcome and Introductions

Karen Kinsella
President-elect, MA-RI HFMA

Capital Finance Committee Co-Chairs:

Eric Schwartz
Robert Guadagno
Gary Janko

Strategic Affiliations

New Models for
Capital Financing

November 17, 2021

Speaker Contact Information

Kathleen Healy

- khealy@verrill-law.com
- Tel: 207.253.4710

Gregory Lief

- glief@asymmetrygroup.com
- Tel: 617.645.6189

Yakir Siegal

- ysiegal@asymmetrygroup.com
- Tel: 617.306.0505

Strategic Affiliations

New Models for
Capital Financing

November 17, 2021



Strategic Affiliations

New Models for
Capital Financing

November 17, 2021

Polling Question 1

Have you been involved in a strategic affiliation in the past 3 years?

- Yes
- No
- I don't know

Strategic Affiliations

New Models for Capital Financing

November 17, 2021

PROGRAM AGENDA

01

Context for strategic affiliations as a source of financing

02

Strategic affiliation models and examples

03

Key regulatory considerations

04

Common pandemic-related considerations

05

Assessing strategic affiliations for your organization

Traditional Source of Capital Financing



Traditional Capital Financing Mechanisms

-  Revenue from Operations
-  Debt Instruments
-  Equity Instruments
-  Grants / Philanthropy



Traditional Sources of Capital Financing

-  Financial Institutions
-  Financial Investors
-  Government / Charitable Organizations

