Health Care Transactions Under Scrutiny

Health Law Webinar

July 8, 2026

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Agenda

- Corporate Practice of Medicine Prohibition (“CPOM”).
- Healthcare Transaction Notification Laws.
- Impact on PE Transactions.
- Q&A.

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CPOM: The Regulatory Landscape

Historical Roots: Late 19th century — lumber, mining, and railroad companies employing physicians; later managed care and freestanding emergency centers drove evolution.

- Not federal law – a patchwork of state-level restrictions.
- Core purpose: protect the patient-physician relationship.
- **Prohibits lay/corporate interference with clinical judgment.**
- Evolved through managed care era – utilization control integrated with care delivery.
- Multi-state expansion creates “jurisdictional jigsaw”.

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States, each with its own approach

No uniform federal CPOM framework exists

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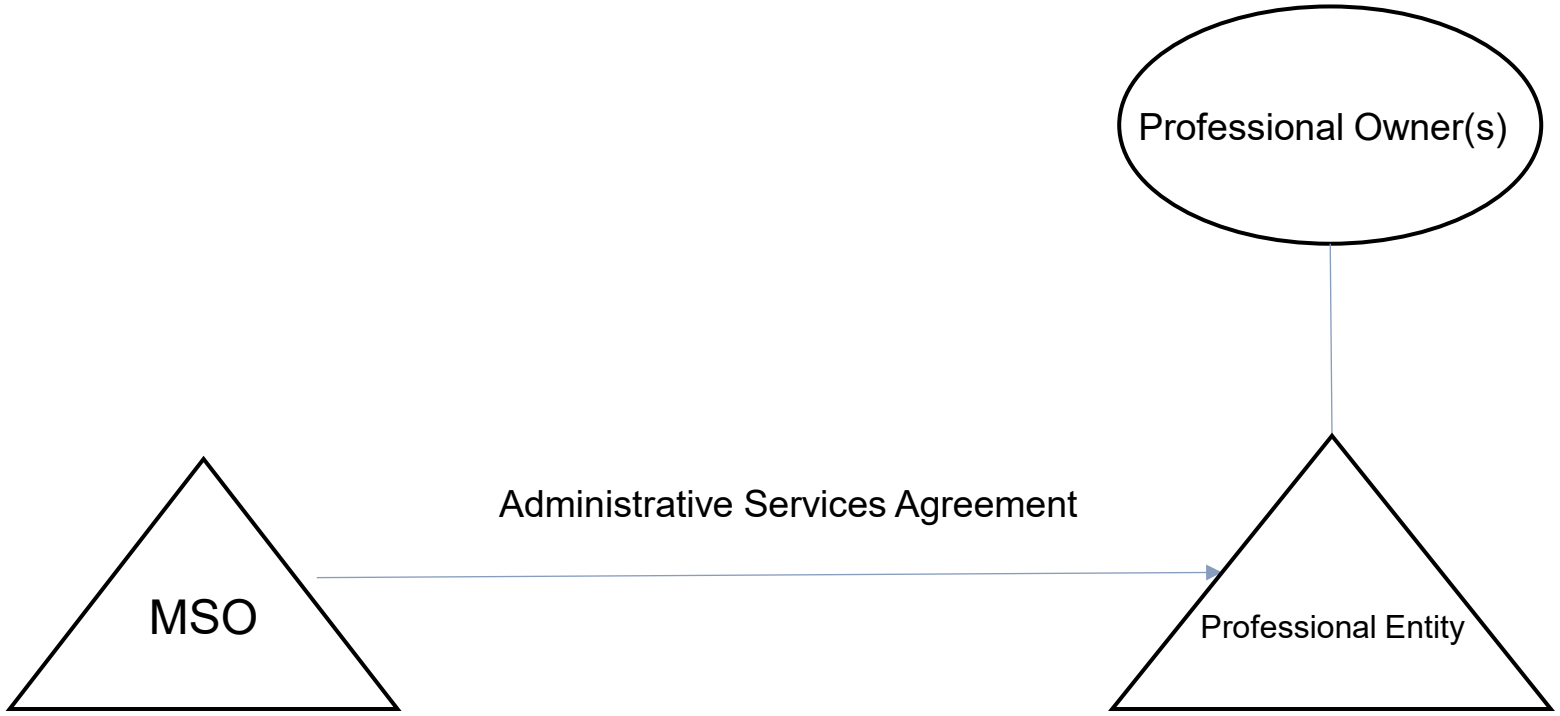
MSO/PC Arrangement



