

Valuing Telehealth Services

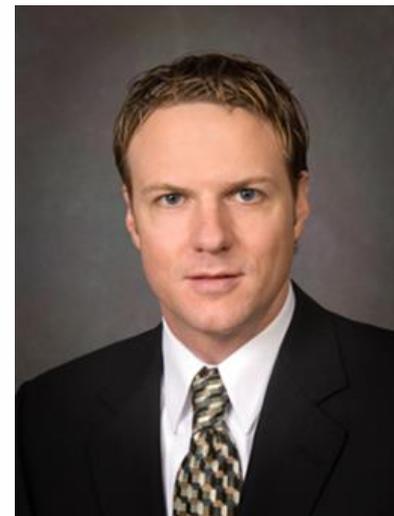
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Presenter Bio

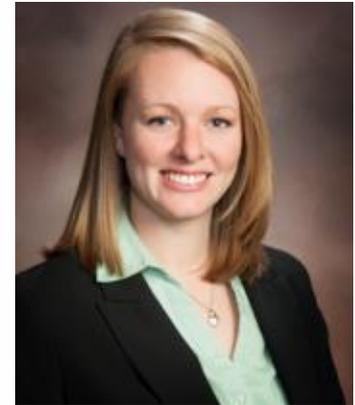
Todd A. Zigrang, MBA, MHA, FACHE, CVA, ASA is the President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 25 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 2,000 transactions and joint ventures involving acute care hospitals and health systems; physician practices; ambulatory surgery centers; diagnostic imaging centers; accountable care organizations, managed care organizations, and other third-party payors; dialysis centers; home health agencies; long-term care facilities; and, numerous other ancillary healthcare service businesses. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.



Mr. Zigrang is the co-author of the “*Adviser’s Guide to Healthcare – 2nd Edition*” (AICPA), numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Guide to Valuing Physician Compensation and Healthcare Service Arrangements* (BVR/AHLA); *The Accountant’s Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies*; *Business Appraisal Practice*; and, *NACVA QuickRead*. Additionally, Mr. Zigrang has served as faculty before professional and trade associations such as the American Bar Association (ABA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Presenter Bio

Jessica L. Bailey-Wheaton, Esq., serves as Vice President and General Counsel of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions, and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services.

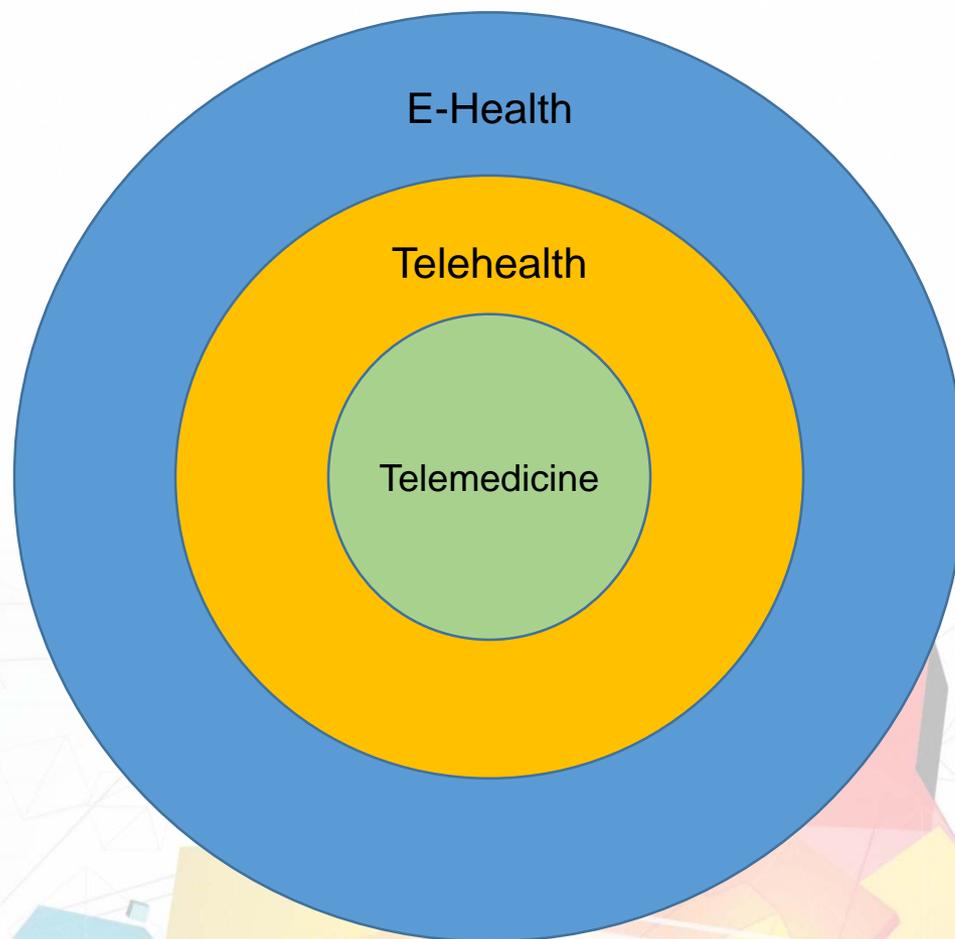


She serves on the Editorial Board of NACVA's *QuickRead* and of the American Health Lawyers Association's (AHLA's) *Journal of Health & Life Sciences Law*. Additionally, she is the current Chair of the American Bar Association's (ABA) Young Lawyers Division Health Law Committee and a Young Lawyer Liaison to the ABA Health Law Section's Membership Committee and Litigation & Risk Management Interest Group. She has previously presented before the ABA, NACVA, and the National Society of Certified Healthcare Business Consultants (NSCHBC).

Ms. Bailey-Wheaton is a member of the Missouri and Illinois Bars and holds a J.D., with a concentration in Health Law, from Saint Louis University School of Law.

Introduction to Telehealth

Definition & Distinction from Telemedicine, E-Health



Definition & Distinction from Telemedicine, E-Health

- **Telehealth**

- **National Institutes of Health (NIH) Definition** – the “use of communications technologies to provide health care at a distance.” Telehealth can be used to describe the monitoring of medical devices; health status data collection and analysis via smart devices; or, virtual visits between physicians and patients
- **World Health Organization (WHO) Definition** – “the delivery of health care services, where distance is a critical factor...using information and communication technologies...for diagnosis, treatment and prevention of disease and injuries, research and evaluation, and for the continuing education of health care providers.” This includes all healthcare providers “such as nurses, pharmacists, and others”

- **Telemedicine**

- **WHO Definition** – Same as telehealth, but regulated to only those services provided by physicians

“Telehealth” National Institutes of Health, <https://www.nibib.nih.gov/science-education/science-topics/telehealth> (Accessed 8/31/20).
“Removing regulatory barriers to telehealth before and after COVID-19” By Nicol Turner Lee, Jack Karsten, and Jordan Roberts, Brookings Institute, May 6, 2020, <https://www.brookings.edu/research/removing-regulatory-barriers-to-telehealth-before-and-after-covid-19/> (Accessed 9/15/20), p. 4-5.

