

Corporatization in Health Care

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Slide credits: Sirui Song, MD, PhD, Harvard Medical School; Jane Zhu, MD, MPP, OHSU

Changes in Corporate Ownership

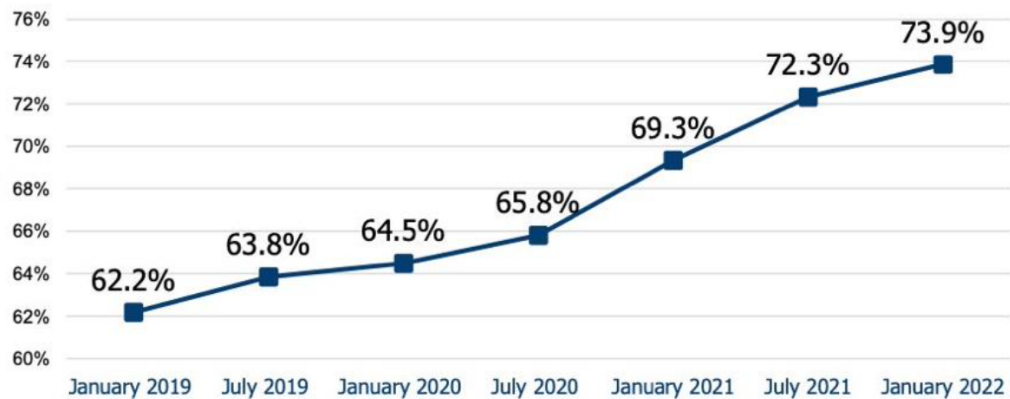
Types of Corporate Ownership

1. Hospitals and Hospital Systems

2. "Other" Corporate Entities

- Private Equity
- Insurance companies (e.g., UnitedHealth)
- Retailers (e.g., Amazon, Walgreens)

By Jan. 2022 74% of MDs were employed by a corporate entity

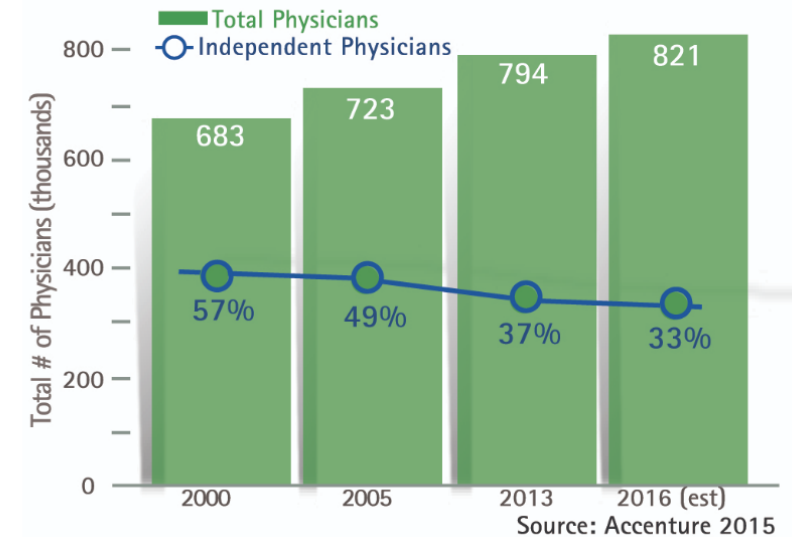


MDs employed by hospitals or corporations

Avalere Health (2022)

Independent U.S. Physicians: A Swiftly Shrinking Segment

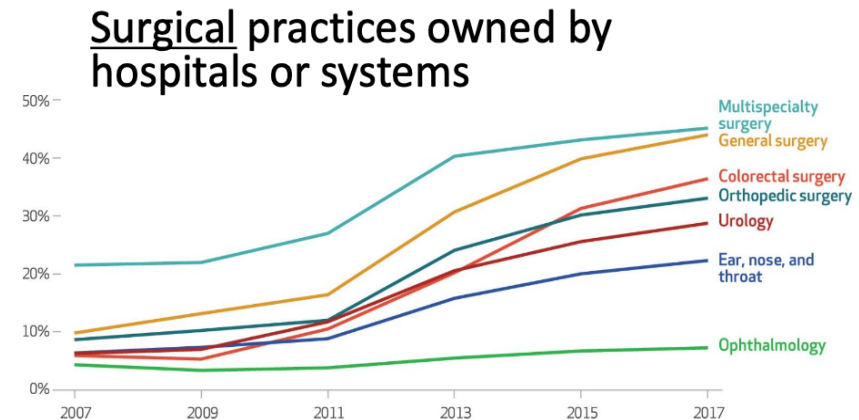
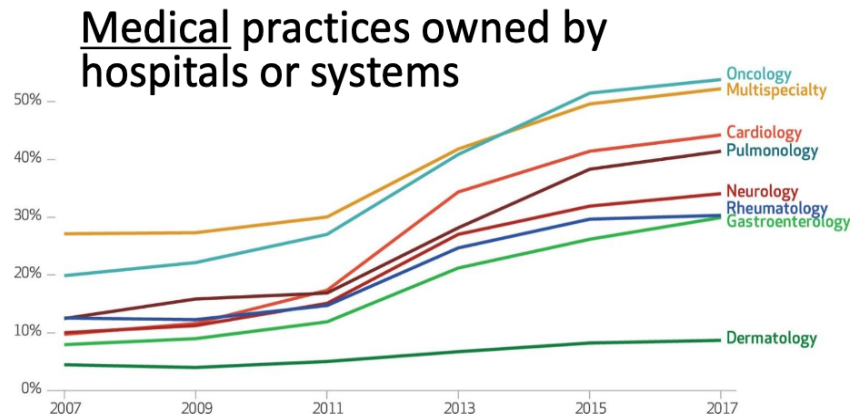
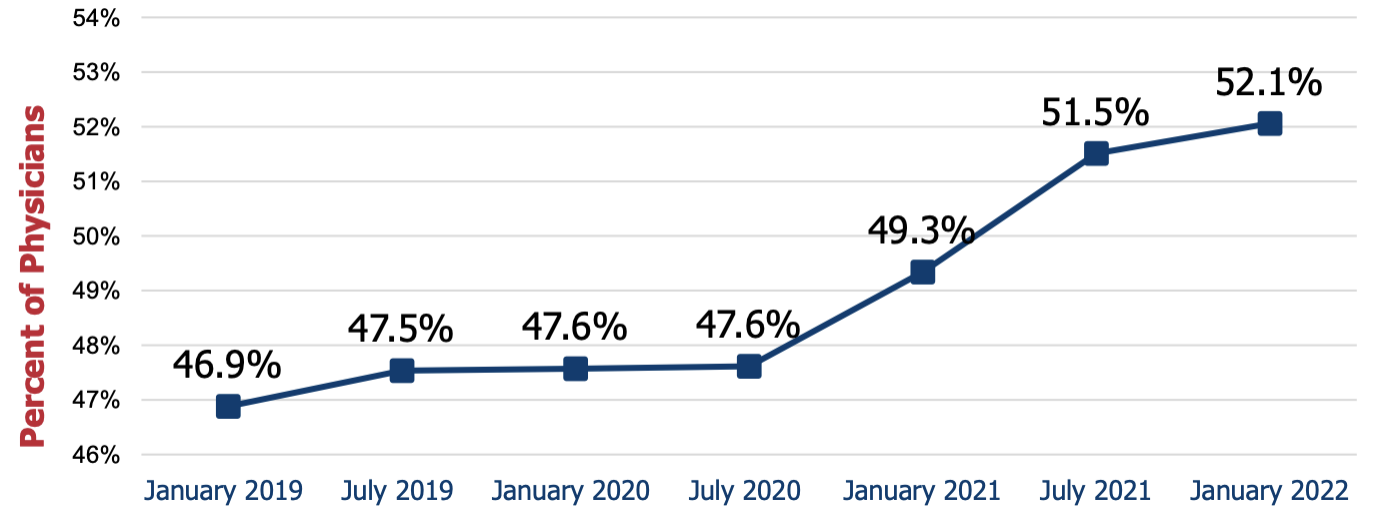
Only 1 in 3 doctors will be independent by end of 2016, Accenture finds



Hospitals: Vertical Consolidation

51% of MD's were employed by hospitals by the end of 2021, an **11%** increase during the three-year study period