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Increased Scrutiny of Acquisitions

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Increased Scrutiny of Acquisitions

The MSO / “friendly PC” model is the most common CPOM workaround – now squarely in regulators’ crosshairs.

- MSO / "friendly PC" model: most common structural workaround.
- Now a primary focus of state Attorneys General.
- Enforcement evaluates "de facto" control, not just contracts.
- Contractual compliance alone is insufficient.

Enforcement Shift

Formal Contracts → **De Facto Control**

AGs assess actual operational dynamics

Key Cases

Envision (2021): AAEM-PG sued in CA Superior Court — alleged straw PCs, unlicensed executives controlling staffing, compensation, scheduling, payor contracting. Bankruptcy May 2023; lawsuit stayed.

U.S. Anesthesia Partners: FTC action for anticompetitive practices; AAEM asserted CPOM violations also at play.

Team Health: Similar CPOM allegations in PE-backed emergency medicine space.

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Ownership, Control, and Governance

California Medical Board: What Constitutes Unlicensed Practice

Determining Diagnostic Tests

Non-physicians cannot determine appropriate diagnostic tests for patients.

Referrals & Consultations

Cannot determine need for referrals to or consultations with specialists.

Overall Care Responsibility

Ultimate responsibility for overall care of the patient must rest with physician.

Scheduling & Workload

Cannot decide how many patients a physician must see or hours they must work.

Governance questions are now central to enforcement.

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Regulatory Focus Areas

01	**“De facto” clinical influence**	Targeting actual operational control beyond contract terms
02	**Excessive control over billing**	Billing practices that dictate clinical decision-making
03	**Aggressive restrictive covenants**	Non-competes undermining physician independence
04	**Fee-splitting violations**	Compensation models constituting prohibited fee arrangements
05	**Telehealth enforcement**	Non-physician owners directing prescribing; modifying Rx for business reasons; communication medical advice to patients

New: Competitors alleging damages from rival’s CPOM noncompliance – expanding risk beyond government enforcement.

Compliance requires proof of operational independence, not just a well-drafted contract.

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Compliance Roadmap

Strategic steps for maintaining CPOM compliance:

1	**Confirm Structure Allowed by State Law** Verify the corporate / MSO Structure is permitted under each applicable state's CPOM framework
2	**Delineate Administrative vs. Clinical Roles** Establish clear, documented boundaries between MSO services and physician clinical authority
3	**Ensure FMV in All Transactions** All financial arrangements must reflect fair market value to withstand scrutiny
4	**Conduct Ongoing PC-MSO Audits** Police that operations "on the ground" do not exceed the MSO's contracted authority
5	**Document Operational Independence** Maintain records demonstrating physician control over clinical decisions, hiring, policies
6	**Monitor CMS Transparency Requirements** Hospital price transparency, SNF ownership reporting, proposed HOTA & PATIENT Act