Common Forms of Telehealth

- **Virtual Visits** – “Live, synchronous, interactive encounters...via video, telephone, or live chat.”
- **Chat-based Interactions** – “Asynchronous online or mobile app communications to transmit a patient’s personal health data, vital signs and other physiologic data or diagnostic images to a healthcare provider to review and deliver a consultation, diagnosis, or treatment plan at a later time.”

“Telehealth: Defining 21st Century Care” American Telemedicine Association, https://f.hubspotusercontent30.net/hubfs/5096139/Files/Resources/ATA_Telehealth_Taxonomy_9-11-20.pdf (Accessed 3/26/21).

Common Forms of Telehealth

- **Remote Patient Monitoring** – The collection, transmission, evaluation, and communication of individual health data from a patient to their healthcare provider or extended care team from...the patient’s home... using...wireless devices, wearable sensors, implanted health monitors, smartphones and mobile apps.”
 - “Supports ongoing condition monitoring and chronic disease management”
 - Can be synchronous or asynchronous

"Telehealth: Defining 21st Century Care" American Telemedicine Association, https://f.hubspotusercontent30.net/hubfs/5096139/Files/Resources/ATA_Telehealth_Taxonomy_9-11-20.pdf (Accessed 3/26/21).

Common Forms of Telehealth

- **Technology-Enabled Modalities** – “[P]hysician-to-physician consultation, patient education, data transmission, data interpretation, digital diagnostics...and digital therapeutics...[i.e.,] personal health devices and sensors, either alone or in combination with conventional drug therapies, for disease prevention and management.”

“Telehealth: Defining 21st Century Care” American Telemedicine Association, https://f.hubspotusercontent30.net/hubfs/5096139/Files/Resources/ATA_Telehealth_Taxonomy_9-11-20.pdf (Accessed 3/26/21).

Telehealth Terminology

- **Originating Site** – A patient's location when receiving care
- **Distant Site** – A provider's location when rendering care
- **Rural Area** – An area located within a rural Health Professional Shortage Area (HPSA) or in a county outside of a Metropolitan Statistical Area (MSA)

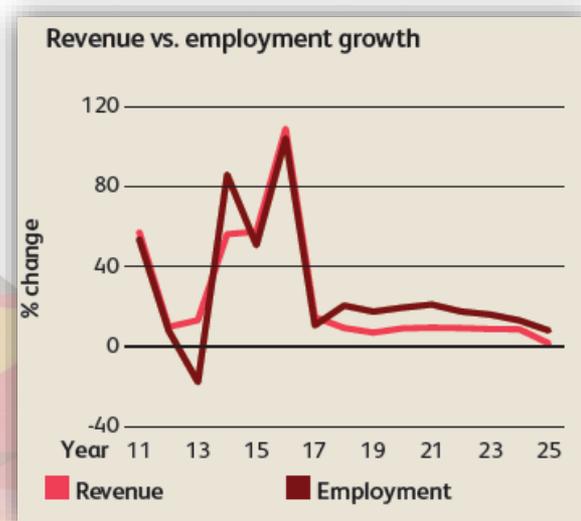
"Telehealth Services" Medicare Learning Network, ICN 901705, January 2019, <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/TelehealthSrvcsfctsh.pdf> (Accessed 9/23/20), p. 4.

Current Trends in Telehealth



Future Outlook

- Global telemedicine market expected to be valued at nearly \$186 billion by 2026
 - An increase of \$152 billion from 2018
 - Compound annual growth rate (CAGR) projected to be approximately 25.3%



"Telemedicine Market: 2020 COVID-19 Impact Industry Analysis By Size Estimation, Growth Rate, Share, Trends, Merger, New Developments, Competitive Landscape, Regional Analysis With Global Forecast To 2026" MarketWatch, September 7, 2020, <https://www.marketwatch.com/press-release/telemedicine-market-2020-covid-19-impact-industry-analysis-by-size-estimation-growth-rate-share-trends-merger-new-developments-competitive-landscape-regional-analysis-with-global-forecast-to-2026-2020-09-07> (Accessed 12/2/20).

Regulatory Environment Pre-COVID

- The growth in telemedicine services differed widely across states due to varying state medical licensure rules
 - 49 states require physicians providing telemedicine to be licensed in the state in which the patient is located
 - 12 states allow for a special license or certificate for physicians to practice across state lines for the purpose of providing telemedicine services
 - 6 states require registration for practicing telemedicine across state lines

"Telemedicine Policies: Board by Board Overview" Federation of State Medical Boards, July 2020, https://www.fsmb.org/siteassets/advocacy/key-issues/telemedicine_policies_by_state.pdf (Accessed 11/2/20). "The IMLC" Interstate Medical Licensure Compact, <https://imlc.org/> (Accessed 11/2/20).

Regulatory Environment

Pre-COVID

- The growth in telemedicine services differed widely across states due to varying state medical licensure rules
 - **Interstate Medical Licensure Compact (IMLC):** An “expedited pathway to licensure for qualified physicians who wish to practice in multiple states,” so long as they meet certain eligibility requirements (which approximately 80% of physicians meet)
 - As of November 2020, 29 states (+ D.C.) have signed the IMLC
 - 3 additional states have passed the ILMC (and it is in the process of implementation) and 6 have introduced ILMC legislation
 - 34 states have signed the Nurse Licensure Compact (NLC), which allows nurses to practice in other NLC states physically, telephonically, and electronically

“The IMLC” Interstate Medical Licensure Compact, <https://imlcc.org/> (Accessed 11/2/20). “Nurse Licensure Compact: NurseCompact.com” Nurse Licensure Compact, https://www.nursecompact.com/Updated_Legislator_FAQ.pdf (Accessed 11/2/20).

Reimbursement Environment Pre-COVID

Medicare

- CMS has been slow to expand telemedicine benefits
- Historically many restrictions to coverage:
 - **Geographical** – Patient must be located in a rural area and travel to a clinic, hospital or certain other facilities to receive treatment; and, physician must (typically) be located in the same state
 - **Provider** – Only the following providers were covered: Physicians, Nurse Practitioners (NPs), Physician Assistants (PAs), Nurse-Midwives, Clinical Nurse Specialists (CNSs), Nurse Anesthetists, Clinical Psychologists and Social Workers, and Registered Dietitians (not physical, occupational, or speech therapists)
 - **Covered Services** – Only 101 services covered/reimbursed by CMS at beginning of 2020

"Telehealth Services" Medicare Learning Network, ICN 901705, March 2020, <https://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/Downloads/TelehealthSrvcsfctshst.pdf> (Accessed 3/29/21), p. 6. "Covered Telehealth Services CY 2019 and CY 2020 (Updated 11/1/19) (ZIP)" available at: "CMS-1612-FC" Center for Medicare and Medicaid Services, <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Federal-Regulation-Notices-Items/CMS-1612-FC> (Accessed 9/23/20).

