



**Davis Wright
Tremaine LLP**

DEFINING SUCCESS TOGETHER

Accountable Care Organizations: Legal and Organizational Structures; Governance

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ACOs: Statutory Requirements

- Accountability for cost, quality and overall care of the assigned Medicare fee for service beneficiaries
- Formal legal structure to receive and distribute shared savings payments
- Sufficient number of primary care physicians
- Minimum of 5,000 beneficiaries
- Patient-centered criteria
- Process for reporting quality and cost-savings payments and measures
- Three-year agreement with DHHS

Eligibility to Participate as an ACO

- Physicians in group practices
- Networks of individual physicians
- Joint ventures between hospitals and physicians
- Hospitals employing physicians
- Other providers and suppliers approved by DHHS

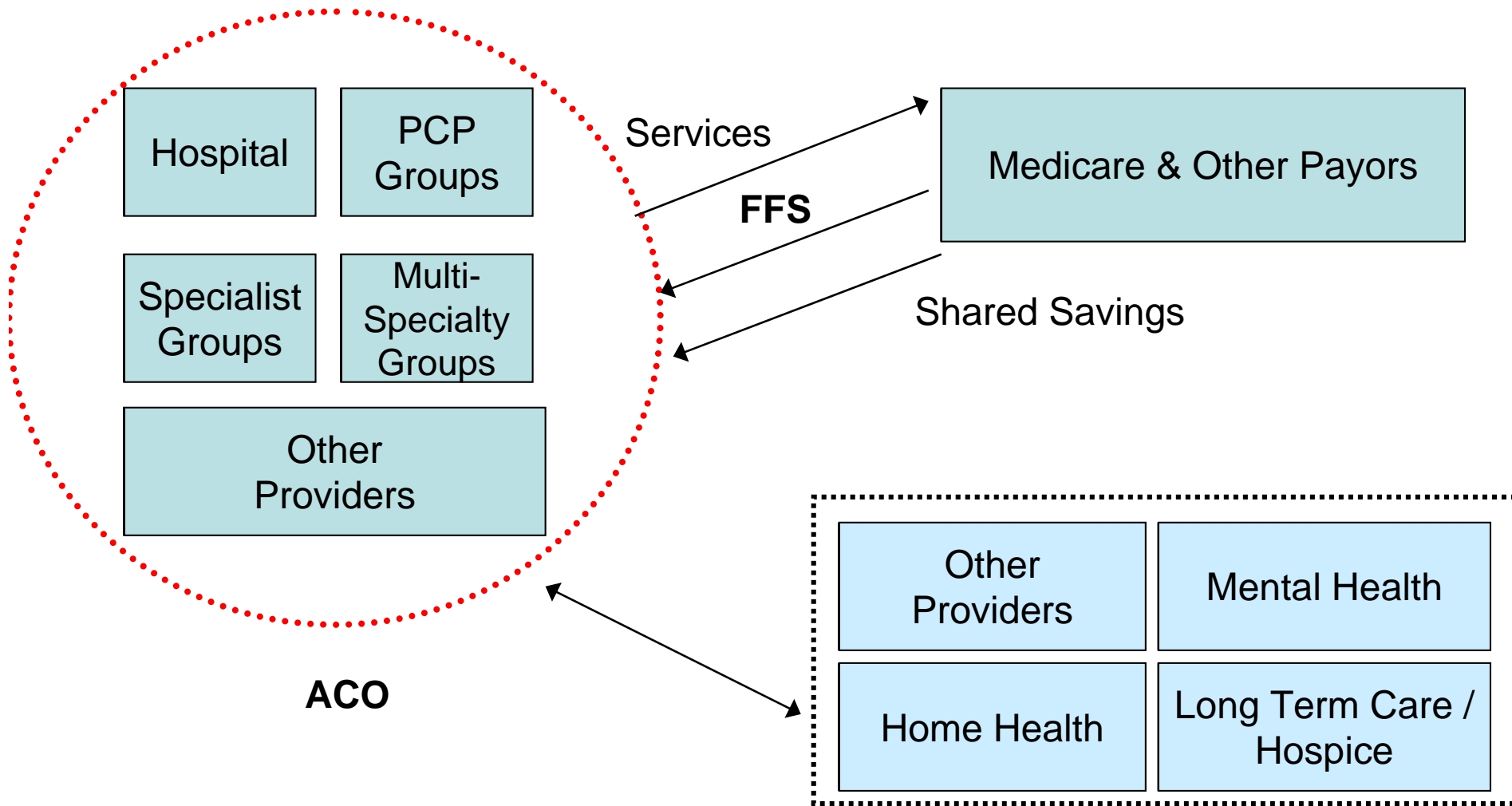
Creating Provider Alignment

- Alignment strategies/function drives form of legal/organizational structure
 - Alignment strategies/functions
 - Physician organization
 - Foundation or other type of clinic
 - Shared risk payments
 - Bonuses (quality and/or cost savings)
 - Joint marketing / branding
 - Shared / integrated IT
-

