AMA VICTORIA

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NEGOTIATING CONTRACTUAL ARRANGEMENTS BETWEEN GPs

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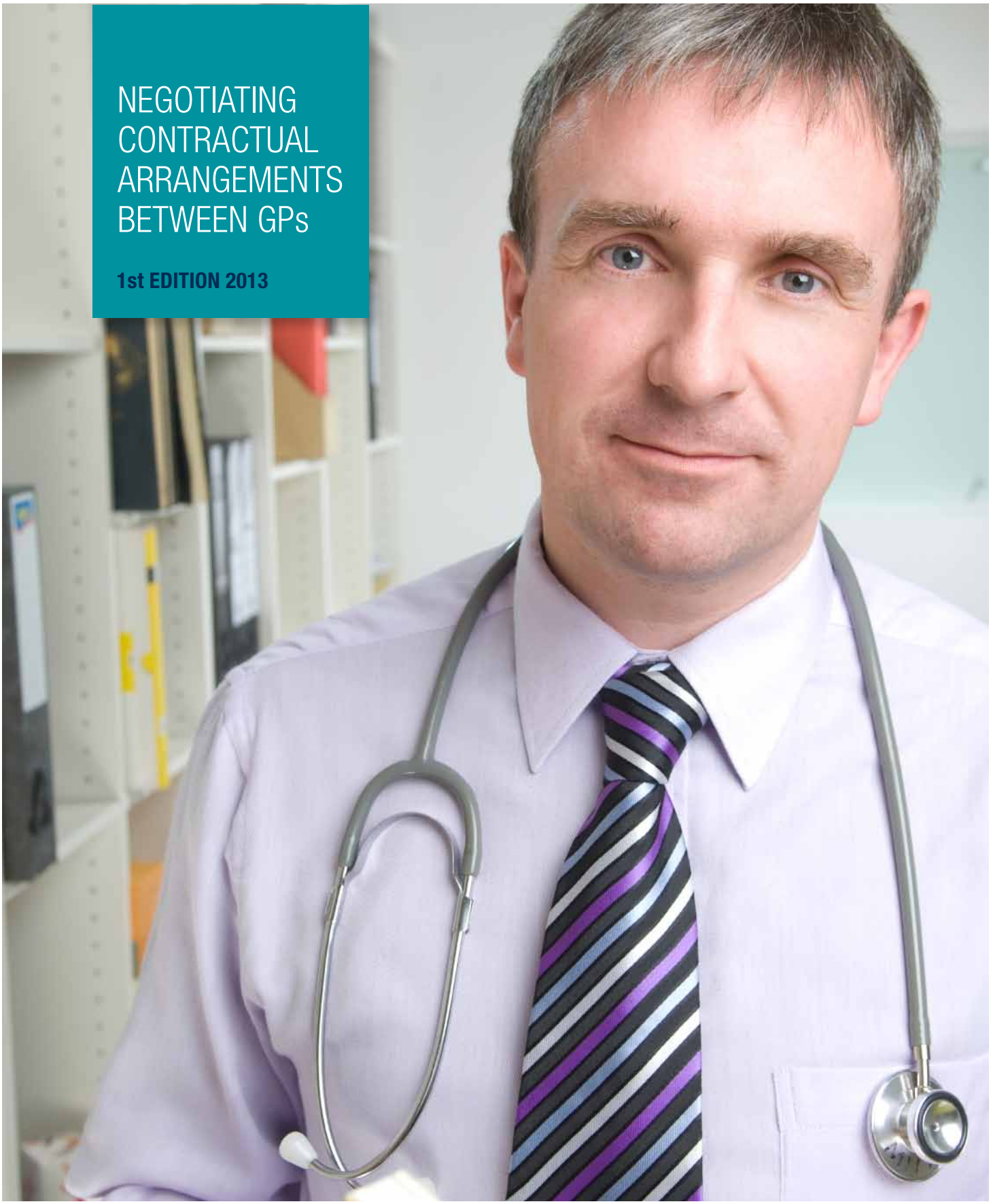

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INTRODUCTION

Negotiating conditions of employment can be a very unpleasant experience for doctors. While we may be used to advocating on behalf of our patients, the practicalities of negotiating in our own best interests can be daunting, particularly if the other negotiating party is a colleague.