Reimbursement Environment Pre-COVID

Medicaid

- As of 2019:
 - 10 states had not yet enacted substantive policies for telemedicine reimbursement
 - 21 and 28 states have coverage and payment parity policies related to Medicaid, respectively

Commercial

- By 2016, most private insurance carriers and self-insured employers had included telemedicine benefits, such as for behavioral health, dermatology, radiology, infectious diseases, and stroke
- As of 2019, 36 states had coverage parity and 16 states had payment parity related to private payments

"2019 State of the States: Coverage & Reimbursement" Ann Mond Johnson, Libby Baney, Tricia Beckmann, and Sarah-Lloyd Stevenson, American Telemedicine Association, July 18, 2019 (Accessed 9/14/20), p. 4, 17, 19. "Virtual reality: More insurers are embracing telehealth" By Bob Herman, Modern Healthcare, February 20, 2016, <https://www.modernhealthcare.com/article/20160220/MAGAZINE/302209980/virtual-reality-more-insurers-are-embracing-telehealth> (Accessed 9/14/20).

Competitive Environment Pre-COVID

Demand

- Relatively low utilization historically
- Between 2016 and 2017:
 - Utilization increased 53%, but still only accounted for 0.11% of all national medical claim lines
 - Urban use of telemedicine grew 55% and rural use grew 29%
 - By 2017, 76% of hospitals had at least partially implemented a telemedicine system

"FH Healthcare Indicators and FH Medical Price Index 2019: An Annual View of Place of Service Trends and Medical Pricing" FAIR Health, April 2019, <https://s3.amazonaws.com/media2.fairhealth.org/whitepaper/asset/FH%20Healthcare%20Indicators%20and%20FH%20Medical%20Price%20Index%202019%20-%20A%20FAIR%20Health%20White%20Paper.pdf>, p. 25-26 (Accessed 9/15/20). "Fact Sheet: Telehealth" American Hospital Association, February 2019, <https://www.aha.org/system/files/2019-02/fact-sheet-telehealth-2-4-19.pdf> (Accessed 11/30/20), p. 1.

Competitive Environment Pre-COVID

Supply

- Over 34% growth in telemedicine companies between 2010 and 2019
- As of 2019, there were 1,909 telehealth businesses
 - Teladoc Inc., had captured nearly 25% of the market (approximately 11 million members and 1,100 providers)
- Supply expected to slow to 9.2% growth from 2019 to 2024

"Fact Sheet: Telehealth" American Hospital Association, February 2019, <https://www.aha.org/system/files/2019-02/fact-sheet-telehealth-2-4-19.pdf> (Accessed 11/30/20), p. 1. "IBISWorld Industry Report OD5775: Telehealth Services in the US" By Jack Curran, IBISWorld, October 2019, p. 3. "IBISWorld Industry Report OD5775: Telehealth Services in the US" By Stephen Morea, IBISWorld, August 2015, p. 4.

Technological Environment Pre-COVID

- 2000-2009 – Number of Americans with broadband access increased from 8 million to 200 million
- In 2010, approximately 33% of the U.S. (100 million Americans) still did not have broadband at home

"Connecting America: The National Broadband Plan" Federal Communications Commission,
<https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf> (Accessed 12/16/20), p. 4, 23.

Regulatory Environment COVID Pandemic

Federal Waivers

- Exempted providers who had acted in good faith, but had nonetheless committed a privacy violation by using unencrypted video programs such as Skype or FaceTime, to conduct telemedicine visits free from *Health Insurance Portability and Accountability Act* (HIPAA) penalties

State Waivers

- 41 states have enacted waivers for out-of-state physicians, preexisting relationships, and audio-only requirements

*U.S. States and Territories Modifying Requirements for Telehealth in Response to COVID-19" Federation of State Medical Boards, March 16, 2021, <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf> (Accessed 3/26/21).

Reimbursement Environment COVID Pandemic

March 17, 2020 Waivers

- Allowed beneficiaries to receive care wherever they were located, including in their home, and allowed physicians to treat patients outside of the state in which they're licensed
- Increased the types of providers that can conduct telemedicine visits to include physical therapists, occupational therapists, and speech language pathologists
- Expanded telemedicine reimbursement coverage to 135 new services, including emergency department visits
- Allowed providers to see both new and established patients

"COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers" Centers for Medicare and Medicaid Services, February 19, 2021, <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf> (Accessed 3/29/21).

Reimbursement Environment COVID Pandemic

March 30, 2020 Regulatory Changes

- Established pay parity rule for telemedicine visits, so they would be reimbursed at the same rate as in-person visits
- Extended coverage to over 80 additional services, which included emergency department visits, initial visits, discharges from nursing facilities, and home visits

"Additional Background: Sweeping Regulatory Changes to Help U.S. Healthcare System Address COVID-19 Patient Surge"
Centers for Medicare and Medicaid Services, March 30, 2020, <https://www.cms.gov/newsroom/fact-sheets/additional-background-sweeping-regulatory-changes-help-us-healthcare-system-address-covid-19-patient> (Accessed 9/22/20).

Competitive Environment COVID Pandemic

Demand

- Early 2020 – 14,000 Medicare beneficiaries per week received care through telemedicine
- March-early July 2020 – Over 10 million Medicare beneficiaries received care through telemedicine
- Utilization rates for Medicare primary visits soared from 0.1% prior to February to 43.5% by April
- All states, as well as both primary and specialty care physicians, experienced increases in the number of telemedicine visits

"Trump Administration Proposes to Expand Telehealth Benefits Permanently for Medicare Beneficiaries Beyond the COVID-19 Public Health Emergency and Advances Access to Care in Rural Areas" Centers for Medicare & Medicaid Services, August 3, 2020, <https://www.cms.gov/newsroom/press-releases/trump-administration-proposes-expand-telehealth-benefits-permanently-medicare-beneficiaries-beyond> (Accessed 8/5/20). "HHS Issues New Report Highlighting Dramatic Trends in Medicare Beneficiary Telehealth Utilization amid COVID-19" Department of Health and Human Services, July 28, 2020, <https://www.hhs.gov/about/news/2020/07/28/hhs-issues-new-report-highlighting-dramatic-trends-in-medicare-beneficiary-telehealth-utilization-amid-covid-19.html> (Accessed 8/6/20). "US Telehealth Market Sees an Increase in Demand for Telehealth Services Due to COVID-19 Pandemic - ResearchAndMarkets.com" Press Release, April 27, 2020, Business Wire, [businesswire.com/news/home/20200427005249/en/US-Telehealth-Market-Sees-an-Increase-in-Demand-for-Telehealth-Services-Due-to-COVID-19-Pandemic---ResearchAndMarkets.com](https://www.businesswire.com/news/home/20200427005249/en/US-Telehealth-Market-Sees-an-Increase-in-Demand-for-Telehealth-Services-Due-to-COVID-19-Pandemic---ResearchAndMarkets.com) (Accessed 3/29/21).

