

Accountable Care Organizations: Organizational and Legal Structures; Governance

**California Association of Physician Groups (CAPG)
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ACOs in PPACA

The Basics

Section 3022 of the Protection and Affordable Care Act (“PPACA”) establishes the Medicare Shared Savings Program

- Health care professionals work together to establish Accountable Care Organizations – ACOs

ACOs in PPACA

The Basics

- ACOs are held accountable for quality, cost, and overall care of Medicare beneficiaries assigned to them
- Have the potential to realign provider incentives

ACOs in PPACA

Key Requirements Under PPACA

- A formal legal structure for receiving and distributing shared savings payments
- A leadership and management structure that includes clinical and administrative systems
- Agree to participate in the program for at least three years
- Able to accept assign of at least 5,000 Medicare beneficiaries, and include a sufficient number of primary care physicians for serving those patients

ACOs in PPACA

Key Requirements Under PPACA

- Have processes relating to quality and coordination of care, such as through the use of telehealth, remote patient monitoring, and other technologies
- Have patient-centered processes that meet criteria specified by the Secretary

Basic ACO Structural Requirements Under Proposed Regulations

- Form of entity must be recognized under state law
- ACO must be “comprised” of eligible participants
- ACO must have an established mechanism for shared governance
- ACO must have a tax ID number

Choice of Entity

ACO must be “authorized to conduct its business under applicable state law” and “be capable of (1) receiving and distributing shared savings, (2) repaying shared losses, (3) establishing, reporting, and ensuring compliance with program requirements; and (4) performing the other ACO functions identified in the statute.”

Choice of Entity

Legal entities under state law:

- General or limited partnership
- Corporations (for-profit and nonprofit)
- Unincorporated association
- Cooperative
- Limited liability company (LLC)

Choice of Entity

Factors affecting choice of entity:

- Risk tolerance of participants
- Nature and extent of desired liability protection, e.g., protection of one segment of business from losses or liabilities of another segment
- Desired tax status of ACO
- How members will be taxed and/or claim benefits from losses generated
- Desired formality of ACO governance

Choice of Entity

LLC

- Liability of members limited to capital contributions
- Flexibility in allocation of tax profits/losses, distributions of cash
- Generally, may be less formally governed

Choice of Entity

Charter documents, e.g., articles of incorporation and bylaws of corporations, articles of organization and operating agreements of LLCs, and partnership and joint venture agreements for partnerships, must be disclosed to CMS in application to participate in shared savings program

Eligible Participants

- ACO professionals in group practice arrangements
- Networks of individual practices of ACO professionals
- Partnerships or joint venture arrangements between hospitals and ACO professionals
- Hospitals employing ACO professionals

Eligible Participants

- Critical access hospitals be eligible to form an ACO
- Federally qualified health centers (FQHCs) and rural health clinics (RHCs) may participate in an ACO, but may not independently form their own ACO