Medicine is a vocation, and doctors of course have high ideals about how a practice should work. However, general practitioners running a practice are also running a business, and they face all the associated risks (and benefits) of any other business owner. They need to manage risk and ensure return for investment; it is therefore not unreasonable that, for example, principals will want to negotiate for the best deal when recruiting a GP.

It is important that when employment negotiations do start we are properly equipped with the information needed to make informed choices during the process. This will allow us to present our position in the best possible light and ensure the right decisions are made.

We should also remember that we are dealing with colleagues, often in a small business. Maintaining relationships is extremely important when negotiating, so while seeking an outcome that suits your interests it is incumbent on you to understand your colleagues' position as well.

I commend this publication to you as a roadmap to assist in the task of negotiating a GP contract.

Best wishes

Dr Stephen Parnis
President, AMA Victoria

Why use this guide?

General practitioners who commence a new job in private practice often begin after having only a brief discussion about their formal employment arrangements. In many cases, the arrangements are not fully set out or documented, or not documented at all. Doctors appreciate the need in their clinical practice to accurately document processes and outcomes – employment arrangements should be approached with the same level of care and detail.

Negotiating conditions of engagement with a practice can be a challenge for GPs and principals alike. However, discussing and documenting arrangements up front and in a more formal way leads to more workable arrangements for GPs in their day-to-day practice. Formalised arrangements also allow for any issues that arise between GPs in the practice to be dealt with early on. They provide a framework to guide discussions and assist the GP and the practice to work through the issues using an agreed starting point.

When preparing to negotiate, you should be aware of the variety of engagement arrangements that may be used in private medical practice. Alternatives to the traditional "employee/employer" arrangement may allow GPs greater flexibility in their practice. For example, a GP may be offered a position as an independent contractor or as part of an associateship. GPs will benefit from familiarising themselves with the obligations and entitlements each arrangement entails prior to making a final decision on whether to accept or reject an offer.

Need to know more?

AMA Victoria has a wealth of knowledge and resources available to help GP members with all aspects of running a practice. If you want to find out more about the information in this guide, or for any other information, contact AMA Victoria on (03) 9280 8722.

UNDERSTANDING PRACTICE STRUCTURES: THE LEGAL FRAMEWORK OF ENGAGEMENT IN GENERAL PRACTICE

Introduction

Although some GPs work as employees in private practice, there are other legal relationships in use. Any one of a range of arrangements may be offered to you when negotiating an agreement to start work, and it is important to understand the nature of the relationship offered. This may not always be clear.

A word of caution: you need to consider the true legal basis of the relationship, as it may not be what is stated in the contract. For example, an "Independent contractor contract" may actually be an employee/employer arrangement on examination of the relationship, which gives rise to significantly different obligations for both parties.

Advice on a proposed arrangement, or changes to an existing arrangement, should be obtained from AMA Victoria, an accountant, a solicitor and/or a financial advisor.

Types of GP engagement

The most common forms of engagement arrangements are:

Independent contractor

Many assumed "employee/employer" arrangements are actually independent contractor arrangements. A GP working as an independent contractor is in effect operating their own business and faces liability, tax and legal compliance issues that are not faced by an employee.

The legal test to determine whether a person is an employee or an independent contractor involves many factors. Some of the indicators that a GP may be an independent contractor are:

- the GP invoices the principal for their work – leave, PAYG tax and superannuation are not paid
- the GP can set their own hours of work and offers their services beyond the practice to other practices or the community at large
- the GP has the authority to control their work
- the GP has the right to delegate their work to other GPs
- the GP is responsible for purchasing their own professional indemnity insurance and for providing their own work equipment.

For example, a locum who comes and works in a practice while another doctor is on holiday often does so as an independent contractor. They are contracted by and provide services to the practice for the period of the locum.

Service entity that supplies administrative and nursing support

Any medical practice can set up an independent business entity to provide GPs with practice support services. In this type of arrangement, the practice is a "service entity", responsible for providing:

- property management issues in operating the rooms
- shared reception, practice management and other non-medical staff, and
- shared telephone and IT systems, computer equipment and general office services.