Competitive Environment COVID Pandemic

Supply

- New growth estimates were approximately 80% year-over-year in 2020
- Greatest difficulty is in hiring or contracting with healthcare providers to render the telehealth services

"Trump Administration Proposes to Expand Telehealth Benefits Permanently for Medicare Beneficiaries Beyond the COVID-19 Public Health Emergency and Advances Access to Care in Rural Areas" Centers for Medicare & Medicaid Services, August 3, 2020, <https://www.cms.gov/newsroom/press-releases/trump-administration-proposes-expand-telehealth-benefits-permanently-medicare-beneficiaries-beyond> (Accessed 8/5/20). "HHS Issues New Report Highlighting Dramatic Trends in Medicare Beneficiary Telehealth Utilization amid COVID-19" Department of Health and Human Services, July 28, 2020, <https://www.hhs.gov/about/news/2020/07/28/hhs-issues-new-report-highlighting-dramatic-trends-in-medicare-beneficiary-telehealth-utilization-amid-covid-19.html> (Accessed 8/6/20). "US Telehealth Market Sees an Increase in Demand for Telehealth Services Due to COVID-19 Pandemic - ResearchAndMarkets.com" Press Release, April 27, 2020, Business Wire, [businesswire.com/news/home/20200427005249/en/US-Telehealth-Market-Sees-an-Increase-in-Demand-for-Telehealth-Services-Due-to-COVID-19-Pandemic---ResearchAndMarkets.com](https://www.businesswire.com/news/home/20200427005249/en/US-Telehealth-Market-Sees-an-Increase-in-Demand-for-Telehealth-Services-Due-to-COVID-19-Pandemic---ResearchAndMarkets.com) (Accessed 3/29/21).

Technological Environment COVID Pandemic

- \$300 million allocated to the Federal Communications Commission (FCC) to expand telemedicine services and infrastructure

"Removing regulatory barriers to telehealth before and after COVID-19" By Nicol Turner Lee, Jack Karsten, and Jordan Roberts, Brookings Institute, May 6, 2020, <https://www.brookings.edu/research/removing-regulatory-barriers-to-telehealth-before-and-after-covid-19/> (Accessed 9/15/20), p. 14.

Provision of Telehealth Services



Telehealth Service Arrangements

Telehealth service arrangements typically fall with two (2) general classifications:

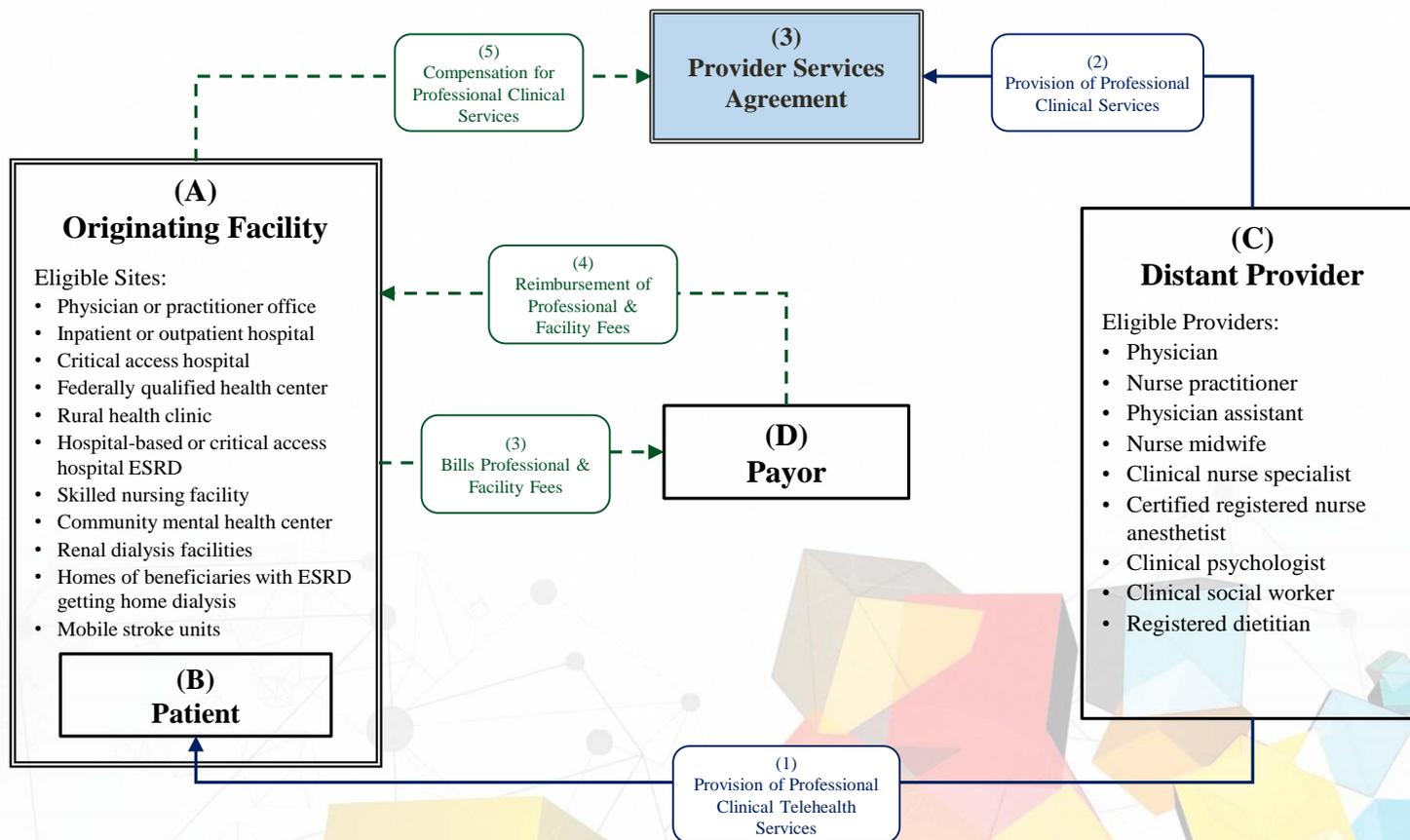
- Professional Clinical Services between Originating Facility and Provider
- Management Services between Technology Services Provider and Clinical Provider