Legal Form of ACO Structure

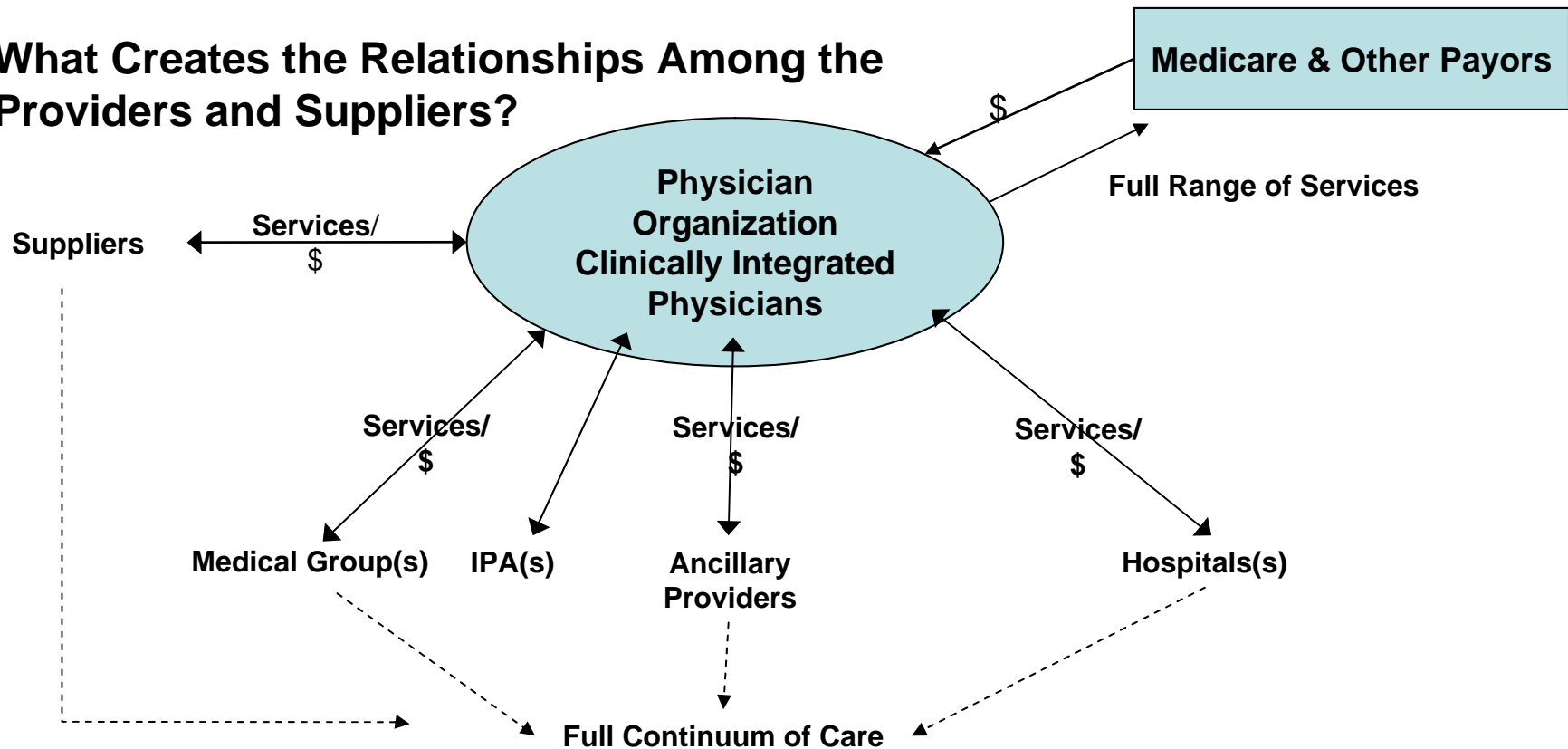
- Legal form of ACO structure will follow from alignment of financial, services, IT and data, and governance relationships among participants
- Legal form
 - LLC
 - Partnership (general or limited)
 - C corporation
 - S corporation
 - Non profit taxable
 - Tax exempt corporation

ACOs: Macro View



ACOs: Physician Organization Model

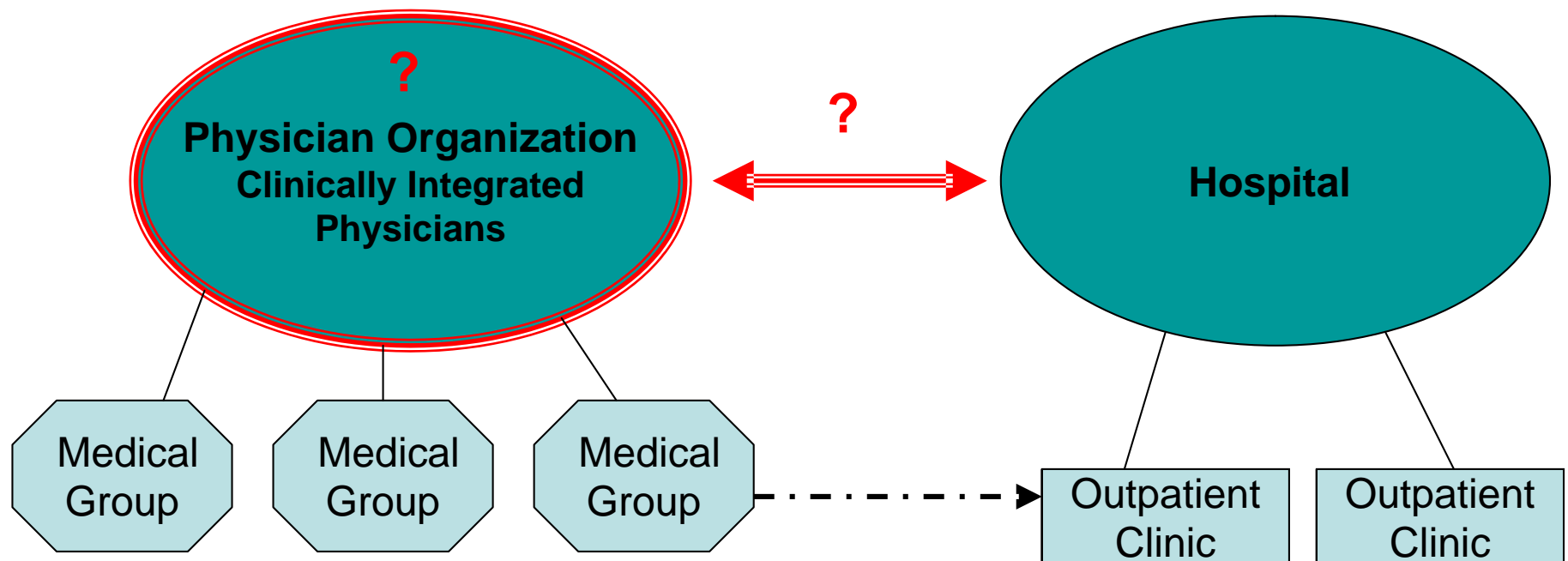
What Creates the Relationships Among the Providers and Suppliers?