Expanding the Aperture

Beyond Traditional Sources of Capital Financing



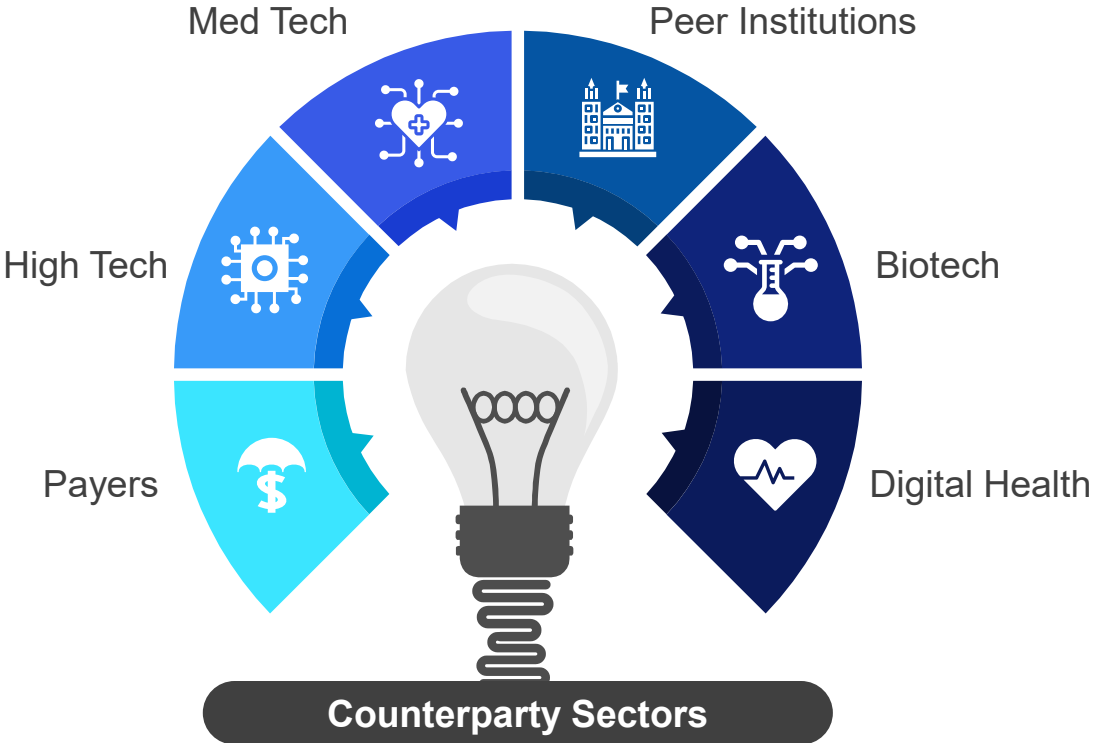
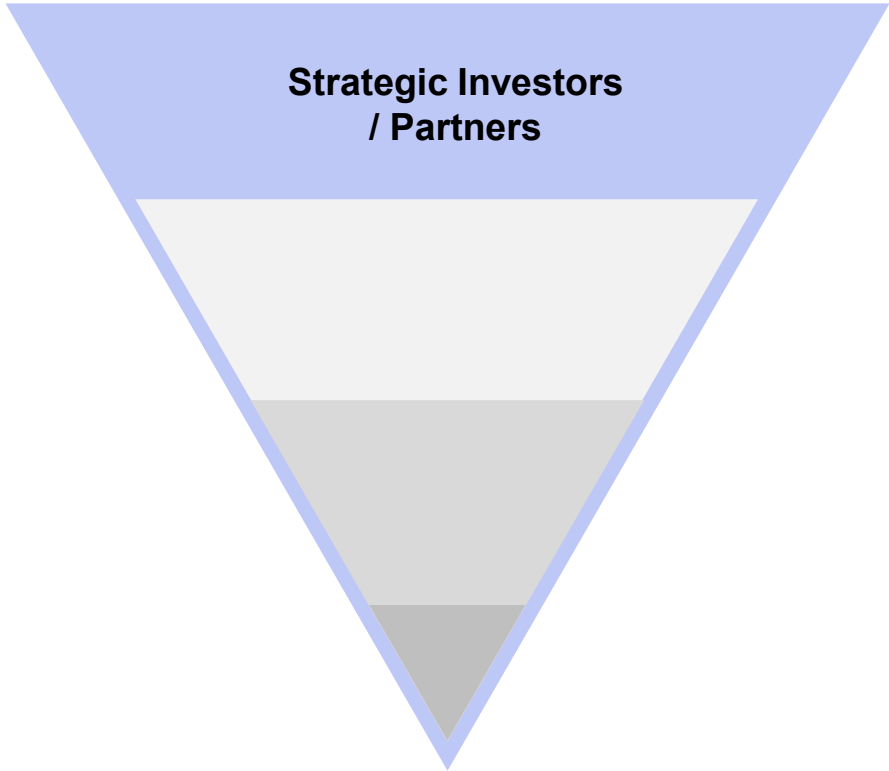
COUNTERPARTY CONSIDERATIONS

