

# Hot Topics in Practice of Medicine and Dentistry

Dallas Bar Association-Health Law Section, October 18, 2017

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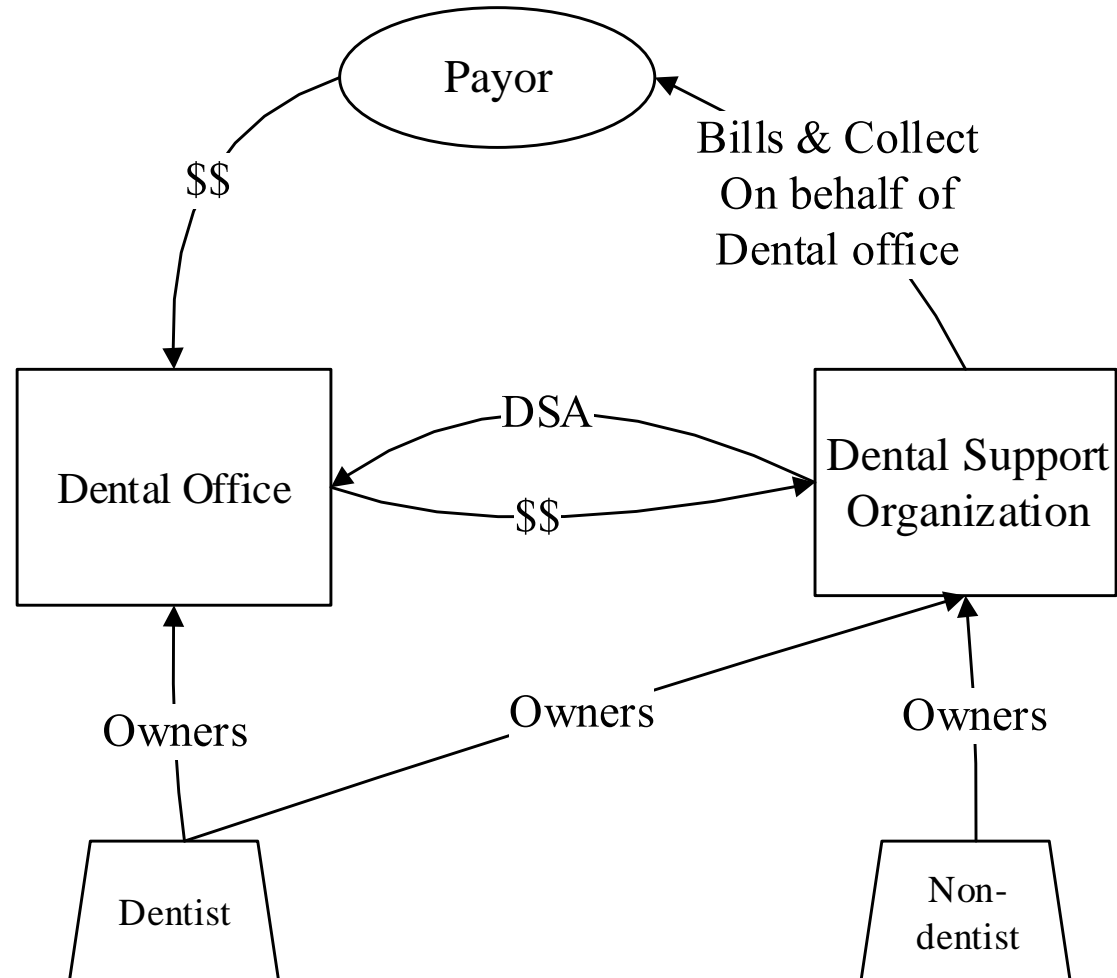
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# Corporate Practice of Dentistry

- A person cannot practice dentistry unless they are licensed by the State.
  - Tex. Occ. Code § 256.001
- One is deemed to be engaged in the practice of dentistry if he **owns, maintains, or operates** an office or place of business in which the person employs or engages under any type of contract with another person to practice dentistry
  - Tex. Occ. Code § 251.003(a)(4)

# DSO Model



# Dental Support Organization

- What is a DSO
  - Organizations that provide two or more business support services to dental practices:
    - Marketing
    - Advertising
    - Billing
    - Collection Services
    - Office Space
    - Etc.
- Why DSO
  - Non-dentist having ownership in an entity in the dental field
  - Legal structure to capture additional revenue
  - Control over business side vs clinical side
  - Common use of back office staff to lower overhead
  - Navigate Regulation Hurdles