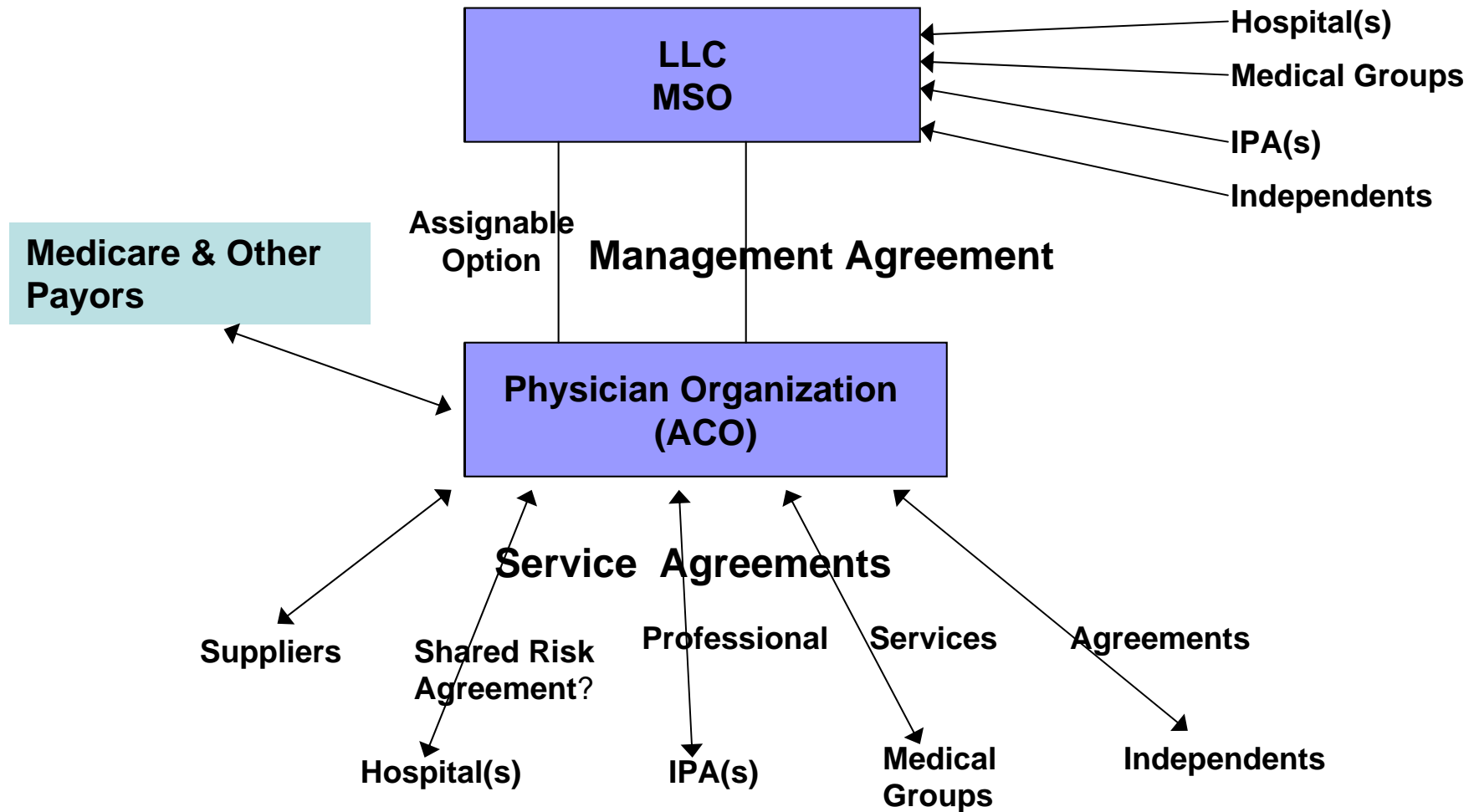
ACOs: Physician Organization – Hospital Models

What Creates the Relationships Among the Physicians?

