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Healthcare

Premier considers possible IPO MedAssets attacks alleged plans as hospital purchasing competition heats up

By [Jaimy Lee](#) and [Joe Carlson](#) | July 19, 2013

PREMIER IN THE SPOTLIGHT
Rising thought leader's firm contemplates going public



PRESIDENT AND CEO Susan DeVore
HEADQUARTERS Charlotte, N.C.
OWNERSHIP About 200 owner hospitals
MEMBER HOSPITALS 2,800
2012 NET REVENUE \$768.3 million
2012 OPERATING INCOME \$322.1 million

Note: Fiscal year ended June 30, 2012
Source: Premier website

The Premier healthcare alliance, one of the nation's largest group purchasing organizations, is considering an initial public offering in its ongoing efforts to transform a business buffeted by the rapidly changing hospital purchasing environment, according to letters obtained by Modern Healthcare.

Rumors that hospital-owned Premier was considering an IPO have circulated widely in hospital purchasing circles over the past year. The confirmation came to light during a testy exchange of letters between Premier and one of its largest competitors.

In that exchange, which took place last year, publicly traded MedAssets accused its rival of using sales tactics linked to a prospective IPO in order to recruit new member hospitals, including some that use the MedAssets GPO. Those tactics could violate the nation's anti-kickback laws, MedAssets warned.

“Representatives of your company have been soliciting hospitals—both existing members of Premier and members of other group purchasing organizations—to join Premier and commit their supply purchases to your GPO in order to benefit from the IPO,” MedAssets Chairman, President and CEO John Bardis wrote last November to Premier President and CEO Susan DeVore, Premier Board Chairman Dr. Glenn

Steele, and Premier Vice Chairman Dennis Vonderfecht. Steele is also president and CEO of Geisinger Health System. Vonderfecht is president and CEO of Mountain States Health Alliance.

Two weeks later, Premier's outside counsel responded in kind, accusing MedAssets of defaming Premier's trade and business. "MedAssets' false statements and any other similar communications threaten to interfere with Premier's proposed initial public offering and related restructuring effort," James Quinn, from the New York law firm of Weil, Gotshal & Manges, wrote Dec. 3 to MedAssets' lawyers.

When contacted by Modern Healthcare, Bardis declined to provide specific names of hospitals allegedly approached by Premier about the IPO. Premier declined to comment on the accusations or the status of any possible IPO.

"The Premier alliance is dedicated to leading the transformation to high-quality, cost-effective healthcare, and any actions we take are to advance that goal," Blair Childs, Premier's senior vice president of public affairs, said in an e-mailed statement.

"Premier is always considering and evaluating all strategic options to drive towards this goal with and for the success of our hospital and health system owners."

The bitter exchange last fall between the two rivals reflects the rising competitive pressures within the GPO industry. GPOs earn fees by negotiating discounts from devicemakers and suppliers for their hospital members.

But the business model has come under stress in recent years as hospitals scramble to cut costs, especially in their purchased supplies. That pressure has led most GPOs to continue to diversify into a variety of consulting and outsourced services, including the use of data and analytics tools to analyze supply utilization and other trends, which has amped up the competition for hospital business.

Though the group-purchasing industry has a relatively obscure profile, even within the world of healthcare, the fight to represent hospitals and nursing homes when they purchase supplies has extremely high stakes. Hospitals accounted for an estimated \$850 billion in U.S. spending in 2011, with about 30% of that cost consisting of supplies and nonlabor services, according to MedAssets' securities filings. Some providers use GPO contracts for nonmedical supplies, such as food and information technology services.

“GPOs are being asked by their hospital partners to help in addressing what are enormous provider cuts,” said Curtis Rooney, president of the Healthcare Supply Chain Association, a trade group that represents GPOs. Rooney was asked about market dynamics affecting GPOs, and not about a possible Premier IPO or the exchange between MedAssets and Premier.

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Source: Premier website

GPOs pool healthcare providers' buying power to drive down supply costs. Premier says it delivers about \$5 billion in savings to its more than 2,800 hospital and 98,000 non-acute care provider members.

