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MSO-PC Structures: Finding Value within the Guardrails

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MSO-PC Framework

Key Elements

- + Corporate Practice of Medicine (“CPOM”) doctrine: state-level prohibitions against non-licensed involvement in medicine (33 states currently)
- + The MSO-PC model is frequently deployed as a way for an outside business entity (with non-physician investors) to participate in the economic benefits of a licensed medical practice.
- + The key elements of the MSO-PC model are:
 - Professional entity (PC or PLLC) owned by licensed clinical practitioners
 - Lay entity (MSO) that provides management and administrative services to the PC
 - A contractual agreement between the MSO and the PC owner(s)
 - Other contracts may include Technology Licensure Agreement; Consulting Agreement; Independent Contractor or Employment Agreement; Support Services Agreement

CPOM Regulations

Key Themes and Issues

- + Common CPOM themes across jurisdictions:
 - States generally require a license to engage in the practice of medicine
 - Medical entities must be wholly (or predominantly) owned by physicians licensed to practice in that state
 - All medical judgment and clinical staffing decisions must remain in the hands of licensed professionals
 - All revenues generated from patient care must be paid to the medical entity
- + Compliance issues typically arise in civil disputes between MSO and physicians
 - Licensed physicians don't have functional control over the PCs
 - Fee splitting prohibitions (may also implicate PSL and AKS)
 - Billing practices (too much control over coding and collections)
 - Provision of software and related IT (clinical data must always belong to PC)
 - HIPAA compliance when accessing patient data
 - Ambiguous or boilerplate agreements to formalize division of duties
 - Heightened scrutiny surrounding PE-backed arrangements

Federal Regulations

“The Big 3” Overview

1. Fair Market Value Standard

- Takes the perspective of willing market participant and focuses on “what is the right dollar amount” to MSO
- CMS does not impose a specific methodology requirement
- Permissibility of actual fee structure employed depends on local jurisdiction

2. Volume or Value Standard

- Compensation must not account for volume or value of referrals, or other business generated, between parties
 - **Violation Threshold 1** (compensation paid **to a physician** by an MSO furnishing DHS): **positive** correlation between physician’s comp and physician's referrals (or other business) to MSO
 - **Violation Threshold 2** (compensation paid **to an MSO furnishing DHS** by a physician): **negative** correlation between MSO’s comp and physician's referrals (or other business) to MSO

3. Commercial Reasonableness Standard

- Considers the actual parties, services, and compensation involved
- Focuses on qualitative justification for the entire arrangement in the first place