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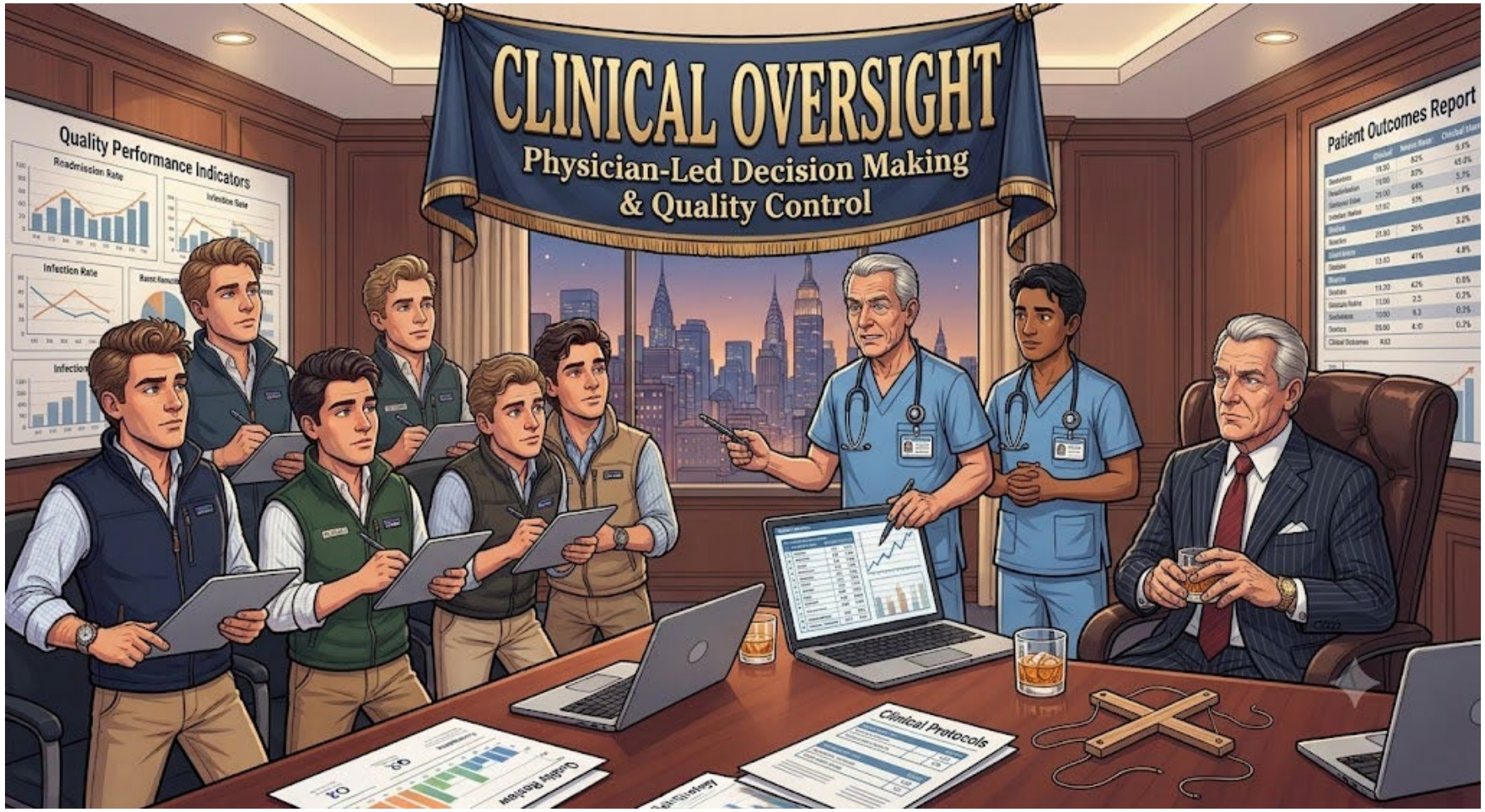
Physician Control Over Clinical Matters



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New Laws Targeting PC/MSO and PE Relationships

Oregon SB 951

Signed June 9, 2025 — Nation's strictest CPOM law

- Prohibits MSO ownership/control of majority equity in medical groups
- Bars de facto control of operations
- Restricts equity transfers
- Prohibits restrictive covenants (physician/MSO)
- Exceptions: hospitals, residential care facilities
- Effective: 1/1/26 (new) / 1/1/29 (existing)

California SB 351

Signed Oct 6, 2025 — Targets PE & hedge funds

- Prohibits PE/hedge fund interference with professional judgment
- Bars control over coding, billing, or clinical staffing
- Violating agreements are void
- Non-compete/non-disparagement prohibitions
- Effective: Jan 1, 2026

Indiana — Transparency Approach

- 90-day advance notice requirement
- $10M AUM threshold ("private equity partnership")
- Ownership disclosure requirements
- Physician non-compete status disclosure

Pending Legislation

MA, CT, NC, ME, WA

Common Thread:

Substance must match form. Regulators want to see genuine physician control, not just contractual language.