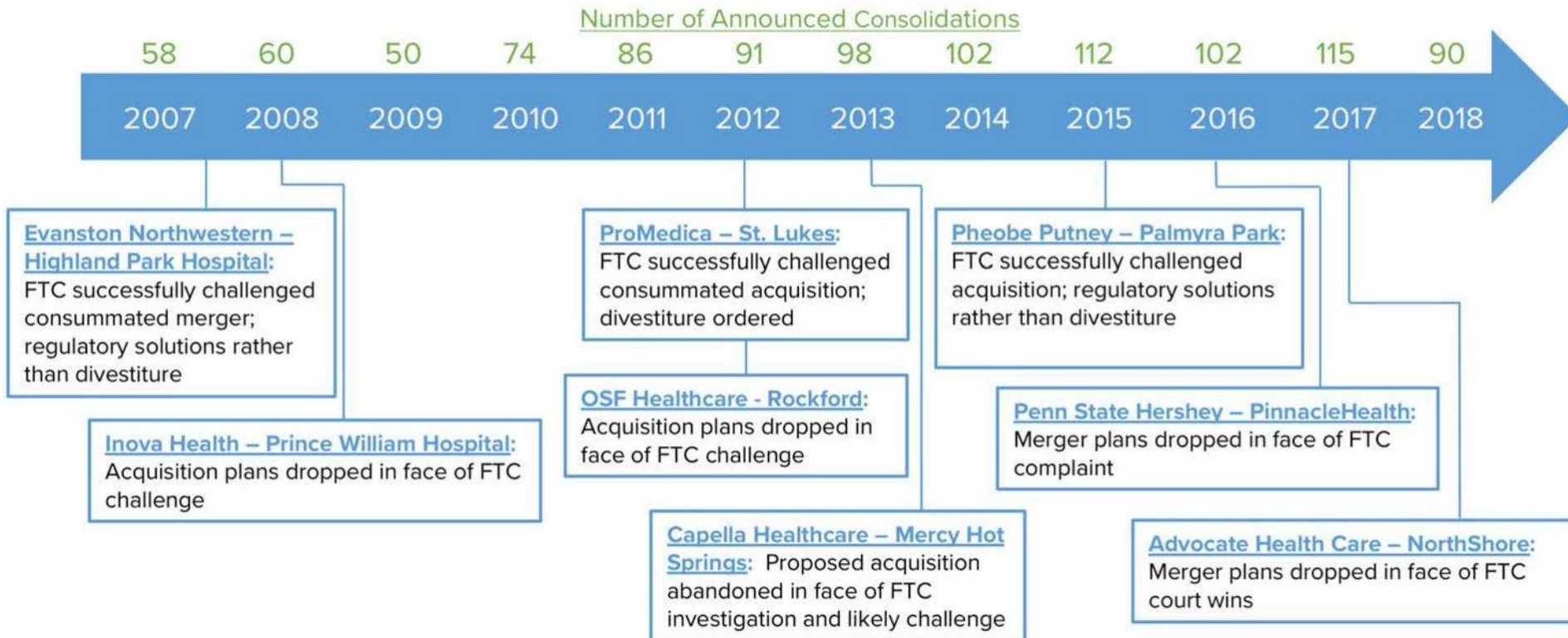
Avelere Health (2022)



Nikpay, Richards, Penson (Health Affairs 2018)

Hospitals: Horizontal Consolidation

A decade of successful within-market hospital merger challenges by the FTC, but very few mergers have been challenged.

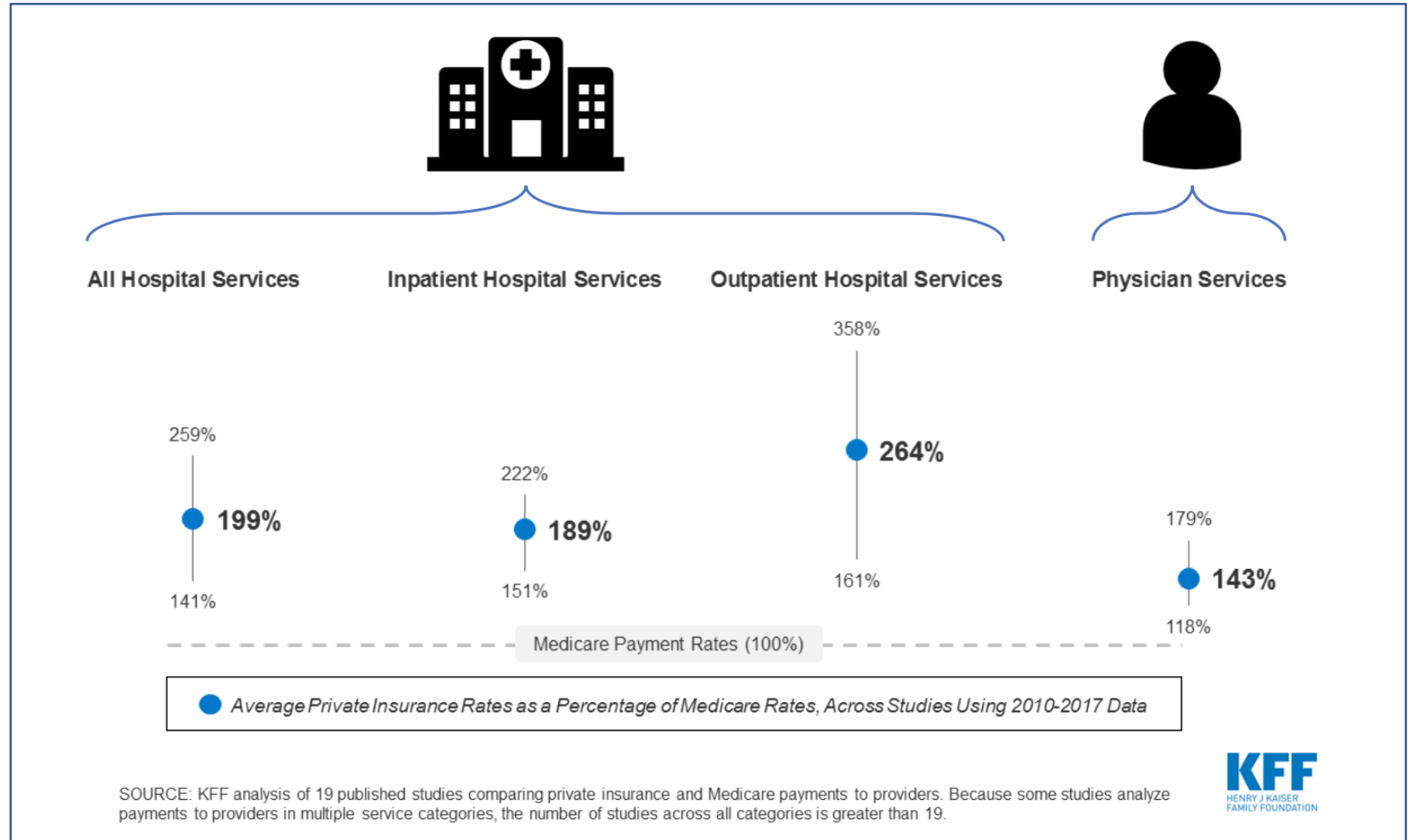


Causes and Consequences of Hospital Consolidation

1. Commercial Market Power

2. Monopsony Power → Lower Labor Costs

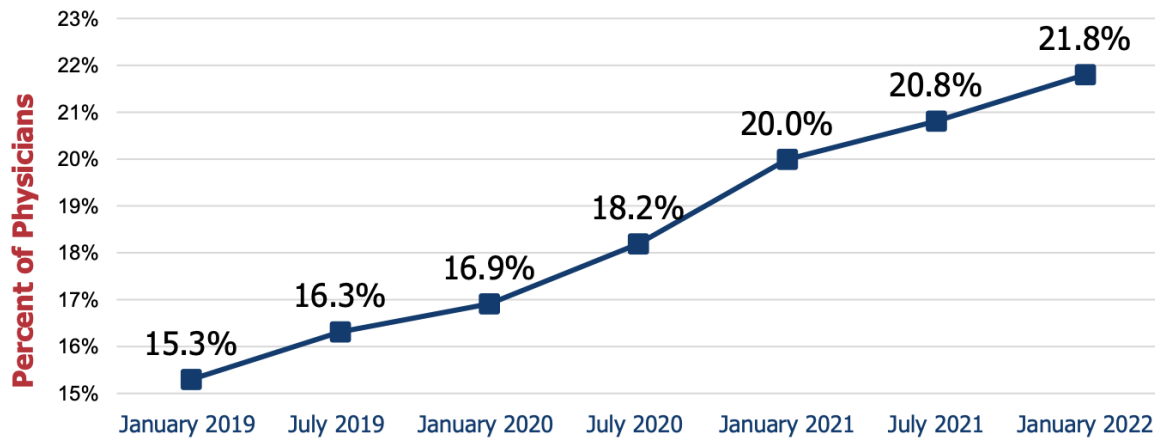
3. Medicare loopholes



“Other” Corporate Entities (PE, Insurance, retail)