GPs using services provided by a service entity can pay for them without taking on the financial and legal responsibilities of the business itself. Service entities are commonly run as companies or trusts.

This type of arrangement has become very common in general practice. Large corporate practices provide administrative and nursing support for GPs, in return for payment of a facility fee.

Associateship

An associateship is an arrangement where two or more GPs own and operate their own practice and agree with one another to contribute towards the shared cost of running the practice.

Costs that are shared between associates often include practice management and support services such as:

- rent, maintenance, utilities and other expenses involved in operating the rooms
- shared reception and practice management staff, and
- shared telephone and IT systems, computer equipment and general office services.

An associateship is not a legally recognised structure (unlike a partnership) and so the rights and responsibilities between associates depend entirely on the associateship agreement.

It is important to structure the associateship arrangement so that it is not, under law, considered to be a partnership. This is because a partnership attracts additional liabilities for the GPs involved.

Associateship tends to be an older style of arrangement that was entered into to allow GPs to collectively set fees.

Partnership

A partnership is defined as a contractual relationship between two or more persons carrying on a joint business venture with a view to profit, each incurring liability for losses and the right to share in the profits.

A practice may be classified as a partnership, even if the term "partnership" has not been used in any written agreement.

A partnership is not a separate legal entity, and as such all assets of the partnership are owned by the partners jointly. Each GP partner is jointly responsible for all aspects of the practice, and profits are shared according to the agreement. It is important to note that each GP partner bears individual liability for the consequences of any decision made by them or any other partner on behalf of the partnership.

This means a partner is liable for:

- any contracts entered by the practice or by one partner on its behalf
- the civil liability of all other partners and employees, including liability for negligence, and
- potentially, the criminal liability of all other partners and employees concerning the practice.

Because of the extent of personal liability a GP partner faces, partnership is not a common structure for private practice. GPs may wish to seek advice on how to structure any arrangement to avoid being considered part of a partnership.

Incorporated medical practice (company)

A private medical practice can be operated by a company, much like any other business. This arrangement is referred to as an "incorporated medical practice". A company is a separate legal entity owned by shareholders and run by directors. To become a member of an incorporated practice, a GP is required to purchase shares in the company. They may also be appointed as a director.

One advantage of a company structure is that the company (and not the GP) is generally liable for the financial and legal responsibilities of the practice. The shareholders, and in most cases, the directors, do not face these liabilities personally.

However, incorporated medical practices do not allow GPs to avoid any personal liability arising out of their professional obligations and responsibilities.

This type of structure is often found when a non-medical practitioner is involved in ownership of the practice, for example, the practice manager.

Lease

GPs can operate their own practice by leasing a property or rooms at commercial premises, regardless of whether or not those premises have other medical practices as tenants.

A lease (or a sub-lease) gives an exclusive right to the GP tenant to use the property or rooms. Any arrangements to share the rooms on a sessional basis are at the tenant's discretion.

GPs considering entering a lease are strongly advised to seek legal advice, as it is a highly regulated arrangement.

Those who lease tend to be doctors running their own independent practice. For example, the owner of the practice may lease the building or might rent a room and reception area from a private hospital.

Licence

GPs can also operate their own practice by accessing a property or rooms on a shared (non-exclusive) basis. A licence arrangement exists wherever there is non-exclusive use of the rooms or premises. Exclusivity of use indicates a lease rather than a licence arrangement.

A licence does not give any exclusive rights over property, but allows a GP access to a specified area on the terms set out in the licence agreement. The terms on which a GP can access and use the premises should be set out in detail.

This style of arrangement is common in specialist practices run on a hospital site where the doctor does not want to set up a full suite of administrative services.

Employee/employer

Most GPs would recognise the formalities that are associated with working for a practice as an employee. In most cases their work hours are directed by the principal, an hourly rate or a percentage of fee-for-service is agreed, leave entitlements and superannuation apply, PAYG tax is retained and the doctor is required to follow the lawful directions of the employer.

GPs should not simply assume they are employees. If you are negotiating to start work, you should not assume the arrangement being offered is one of employment. Employee/employer arrangements are more common for first and second term GP registrars and some community health centre GPs.

