

Contracts for Med & Dental Services

Reading time:

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Contracts at first glance can be overwhelming and a very dry read. It is important not to be put off by the terminology and bear in mind that the purpose of a contract is to set the foundation of a professional relationship.

We recommend talking to the employer or other party who has drafted/produced the contract as a starting point for questions. They are likely to have the answers a lot of the time.

Medical/Dental service contracts can be set up as either:

1. Service agreement – a practitioner runs their own business and engages a practice to provide practice management and administrative support services.
2. Contractor agreement – a practice engages a medical practitioner as an independent contractor to provide medical or dental services to patients of the practice.

We have recently seen the use of licence agreements. However, these are usually contractor agreements in substance. A true licence agreement is limited to a property transaction and access to rooms on a flat fee basis. Any term beyond this, such as taking a percentage of Medicare billing, really goes beyond the bounds of a licence agreement.

Recent legislative changes and tax rulings means that medical practices are increasingly required to pay payroll tax and superannuation on amounts paid to medical practitioners. This will often depend on the terms and conditions in a medical services contract. Many medical services contracts seek to pass the requirement to pay payroll tax and superannuation on to medical practitioners.

Tips to look out for when reviewing a contract

There can be many implications for signing a contract. You should look for such elements as:

1. Restraint of trade clauses.

A restraint of trade clause seeks to restrict your right to work elsewhere and your ability to engage with patients and staff of the practice after your engagement ends. For a restraint clause to be valid, it must be reasonably necessary to protect the legitimate business interests of the business. Unlike other terms of a contract, the starting point is that a restraint clause is unenforceable, unless the practice can prove that it is reasonably necessary on a case-by-case basis.

Restraint clauses will often contain both a time period and a geographic radius (such as a restriction on working within 5km of the practice for six months). What is reasonable will always depend on the circumstances of the case, but geographic restraints will generally be harder to enforce in urban and densely populated areas.

2. Term of contract; is it fixed, ongoing or for a maximum term?

If your contract is a fixed or maximum term agreement, it is important that the commencement date and end date are clearly defined. You should always be aware of your rights and obligations to extend or renew the contract.

3. Notice and termination requirements.

If your contract is ongoing, it should state the period of notice that the parties can give to terminate. You should consider whether the notice period is reasonable. For example, does the contract require you to backfill the position or find a replacement if you go on leave?

Some contracts provide for a long notice period, three to six months. This can be a long notice period to serve out once you have decided to move.

You should also be aware of the reasons why a contract can be terminated. Some service contracts allow termination for any reason with notice, while other contracts can only be terminated early if either party commits a serious breach. The right to terminate has a significant bearing on the certainty and flexibility of a contract term.

4. Indemnity for billing errors.

Even though administrative staff often process invoices, the law clearly explains that the individual practitioner is entirely responsible for the accuracy of Medicare billings. This means that if Medicare conduct an audit and find an issue, it is the individual practitioner who is liable to make a repayment and not the practice.

To provide some protection, a service contract can guarantee a medical practitioner control and oversight of invoices submitted to Medicare under their name. A service contract can also go further and provide a form of financial indemnity in favour of the practitioner in the event of a Medicare audit.

Otherwise, some general points to consider:

- Read your proposed medical services contract carefully and ensure you understand its terms.
- If there is anything you do not understand or you do not agree with, speak with the practice and/or seek legal or accounting advice.
- Even if you are not an employee, you can still be required to comply with practice policies that regulate workplace behaviour and work health and safety (such as bullying or sexual harassment) and administrative policies.

If you are unsure of what you need and would like to discuss your contract you can contact MIPS or 1800 061 113.

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