In its 2013 annual report to the Securities and Exchange Commission, MedAssets reported conducting \$28 billion in purchasing on behalf of its more than 3,000 hospital clients in 2012. Virtually all of the more than 5,000 hospitals in the U.S. belong to a GPO, some to more than one.

Despite that high rate of adoption, changes in the wider payment and delivery system for healthcare are exerting pressures on the GPOs, causing them to diversify their business models and intensify the competition to sign up provider clients.

Last year, MedAssets claimed it had received reports that Premier was considering going public and was telling potential members, including some MedAssets customers, that “joining Premier could provide financial benefits to the hospitals in the form of shares of that stock,” according to a July 3 letter from MedAssets Chief Legal Officer Jonathan Glenn to his counterpart at Premier, Jeffrey Lemkin. Lemkin responded that “Premier continues to monitor such interactions to assure that ethical and legal compliance is maintained.”

MedAssets then hired former federal healthcare prosecutor and Boston attorney Michael Loucks to evaluate a business plan similar to the one allegedly being used by Premier. Loucks concluded that the alleged arrangement might violate the anti-kickback statute, which prohibits anyone from paying a hospital to use certain products on Medicare patients.

In strong language, Premier rejected the legal analysis and disputed how Loucks was characterizing the proposed business arrangement. In an Oct. 5 letter to Glenn and Loucks, Lemkin noted that “you may not be fully aware of Premier's existing and long-standing business model which includes member ownership as a stockholder in Premier ... This business model has been described, disclosed and reviewed on more than one occasion to and with the OIG, CMS, HHS, GAO, as well as United States Senators and Congressmen and their staffs,” he wrote.

About 200 hospitals and health systems are owners of Premier. For instance, the University of Texas MD Anderson Cancer Center owned a 1.15% stake, roughly \$4.1 million, in Premier as of Dec. 31, 2012, according to financial documents. Not all of the company's owners disclose their investments in Premier.

When MedAssets CEO Bardis directly accused Premier of soliciting hospitals to join Premier “in order to benefit from the IPO,” Premier's outside counsel fired back that “MedAssets knowingly disregarded the facts concerning Premier's business model and proposed transactions.”

In the wake of the exchange, MedAssets decided it had a responsibility to its stockholders to investigate similar action. “A decision was made to figure out what MedAssets could do,” Loucks said in an interview.

After putting together a business plan, MedAssets submitted it to HHS' inspector general's office for an opinion. MedAssets described its proposal as one where members would sign five- to seven-year agreements in which they would agree not to decrease volume of purchases and accept stock instead of other types of remuneration.

MEDASSETS IN THE SPOTLIGHT
Sole investor-owned GPO raises questions over alleged tactics

CHAIRMAN, PRESIDENT AND CEO John Bardis
HEADQUARTERS Alpharetta, Ga.
OWNERSHIP Publicly traded
GPO CLIENT HOSPITALS More than 3,000
2012 NET REVENUE \$640.1 million
2012 OPERATING INCOME \$85.2 million

Note: Fiscal year ended Dec. 31, 2012.
Source: MedAssets annual report

The OIG's opinion, which was obtained by Modern Healthcare and is slated for public release this week, concluded that the sale of stock described by MedAssets “could potentially generate prohibited remuneration under the anti-kickback statute and that the OIG could potentially impose administrative sanctions.” Such arrangements could also lead to criminal charges, the opinion said, which could “lead to automatic exclusion from federal healthcare programs.”

The inspector general's office said the guarantees of future volume and the payment of fees in ways that would not be recorded on Medicare cost reports could “implicate” the anti-kickback law. GPOs are normally protected under a special provision in the law called a “safe harbor” that protects the group-purchasing industry from liability for doing what would otherwise be illegal.

The safe harbor was set up so Medicare could indirectly benefit from cost-savings. The discounts arranged by GPOs are reported to the CMS and factored into Medicare rates. But under the proposal submitted by MedAssets and evaluated by HHS' OIG, those indirect benefits for payers disappear. “Unlike a discount, the (stock) remuneration under the proposed arrangement would have no potential to benefit payers, including federal healthcare programs,” the OIG opinion says.

