

SCHAUM LAW OFFICES

600 Old Country Road, Suite 328, Garden City, NY 11530
516-228-8766 Fax: 516-228-3559 SCHAUM@SCHAUMLAW.COM

January, 2022

TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

We wish to report on a lawsuit which carries significance for anyone either selling or buying a practice. While the facts seem clear on the surface the ruling of the court leaves one puzzled and alerts one as to what can occur. The asset being sold was a skilled nursing facility, but the fact pattern could be applied to any type of practice.

The Asset Purchase Agreement (APA) provided the usual provision that any monies received after closing, in the nature of reimbursements for services provided prior to closing, would be credited to the Seller. These included fees emanating from Medicaid rate appeals. There was also a clause to the effect that the liabilities for overpayments would also be the responsibility of the party who had provided such service. The specific language as to this issue of liability continued the verbiage describing possible overpayments, “ ... caused by its own acts or omissions.”

The Office of Medicaid Inspector General did conduct an audit and a significant amount was determined to be owed to the Seller for services provided prior to transfer. At the same time there remained a question regarding a prior reimbursement methodology which might trigger a liability for a partial refund to the State to be finalized.

It was at this point in the process that the Court determined that it could not make a definitive ruling as to the party which would be responsible for any possible return of overcharges until there was a determination as to whether the liability arose as the result of the “acts or omissions” of the Seller.

One could very well argue – and we certainly would – that if a party receives funds for services prior to transfer of title that same party should be responsible for liabilities incurred during that earlier period. However, the last time we looked in the mirror we do not wear judicial robes. This seems a good example of where less is more. The words regarding “own acts or omissions” might be overused boiler plate which suddenly, and surprisingly, became important. A lesson to be learned in good draftsmanship.

Respectfully submitted,

Schaum Law Offices