Legal compliance obligations

When you are seeking engagement as a GP in a private practice you will need legal, accounting and/or financial advice to develop an understanding of:

- the professional obligations you continue to face as a medical practitioner
- your legal obligations as a business operator or employee
- running your practice efficiently and profitably, and
- insurance policies (such as personal accident and income protection cover) that will help manage your personal and financial risks.

The legal issues you will need to consider include (among others):

- privacy legislation
- medical practice law and regulations
- taxation legislation
- trade practices and consumer law (including pricing decisions)
- health and safety law
- workers' compensation
- public liability, and
- industrial law entitlements and obligations.

These issues provide a useful list when assessing which type of practice structure is most suitable for your circumstances.

NEGOTIATING A MUTUALLY WORKABLE EMPLOYMENT ARRANGEMENT

Introduction

GPs looking for work in private practice need to consider their personal circumstances and bargaining power. Whether the offer is for an employee/employer arrangement or another structure, you should not forget that principals and GPs alike are primarily looking for an arrangement that is workable for all concerned.

A practice will operate more smoothly and issues will be resolved more readily if the practice arrangement is clear and suits all parties. This means it is in the interests of both principal and GP to work towards a win/win outcome. It also means that both parties need to know when the proposal is not going to be workable and they would be better off not pursuing the position. GPs who understand the negotiation process can have the confidence to negotiate and maximise their opportunity to secure a workable position.

Preparing to negotiate

Negotiating an agreement is about matching what you want (and how badly) with what the principal wants (and how badly). This is the most important step in the negotiation and should be worked out before you start. You will also need to identify what you can bring to the practice that adds value. Unless you can "add value", the practice will have no reason to engage with you.

You need to consider the following:

What sort of practice structure do you seek? For example:

- Do you want autonomy to run your own practice (within a practice), or would you prefer to work at the direction of the principal?
- Are you content to bear responsibility for the paperwork involved in running a small business, or would you prefer the practice to do this?
- Do you want flexibility to be able to take your business to any practice, or are you seeking a relatively long-term relationship with one practice?

What pay and benefits do you want? For example:

- Do you want to receive an hourly rate or a percentage of fees?
- What blended payments (such as Practice Incentive Payments) are you seeking? See Appendix A for a run down on possible PIP payments.
- Does the payment include superannuation contributions (at 9%)?
- Are you required to teach students, and if so is this extra time compensated?
- Are you prepared to be responsible for funding your own leave, or would you prefer the practice to fund your leave and organise a replacement in your absence?

What responsibilities are you prepared to take on? For example:

- Are you prepared to contribute to the practice expenses in exchange for better pay?
- Do you want responsibility and ownership of your own patient records, or would you prefer the practice to take on this role?
- Do you want responsibility for all the paperwork, or would you prefer the practice to complete this?
- Are you willing to take on any new patient that walks in the door, or do you prefer to treat a particular demographic?

What liabilities are you are prepared to bear? For example:

- Are you prepared to be liable for the expenses of the practice, or just your own expenses?
- Are you prepared to manage your own financial risks, or do you prefer an employer to manage PAYG tax, superannuation contributions and other benefits?

How can you add value to the practice?

- How much can you bill in a year? Check Appendix B to calculate this.
- How many patients can you bring to the practice?
- What specialty interest can you bring to the practice that it does not already have?
- What additional resourcing can you bring – for example, flexibility to pick up extra sessions?
- Is gender balance an issue that can assist the practice to meet the demands of patients?

With each of these points you need to consider how much you would be prepared to compromise. Work out which issues are non-negotiable (e.g. hours and days of work), and which are desirable with some room to move (e.g. pay, benefits).

Greater acceptance of responsibilities will usually mean the opportunity for better pay, but will also mean higher exposure to legal liabilities.

A non-exhaustive list of potential conditions is contained in Appendix C. This is not a necessary list of items as some headings will not be relevant to all types of arrangements.

The process

In most cases the principal will make you some form of initial offer. If they want you to start work but haven't detailed the offer, ask them to do so. If they simply ask you what terms you want, put your best offer (not your bottom line) in detail and give the principal the opportunity to respond. Specify which details need to be discussed.