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Intersection with Other Laws

CPOM does not exist in a regulatory vacuum – holistic, multi-framework compliance is essential.

Anti-Kickback Statute (AKS)

Referral arrangements in MSO structures may implicate AKS; safe harbor analysis required for all remuneration flows.

Stark Law (Self-Referral)

Physician compensation from MSOs must meet exception requirements; designated health service referrals at risk.

Fee-Splitting Prohibitions

State-level prohibitions on sharing professional fees with non-physicians; MSO management fee structures must be carefully calibrated.

Unlicensed Practice of Medicine (Criminal)

Non-physician exercise of clinical control may constitute criminal UPM in many jurisdictions — carries significant personal liability

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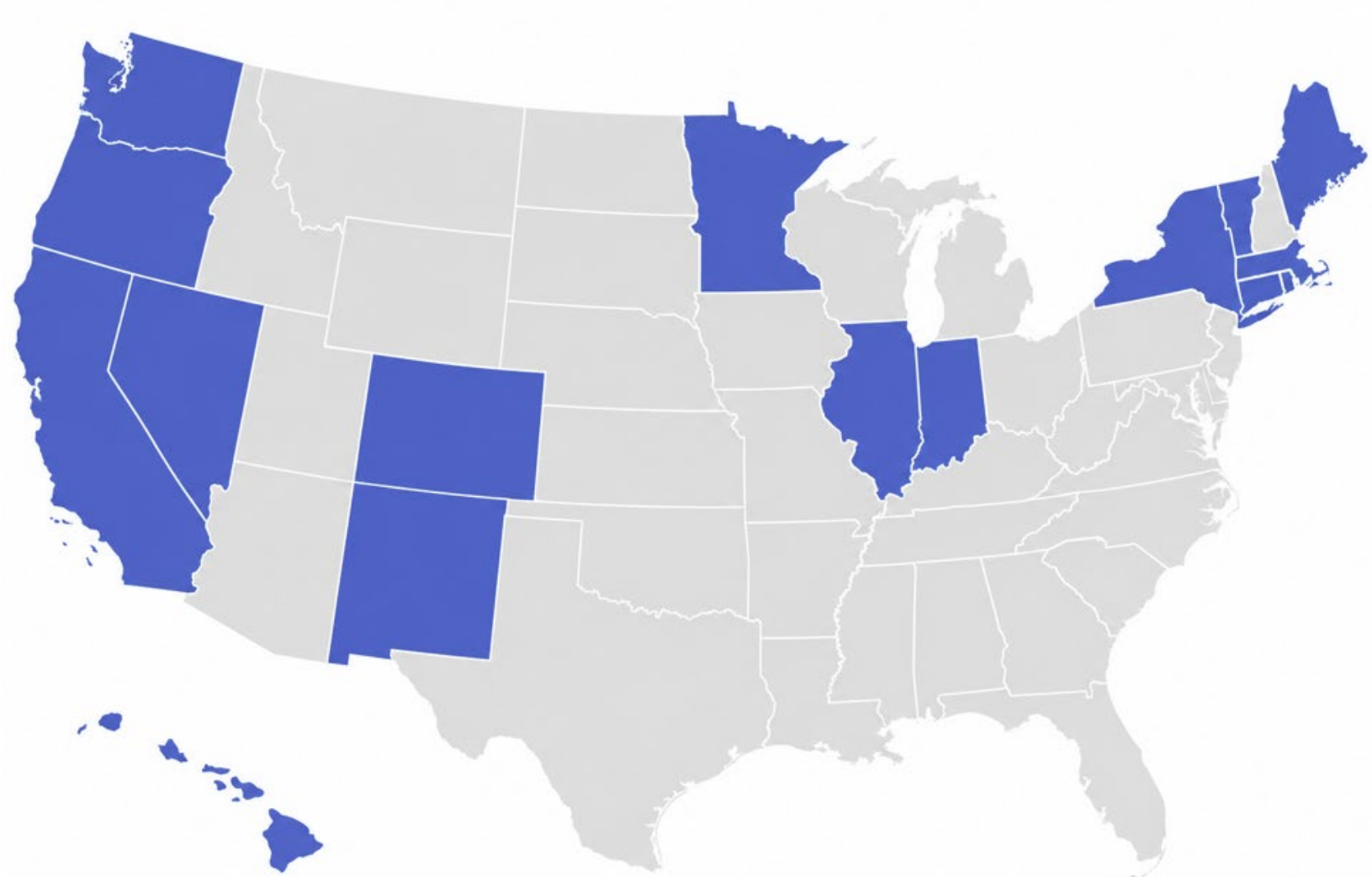
States with Healthcare Transactions Laws