↑ Strategic **and** financial

↓ Purely financial

Expanding the Aperture: Strategic Investors / Partners

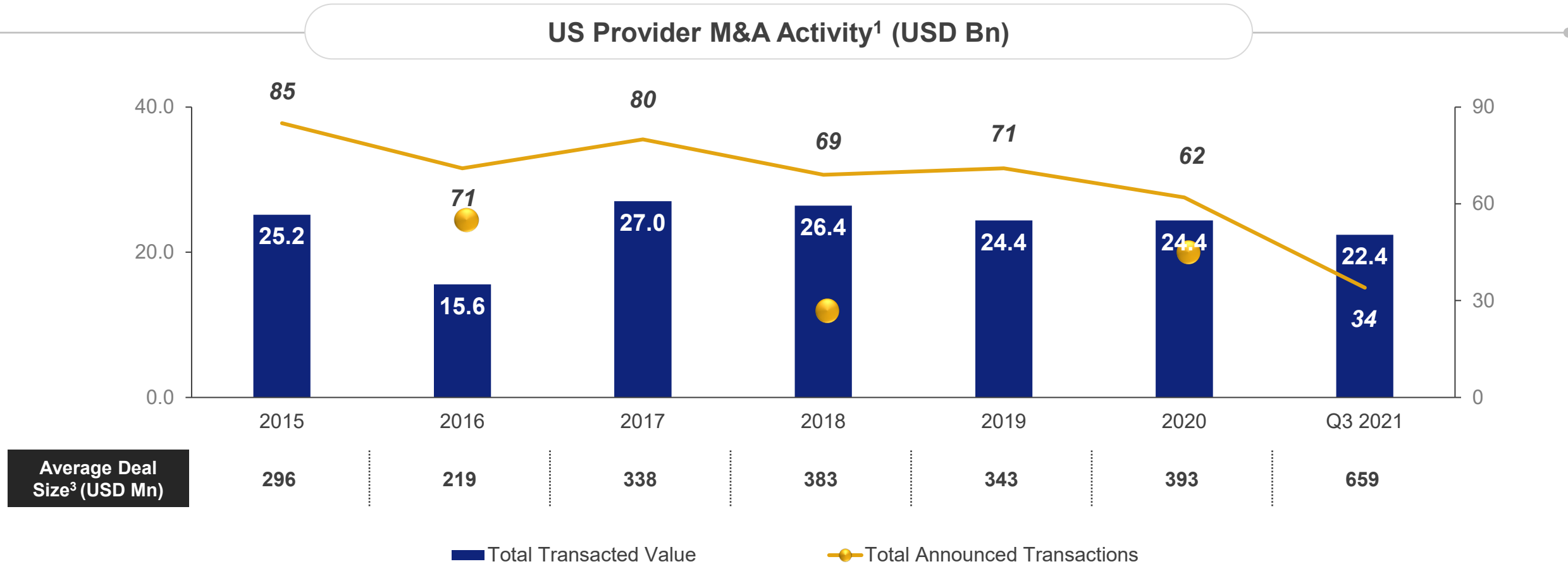
Illustrative Range of Potential Counterparty Sectors



Strategic Affiliation Models and Examples

“Go to” Strategic Affiliations: Provider Mergers & Acquisitions

Mergers & acquisitions have been the “go to” model for strategic affiliations in the provider space, primarily oriented towards consolidation of care delivery systems and facilities