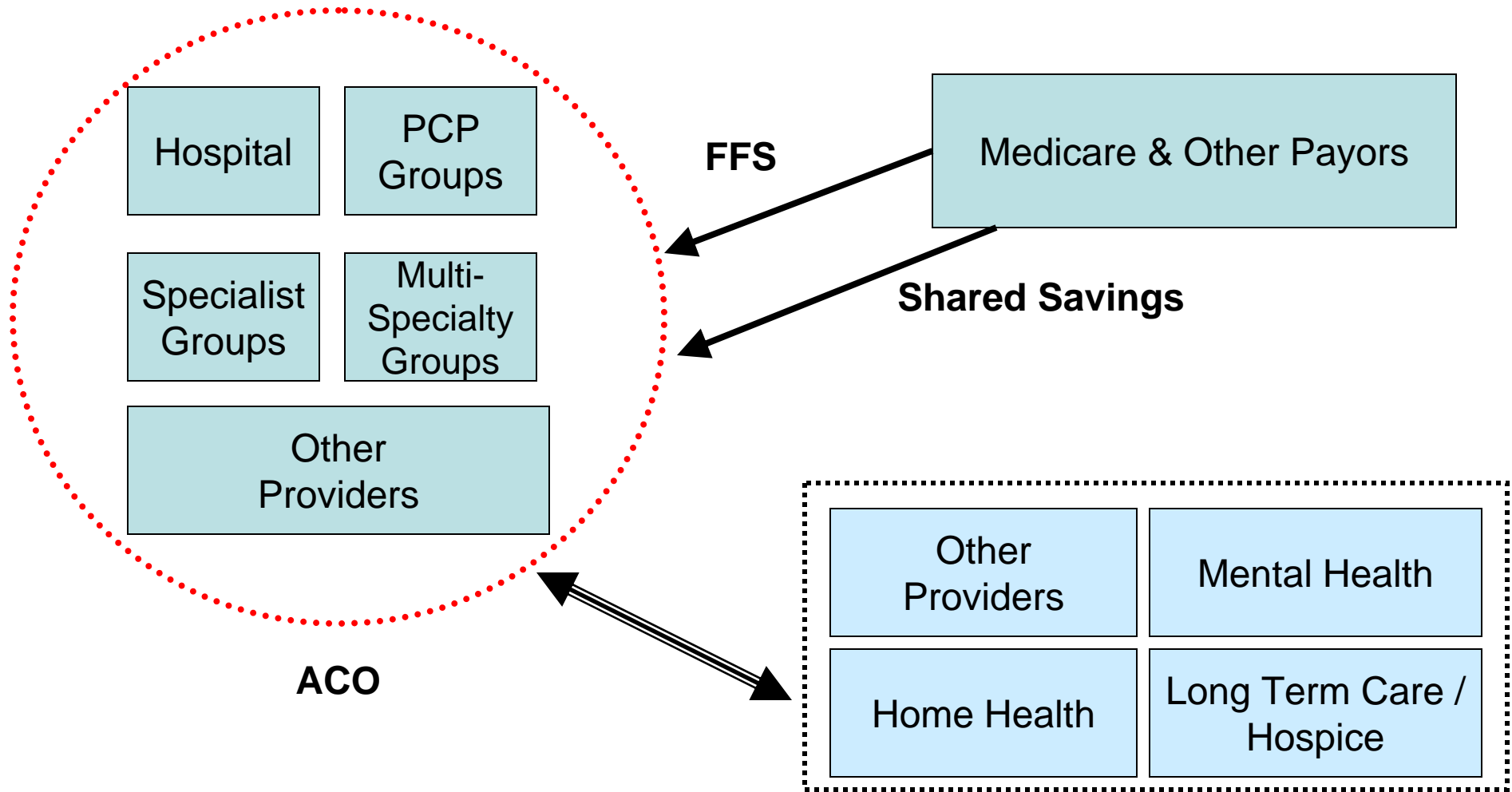
Creating Provider Alignment

- Alignment strategies/functions drive legal/organizational structures

Creating Provider Alignment (cont'd)

- Alignment strategies/functions
 - Shared risk payments
 - Bonuses (quality and/or cost savings)
 - Joint marketing / branding
 - Shared / integrated IT
 - Models
 - Medical Group focused
 - Physician – Hospital
 - Co-Management
 - Foundation or other clinic