You should do the following in each round of negotiations (or exchange of offers).

- Assess the offer against your priorities (worked out above), see where you have room to move and where you have non-negotiable issues you must pursue. Never reveal your priorities during the negotiation.
- Consider why the principal is prepared to move or not (i.e. what their own priorities are), and see how you can make a counter-offer that addresses their priorities whilst suiting yours.
- See where you can concede something less important to you in exchange for the principal conceding to something more important to you.
- Start with big concessions and make gradually smaller concessions as you get closer to an agreement.

When negotiations get down to the key issues you should be realistic about whether it would be better to "walk away" than agree to work based on the terms on offer.

- Don't make an ultimatum based on your bottom line unless you are prepared to walk away if it is rejected. Walk away if your bottom line is still unacceptable to the other party.
- At the same time, don't be surprised if you walk away and then get a new offer.

When you reach an agreement, it is critical that the agreement is documented, signed and dated by you and the principal as soon as possible. This ensures the terms of the agreement are recorded while your minds are fresh, and that neither side can back out if they have a change of heart afterwards.

If you have reached agreement and need a formal contract prepared, as a minimum, prepare and jointly sign a "heads of agreement" listing all the key terms and conditions you have agreed on. Follow up regularly to ensure the formal contract is prepared quickly and that its terms match those outlined in the heads of agreement.

Never resign from your current job until you have a signed contract with a new practice.

When you start work, make sure each aspect of the contract is implemented according to your agreement (e.g. session arrangements, pay paperwork, IT systems, access). Any aspect that is not implemented completely should be followed up promptly.

Once things are underway, arrange for periodic meetings with the principal to review the contract and your working arrangements. This allows each of you the opportunity to raise any issues about your arrangements or the contract itself.

Things that occur that differ from what was agreed need to be addressed. Any work practices that are significantly different to the contract should be raised with the principal as soon as possible. If you delay, you might be seen to be agreeing with the changes.

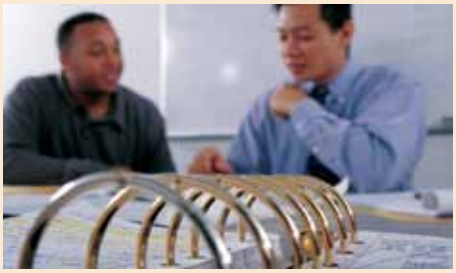
Attempt to resolve any issues by referring to what is in the written agreement. If things have changed for either or both of you, you may need to re-negotiate a new agreement.

Remember

The objectives for both you and the principal are the same – for there to be a good working relationship between you and the practice from which you can both benefit. Treat negotiations as a positive process designed to ensure a workable outcome for you and the practice. Being well prepared at the start, understanding the process and having a positive attitude will assist enormously in you achieving this goal.

However, not all negotiations go well and sometimes the best negotiators are the ones that recognise problems early and act accordingly. Above all, work to protect and maintain your relationship with the practice. It can be very difficult for a GP to work in a small practice (or town) when the relationship with the practice has become strained, regardless of the rights or wrongs of the situation.





Tips for negotiations

The best way to enter into any negotiation is to be very well informed, understand the process, understand yourself and bring a positive and open attitude.

Information to have on hand which will assist you:

- What is "normally" paid in the area for your work?
- What can you bill in a year?
- How will your personal circumstances affect your ability to practice?
- What can you bring to the practice that they may need or desire?

There is no set process for negotiations, but the following outline may assist:

1. Offer is made (generally in writing).
2. Consider the offer and provide a response that identifies the terms you agree to and the terms you wish to negotiate.
3. Negotiate through the identified terms and response.
4. Agree in principle, subject to final wording (and sign a "heads of agreement").
5. Draft a final contract.
6. Sign off.
7. Commence.
8. Orientate.

Attitude is all-important.

- Be positive and open to considering arrangements that you may not have considered previously.
- If negotiations stop being interesting or constructive, withdraw!
- Control your emotions.
- Always consider their circumstances, as well as your own.
- Focus on easily negotiable issues first and more difficult issues last.
- Avoid ultimatums!