# Texas Legislation – September 1, 2015

- Tex. Bus. & Com. Code § 73.004 – DSO Law
  - Sets up registration requirement for all DSOs operating in Texas
  - Must report to the state annually
    - What dentists they have agreements with
    - What is the ownership structure of the DSO
    - What services are being provided to each dentist

# DSO Content & Penalties

- **Registration Content**

- Name and business address of DSO;
- Name and business address of each Texas dentist with which DSO has entered into an agreement to provide two or more business support services;
- Name of each dentist and each person who is not a dentist who owns 10 percent or more of the dental support organization;
- List of all business support services provided to each dentist.

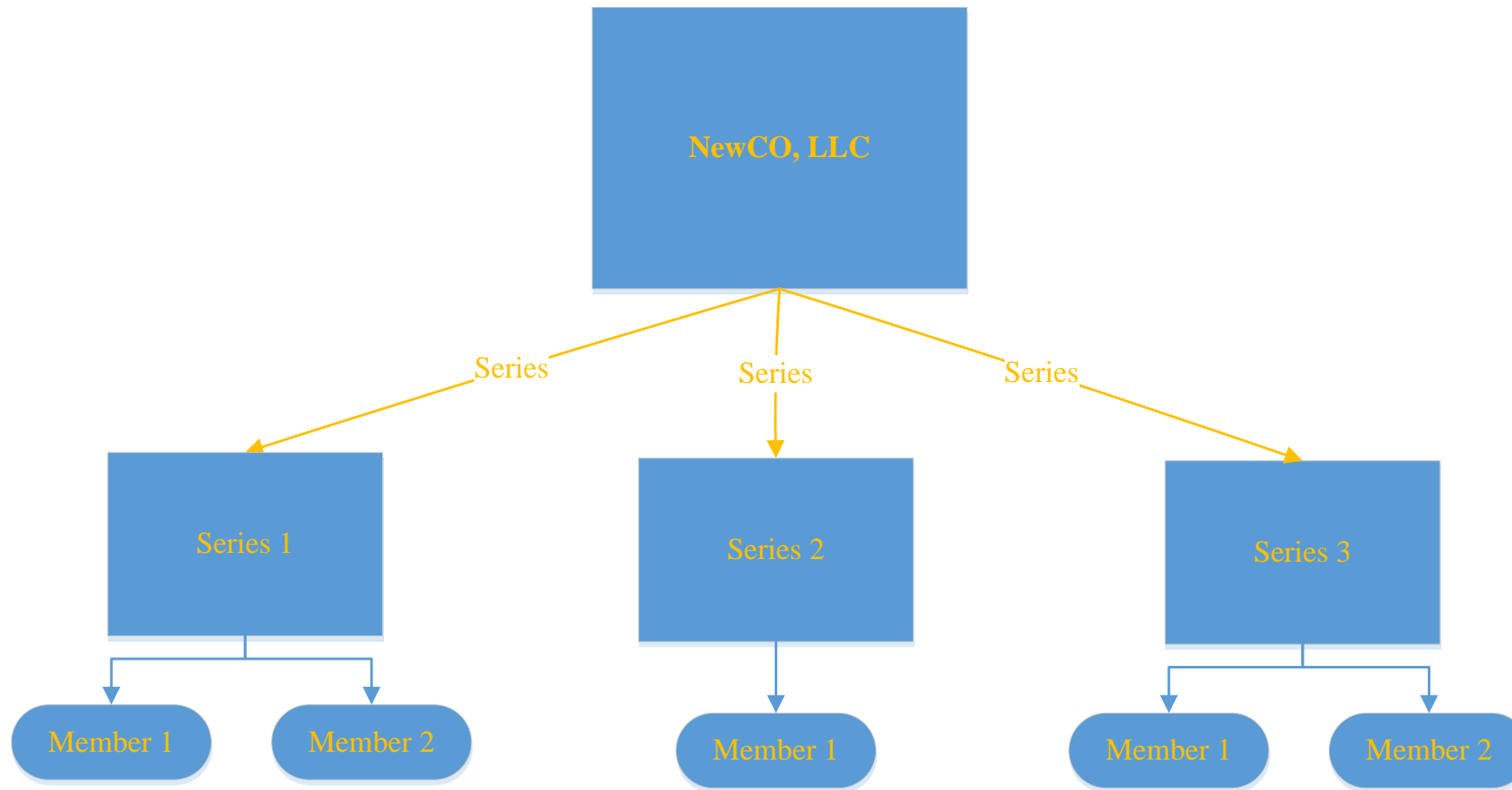
- **Penalties**

- Civil penalty not to exceed \$1,000.
- Each day a violation continues or occurs is a separate violation for the purpose of imposing the civil penalty.
- AG files suit to collect the civil penalty.