ACOs: Macro View

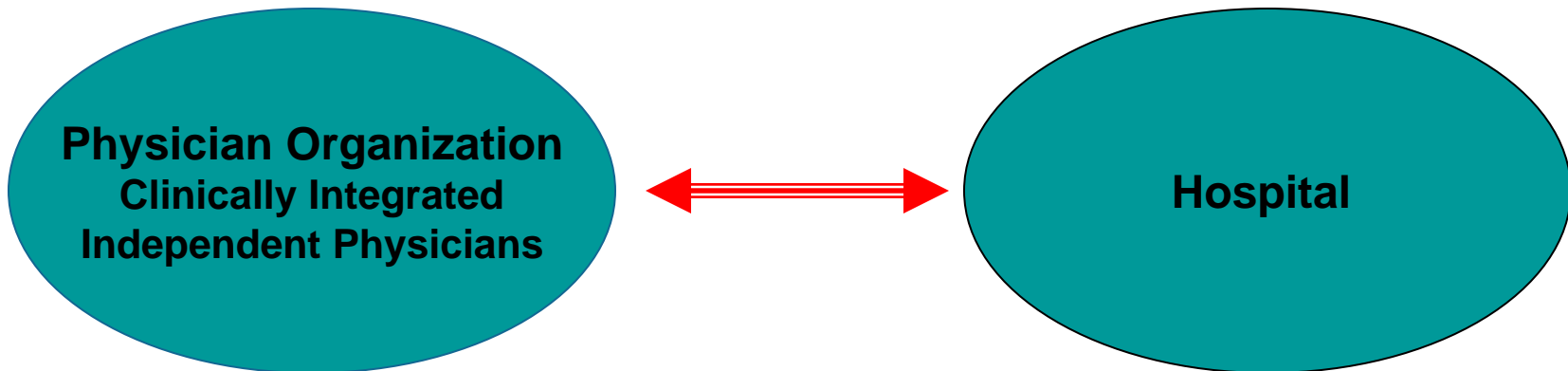


Creating Alignment

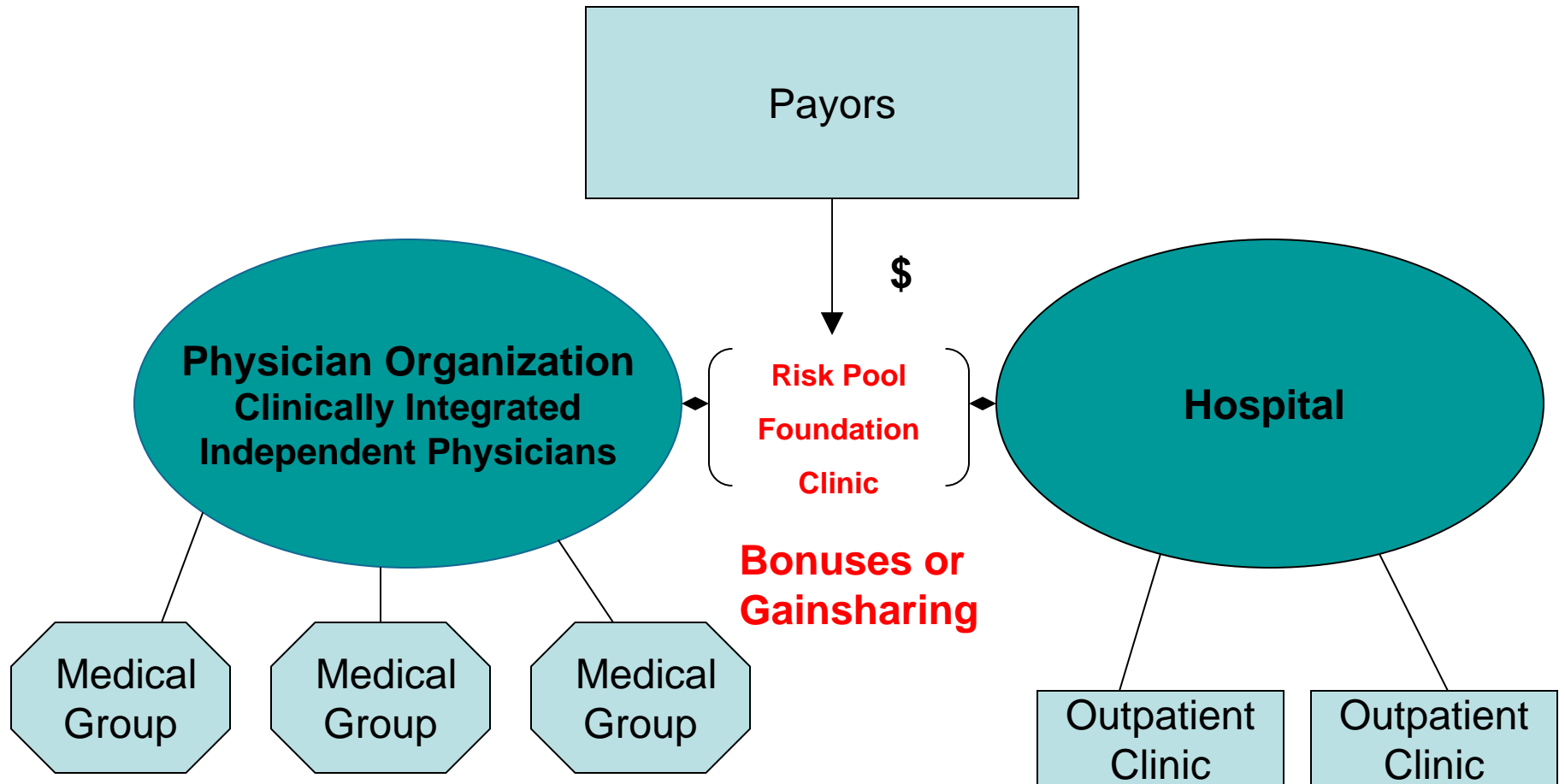
- What IT is currently in place?
- What will be needed to:
 - Coordinate Care
 - Measure Outcomes (Quality and Cost)
 - Report to Payors

**Who Will
Pay?**

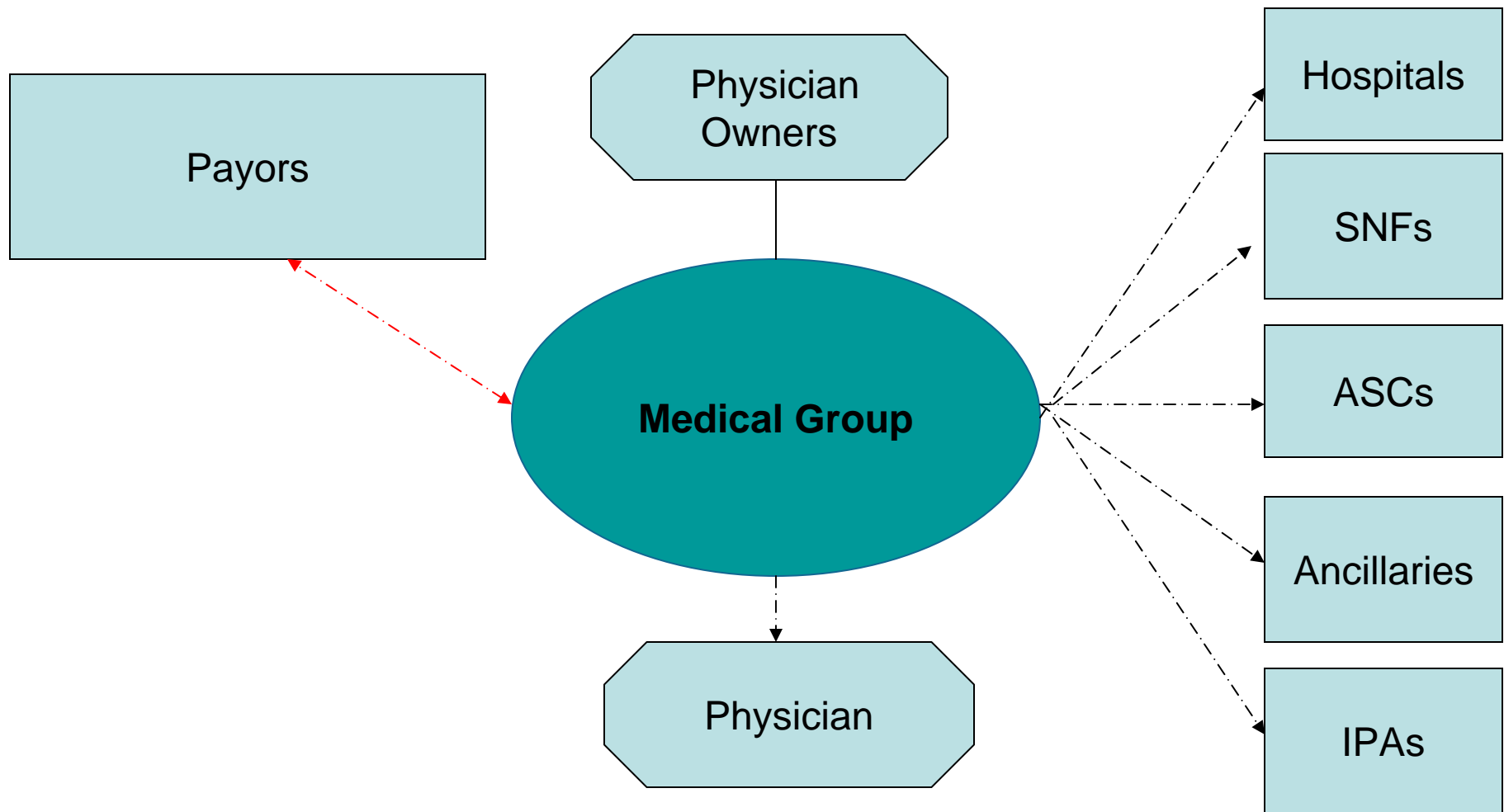
Meaningful Use \$\$\$?