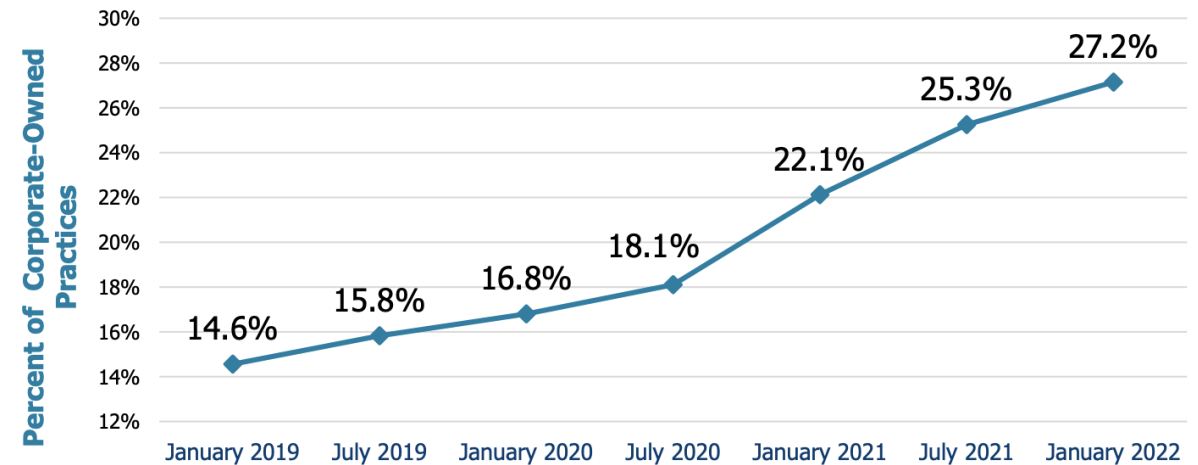
As of 2022, **21.8%** of physicians were employed by “other” corporate entities, a **43% increase** over a three-year period

PERCENT OF U.S. PHYSICIANS EMPLOYED BY CORPORATE ENTITIES IN 2019-21



As of 2022, **27.2%** of physician practices were owned by corporate entity, an **86% increase** compared to the three years prior to 2022