Provision of Professional Clinical Telehealth Services

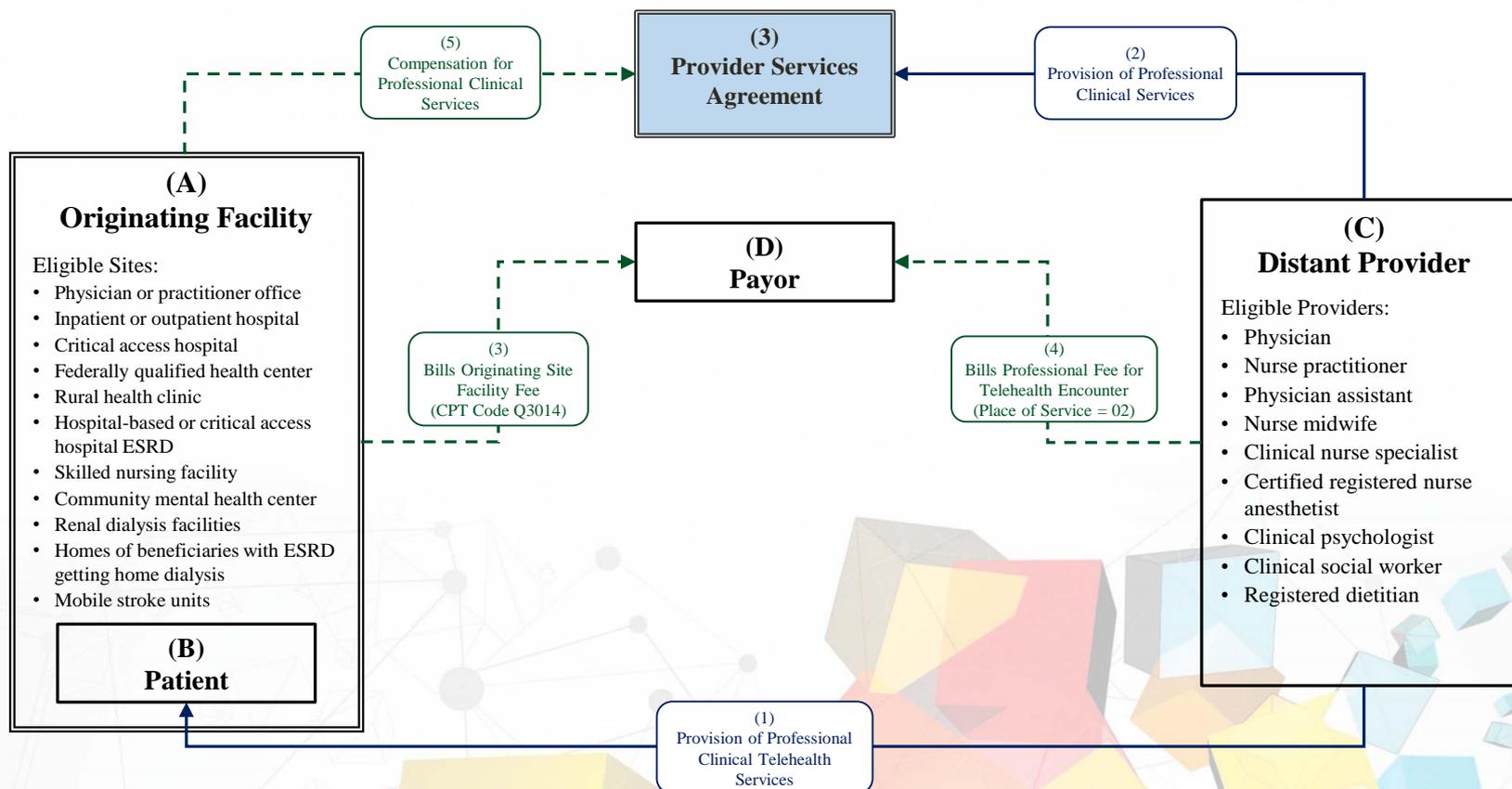
Professional Clinical Telehealth Services

- Professional clinical telehealth services, i.e., the direct provision of medical services through virtual means, are typically memorialized through a Provider Services Agreement with an Originating Facility
- Professional clinical services include the professional provider work component (the work RVU), and may also include the malpractice (MP) and/or practice expense (PE) components

Typical Professional Clinical Telehealth Service Arrangements



Typical Professional Clinical Telehealth Service Arrangements



Provider Compensation/Fees

- Some of the ways that the provider compensation (service fees) can be structured include:
 - Prospective fixed rate per consultation
 - Fixed rate per time unit (hour, day, shift)
 - Combination of any of the above

Provision of Telehealth Management Services

Telehealth Management Services

- Telehealth services, i.e., licensing of the telehealth software, can be a separate agreement from the Telehealth Management Services Agreement
- Telehealth management services are typically provided to healthcare providers such as hospitals, practices, individual physicians, public safety operators, accountable care organizations, etc.
- Telehealth management services can include just the IT management, i.e., managing the telehealth software/ platform, or include the administrative management of telehealth patients on behalf of the providers, i.e., scheduling, billing, etc.

Telehealth Management Services

Services that can be provided under a Telehealth Management Services Agreement include, but are not limited to:

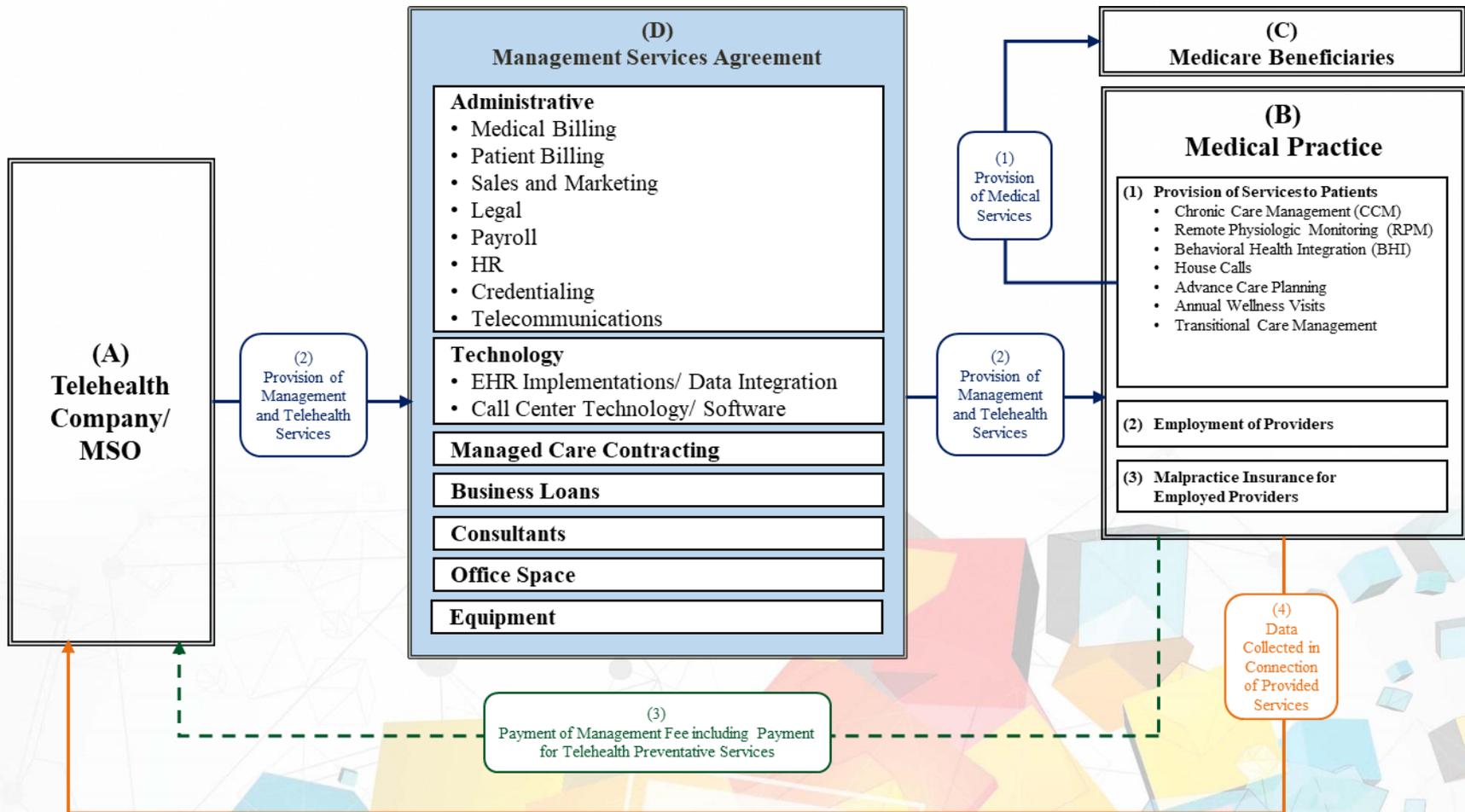
- Telehealth technology/software/platform
- IT Support
- Hardware/Equipment
- Reporting and Analytics Services
- Electronic health records (EHR) and Data Integration
- Customer Service/Call Center
- Billing
- Training and compliance management

Telehealth Management Services

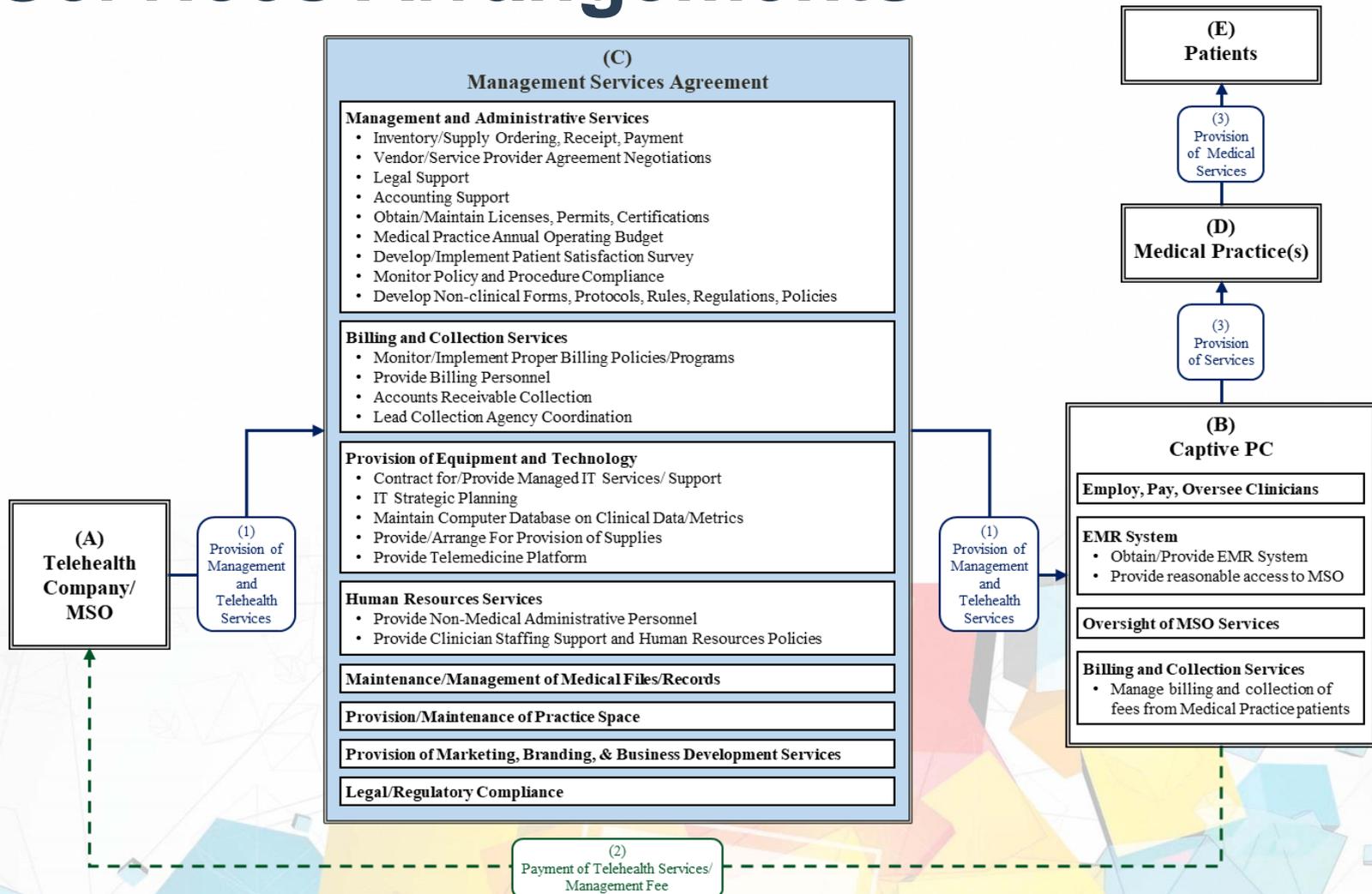
In addition to the Telehealth Management Services specified above, services may include traditional management services by the MSO, including but not limited to:

- Administrative and payroll services
- Managed care contracting services
- Manage patient records
- Medical and surgical supply procurement
- Accounting services
- Human resource management
- Revenue cycle management
- Supply chain management
- Sales and marketing
- Legal and consulting services