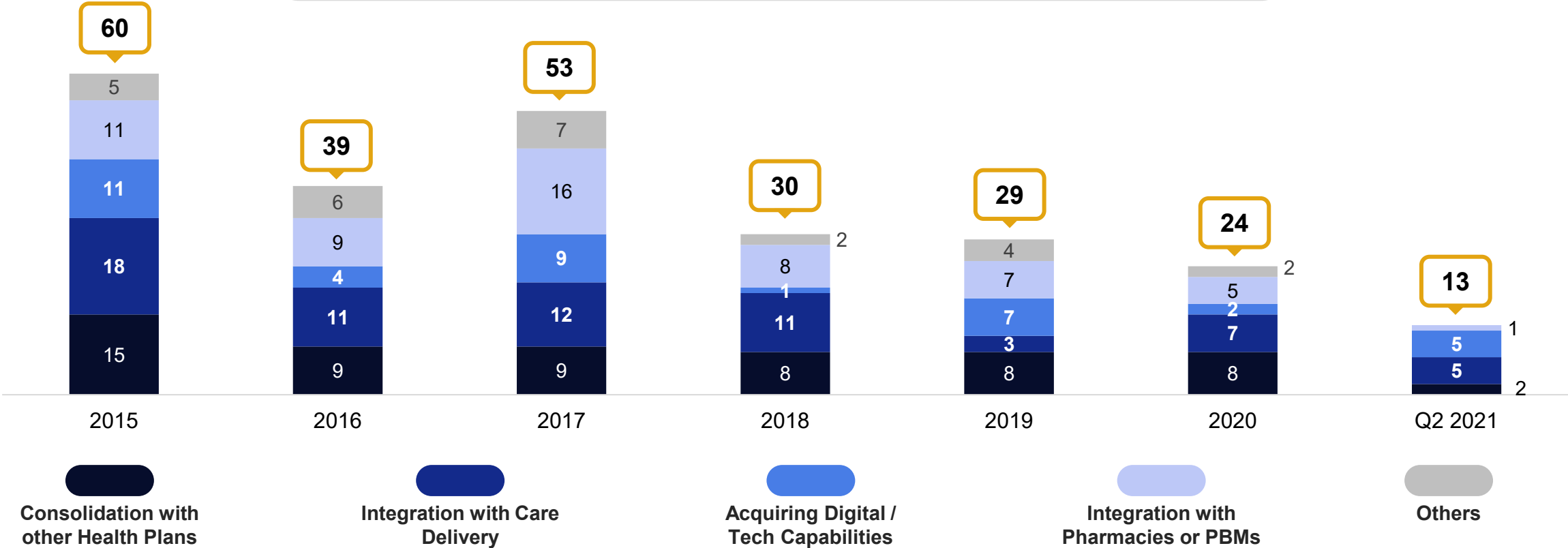


Notes: ¹Includes hospitals and health system transactions; ²Mega-mergers transactions are those in which the smaller partner or seller has average annual revenues in excess of USD 1 Bn; Based on revenue of the seller
 Sources: [Kaufman Hall](#)

Payer Merger & Acquisitions Landscape

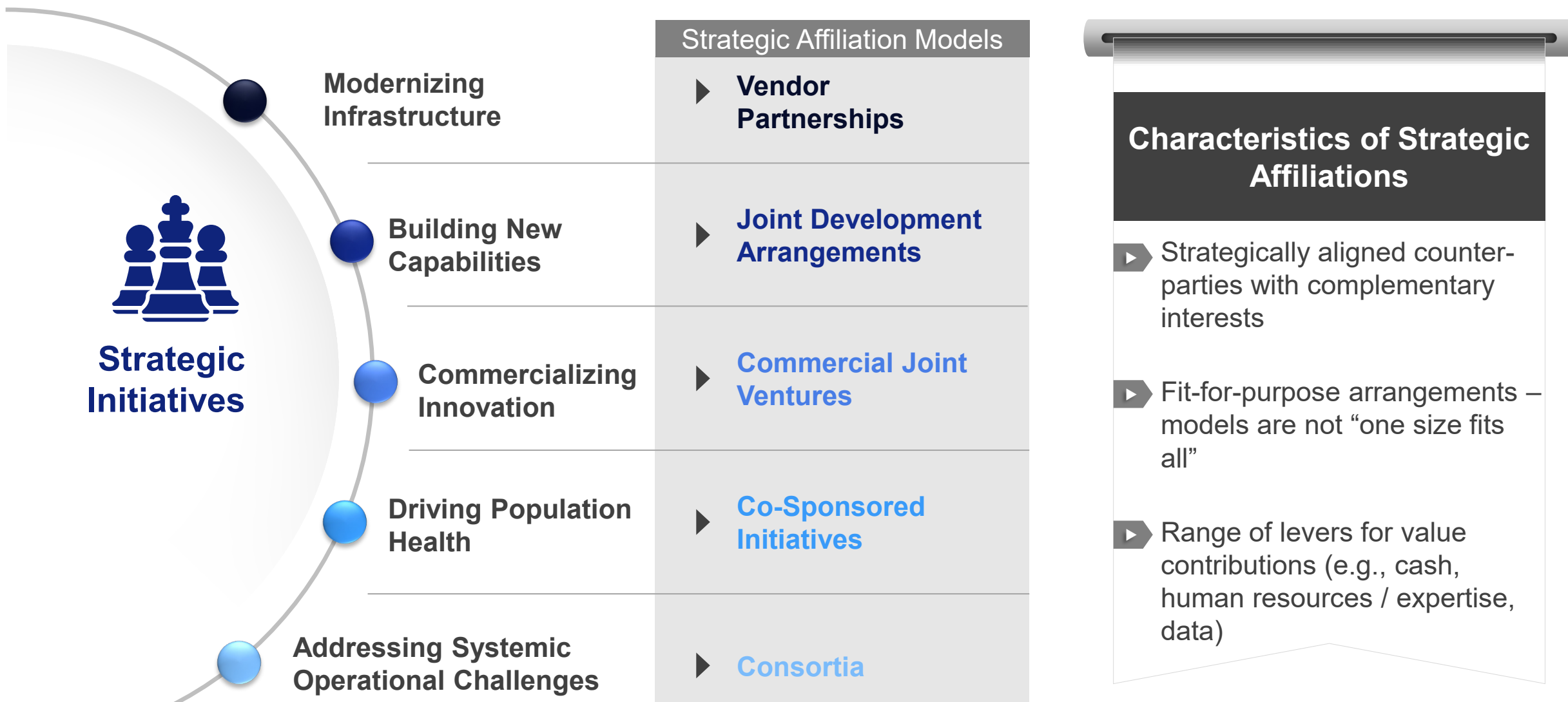
Payers are using merger and acquisitions to expand beyond their core business, acquire new capabilities, and boost efficiency