APPENDIX A – Sharing of grants, such as Practice Incentive Payments

The distribution of the Practice Incentive Payment (PIP) is open to discussion, negotiation and agreement between an independent contractor/employee and the practice.

It is becoming more common to include the allocation of blended payments as an incentive for the independent contractor/employee and the practice to attract needed funding. The following information is provided to assist such discussions.

The PIP is based on ten broad elements, some of which relate to organisational issues within the practice and others that are based on the provision of clinical services. The distinction could be the basis for distribution between the independent contractor/employee and the practice. You may wish to negotiate possible distribution ratios for some, or all of the following.

A word of caution: these distributions would change markedly if the practice paid an employee GP by the hour and provided time within their normal working week to complete the work. For example, if the GP is paid by the hour and is involved in student teaching, there is less argument for the GP to be paid extra for this time as their salary is not affected by seeing fewer patients. However, if a GP is paid based on a percentage of fees, he or she may earn less when teaching a student as the consult takes longer to complete.

The setting of fees is a matter for individual negotiation. The listed distributions below ARE NOT recommended fees but are supplied purely for illustrative purposes.

Where practices receive additional incentives for the provision of services by other allied health providers, it is suggested that items billed in the name of the independent contractor should be distributed to the independent contractor and the incentive payment retained by the practice. A clinician's pool could be developed and divided amongst the clinicians on some agreed basis, perhaps pro-rated for the number of patients seen or hours worked.

The actual distribution is dependent on individual negotiation and local circumstances.

The elements of the PIP are listed below

Possible PIP distribution for an independent contractor paid a percentage of billings

Element	Aspect or activity	Possible distribution practice/doctor
1. e-Health Incentive	Practices have a secure messaging capability	100% practice
	PKI certificates for the Practice and each GP	100% practice
	Access to key electronic clinical resources	100% practice
2. After hours	Ensuring patients have access to 24-hour care (all practices will qualify for this payment)	100% practice
	The practice provides the minimum level of after hours cover (dependent on practice size) for all regular practice patients	% of time spent by doctor on call
	The practice provides 24-hour coverage from within the practice	% of time spent by doctor on call
3. Teaching	Teaching of medical students	% based on billing split
4. Aged Care Access Incentive	GPs must provide 60 eligible services	100% to doctor
	GPs must provide 140 eligible services	
5. Rural Loading	The practice's main location is outside metropolitan areas (increases with remoteness)	100% practice
6. Quality Prescribing Initiative	Average of three activities per full time equivalent GP, one of which is a clinical audit	33% of 1 EFT incentive per audit to doctor
7. Diabetes care	Completion of diabetes cycle of care	50% to doctor
8. Asthma best practice care	Completion of asthma cycle of care	50% to doctor
9. Cervical cancer screening	Cervical cancer screening for women who are unscreened or significantly under-screened.	50% to doctor
10. Indigenous Health Incentive	Patient Registration Payment	100% practice
	Target level of care for each registered patient in a calendar year	100% practice
	Provision of the majority of care for each registered patient in a calendar year	100% practice
11. Procedural services	Provision of obstetric, anaesthetic and surgical procedures by a GP	100% to doctor

APPENDIX B – Determining your earnings for the year

The following provides a list of activities that you may undertake as a GP. The list includes consults and procedures at a local public hospital. Ignore those elements that do not apply to your practice.

Be aware that with some PIP payments, the practice may provide some or all of the resources necessary to deliver the service. As such, while the revenue may be correctly allocated to your provider number, there will be an expense, other than your labour, for delivery of the service – i.e. wages of a practice nurse or diabetes educator.

To determine your approximate earnings for the year, take the following steps.

1. Identify (from the table below) the items that form part of your normal practice.
2. Estimate the number of times you will provide this service over 4 weeks.
3. Fill in your standard charge for this work.
4. Total up the estimate of revenue to obtain the total revenue for 4 weeks.
5. Convert this to a weekly average and multiply by 43* to obtain an estimate of earnings per year from your billings.

This will provide an important guide for you when discussing your contract with the practice.