Creating Alignment – Shared Risk



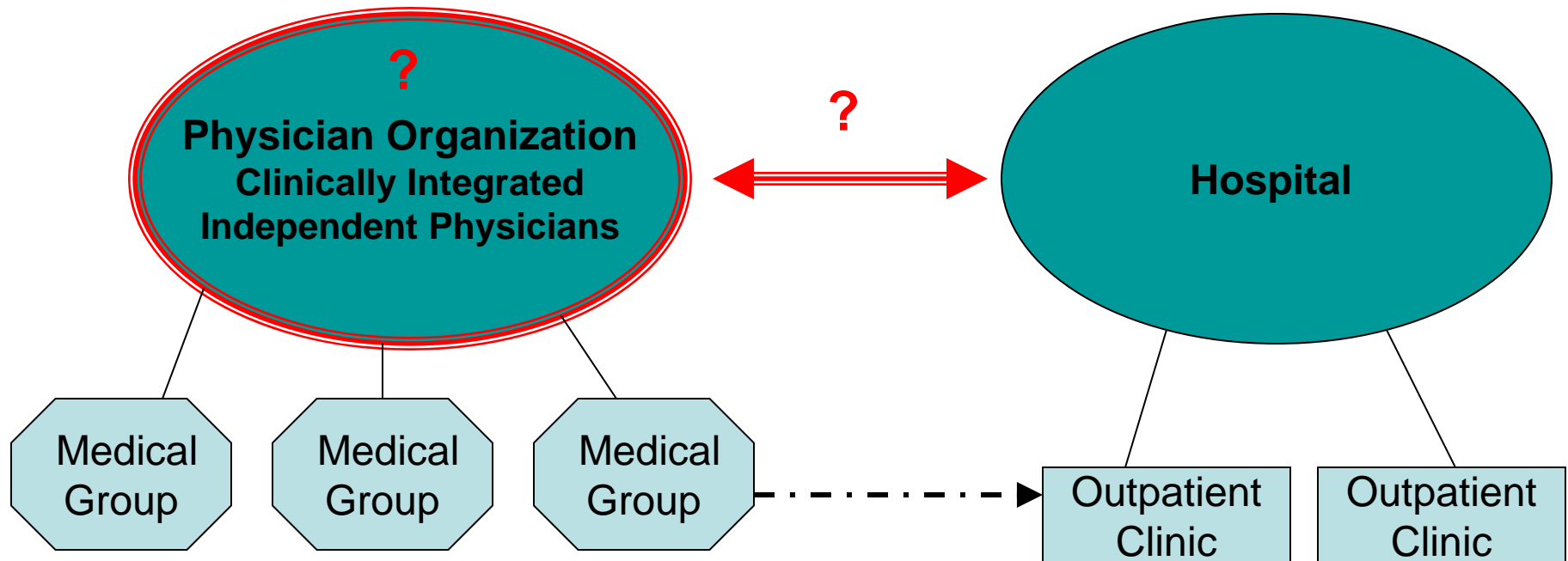
Medical Group-Focused Model



ACOs: Physician – Hospital Model

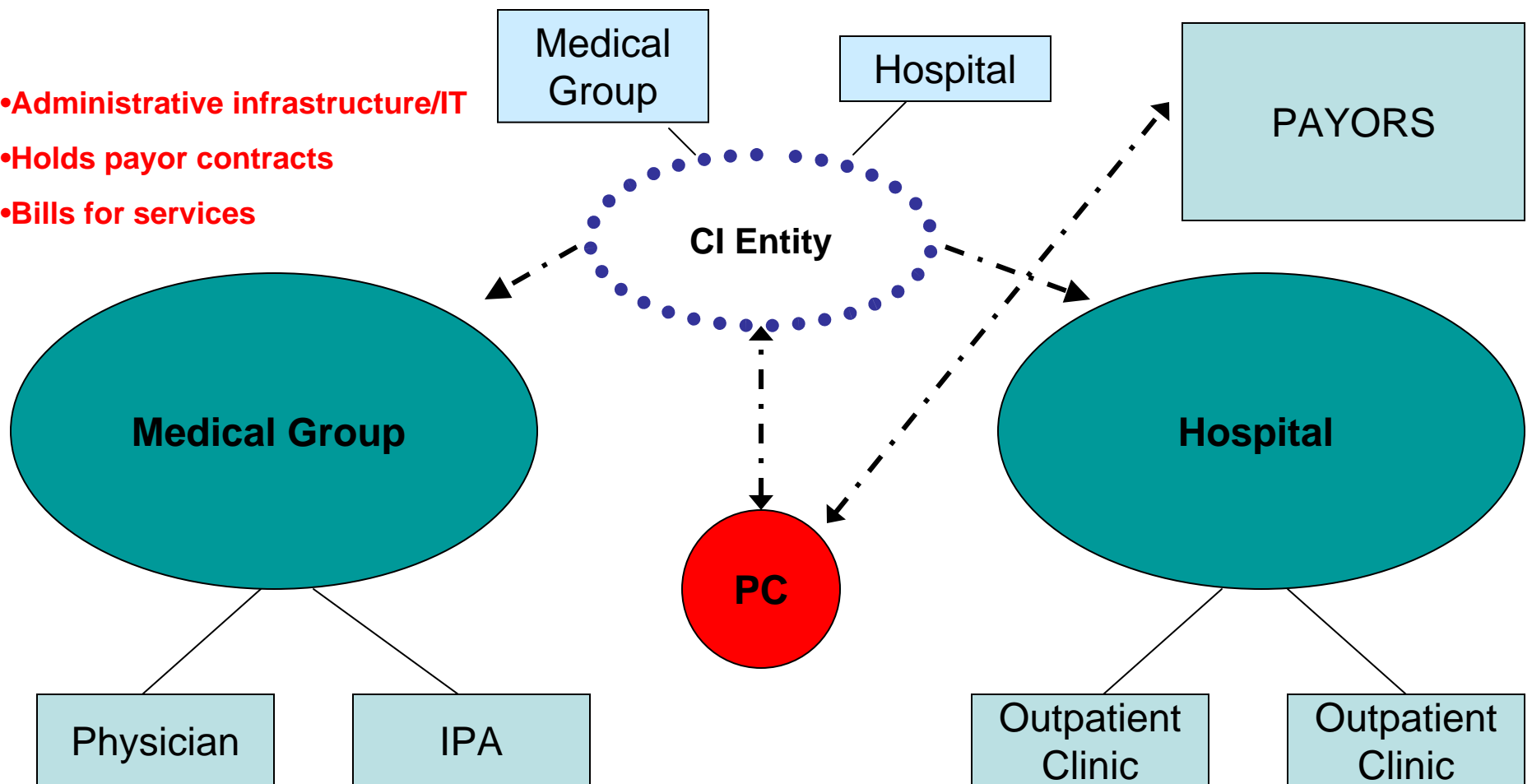
What Creates the Relationship Among the Physicians?

What Creates the Relationship Between the Hospital and Physicians?