# DSO Registration Numbers

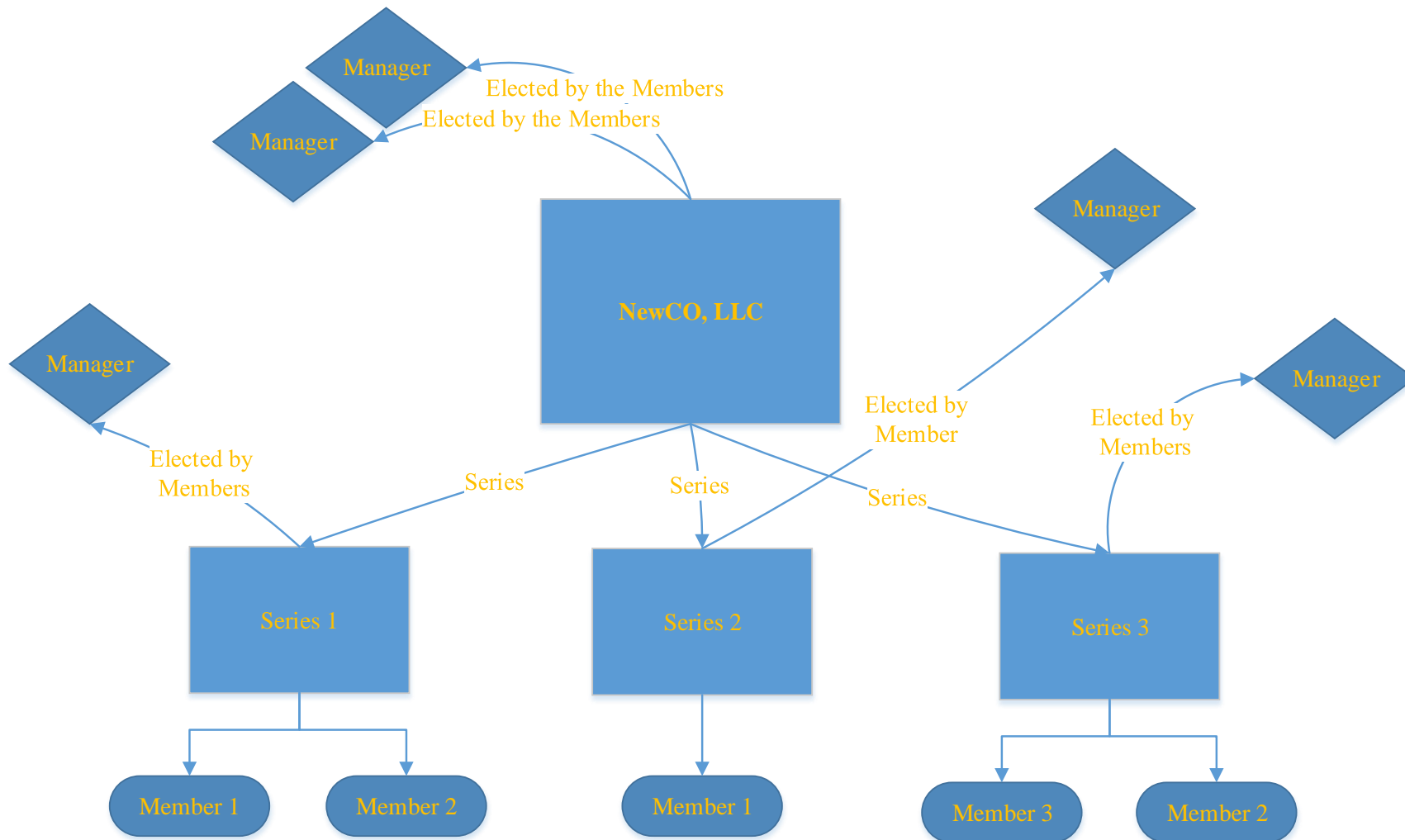
- In 2016, only 17 DSOs were registered in the state of Texas.
- By January 31, 2017 the number of registered DSOs had increased to 120
- The current total is 129 registered DSOs in Texas
- Of those 129, 75 DSOs had at least one dentist listed as an owner
- 54 DSOs did not have a dentist listed as an owner
- However, only those with 10% ownership interest or higher are included in the registration, so perhaps those with less than 10% were not included

