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# Telemedicine Essentials: Corporate Formation Considerations

# Presented by

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# Agenda

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- Overview of Telemedicine
- Rolling Out a National Network
- Corporate Practice Restrictions
- How to Address Corporate Practice Risks
- Documentation to Set up a Friendly PC Structure
- Enforcement

# Telehealth and the U.S. Health Care Landscape

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**The U.S. health care landscape continues to transition from fee-for-service to pay-for-performance models of care delivery (e.g., outcomes, quality)**

**Continued and increased use of integrated delivery models (e.g., Accountable Care Organizations), bundled payments, medical homes, and readmissions reduction initiatives**

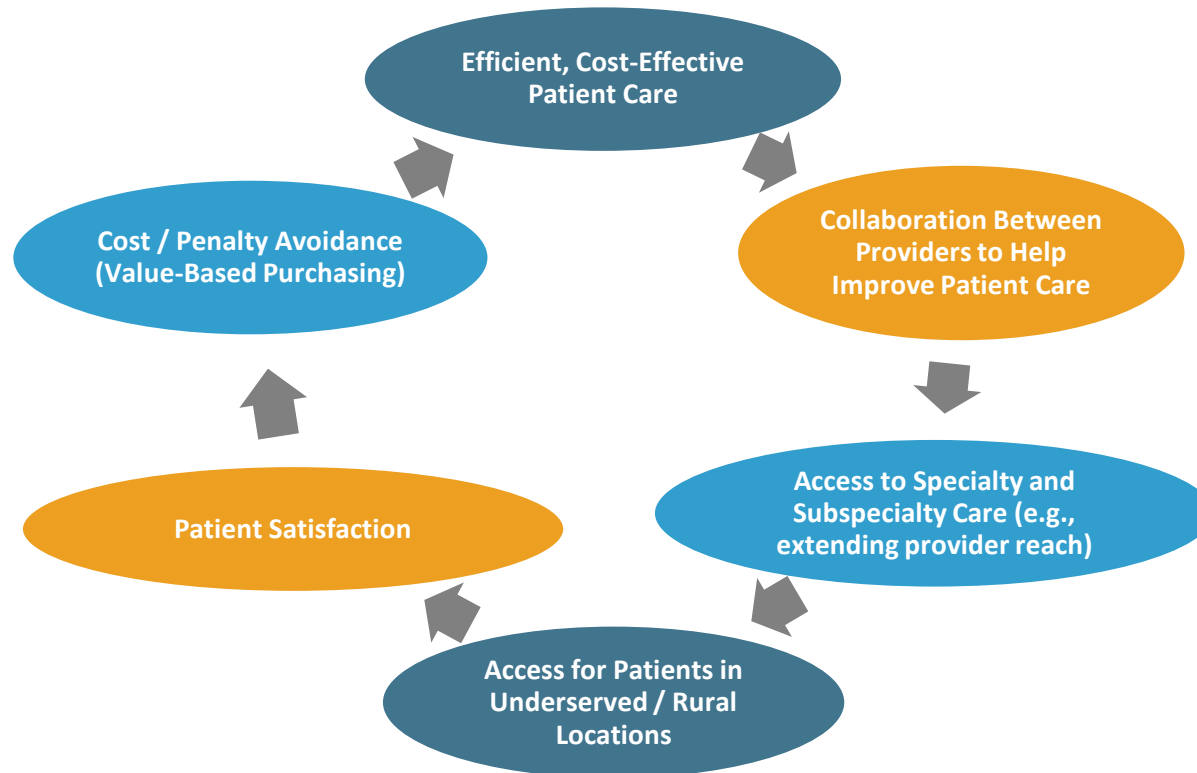
**Continued growth in consumer demand for in-home care modalities**

**Telehealth viewed as an efficient and cost-effective care delivery vehicle**

**Availability, accessibility, and ubiquity of telehealth technologies**

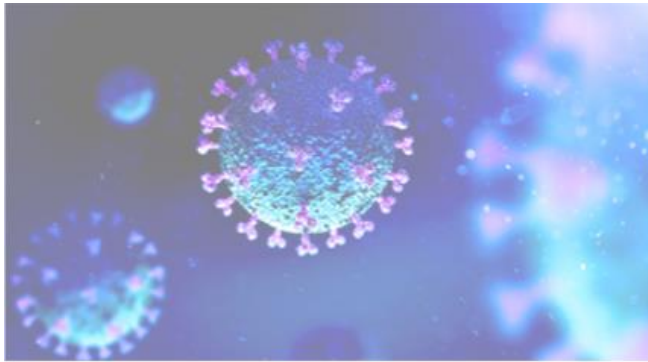
# Benefits of Telemedicine

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# Additional Resources on ebglaw.com

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## IN THE NEWS

### Coronavirus (COVID-19) Resource Center

News and updates for organizations  
grappling with the various implications of the  
coronavirus (COVID-19).