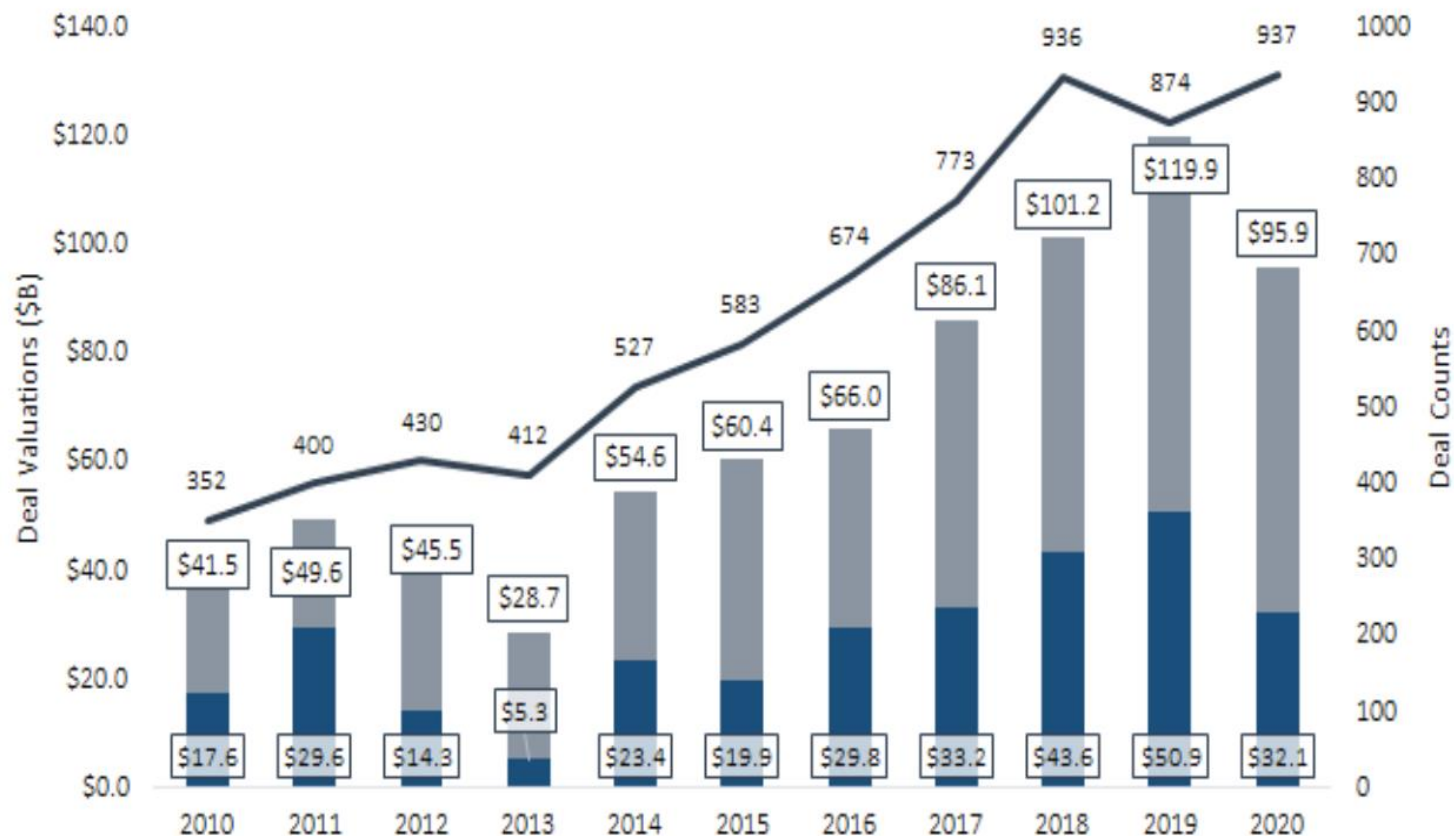
PERCENT OF U.S. PHYSICIAN PRACTICES OWNED BY CORPORATE ENTITIES IN 2019-21



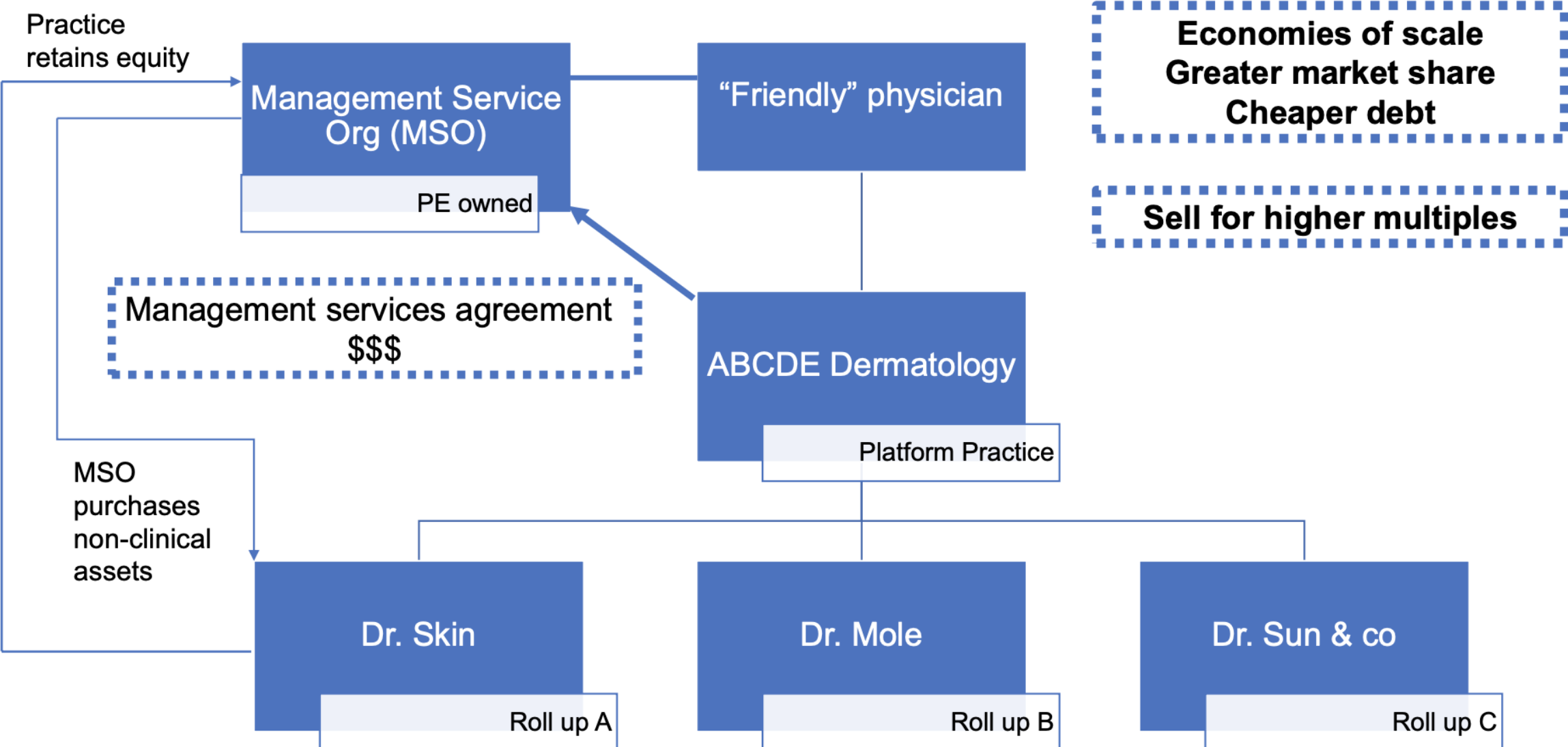
Private Equity Over Time

- PE capital investment in health care grew from \$5 billion in 2000 to \$100 billion in 2018
- The total value of health care deals between 2010-2020 was \$750 billion
- Physician practice acquisitions grew from 39 to 221 deals annually 2010-2019 (1,283 deals in total the decade)

Figure 1. Total PE Deals in Healthcare* – Reported Deal Value, Estimated Deal Value, and Reported Deal Count, 2010-2020

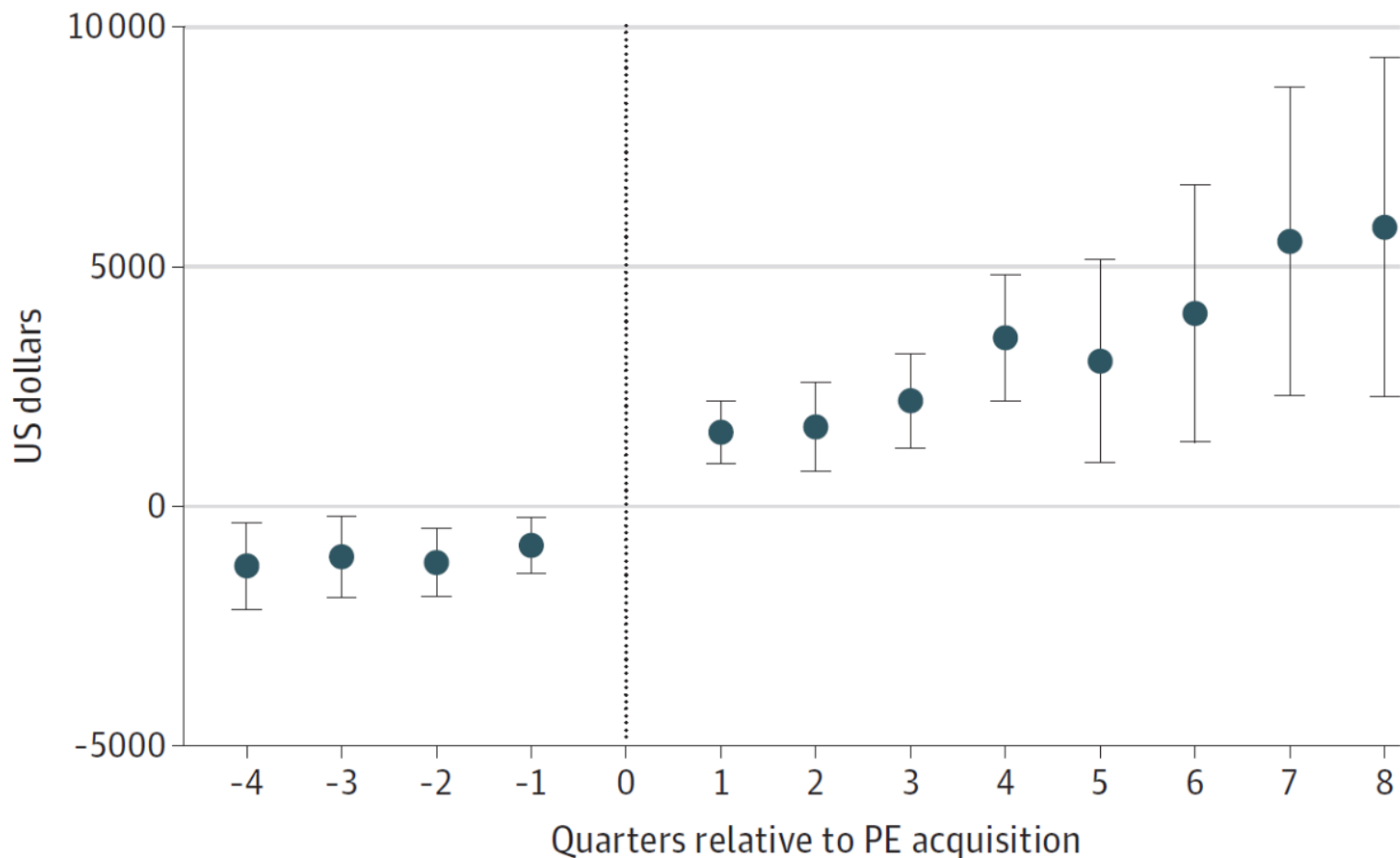


Empire Building by Roll-Up



Acquisitions of MD Practices → ↑ Spending, Charges, Prices, Volume

Figure 1. Changes in Total Spending per Practice Associated With Private Equity Acquisition, by Quarter