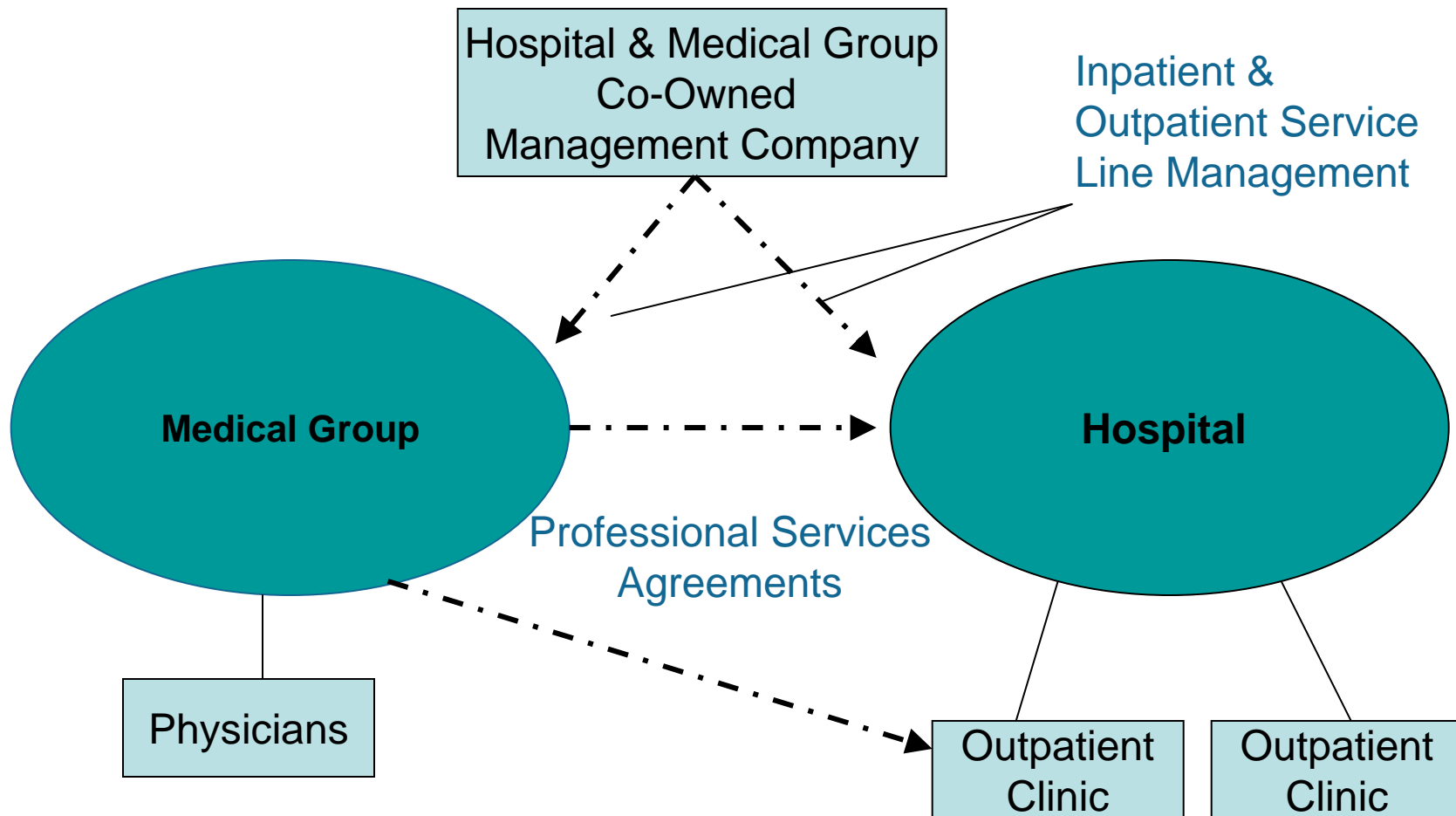


Physician-Hospital Organization (the CPOM “Friendly” Version)

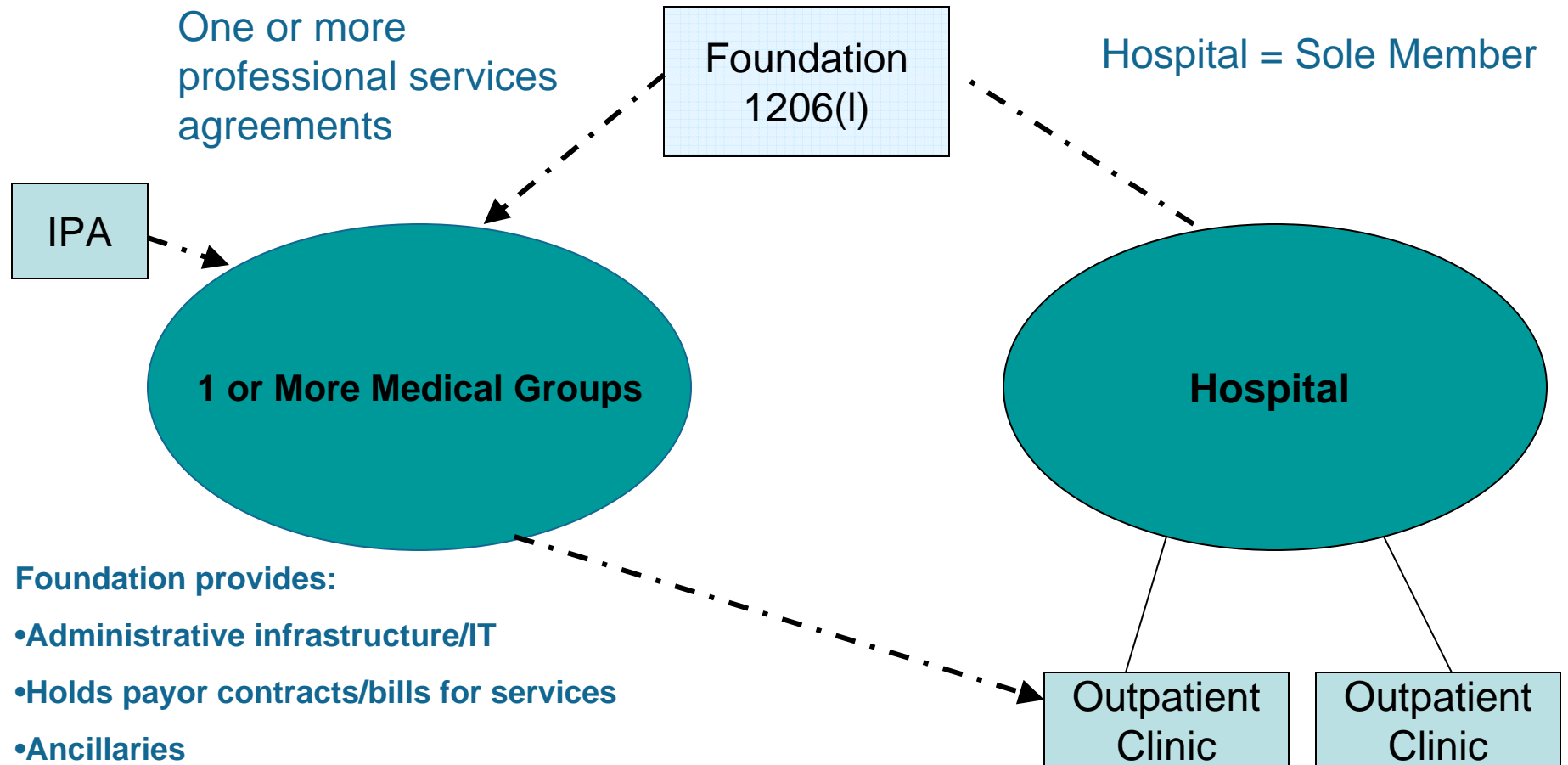
- Administrative infrastructure/IT
- Holds payor contracts
- Bills for services