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Who is Subject to the Transactions Law?

- Most often, hospitals and physician practices.
- Scope varies a lot after that. Could include ambulatory surgery centers, dental groups, licensed facilities like nursing homes or assisted living facilities, mental health professionals, nurses, imaging centers, clinical lab, insurers, and pharmacy benefit managers.
- Some laws specifically target private equity sponsors.

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What Transactions are Covered?

- Not just mergers and stock or asset acquisitions.
- Could include a PSA or revenue sharing arrangement or even the creation of a new entity.
- Look out for a lookback period, too.

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What Do I Need to Disclose? And to Whom?

- Disclosures can be onerous and include very sensitive information.
- Is the state agency obligated to publish any information?
- Could the disclosed info be subject to an open records request?

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When Do I Need to Make the Disclosure?

- Typically, 60 to 90 days pre-closing, but some are up to 180 days.
- Minimum of 30 days.
- State may be able to extend the notice period while it reviews the transaction.

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Notice Only? Or is Consent Required?

- Most jurisdictions are notice only…
- But a few states have a consent requirement.
- Can the state seek an injunction to prevent or delay the transaction?

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What are Potential Penalties or Remedies?

- Monetary penalties.
- May be subject to increased delays or risk of the state seeking injunctive relief’.
- Can the state unwind a transaction?
- Closing conditions imposed:
  - Aether/SuperCare Transaction (2026) – obligations to keep open all existing retail locations, maintain Medicaid enrollment, and provide an annual compliance report to the Oregon Health Authority for 5 years following the closing of an acquisition of a DME supplier’.
  - Hartford HealthCare/Prospect Medical (2025) – required existing hospitals to maintain an open medical staff, limit rate increases on certain services, and preserve 24/7 emergency department and inpatient behavioral health services for at least 3 years following the closing of a hospital acquisition’.

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Practical Questions

- What should I be doing early on in the transaction process?
- The new state law is unclear. How do I confirm whether notice is required?
- What if the parties disagree on how to handle the notice requirements?

PE Trends in Healthcare

- Healthcare PE deals peaked in 2021 and declined since then, with slight rebound in 2025.
- Popular industries:
  - Dental.
  - Behavioral Health.
  - Dermatology.
  - Eye.
- Longer holding periods.