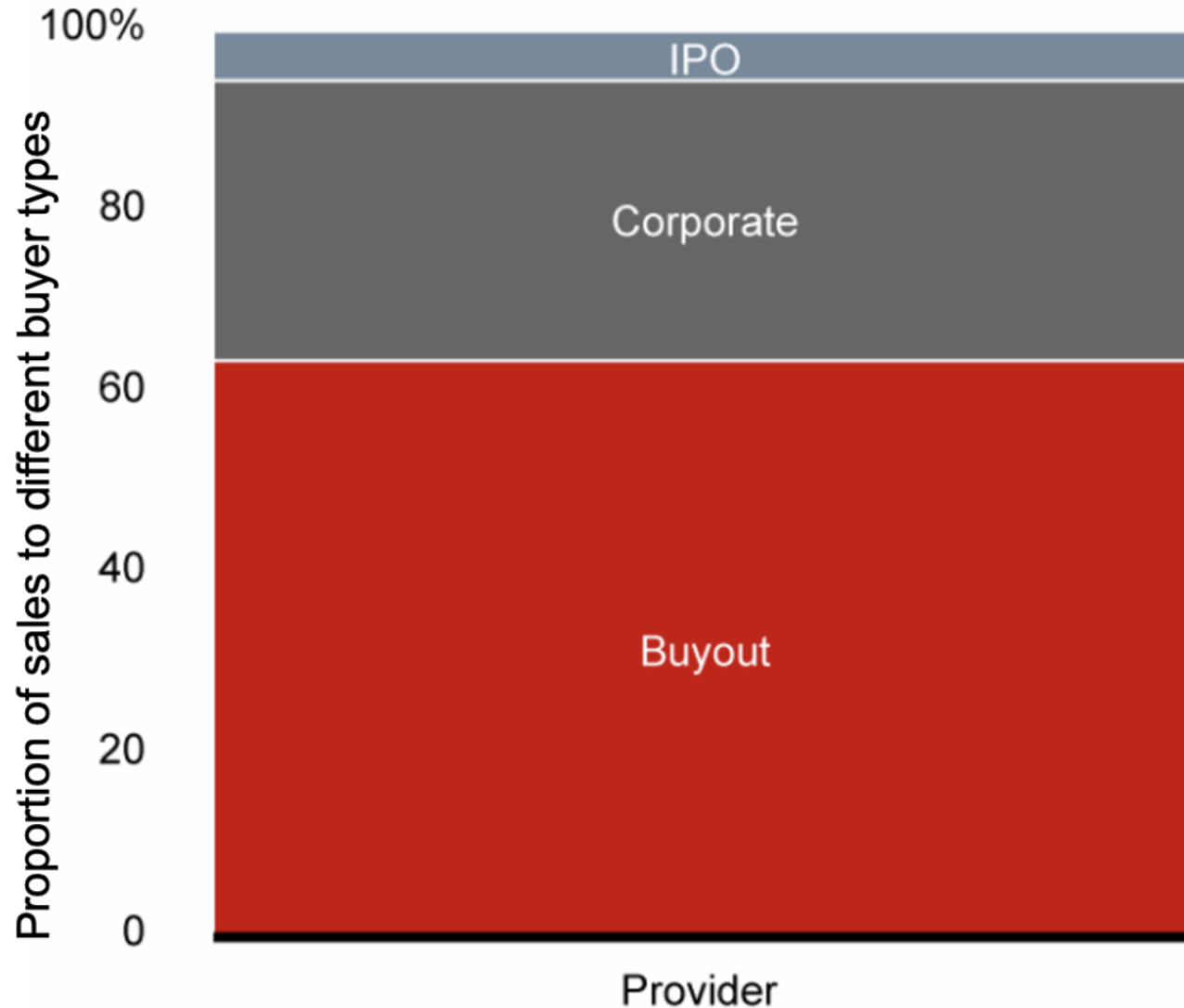


JAMA Health Forum™

Relative to controls, PE acquisitions increased:

Charges	20%
Prices	11%
Aggregate volume	16%
Unique patients	26%
New patient visits	38%
Long (>30 min) visits	9%

“All Roads Lead to Optum”



~65% of sold to other PE firms

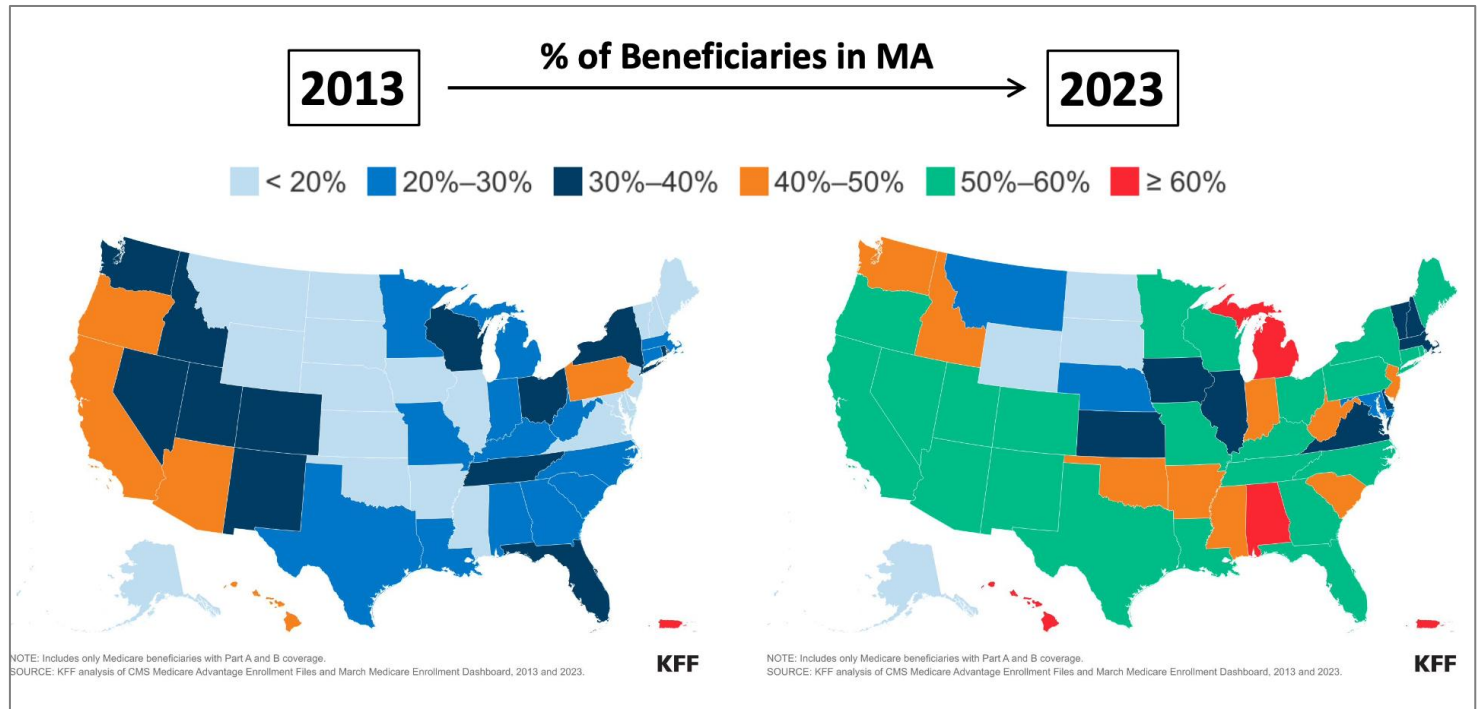
~20% sold to corporate entities
(e.g., Optum, CVS, Amazon)