Number of Payer M&A Deals (Jan 2015 – June 2021)¹



Notes: ¹Includes transactions of leading players (BCBS, Centene, Cigna, CVS Aetna, Humana, Kaiser Permanente, Molina Healthcare, and UHG); ²Other includes a wide variety of transactions outside the four listed categories
Sources: [BCG](#)

Wider Opportunity: *Strategic Financing for Strategic Initiatives*



Vendor Partnerships

Vendor Partnerships

Joint Development Arrangements

Commercial Joint Ventures

Co-Sponsored Initiatives

Consortia

Modernizing infrastructure through long term commercial partnership with key vendor



Deployment of the latest generation of medical technology at Prisma Health sites and collaboration to **improve the delivery of clinical services**



Coupling of MUSC's clinical care and research expertise with Siemens's **engineering innovations** and workflow-improvement capabilities

Joint Development Arrangements

Vendor Partnerships

Joint Development Arrangements

Commercial Joint Ventures

Co-Sponsored Initiatives

Consortia

Co-investing with complementary business partner on building new capabilities



Combining Syntropy **data platform**, with UCI **health IT, data science, and AI** to develop a deeper understanding of diseases



Improving asthma care by creating a **suite of products that integrate into the electronic health record (EHR)**

Commercial Joint Ventures

Vendor Partnerships

Joint Development Arrangements

Commercial Joint Ventures

Co-Sponsored Initiatives

Consortia

Co-investing with complementary business partner in new business ventures



elevatebio

Focused on creating multiple companies to **commercialize advances in cell and gene therapy**

Co-Sponsored Initiatives

Vendor Partnerships

Joint Development Arrangements

Commercial Joint Ventures

Co-Sponsored Initiatives

Consortia

Participating in public health initiatives along with other sponsors



Cambridge
Innovation
Center



Universities, CLIA-certified labs, state and municipal governments, health systems, and physician networks

Provided COVID-19 testing and vaccination services to more than 600 schools and 450 organizations



Texas Tech University
Health Sciences
Center, El Paso



Cancer Prevention
and Research
Institute of Texas

Improving cancer screening rates among underserved populations

Consortia

Vendor Partnerships

Joint Development Arrangements

Commercial Joint Ventures

Co-Sponsored Initiatives

Consortia

Co-chartering a member-led non-profit entity with a group of peer institutions

CIVICA



7 Health Systems & 3 philanthropies

Providing stability in the supply of generic drugs to member institutions



Graphite Health



Presbyterian Healthcare Services

Intermountain Healthcare

SSM Health

Enabling a secure and open marketplace to facilitate the **distribution of digital health tools for health systems and entrepreneurs**

Polling Question 2

What hurdles or challenges have you encountered or are concerned about in entering strategic affiliations?
SELECT ALL THAT APPLY:

- Regulatory Process
 - Tax Law / Liabilities
 - Financial Terms & Structure
 - HIPAA Requirements
 - Stark Law
 - Reimbursement Considerations
 - Determination of Need (as required)
 - Union Activity
 - Governance Structure
 - Other please list:
-