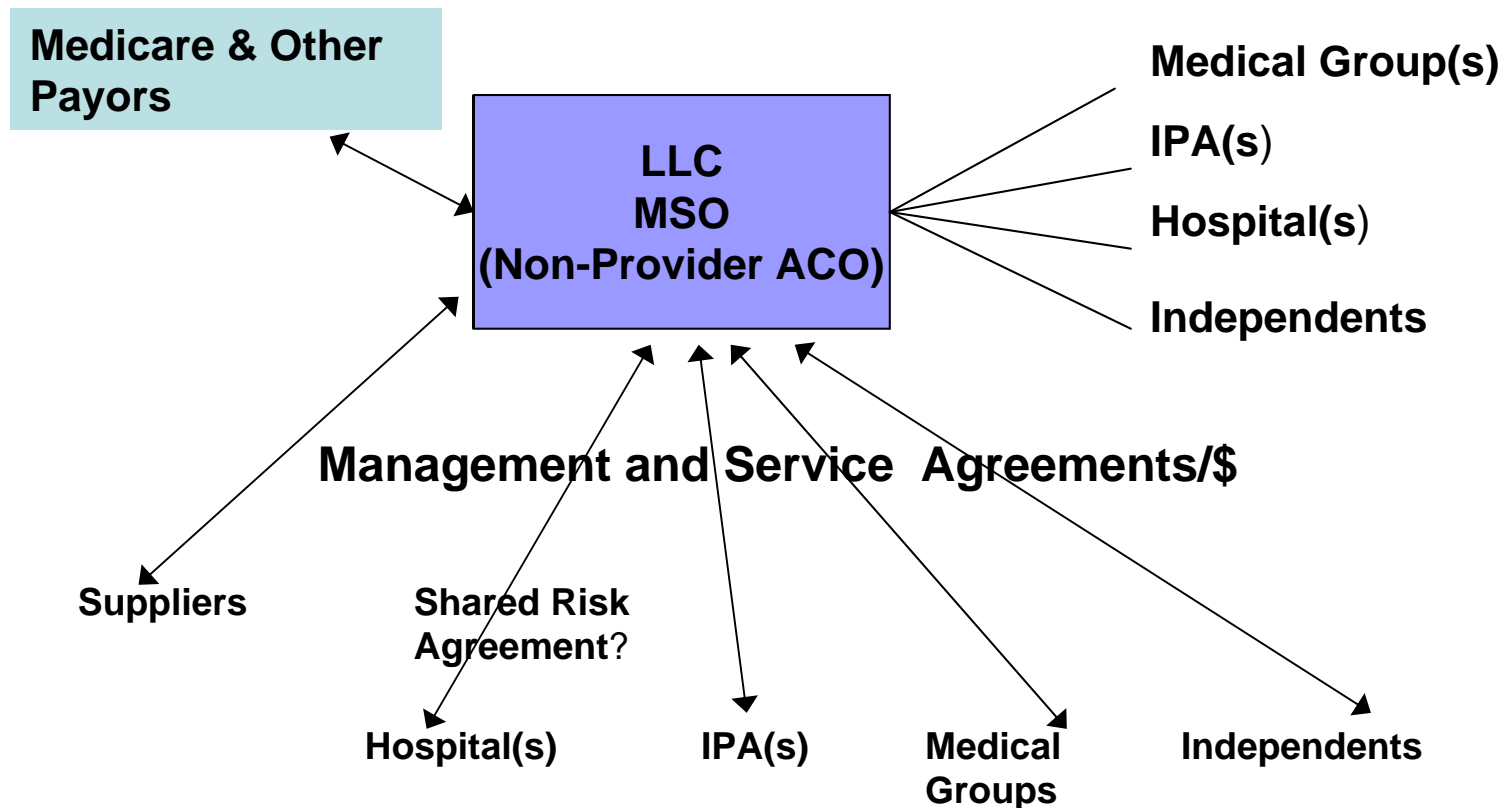
What Creates the Relationships Between the Hospital and Physicians?