~5-10% go public

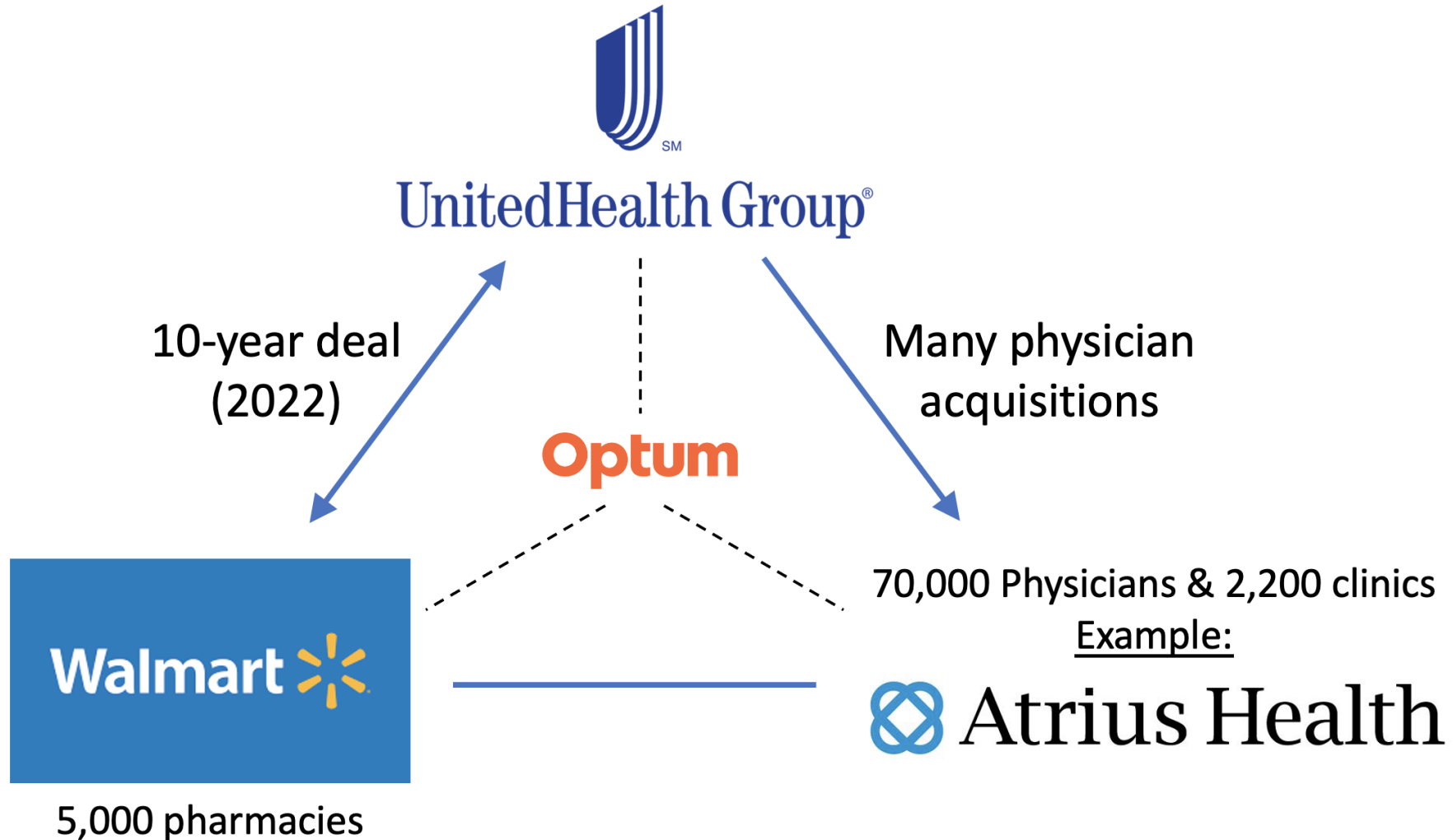
Insurance Companies and Retailers

Rise of Capitation-based Financing

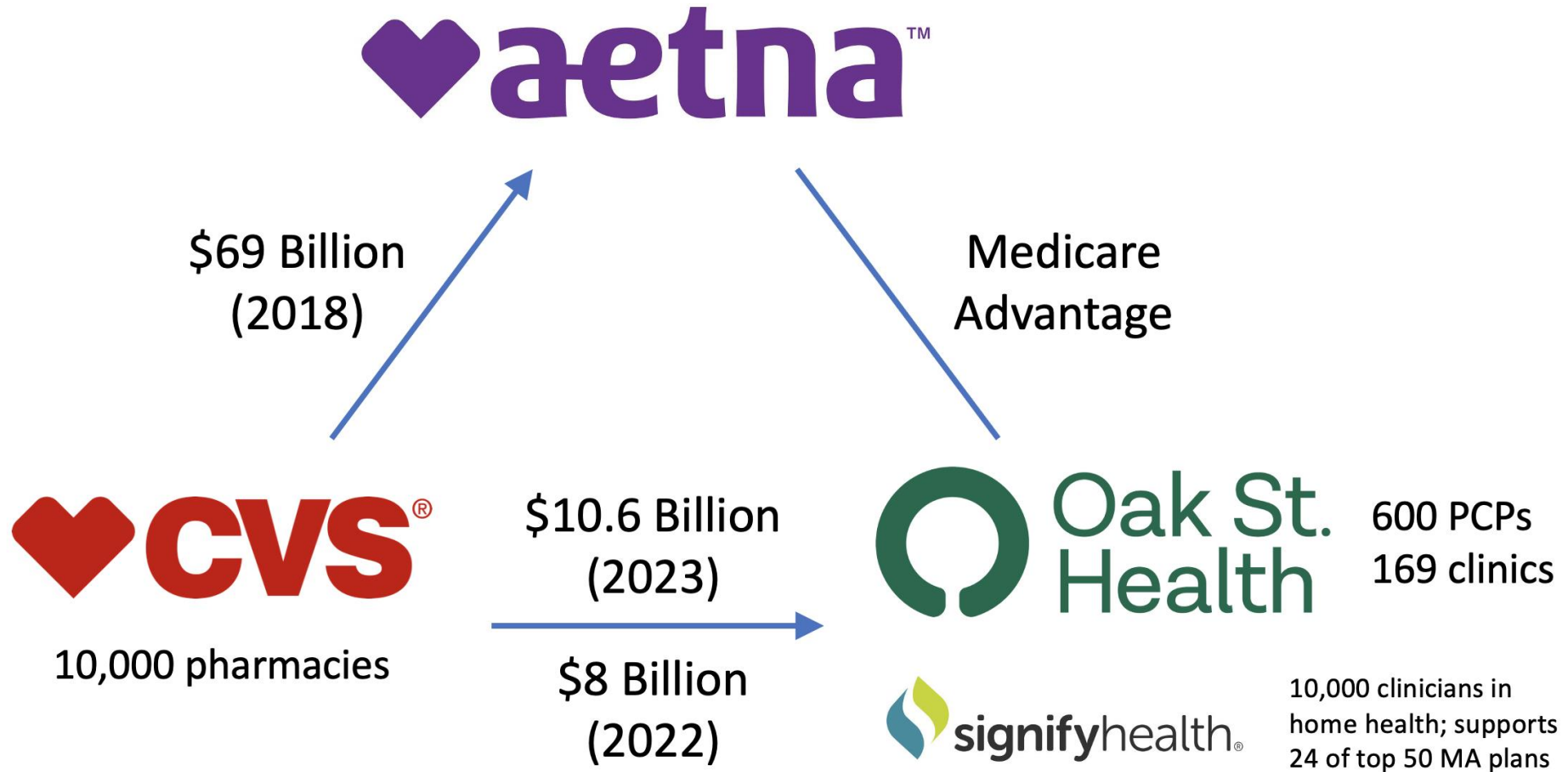
- Medicare Advantage
- Traditional Medicare (ACOs, Direct Contracting)
- Medicaid Privatization



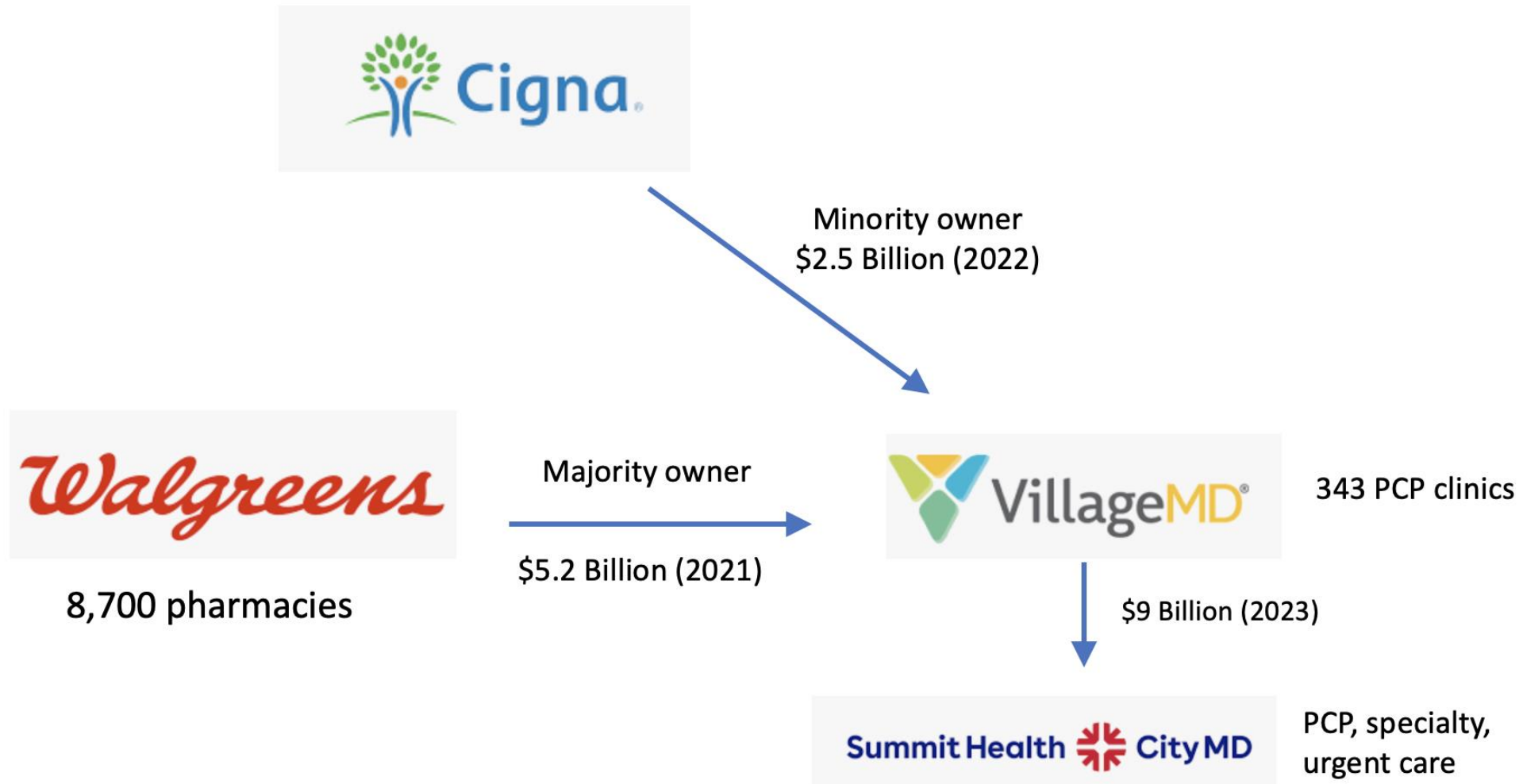
Insurance Companies and Pharmacy Retailers