Typical Telehealth Management Services Arrangements



Typical Telehealth Management Services Arrangements



Compensation for Telehealth Management Services

- MSOs are compensated for management services under the MSA in the form of a management fee
- The management fee can be structured in multiple ways depending on the provider to whom the service is being offered
- Some of the ways that management fees can be structured under the MSA are:
 - Fixed annual/monthly fee for services offered
 - Licensing fee for telehealth platform
 - Management fee calculated as a percent of revenue
 - Management fee calculated as a percent of cost incurred by the MSO
 - Management fee per patient encounter
 - Management fee per patient per month (mostly in the case of ACOs)
 - Combination of any of the above

Valuation of Telehealth Management Services

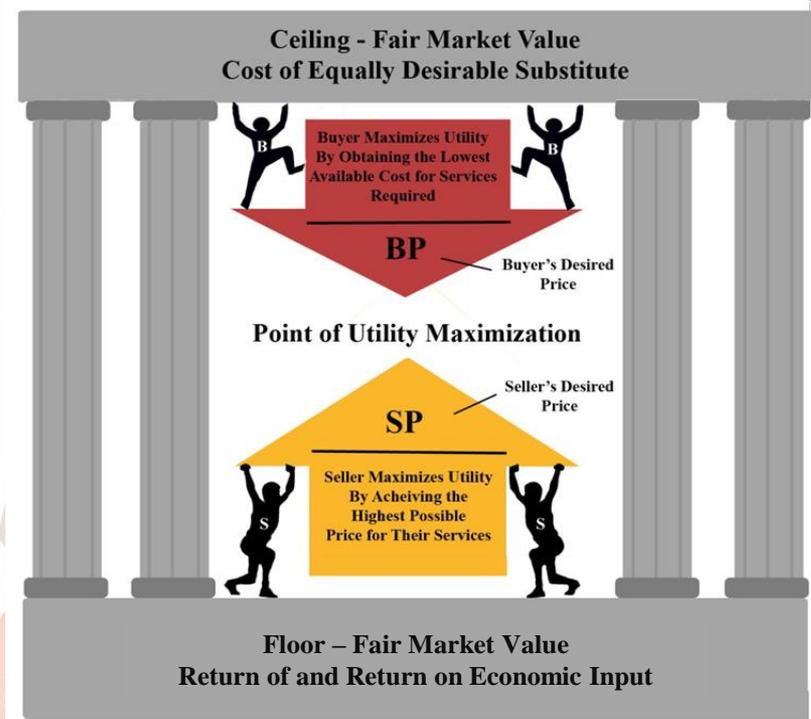
Valuation Consideration and Approaches for Services

- Fair Market Value
- Methodology
 - Income Approach
 - Market Approach
 - Cost Approach

Valuation Standard of Fair Market Value (FMV)

The FMV of the management services is the price point where both parties will choose to transact

- The highest price that the buyer will accept – the ceiling
 - Estimated utilizing a *Top-Down* Methodology
- The lowest price that the seller will accept – the floor
 - Estimated utilizing a *Bottom-Up* Methodology



Value to the Providers of the Clinical Services

- Ability to perform more services (and receive more reimbursement) with minimal incremental costs
- Receipt of some level of integrated management services
- Potential to reduce high-cost care (e.g., reduced readmissions), potentially resulting in cost savings
- Enables providers to focus on providing care
- Transfers burden of managing systems and technology infrastructure from the Providers to the Management Company

Value to the Providers of the Management Services

- Allowance for investment by non-providers (if structured correctly)
- Ability to perform more services (and receive more reimbursement) with minimal incremental costs
- Amortization of significant technological and organizational costs over a greater volume of services (coverage of start-up and fixed costs)
- Leverage with payors
- Scalability

Value to the Recipients of the Clinical/Telehealth Services

- Ability to receive medical services in place, with no cost implications – greater access to care
- Opportunity to seek care from provider of choice, rather than closest physician
- Reduced costs (gas, parking, etc.), travel time, and time off work
- Improved health

Regulatory Constraints

- MSOs, MSAs, and management fees have been subject to increased regulatory scrutiny in recent years
- 2 federal fraud and abuse laws implicate many healthcare transactions:
 - Stark Law
 - Anti-Kickback Statute (AKS)

Regulatory Constraints

Factors to consider at the outset of a management fee valuation assignment:

- Ownership of the MSO (physician owned/non-physician owned)
- Relationship between MSO and provider to whom services are provided
- Whether any element of the management fee is remuneration paid (directly/indirectly) in an effort to solicit or reward patient referrals

Regulatory Constraints

Management fee valuations should also consider advisory opinions issued by the Office of Inspector General (OIG)

- In the past, the following advisory opinions have spoken to the relationship between the MSO and providers:
 - **1998 Advisory Opinion** – Expressed concern regarding MSOs receiving payment from a physician group as a percentage of collections or revenue while performing marketing services
 - **2003 Advisory Opinion** – Reviewed a proposed management fee, calculated on a per patient per day basis, to be paid to a company to development inpatient rehab units in general acute care hospitals, to be in violation of the AKS

Regulatory Constraints

Management fee valuations should also consider advisory opinions issued by the OIG

- In the past, the following advisory opinions have spoken to the relationship between the MSO and providers (continued):
 - **2006 Advisory Opinion** – While the OIG ultimately found payment to a dental marketing and management company in compliance with the AKS, it noted that “Per patient, per unit-of-service, percentage, or similar variable compensation structures are particularly problematic under the statute, because they relate to the volume or value of business generated between parties.”

Regulatory Constraints

Corporate Practice of Medicine (CPOM) Doctrine

- Prohibits unlicensed individuals or corporations from engaging in the practice of medicine by employing licensed physicians
- Developed by the American Medical Association (AMA) in the 19th century to protect patient care, instead of profits, as the greatest concern in healthcare practices, to prohibit the “commercialization or exploitation” of medical professionals and the medical field, and to ensure medicine is only practiced by licensed professionals

"Issue brief: Corporate practice of medicine" American Medical Association, available at: <https://www.ama-assn.org/media/7661/download> (Accessed 11/21/20). "Corporate Practice of Medicine: The Unseen Hurdle in Telehealth" By Daniel Gottlieb, Health Law Advisor, Epstein Becker Green, February 6, 2013, <https://www.healthlawadvisor.com/2013/02/06/corporate-practice-of-medicine-the-unseen-hurdle-in-telehealth/> (Accessed 11/21/20)

Regulatory Constraints

Corporate Practice of Medicine (CPOM) Doctrine

- Significant variations in regulation between states
- 20 states have not explicitly adopted CPOM
- Majority of states have adopted all or some of the following measures in the 4 key areas addressed by the doctrine:
 1. Prohibiting business entities from employing physicians to provide medical care
 2. Requiring that licensed medical doctors own and operate facilities providing medical services
 3. Not allowing professional fee splitting between licensed practitioners and non-licensed individuals or entities
 4. Mandating that MSAs adhere to FMV standards

"Understanding The Corporate Practice Of Medicine Doctrine And The Role Of The Management Services Organization" Nelson-Hardiman, June 6, 2011, <https://www.nelsonhardiman.com/hc-law-news/understanding-the-corporate-practice-of-medicine-doctrine-and-the-role-of-the-management-services-organization/> (Accessed 2/23/21).
"3 Steps to Navigate Through the Corporate Practice of Medicine" By Jennifer Brunkow, Becker's Hospital Review, March 26, 2012, <https://www.beckershospitalreview.com/legal-regulatory-issues/3-steps-to-navigate-through-the-corporate-practice-of-medicine.html> (Accessed 2/23/21).
"Issue brief: Corporate practice of medicine" American Medical Association, 2015, <https://www.ama-assn.org/media/7661/download> (Accessed 2/23/21); "Understanding the Corporate Practice of Medicine Doctrine and the Role of the Management Services Organization" Nelson-Hardiman, June 6, 2011, <https://www.nelsonhardiman.com/hc-law-news/understanding-the-corporate-practice-of-medicine-doctrine-and-the-role-of-the-management-services-organization/> (Accessed 2/23/21).

