



Representations and warranties insurance in healthcare transactions

Representations and warranties insurance (“RWI”) has become an increasingly popular tool in healthcare transactions, protecting buyers and sellers against potential breaches of representations and warranties made during the negotiation process. In healthcare M&A transactions, RWI helps mitigate risks associated with complex regulatory environments, compliance issues and other potential liabilities common in the healthcare industry.

Healthcare transactions, and the businesses underlying them, are often characterized by significant scrutiny from regulators such as the Department of Justice (DOJ), Federal Trade Commission (FTC) and Centers for Medicare & Medicaid Services (CMS). This scrutiny makes navigating compliance intricacies challenging, especially regarding healthcare laws such as the Stark Law, Anti-Kickback Statute and healthcare fraud regulations. Using RWI in healthcare deals allows buyers to address concerns about potential unknown liabilities without holding sellers liable for post-transaction breaches. For example, if a healthcare provider or company fails to comply with regulatory requirements or improperly bills patients, and the diligence leading up to the consummation of the transaction did not bring these issues to light, the buyer of the company can turn to RWI to cover these unexpected financial losses. By transferring these risks to an insurer, buyers can achieve more favorable deal structures and avoid lengthy indemnity negotiations, while sellers gain security knowing that the likelihood of post-closing disputes is reduced.

Types of healthcare transactions we encounter:



Provider practices



Life sciences businesses



Pharmaceutical companies



Medical staffing



Managed services



Pharma marketing



Educational providers

Historically, the heavily regulated nature of much of the healthcare industry meant that RWI underwriters considered healthcare transactions to be higher risk, which in turn made them relatively challenging to insure. However, with the M&A market having experienced sustained lower deal volume throughout 2023 and 2024, RWI insurers, some of which previously struggled to offer competitive quotes in the healthcare sector, have expanded their coverage appetite and now provide comprehensive policies at favorable rates. That said, placing an RWI policy on a healthcare transaction still presents its own challenges. One of the most common claims in healthcare transactions involves inaccuracies in the target's billing and coding (B&C) processes. In the past, insurers often excluded B&C risks entirely, but with improvements in B&C due diligence, insurers can now better assess a target's B&C risk profile and are more willing to underwrite that risk. Coverage of a target's billing practices is a key benefit of RWI policies.

In addition to providing risk mitigation, RWI can facilitate smoother deal timelines, especially in healthcare transactions where the due diligence process can be more time-consuming due to detailed reviews of regulatory compliance, licensure and billing practices. With RWI in place, buyers are often more confident in proceeding with transactions, even if certain doubts remain. Moreover, RWI can enhance the marketability of healthcare deals, making them more attractive to both buyers and sellers. In an industry where compliance and regulatory concerns are paramount, RWI offers a valuable tool for managing risk while fostering successful healthcare transactions.

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WTW-1640648765-04-2025

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WTW's deep expertise in the healthcare sector allows us to navigate the complexities of compliance, billing and coding issues and other sector-specific risks. By leveraging RWI, we can effectively transfer risks associated with potential breaches of representations and warranties to insurers, providing both buyers and sellers with peace of mind