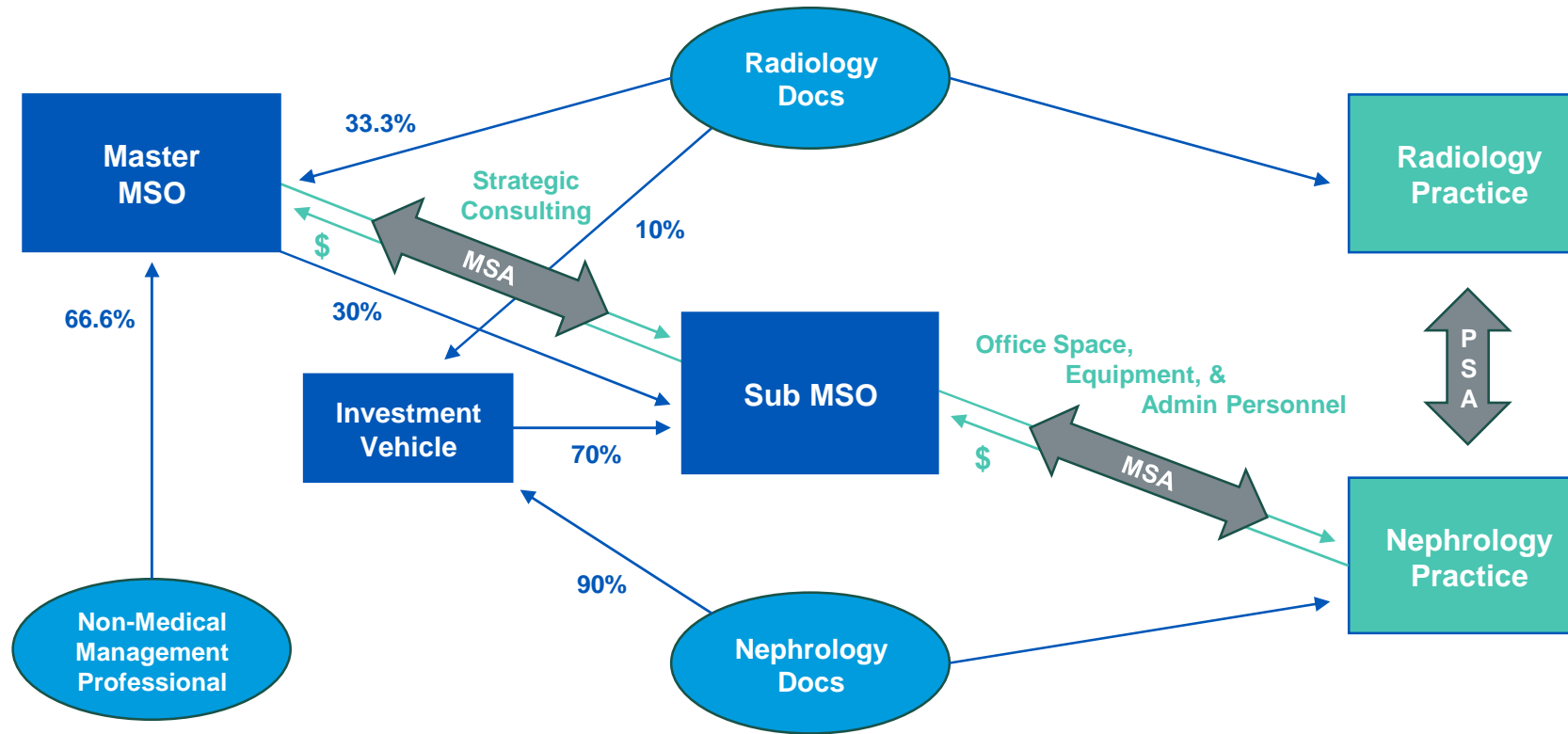
Valuation Considerations

Various Structure Types

- + Conventional third-party model
 - PC outsources specific administrative functions (e.g., RCM) to MSO in exchange for a fee
 - Scope of services varies—typically more limited
- + Network aggregation model
 - Smaller PCs are aggregated into larger provider network
 - PCs remain independent but approach payor negotiations as unified entity
- + Joint-venture model
 - Smaller PCs are consolidated into large platform practice operated by MSO
 - Physicians granted minority ownership in MSO while MSO invests capital into PCs
- + Captive PC model
 - PC owner sells non-clinical assets to MSO in exchange for equity in MSO
 - Often employed in PE acquisitions
 - Greatest degree of MSO control

Valuation Considerations

30,000 Foot View



Valuation Considerations

Approaches to Value

- + FMV is commonly assessed through a blended form of cost- and market- based approaches
 - Understanding costs to recreate/provide services with a reasonable margin
 - Value indications from comparable market information (sometimes)
 - Income approach becomes more relevant when examining the MSO entity itself
- + Using market data to develop an estimated cost profile
 - Useful for start-up enterprises and accommodating scaling considerations
 - Relevant when determining reasonable compensation for MSO personnel
- + Assessing expenses within distinct categories according to their type or related service
 - Compiling margin data applicable to each category
 - Determining applicability of corresponding markups to each category
- + Assessing other arrangements (e.g., PSAs) separately

Valuation Considerations

Strategic Uses

- + Transactions involving non-medical investors
- + Aligning practice value with new physician partner finances
- + Protection of assets
- + Separating practice assets from liabilities
- + Retaining control
- + Preserving practice legacy within family
- + Organization of revenue streams
- + Different entities with common purpose