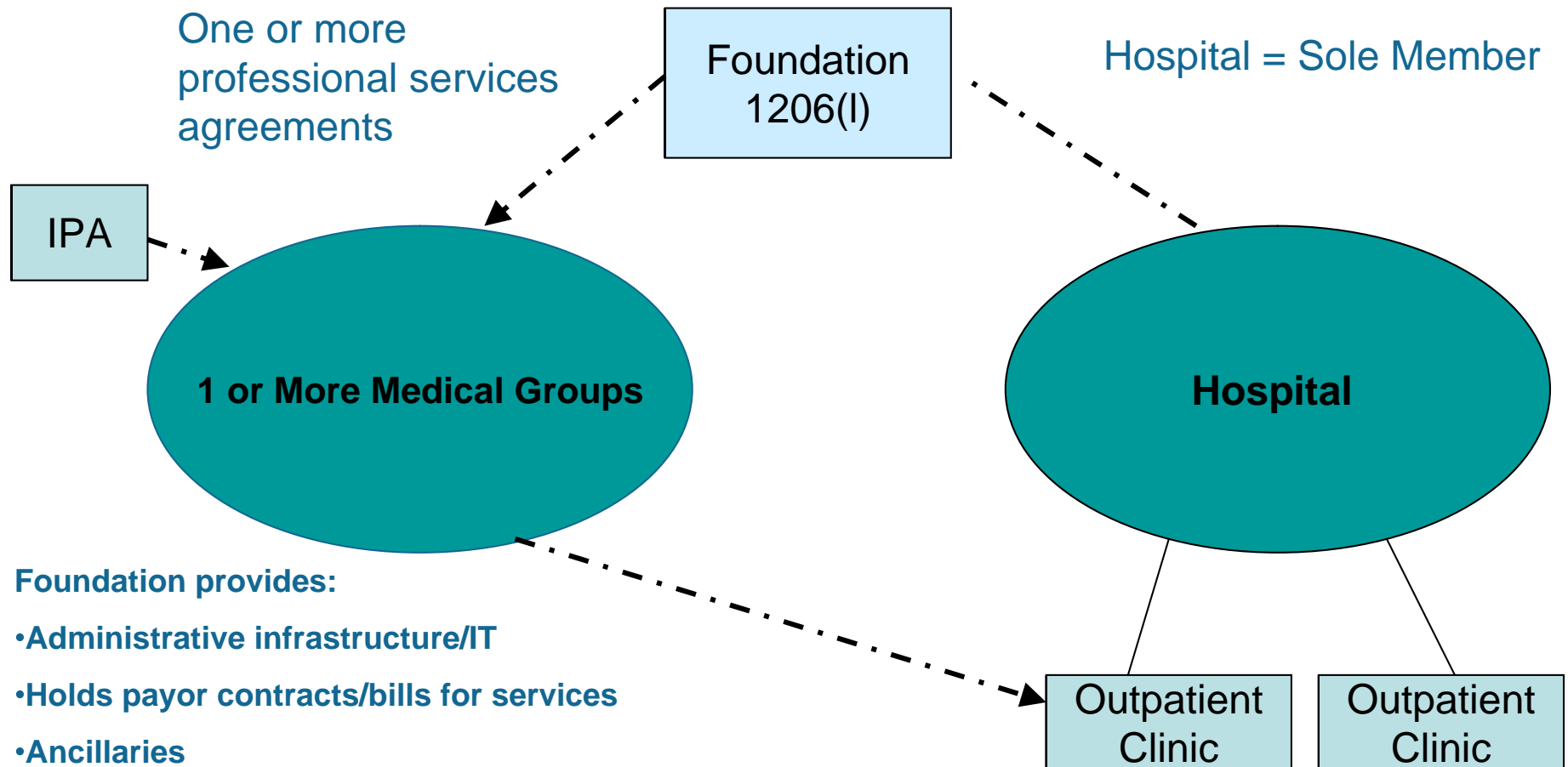
Creating Alignment – Physician-Hospital Model (Friendly Physician Organization)