Item	# completed per 4 weeks	Your charge per item	Total income (# x charge)
Consultations			
In hours			
Level A attendances			
Level B			
Level C			
Level D			
After hours attendances			
Emergency after hours attendances			
Consultations at a residential age care facility			
Consultations at hospital			
TOTAL CONSULTATIONS REVENUE			
Tests/minor procedures			
Diagnostic (respiratory function, electrocardiogram, skin sensitivity)			
Pathology (urine, pregnancy, microscopy, Mantoux)			
Biopsy of skin			
Administration of blood			
Hormone implant			
Removal of foreign body			
Skin lesion injections			
Intra-uterine contraceptive device introduction			
TOTAL TESTS/MINOR PROCEDURES REVENUE			

Item	# completed per 4 weeks	Your charge per item	Total income (# x charge)
Procedures			
Assistance at operations			
Dislocations			
Fractures			
Removal of foreign bodies, tumours etc.			
Wound repair			
Burns			
Acupuncture			
Obstetrics (antenatal, attendance at hospital, planning, delivery)			
Anaesthetics (if appointed at a public hospital)			
TOTAL PROCEDURES REVENUE			
Management plans/team care			
Preparation of management plan			
Team care coordination			
Case conferences			
Health assessments			
Mental health care (treatment plans)			
TOTAL MANAGEMENT PLANS/TEAM CARE REVENUE			
PIP activities by doctor			
Asthma			
Cervical			
Diabetes			
Indigenous health			
e-health			
After hours			
Teaching			
Rural loading			
Procedural GP			
Aged care access			
TOTAL PIP REVENUE			
Total estimated revenue per 4 weeks			
Average per week			
TOTAL REVENUE PER YEAR (WEEKLY INCOME X 43 WEEKS)*			

*A year comprises 52 weeks less 4 weeks holiday leave, 2 weeks conference leave, 10 public holidays and an average of 5 days of sick/family leave.

For more information on the MBS see Medicare Benefits Schedule Online at http://www.mbsonline.gov.au/

The RACGP's Medicare Benefits Schedule fee summary is available from http://www.racgp.org.au/your-practice/business/billing/mbs/

APPENDIX C – List of conditions headings for inclusion in a contract

Names of parties to the agreement

Relationship

- i.e. contractor/employee/partner

Term of agreement

Location of practice

Definitions of key terms used in the contract

Obligations of the practice

Obligations of the GP

Payment of accounts

Hours of work

Participation in out of hours rosters

Interval of payment

Handling of GST

Medical records

- Including standards to be maintained, ownership, access after leaving the practice.

Indemnities

- Provided by practice to GP, and provided by GP to practice.

Notice of Termination

- 1–3 months notice is standard.

Termination for breach of contract or misconduct of GP

Confidentiality

Restraint of Trade clause

- Often presented as cascading clause (e.g. 5, 3 or 1 year and 10, 5 or 1 km radius). If necessary suggest 3 months and 1 km.
- Define what is restricted – e.g. practicing medicine, enticing staff, enticing patients.

Dispute resolution.

- Does it include agreement for arbitration if a problem cannot be solved?

Taking of leave

- What leave is available?
  - Personal holidays
  - Maternity/paternity/adoption leave
  - Sick leave
  - Carer's leave
  - Conference leave
  - Public holidays.
- How much notice do I need to give?
- Do I need to provide a locum?

Income

- Hourly rate
- % of billings (or receipts)
- Facility fee charged against billings
- % of fees for medical reports
- Court appearance fees
- Academic work, i.e. training of students
- % of Practice Incentive Payments (PIP) – see Appendix A
- % for out of hours payments
- % for nursing home consults.

AMA Victoria's contract review service

Ensure you receive what you deserve with our contract review service for GPs engaged by medical practices. Contract reviews are completely confidential. We provide a report on your proposed or current contract, including recommendations and arguments for improvements where they are needed.
For more information call (03) 9280 8722.

AMA Victoria

AMA House
293 Royal Parade
Parkville, Victoria 3052

Postal Address

PO Box 21, Parkville 3052

Telephone: 03 9280 8722
Facsimile: 03 9280 8786

Country Freecall: 1800 810 451
Website: www.amavic.com.au
Email: reception@amavic.com.au

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