Regulatory Constraints

Corporate Practice of Medicine (CPOM) Doctrine

- All states have exceptions for professional corporations, which are designed and created specifically to render a professional service, but states may specify the ownership structure for these organizations
- Telemedicine companies may be prone to running afoul of CPOM statutes because they are often owned by non-providers and operate (and provide services) across state lines
 - MSAs allow outside companies to manage medical practices or groups, including administration and operations

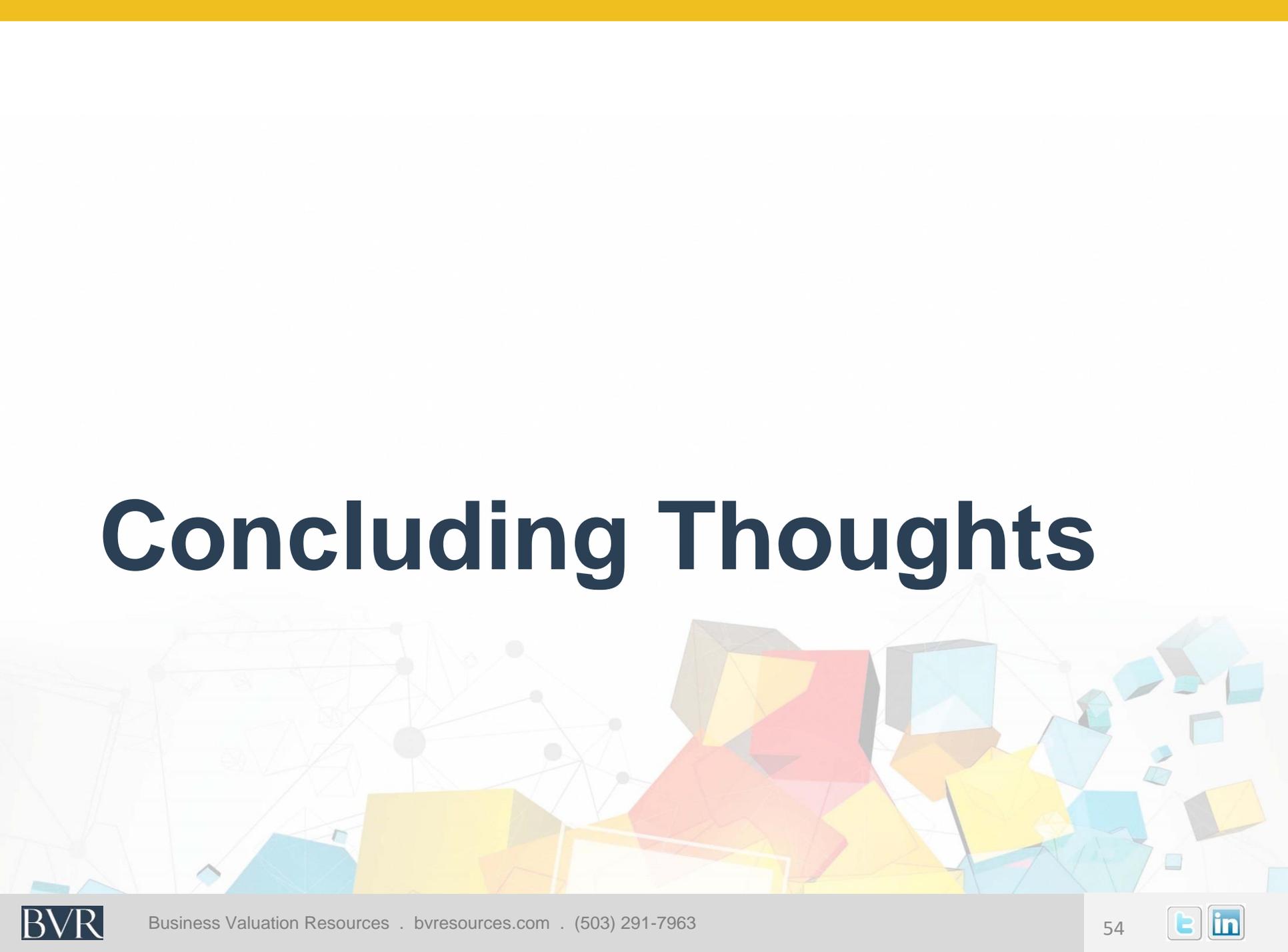
"3 Steps to Navigate Through the Corporate Practice of Medicine" By Jennifer Brunkow, Becker's Hospital Review, March 26, 2012.
<https://www.beckershospitalreview.com/legal-regulatory-issues/3-steps-to-navigate-through-the-corporate-practice-of-medicine.html> (Accessed 2/23/21).

Regulatory Constraints

Corporate Practice of Medicine (CPOM) Doctrine

To refrain from CPOM violations, telehealth companies and may set up their corporate structure utilizing a “friendly PC” or “captive PC” model, wherein physicians own the legal entity that provides healthcare services, and that “captive” or “friendly” entity contracts with a management services organization (MSO), which provides the management services to the PC/PLLC

Concluding Thoughts

The background features a network of grey lines and dots on the left, transitioning into a cluster of colorful, semi-transparent 3D cubes in shades of yellow, orange, red, and blue on the right.

Concluding Thoughts

- Separate the various management & telehealth services to be provided and find actual or proxy costs
- Determine which costs are fixed, modified fixed, or variable
- Simulate negotiations between buyer and seller through “bottom up” and “top down” methodologies
- Be cognizant of various regulatory constraints that may impact upon the valuation

Concluding Thoughts

- Helpful Resources:
 - Cost & Revenue Report, Medical Group Management Association, MGMA DataDive
 - Guideline Public Company Database, KeyValueData
 - Annual Statement Studies Financial Ratio Benchmarks, Risk Management Association
 - Five Year Industry Reports, Bizminer
 - Five Year Reports, Microbilt Integra

Questions & Answers



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