# Series Limited Liability Company

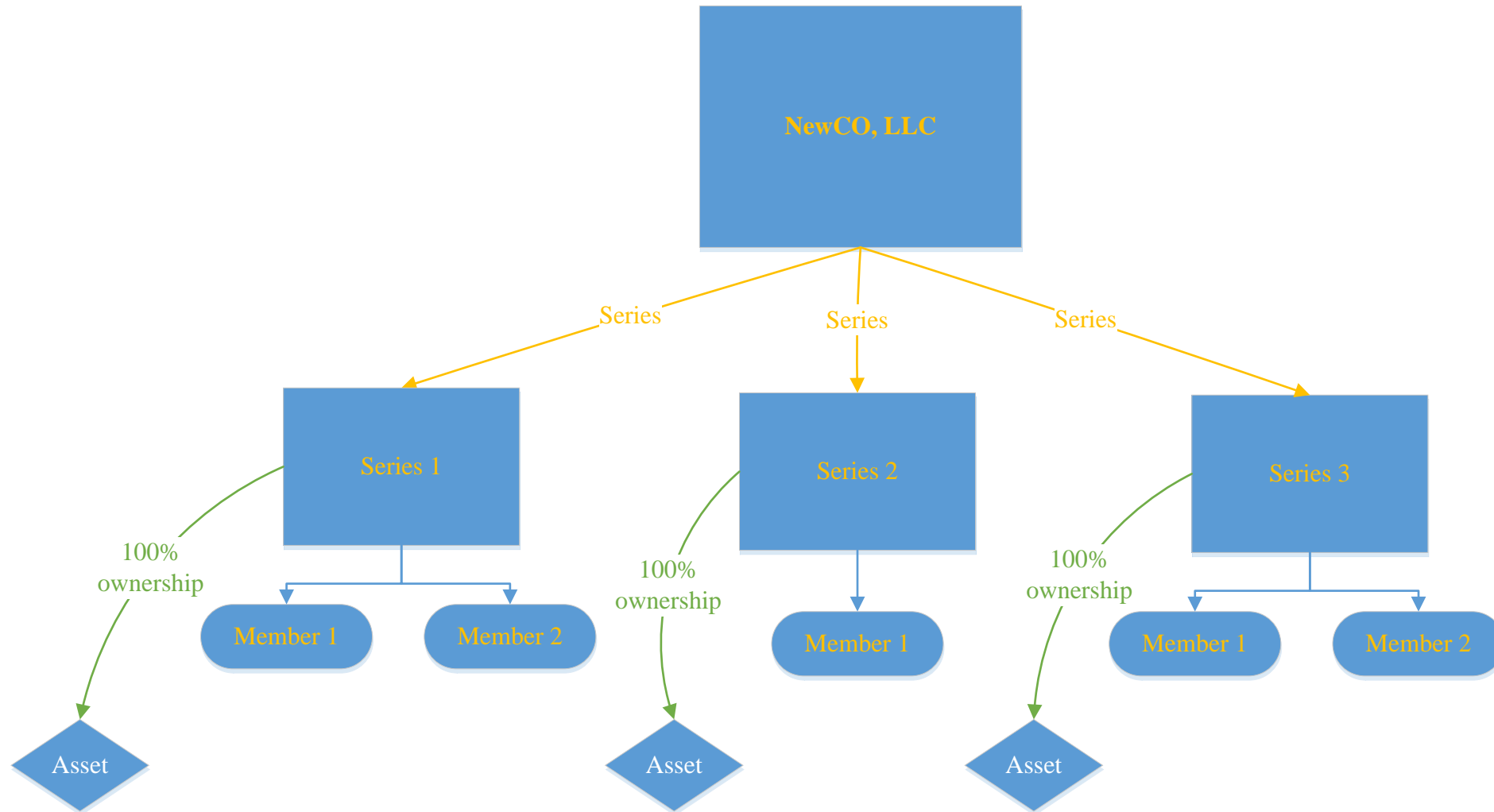




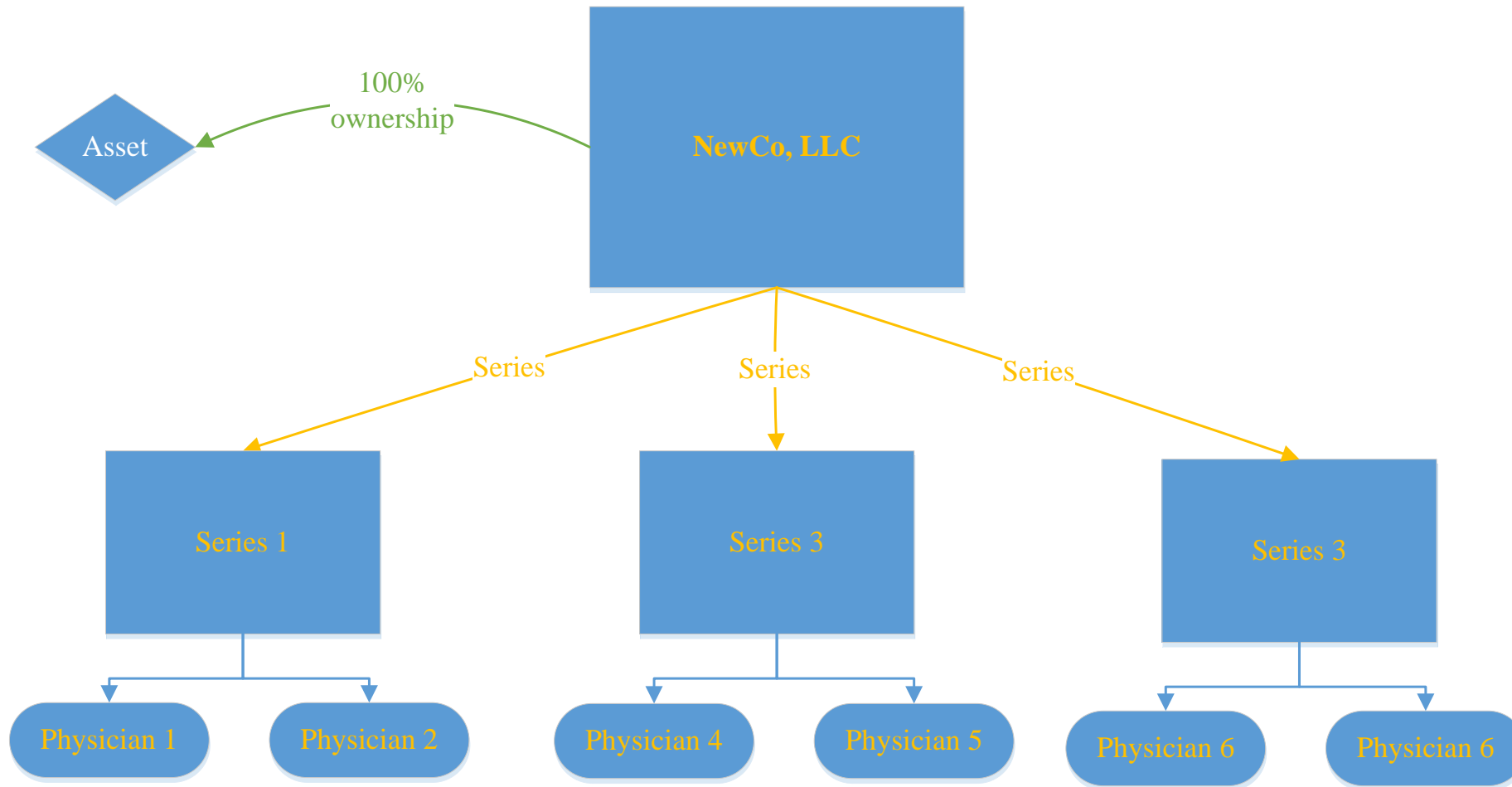
# Series Limited Liability Company



# Series LLC Asset



# Series LLC Asset - Healthcare



# Healthcare Marketing

- Anti-Kickback
  - Federal
  - State
- Safe Harbors
  - Employee (also an exception)
  - Personal Services

# What is Medical Treatment?

- Anything that effects living tissue
  - Botox
  - Most lasers (IPL, hot/cold, radiofrequency)
- Medical Clinics
  - IV Clinic
  - Stem Cell Clinic
  - Weight Loss
  - MedSpas