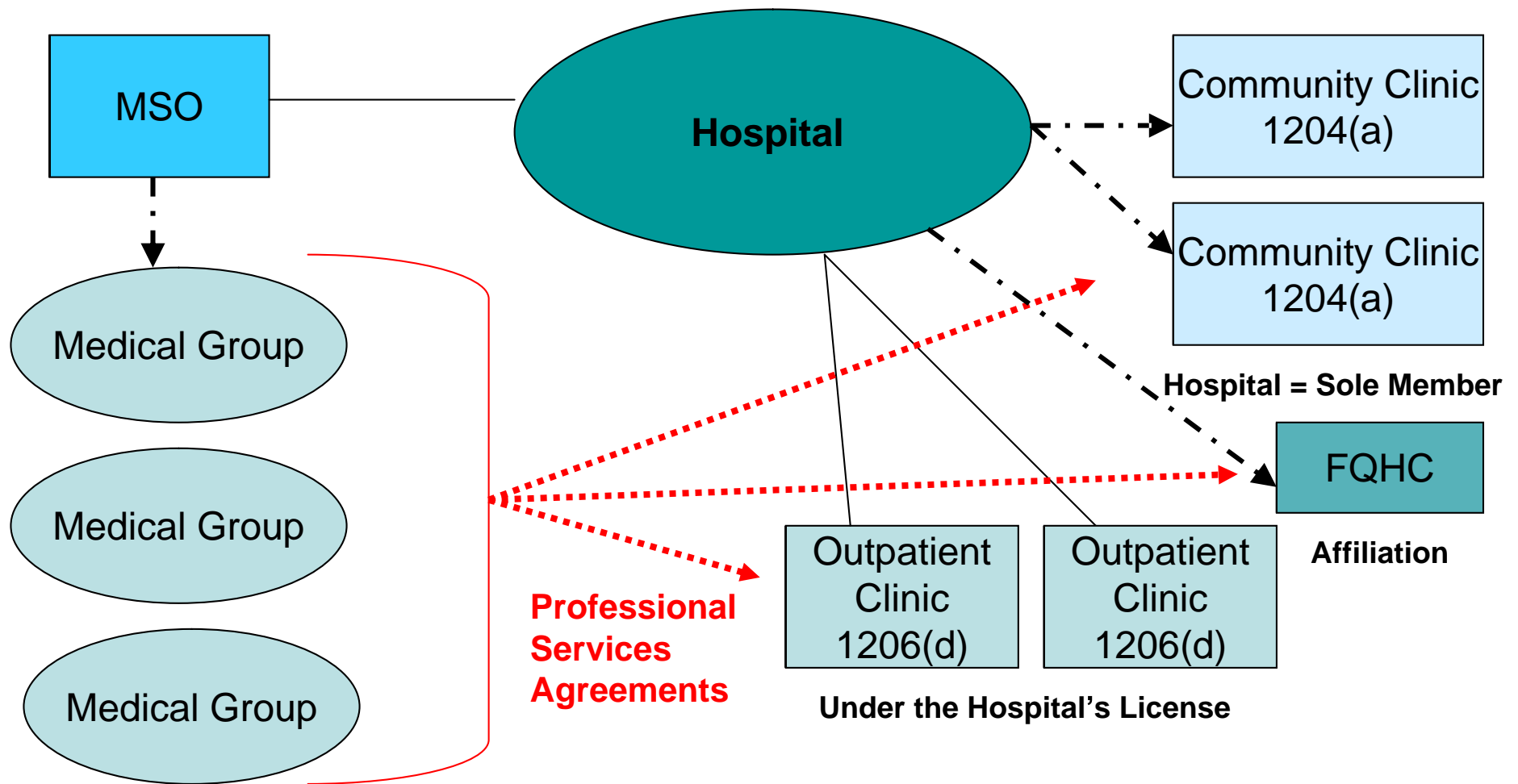
Creating Alignment – Physician Hospital Model (Non-Provider ACO)