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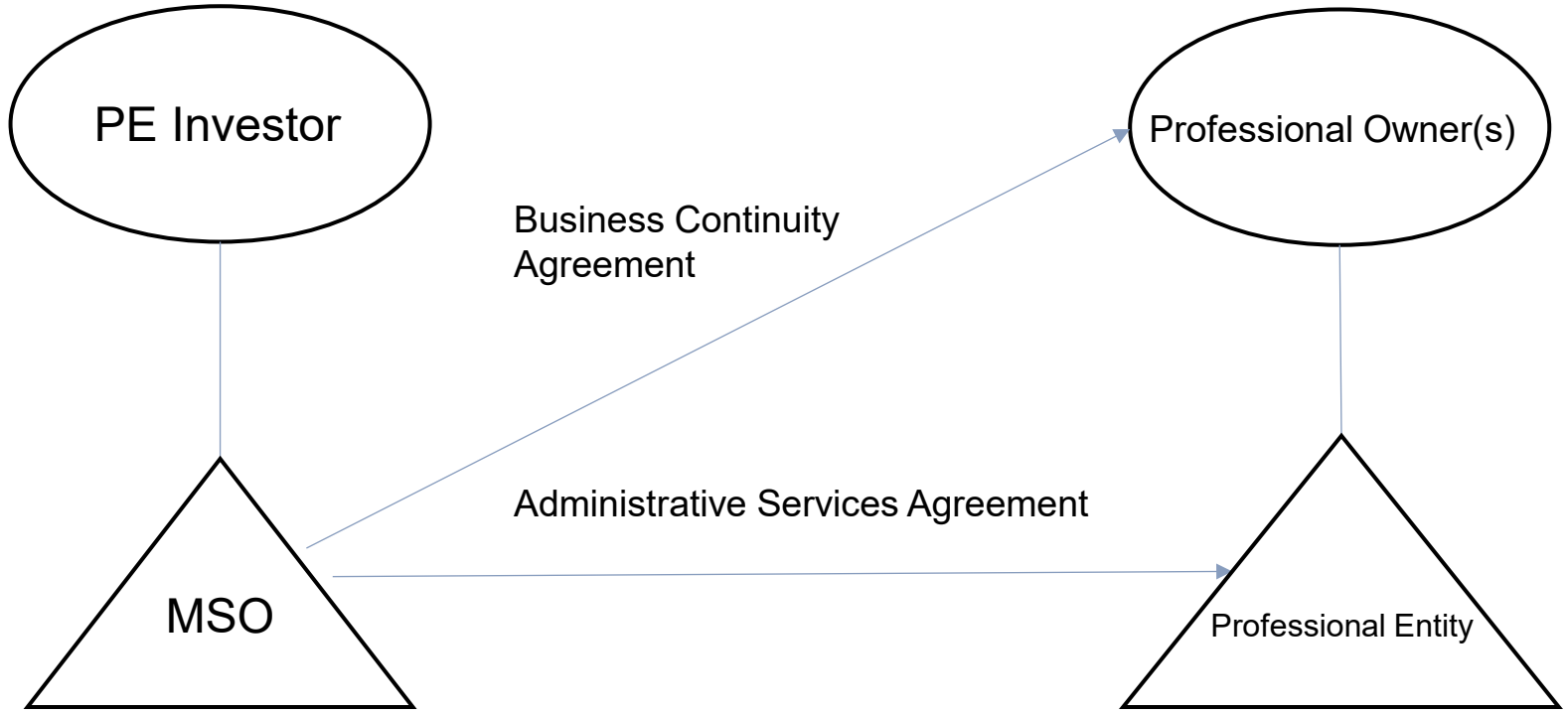
Typical Structure for Healthcare PE



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Heightened Scrutiny of PE in Healthcare

- March 2024 – FTC hosted “Private Capital, Public Impact: An FTC Workshop on Private Equity in Healthcare”.
- March 2026 – FTC launched its Healthcare Task Force.
- Case Law:
  - Federal Trade Commission v. U.S. Anesthesia Partners.
  - Art Center Holdings Inc. et al v. WCE CA Art LLC et al.

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Practical Impact on Transactions

- Impact on diligence.
  - Heightened regulatory scrutiny increases potential risk to buyer.
- Impact on timeline.
  - State transaction laws review process – inconsistent across states.
- Impact on structure.
  - Movement away from large platform deals toward small add-on or carveout deals.
- Impact on industries / growth strategy.
  - Scope of state transaction laws may impact desirability of business.

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Practical Steps to Take – During the Deal

- LOI Stage / Due Diligence.
  - Engage healthcare regulatory counsel early.
  - Consider billing / coding consultants.
  - OIG exclusion and background checks.
- Deal Execution.
  - Consider risk profile’s impact on deal structure.
  - Account for regulatory review periods.
  - Stronger indemnification for breach of healthcare representations and warranties.

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Practical Steps to Take - After the Deal

- Prioritize integration of compliance-related operations.
- Replace problematic agreements with compliant agreements.
  - Consider governance / control issues.
  - Make sure agreements reflect reality.
- Conduct post-closing assessment.

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