# Who Can Practice Medicine?

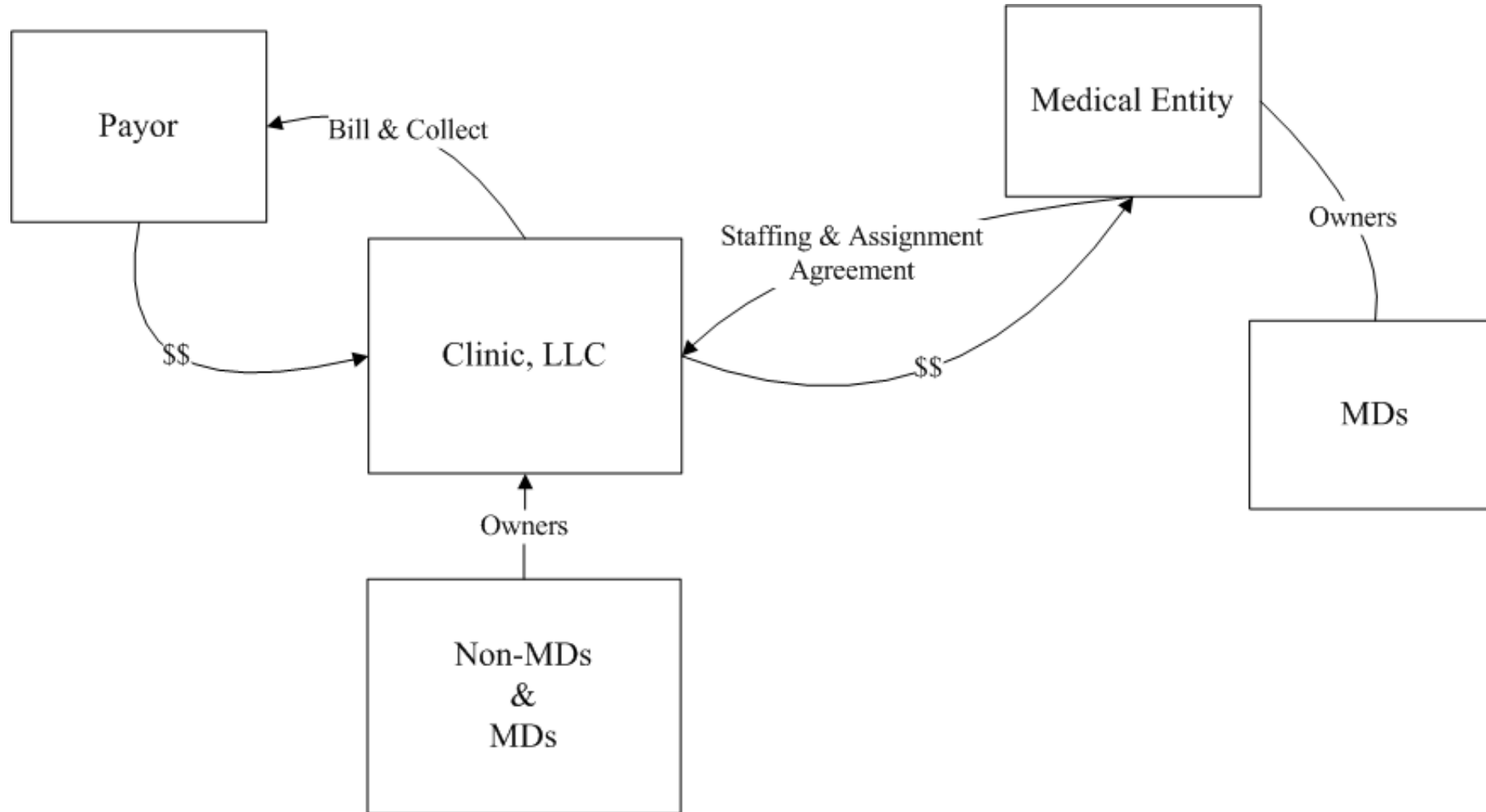
- In Texas, Physicians, Physicians Assistants, and Chiropractors can all own medical practices
- Corporations may not practice medicine unless owned by doctors
- Texas allows Physicians Assistants to own up to 49% of a medical practice in certain circumstances
- Now Chiropractors can jointly own practices with Physicians and PAs