**Download Epstein Becker Green's  
Telemetal Health Laws App  
iPhone, iPad, Android**

# Rolling out a National Network

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- What do I need to do in order to roll out a telemedicine business across all 50 states?
- What type of legal entities work best?
- How long will it take to do this kind of corporate setup?



# Corporate Practice of Medicine

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## A twofold prohibition:

A concern that the professionals' medical/healthcare decisions will be driven or influenced by the desire to generate profit, rather than the care of patients.

A concern that non-licensed individuals or companies will be able to control medical practices and limit professionals' freedom and earning capacity.

# Corporate Practice of Medicine – Unique Challenges



Most states have some form of “corporate practice” prohibition, and professions other than medicine (doctors) may be covered – including psychologists or therapists.

At its core, CPOM is a prohibition on non-licensed individuals **owning** or **controlling** professional medical practices. Applicable law may be located in licensing rules, entity formation requirements; practice rules; or in opinions or guidance of AG or state licensing board(s).

States vary in their level of scrutiny and enforcement activity. Compliance in a “friendly” or “captive” PC structure requires the observation of formalities separating the **professional entity** and the **management entity**.

# Corporate Practice Restrictions

## Other Professions/Services

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- Do corporate practice rules apply to other professions?
  - APRNs, RNs
  - Physician Assistants
  - Dentists
  - Optometrists
  - Psychologists
  - Counselors, social workers, marriage and family therapists, etc.
  - Speech-language Pathologists
  - Coaches

# Addressing CPOM Risks – How?

## Friendly PC Structure



- So-called “friendly PC” or “captive PC” structure.
- A professional entity, owned by a “friendly” professional is managed by a non-professional entity (typically referred to as a “Management Services Organization” or “MSO”).
- Professional entity is aligned with the MSO through an administrative/management services agreement.
- Management agreement describes each parties’ responsibilities – **Manager is responsible for business decisions, practice is responsible for clinical decisions.**
- Independence of clinical decision making maintained.
- **Management entity and professional entity work together but are separate and distinct entities with separate and distinct responsibilities and authority.**

# Overview of Compliant Structure

## Compliant structures preserve clinical independence



### No Interference with Clinical Care

An MSO cannot interfere with the clinical services and decision-making provided by the professional practice entity and its professional staff, and the MSO should seek consensus with the professional practice entity over the development of clinical protocols, scheduling, and fees charged for professional services.

### Employment of Professionals

In states with a corporate practice prohibition, the professionals must be employed by the professional corporation that is authorized to provide professional services; they cannot be employed by the MSO.

# Management Company (MSO)

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- Be responsible for all business/back office operations
- Employ the non-licensed/non-professionals to provide the business services
- Assist PC with human resource issues, with final decisions to be made by PC
- Assist with
  - Budget preparation
  - Drafting of policies and procedures
  - Marketing/promotion – final copy to be the decision of PC
- Handle billing/collection/accounts payable on behalf of PC
- Is paid by PC for management services

# Professional Corporation (“PC”)

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- Be responsible for all clinical/professional decision making
- Employ or contract with professionals to provide professional services
- Have ultimate authority on all hiring/firing decisions
- Sign off on
  - Budget for PC
  - Hours of operation for PC
  - Clinical policies and procedures
  - Marketing of PC
- Control PC bank account
- Pays management company

# Corporate Practice Risk Areas

**Management “control” of professional decisions (or the appearance of same) can create legal risks**

## Maintaining formalities of separate entities essential for compliance:



Separate names and identities



Separate management and oversight structures



Separate bank accounts and financial structures



Defined decision-making roles (clinical v. business)



Defined communication and collaboration areas (budgets, hiring, advertising)



# Separate Finances

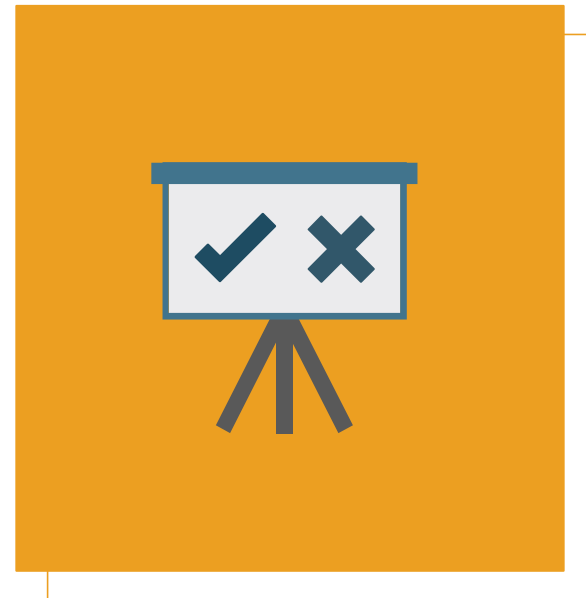
Practice and Manager must have separate bank accounts

Practice should have at least TWO bank accounts:

- An AR account, in the name of the practice and the practice alone, where payments are received from payors (including government payors)
- An Operating account from which payments are made, including management fee payments
- Manager may have signing authority on Operating account
- Deposit Account Control Agreement (DACA) should be placed on AR account so that all receipts are swept each day into Operating Account

Manager may pay itself from Practice account as part of its services (paying bills) but it must pay itself FROM a Practice account (Operating account) TO an account of Manager

Manager should not accept any payments for professional services rendered by Practice into Manager's bank accounts



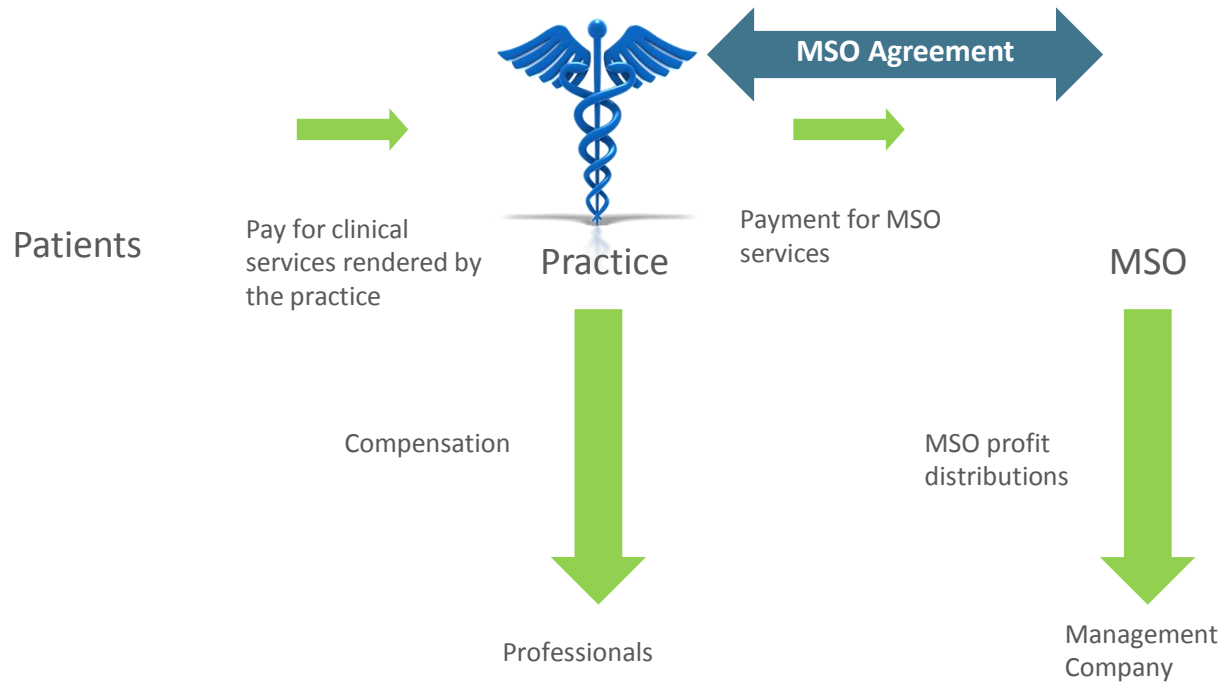
# Defined Decision Making Roles

- Written policies (including management agreement) should govern what decisions are made by Manager, what by Practice
- Policies should also describe where collaboration is necessary



- Clinical decision making includes hiring and firing of professionals, pricing, payor contracting, hours worked, services offered, treatments prescribed and similar subject areas that determine how professional services are provided by Practice
- Practice should have policies dictating who makes (or approves) such decisions – typically the owner of the PC
- Where owner approval is required, should be written and records of approval maintained

# Flow of Payments



# Required Documents

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- A Management Services Agreement (MSA) is entered into between the management company and the professional corporation
- A Stock Transfer Agreement is entered into between the management company and the physician/professional. This allows the management company to designate the owner of the stock of the professional corporation.
- Corporate bylaws
- Professional services agreements

# Consequences of Failing to Comply with the Corporate Practice Prohibition

**In general, failure to comply with Corporate Practice rules can result in:**

- Charges of practicing medicine (or other applicable profession) without a license (which can be a crime).
- Denial of reimbursement or recoupment of prior payments made by third-party payors (on the grounds that the party billing for services violated the law and, thus, was never entitled to receive payment for its services).
- Professionals involved being subject to professional discipline by the applicable state licensing board for aiding/abetting the unauthorized practice of the profession or other form of professional misconduct.
- Invalidation of contracts (courts can refuse to enforce contracts on public policy grounds).
- Fines for conducting the unauthorized practice of medicine.

Accusations of violating Corporate Practice prohibitions can come from state professional licensing boards, the state attorney general, or from unhappy professionals, competitors, and payor or patient complaints.

# Thank You.

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