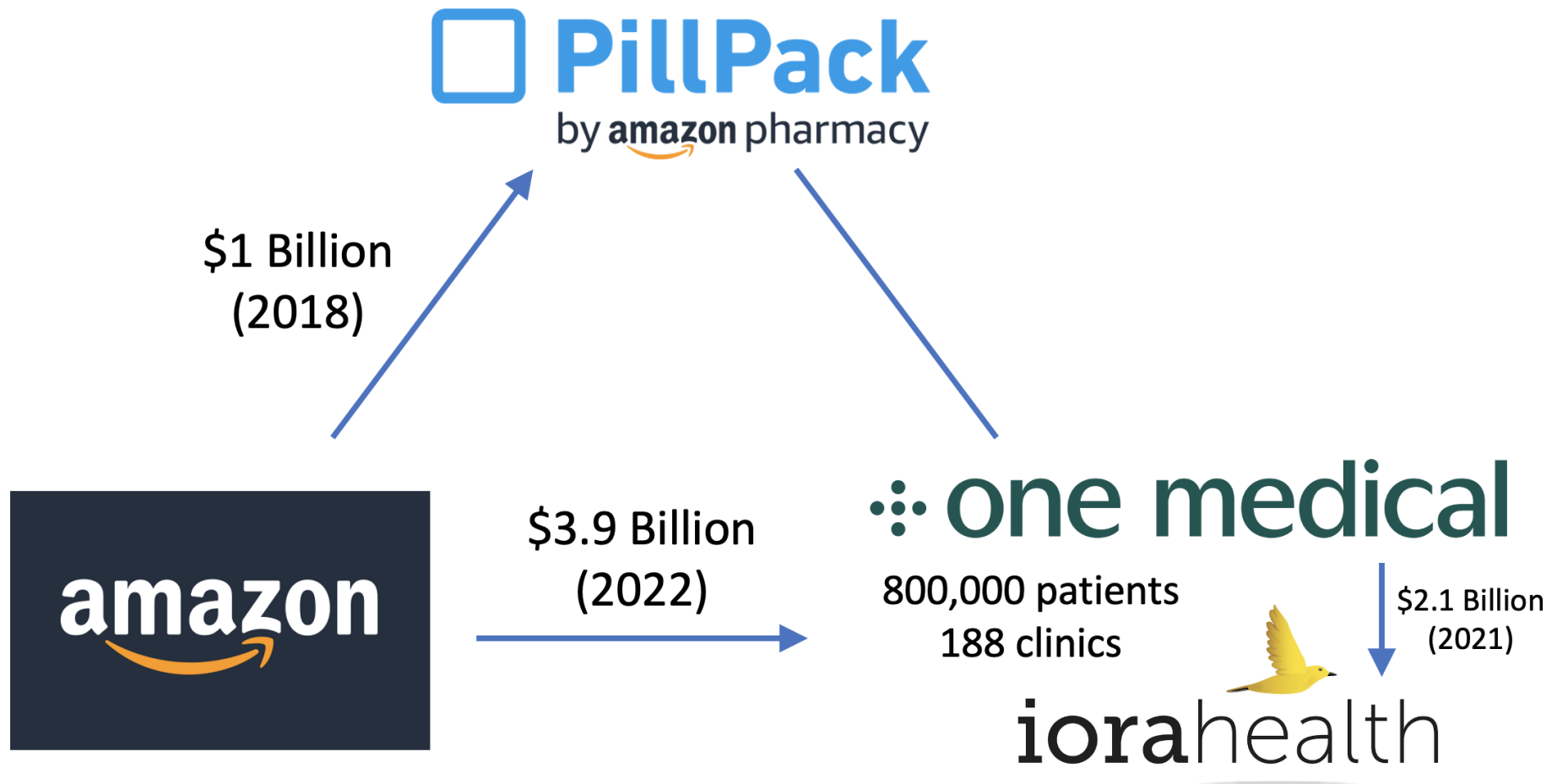
Insurance Companies and Pharmacy Retailers



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Insurance Companies and Pharmacy Retailers



The Corporate Practice of Medicine Doctrine

- The Corporate Practice of Medicine (CPOM) doctrine generally bans unlicensed lay entities from owning, employing, or controlling medical practices
- CPOM ban dates back to the 1800s; rooted in concerns about the commercialization of medicine and the tension between business interest and the ethical obligations of practicing medicine
- Stems from the prohibition on the unlicensed practice of medicine.
- Source of CPOM doctrine includes state statutes, common law, administrative actions (AG opinions, Medical Board decisions)

Perspective
SEPTEMBER 14, 2023

A Doctrine in Name Only — Strengthening Prohibitions against the Corporate Practice of Medicine

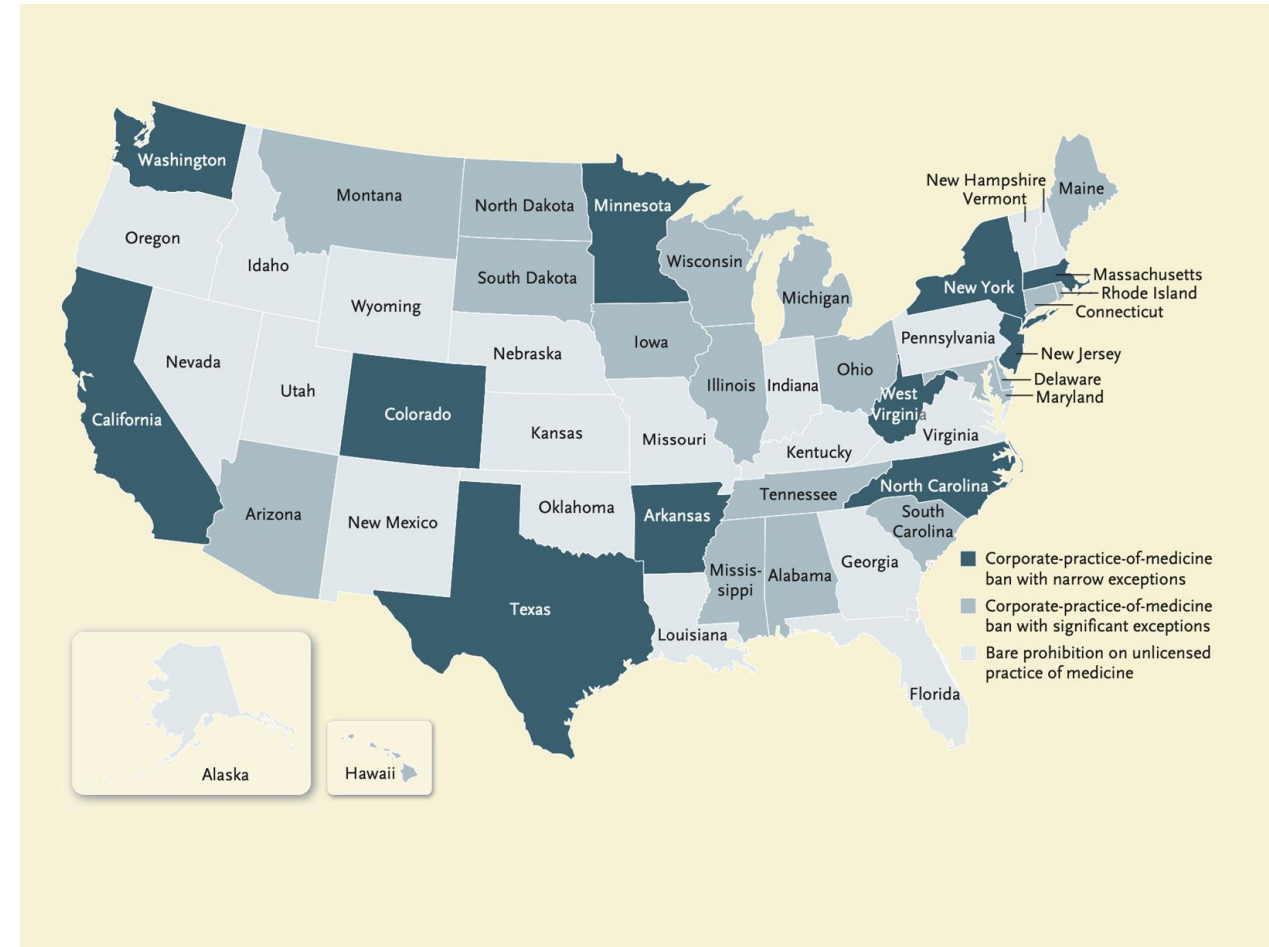
Jane M. Zhu, M.D., M.P.P., M.S.H.P., Hayden Rooke-Ley, J.D., and Erin Fuse Brown, J.D., M.P.H.