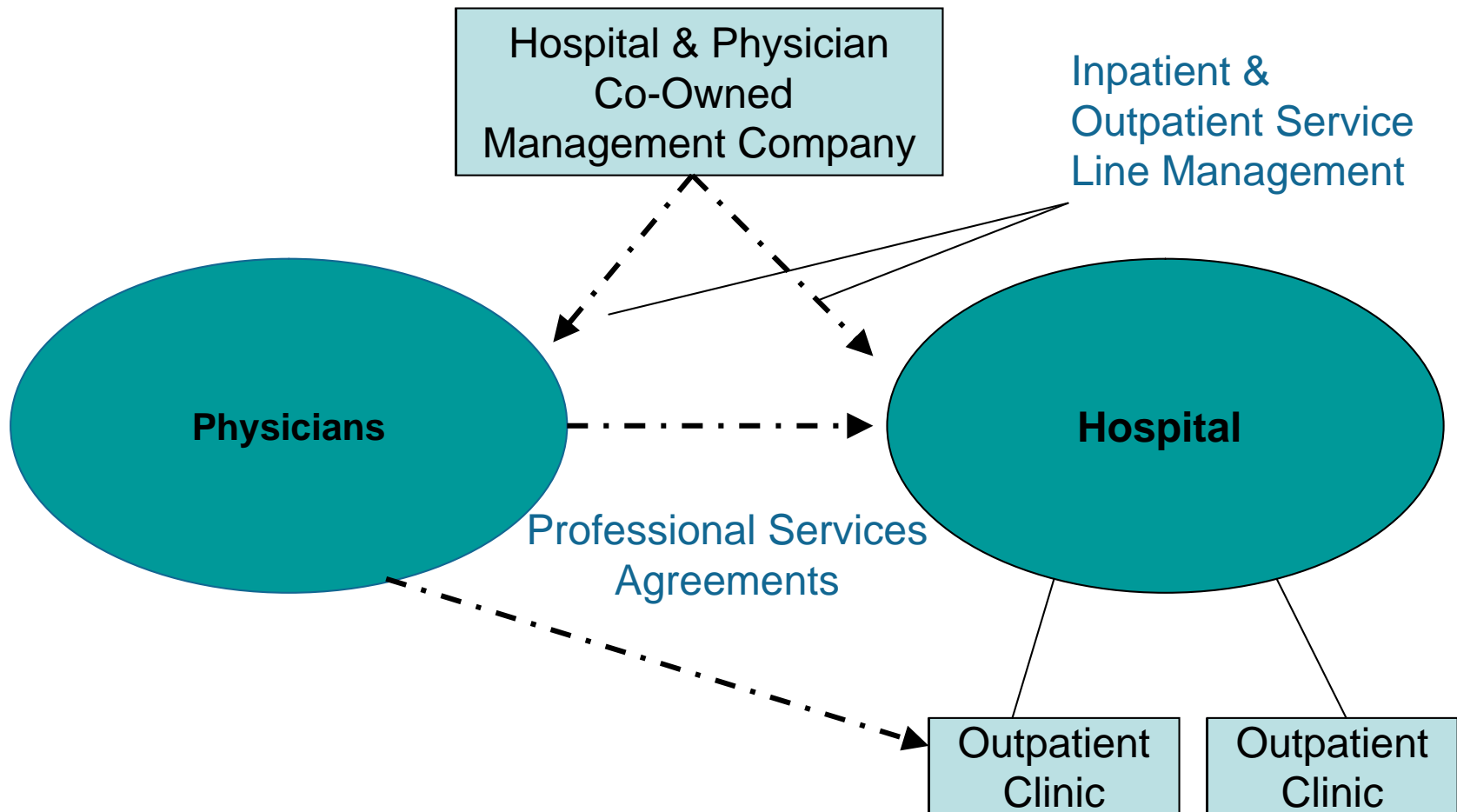
Creating Alignment – Foundation Model



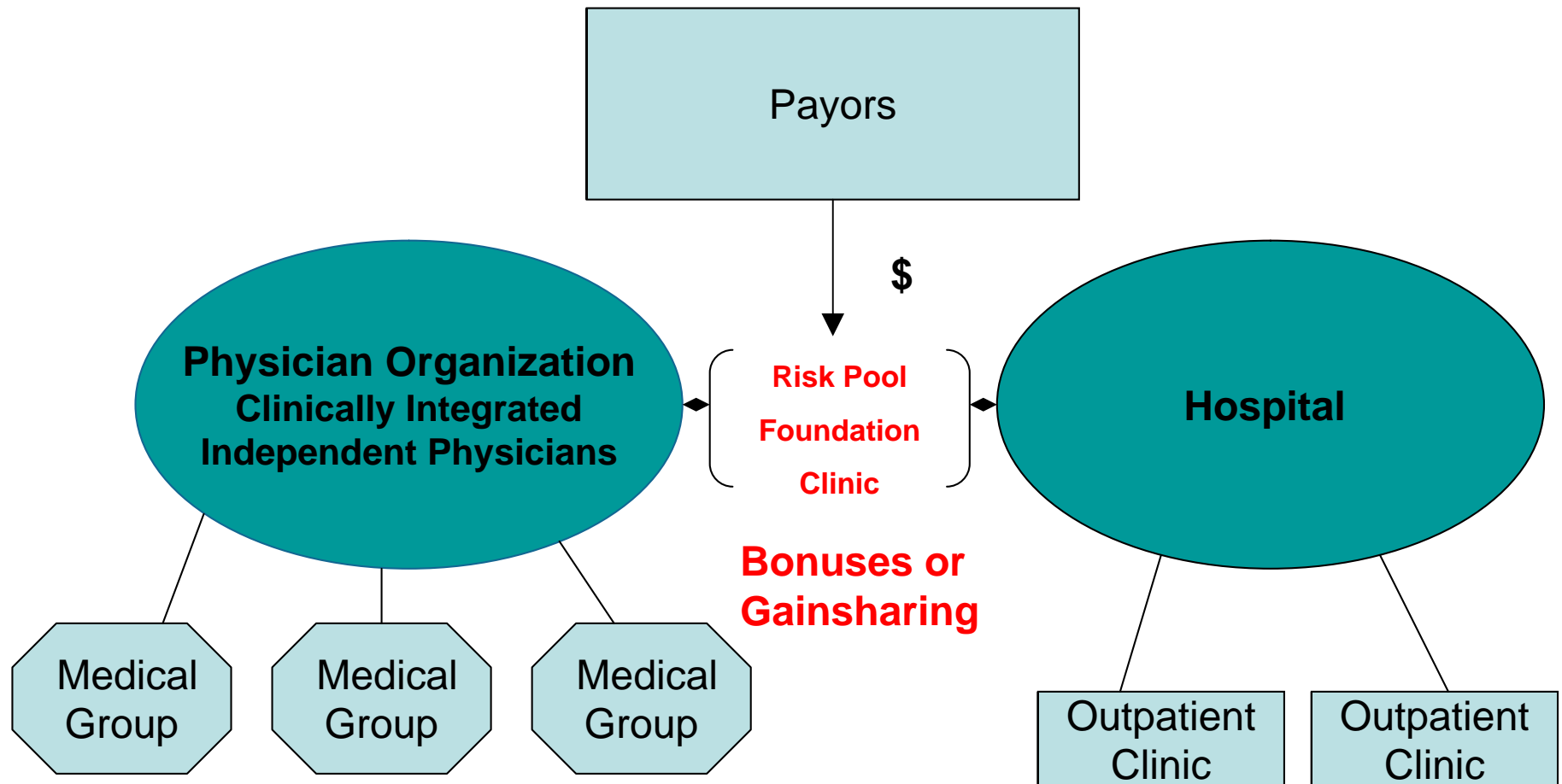
Creating Alignment – Hospital Clinic Model