# Texas CPOM



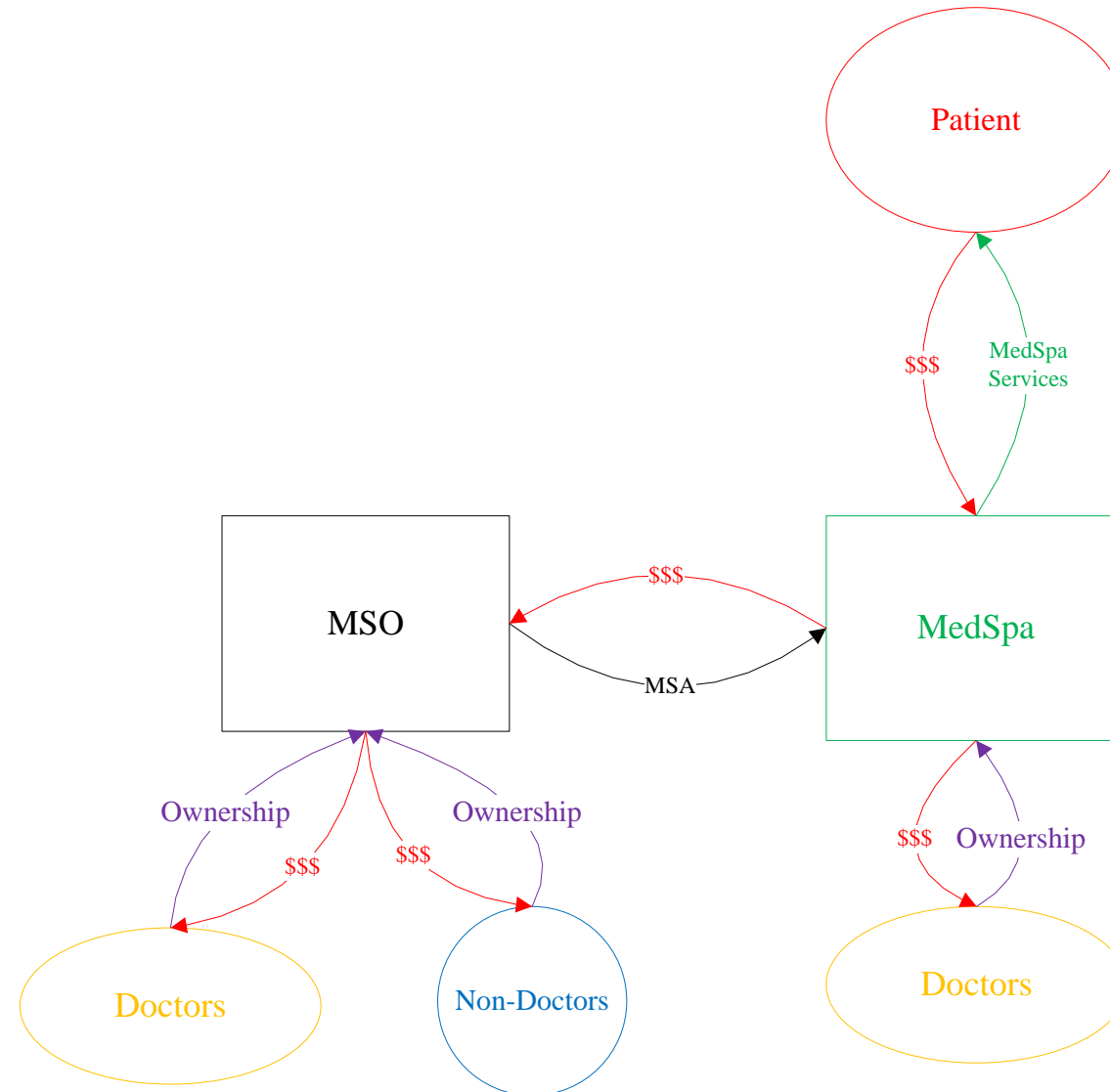
\*Doctors – In Texas a medical practice now can be owned by medical doctors, and chiropractors jointly. Additionally, medical doctors and physician assistants can own-up to 49% of a medical practice, but cannot assert any control over the medical doctors.

# Illegal Texas Model





# MSO Flow of Funds



# Enforcement by the Texas Medical Board

- In 2016, the Texas Medical Board (“TMB”) received 7,821 complaints
  - Of those complaints received, they opened 1,967 investigations (1,662 of which were against physicians)

Year	2016	2015	2014	2013
Complaints Received	7,821	7,510	6,847	6,857
Investigations Opened	1,967	1,853	1,808	1,649

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