In the late 1800s, corporations began hiring U.S. physicians and profiting directly from their services without being bound by professional ethics considerations. Concerned about this commercialization of medicine, in health care continued? And potentially to avoid competi- how can the CPOM doctrine be

ployer, with 70,000 salaried or affiliated physicians, and retailers such as Amazon, CVS, and Walgreens have spent billions of dollars expanding their primary care footprint in nearly every state. Private-equity investors have reached penetration rates of more than

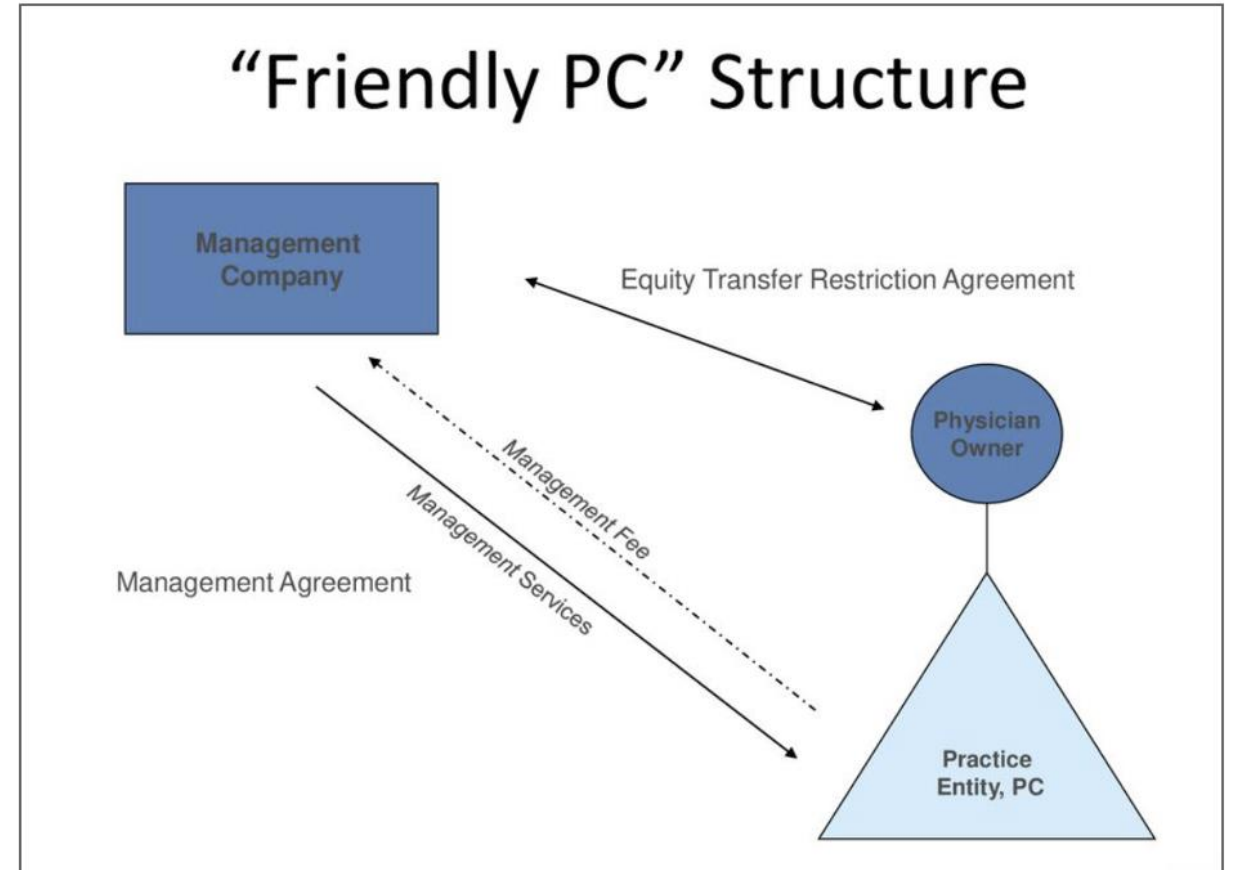
Weakening of CPOM in Recent Decades

- States began to weaken the CPOM ban beginning in the 1970s, coinciding with the “managed care” revolution
- Physician ownership of corporate structures relaxed
 - Professional Corporations (PCs)
 - Limited Liability Companies and Partnerships (LLCs & LLPs)
- Express exemptions for certain types of providers
 - E.g., HMOs and hospitals
- Corporations began to “contract around” CPOM bans to exert de facto control over a medical practice they did not formally own



Corporate Control Via Contracting

- **MSO Model:** Corporate-owned management services organization (MSO) contracts to run the PC
- **Friendly PC Model:** Corporate investor selects a “friendly physician” to run, and often to exclusively own, the practice’s PC
- Ways in which corporate owner exerts control
 - Requiring stock restriction agreements, non-competes, gag clauses;
 - Purchasing practice assets;
 - Hiring and terminating physicians and clinical staff;
 - Setting work schedules, terms of employment, compensation, and staffing levels;
 - Dictating the volume of encounters and controlling diagnostic coding decisions;
 - Establishing clinical standards and protocols; requiring performance standards for physicians
 - Making policies for billing and collection
 - Controlling payer contracting



American Health Law Association Presentation (2017)

CPOM Ban in Oregon Today

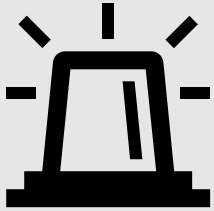
The Oregon Supreme Court recognized a CPOM ban in 1947 in *Sisemore*; still good law today



But the CPOM ban has been weakened over time...

- Corporate structures permitted
 - Professional Corporations (majority MD ownership required)
 - Limited Liability Corporations and Partnerships (majority MD ownership not required)
- Express exemptions
 - Hospitals and other health care “facilities” (1975 AG opinion)
- Contracting around the CPOM
 - “MSO” Model
 - “Friendly PC” Model

Oregon's Enforcement of CPOM



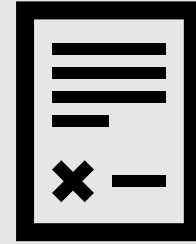
Lax and uncertain enforcement

- Two enforcement cases since 1940s



Unclear primary enforcement body

- AG or Medical Board?



Difficult structure, contractual terms, and compliance of corporate MSO and Friendly PC arrangements

- Consider private enforcement (e.g., by employee or competitor)
- Allow insiders to function as private attorneys general to enhance enforcement