Strategic Affiliations

New Models for Capital Financing

November 17, 2021

Key Regulatory Considerations

Tax

- **Tax Exemption**
 - Tax exempt entity must operate exclusively in furtherance of its tax-exempt purpose
 - May participate in a partnership if participation furthers tax-exempt purpose and partnership agreement permits exempt organization to act exclusively in furtherance of its tax-exempt purpose and only incidentally for the benefit of its for-profit partners
- **Unrelated Business Income Tax**
 - Activities that are substantially related to the exercise and performance of organization's exempt purpose do not generate unrelated business taxable income
- **Tax-Exempt Bond Financing Considerations**



Stark Law/AKS

- **Stark Law**
 - Prohibits physician from referring designated health services (DHS) to an entity, or the entity from billing for DHS, if physician has a financial relationship with the entity, unless an exception applies
 - Requirements of common compensation exceptions:
 - FMV
 - Commercially reasonable
 - Compensation set in advance
 - Signed writing
 - Not in exchange for the volume or value of referrals
- Strict liability statute



Stark Law/AKS *continued*

- Common DHS include:
 - clinical laboratory services;
 - physical therapy services, occupational therapy services, outpatient speech-language pathology services;
 - radiology and certain other imaging services;
 - radiation therapy services and supplies;
 - durable medical equipment and supplies;
 - parenteral and enteral nutrients, equipment and supplies;
 - prosthetics, orthotics, and prosthetic devices and supplies;
 - home health services;
 - outpatient prescription drugs; and
 - inpatient and outpatient hospital services



Stark Law/AKS *continued*

- **Anti-Kickback Statute**

- Generally, prohibits the knowing or willful payment or receipt of remuneration in exchange for or to induce referrals of items or services reimbursable by a federal health care program
- Intent-based statute
- Safe harbors protect arrangements from prosecution but include very rigorous and often hard-to-meet requirements
- Issue in the JV context is whether the return on investment constitutes an improper inducement for referrals



Health Policy Commission - Massachusetts

- HPC's goal is better health and better care – at a lower cost – for all residents across the Commonwealth