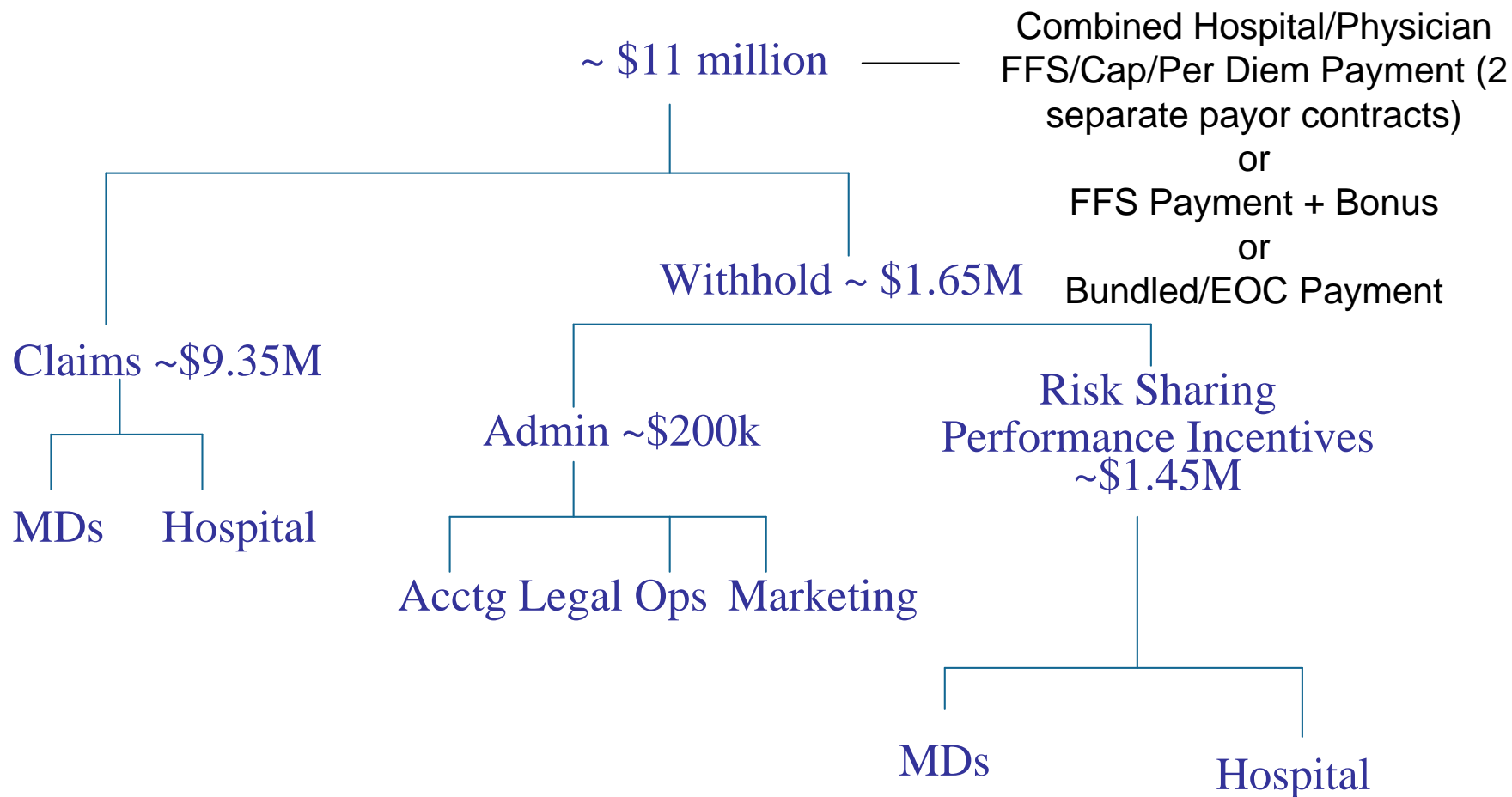
Creating Alignment – Co-Management Model



Creating Alignment – Shared Risk



What It May Look Like



Example: Risk Pool / Bonus and Incentive Payments 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

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

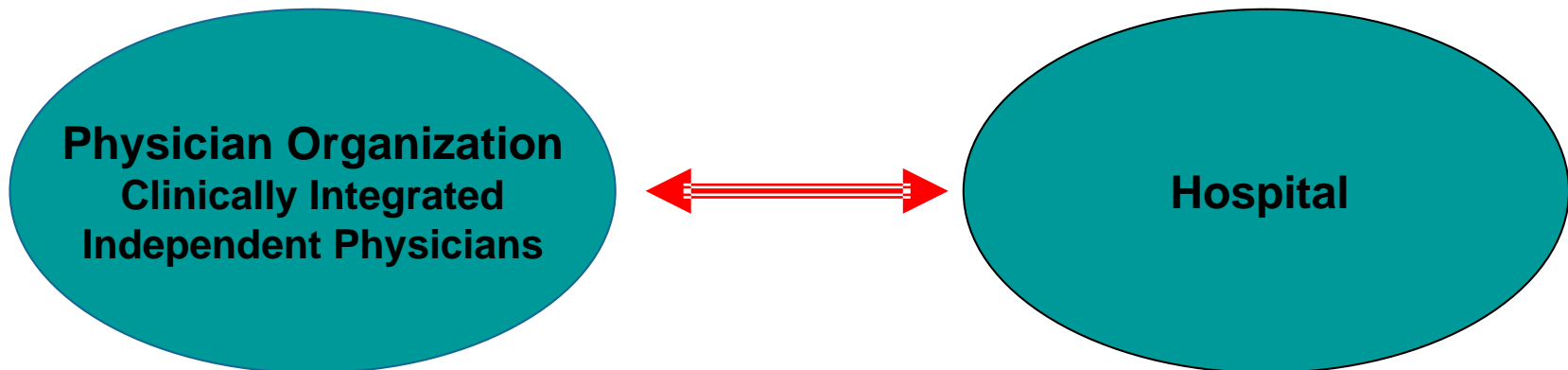
- Hospital and physician organization share risk for bonus (or payment)
- Physicians receive money for achieving certain metrics
- Hospital receives money for achieving certain metrics

Creating Alignment – Joint IT/Branding

- 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 \$\$\$?



Legal Issues

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

Governance

Statute requires:

- Mechanism for “Shared Governance”
- “Leadership and Management” structure including “Administrative and Clinical Systems”

Governance

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

Governance

- Board committees
 - Clinical; quality
 - Finance
 - IT
 - Compliance
 - Governance
 - Audit? SOX
- Conflicts of interest; disclosure of material Financial Interest
- Conflicting loyalties; fiduciary duties

Governance: Tax Exempt Providers

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