A Premier spokesman dismissed the relevance of the OIG opinion to Premier. “The facts presented in the opinion are not our facts and do not relate to Premier,” senior vice president Childs said in an e-mailed response. In a separate statement, he said: “Premier always follows all requirements of the law.”

A dozen major health systems declined to comment on whether they were approached by Premier about its proposed IPO. None of the hospitals that have executives on Premier's board made those executives available for comment, with several referring calls back to Childs.

MedAssets is the only publicly traded GPO, having issued its first round of stock in 2007. However, its owners are not the healthcare providers who purchase their supplies through it, as Premier's are.

Premier, MedAssets and Novation are considered the largest GPOs in the U.S. Along with Amerinet and HealthTrust, which is part of HCA's Parallon Business Solutions, they account for an estimated 85% of the market, according to a MedAssets securities filing.

In the same filing, MedAssets said the “endemic, persistent and growing healthcare industry pressures” provide growth opportunities for the company, which also offers revenue-cycle management services.

Hospitals have increasingly taken an interest in reducing the costs of supplies, which

usually make up a hospital's second largest expense after labor, as well as implementing new strategies for better utilization of those supplies.

GPOs are scrambling to line up clients for using data and analytics to achieve these goals. Premier has sought to specialize in that area, said Richard Close, a healthcare equity analyst with Avondale Partners.

This interest in minimizing supply costs has led some hospitals to think differently about how they use GPOs. However, most hospitals agree that GPOs are a necessary part of their supply chains.

Some large hospital systems have been banding together to form regional purchasing cooperatives that boost their leverage in a GPO and subsequently provide them with better prices. “We're seeing (patient) volume decreases across the country in virtually all markets,” said David Cyganowski, a managing director at Kaufman Hall. “We're seeing revenue pressures as the payer mix changes. It's all coming down to cost management.”

But the current cost-conscious environment has led hospitals to explore ways of cutting their GPO costs, too. GPOs collect a small percentage—generally 1% to 3% of all purchases—from vendors to cover their costs. Several large health systems, including Ascension Health and Dignity Health, have moved forward with plans to develop their own GPOs. Highmark, a health insurer that recently purchased eight hospitals, also has formed a GPO.

“That is a headwind,” Close of Avondale Partners said. But “there's not going to be many individual health systems that can do that, that have the size and scope to do that.”

Another challenge lies in the industry's safe harbors that allow GPOs to operate. Without the safe harbors, which protect GPOs from violating the anti-kickback statute, the current business model for group purchasing would collapse.

The issue of repealing the safe-harbor provision crops up in Washington every few years. Some medical device manufacturers and their supporters on Capitol Hill have been among the biggest critics of the industry.

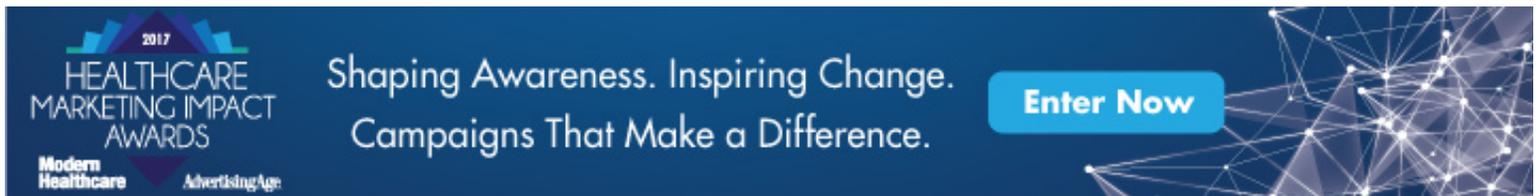
MedAssets noted that hostile political environment in its letters to Premier. In one letter, MedAssets argued that Premier's alleged actions could lead to scrutiny from lawmakers that could "put the entire GPO industry in the cross-hairs of the U.S. Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights."

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