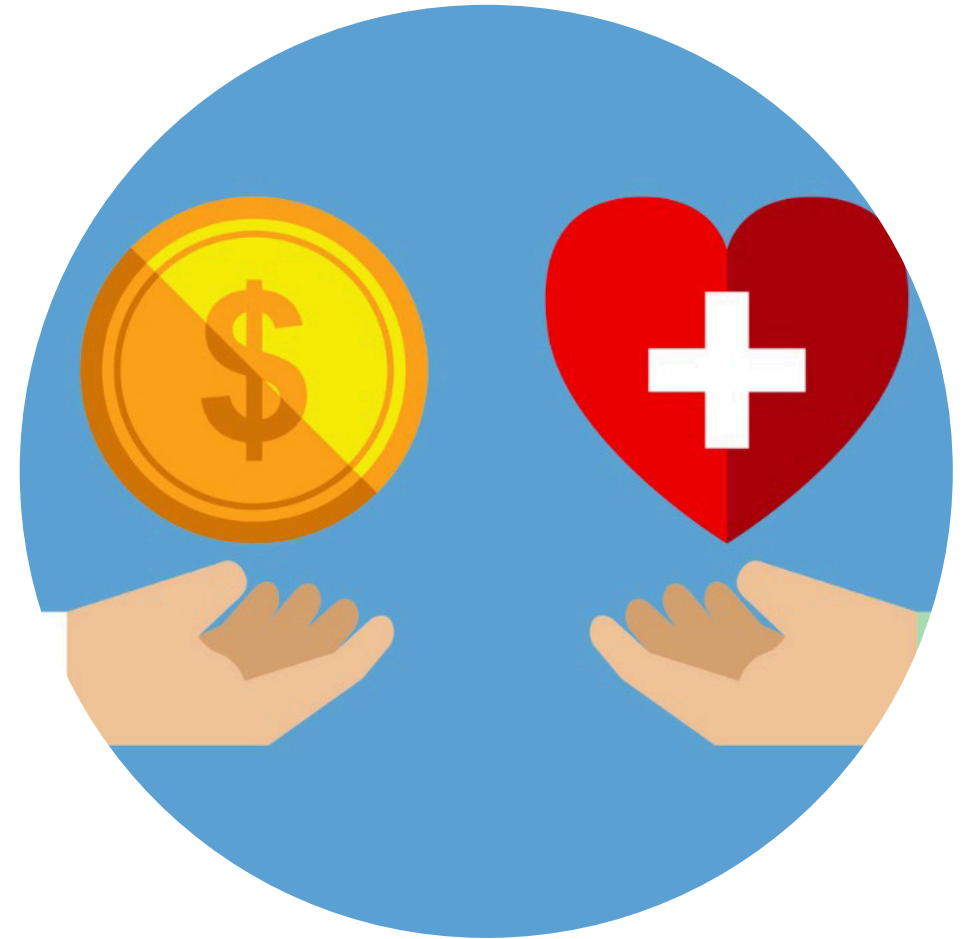
Licensing and Determination of Need

- Health care providers of all types and health plans generally must be licensed in the state in which they operate to provide a particular service
- Determination of need regulations aim to control health care costs by restricting duplicative services and determining whether new capital expenditures meet a community need



Reimbursement Considerations

- Entity joint venture will have its own tax ID number
- Joint venture must be able to enroll as a Medicare and Medicaid provider if services are provided to Medicare/Medicaid patients
- Joint venture must separately contract with commercial payers



HIPAA and State Privacy and Security Laws

- HIPAA applies to covered entities
 - Health care providers
 - Health plans
 - Health care clearinghouses
- HIPAA also applies to business associates
 - Contractors who receive protected health information (PHI) in the course of performing services for a covered entity
- Establishes a federal floor of confidentiality requirements applicable to the use and disclosure of PHI
- HIPAA will apply to entity JVs that do not fit the definition of a covered entity if the entity receives PHI from a partner that is a covered entity as part of the activities of the JV in order to perform services for covered entity partners



Corporate Practice of Medicine

- Generally, prohibits a corporation from practicing medicine or employing physicians to provide professional medical services
- Doctrine arises from state medical practice statutes based on public policy concerns that include:
 - Allowing corporations to practice medicine and employ physicians will result in commercialization of the practice of medicine
 - A corporation's obligation to its shareholders may not align with a physician's obligation to his/her patients
 - Employment of a physician by a corporation may interfere with the physician's independent medical judgment



Common Pandemic- Related Considerations

Common Pandemic-Related Considerations

- Telehealth
 - Many states relaxed licensing requirements applicable to telehealth service providers during the pandemic
 - Relaxation was generally accomplished through executive action in the form of state of emergency orders
 - Many state of emergency orders have expired
- Material Adverse Change
 - Requires target company not to have experienced a material adverse change (MAC) in its business
 - Typically, the non-existence of a target company MAC is a condition to closing a transaction and the existence of a MAC gives the acquirer the right to terminate the agreement
- Delay with Regulatory Approvals



Polling Question 3

Do you see utilizing a strategic affiliation as an alternative source of financing for your organization as a possibility over the next 1-2 years?

- Yes
- No
- I don't know

Strategic Affiliations

New Models for Capital Financing

November 17, 2021

Assessing Strategic Affiliations For Your Organization

Exploring Strategic Affiliations for a Strategic Initiative

What **financial, human, technology, or other capabilities** do we need to support this initiative?

What **partnership structure** best recognizes the respective contributions of each party, appropriately manages risk, and allows for efficient and effective execution of the initiative?

What **key risks or other considerations** do we need to watch out for in pursuing this strategic affiliation?



What **other players** (inside or outside of our sector) have aligned interests and complementary capabilities that might consider a strategic affiliation?

What **source of value** (beyond dollars) can we contribute to the strategic affiliation?



Verrill

Questions?

Kathleen Healy

- khealy@verrill-law.com
- Tel: 207.253.4710

Gregory Lief

- glief@asymmetrygroup.com
- Tel: 617.645.6189

Yakir Siegal

- ysiegal@asymmetrygroup.com
- Tel: 617.306.0505

Thank You!

Strategic Affiliations

New Models for
Capital Financing

November 17, 2021