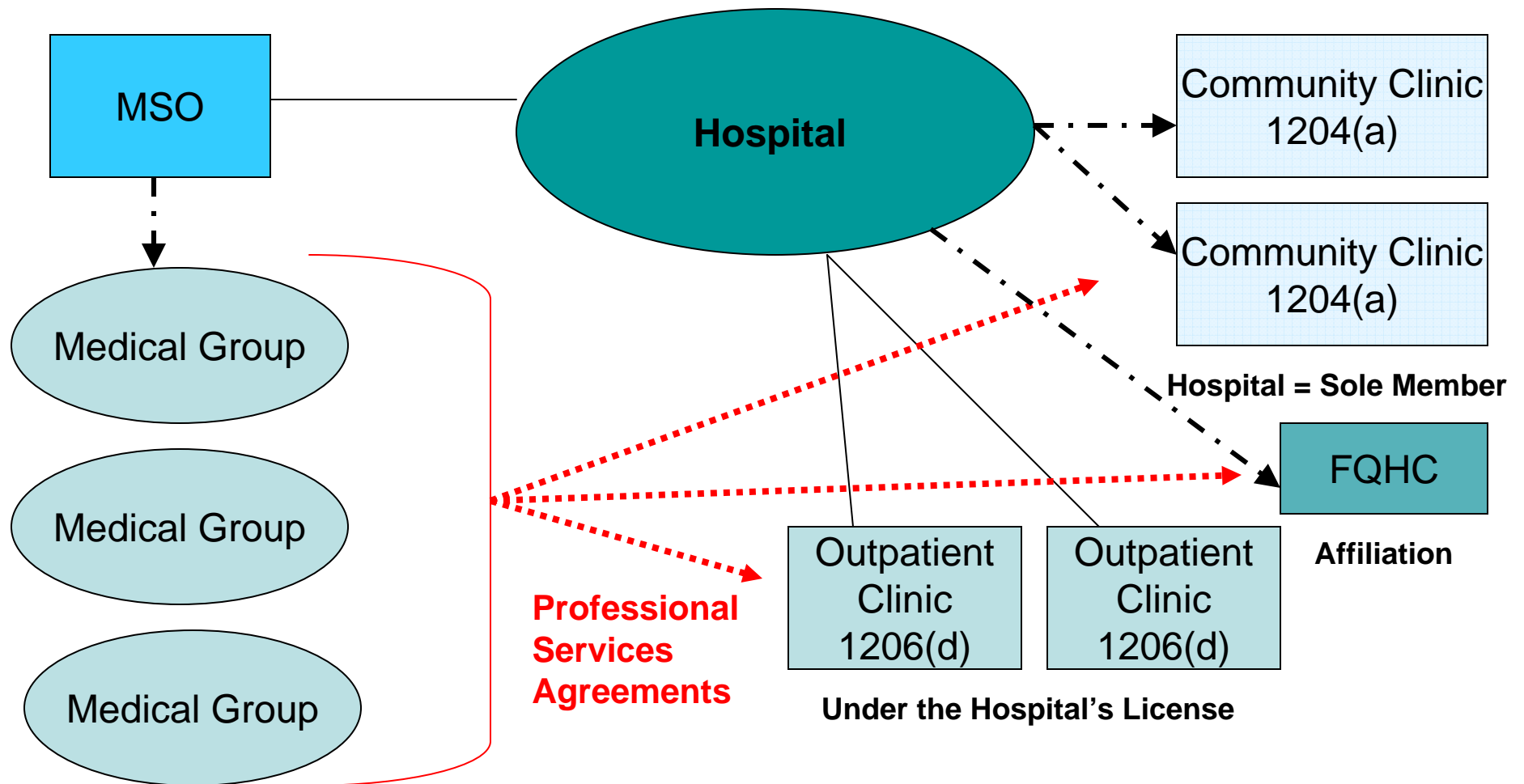
Creating Alignment – Co-Management Model



Creating Alignment – Foundation Model



Creating Alignment – Clinic Model



Creating Alignment – Coordination of Care

Clinical and administrative systems capable of:

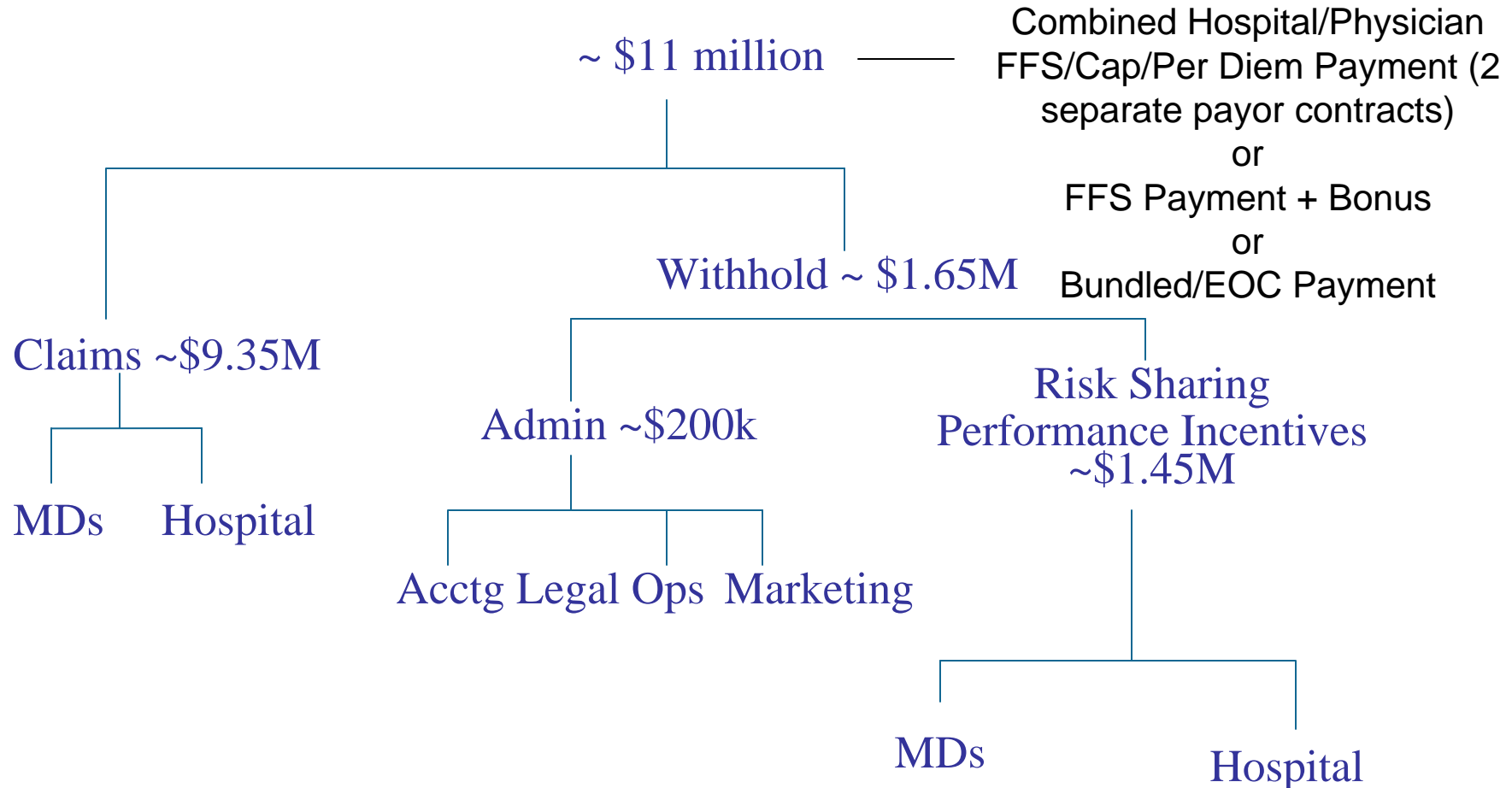
- Promoting evidence-based medicine and patient engagement
- Reporting on quality and cost measures
- Coordinating care (through telehealth, remote patient monitoring and other technology)

Creating Incentives

ALIGNMENT = FINANCIAL RELATIONSHIPS = CONTRACT

- Hospital and physician entity share risk for bonus (or payment)
- Physicians receive money for achieving certain metrics
- Hospital receives money for achieving certain metrics

What It May Look Like



Example: Risk Pool / Bonus Arrangement

Performance System Allocation Percentages

	<u>% of Pool</u>	<u>Type</u>
■ Cost	30	Individual
■ Quality	30	Network
■ Satisfaction	20	Network
■ Participation	20	Individual

Example: Risk Pool / Bonus Arrangement

Network Performance Incentives Measures

- Financial: Individual case mix adjusted cost per case
- Clinical: Mortality, morbidity, clinical process measures
- Satisfaction: Patient satisfaction, member satisfaction
- Participation: Clinical education forums, performance improvement committees, educational presentations, charity care cases

Legal Issues

- Stark Law
- Anti-Kickback Statute
- Reduction in Services (CMP)
- Antitrust Law
- Insurance Law
- Corporate Practice of Medicine
- Tax Exemption

Governance

- Proposed regulations do not define “governance,” but call for a governing body with authority over administrative, fiduciary, and clinical operations

Governance

Requirements for governing boards under proposed regulations:

- *75 percent representation by providers*
- *One Medicare beneficiary on the governing board*
- *Management; medical director*
- *Conflict of interest policy*
- *Quality assurance committee*
- *Compliance function*

Governance

- Board composition; representation of ACO participants
- Size of board; quorum
- Overlapping boards among participants
 - Access
 - Consistency
 - Coordination
 - Clinical; quality
 - Cost savings
 - IT

Governance

- Board committees
 - Quality Assurance
 - Finance
 - IT
 - Compliance
 - Governance
 - Audit? SOX
- Conflicts of Interest; Disclosure of Material Financial Interest
- Conflicting Loyalties; Fiduciary Duties

Governance

- Considerations for Tax-Exempt Entities
 - Furtherance of tax-exempt participant's charitable purpose
 - In tax-exempt hospital-physician joint venture, benefits flow to hospital (not physicians) consistent with its tax exempt status
 - Tax-exempt representation on board commensurate with level of investment; veto power; control over charity care and community benefit; community needs assessments; participation in Medicaid

ACOs – What Will Be Needed?

What Medical Groups Can Work on Now

- The ACO is a new line of business so...
- Prepare a business plan
 - What is the opportunity
 - What is the strategy for the ACO to seize the opportunity
 - What physicians – hospitals – others will be “inside” the ACO
 - How will the ACO coordinate care, deliver quality, achieve savings?
 - What staff will be required? IT systems?
 - Project a three year budget
 - Project various revenue models
- Identify capital needs and sources of funding
 - Can it work?