# Cost Sharing

## Explanatory notes

**Introduction**

These explanatory notes summarise a number of the more important considerations to be taken into account by medical practitioners who may be contemplating entering into a cost sharing arrangement. It is important for you to satisfy yourself that it will adequately and fairly deal with your particular situation before you sign it. If there is some aspect not covered and which you believe needs to be covered, then with the agreement of the other parties you may be able to get that aspect included in the "Special Conditions" clause (see clause 19 of the standard document). If, however, you believe that the standard document does not meet the requirements of your particular group practice in a number of important respects, then the safest course will probably be for you to instruct your practice solicitors to prepare an agreement tailor made to your situation, rather than attempting to introduce numerous changes to the standard document.

**Premises leases**

The standard document is based on the assumption that each practice will have its own lease, and will be responsible for the outgoings (ie. mainly rent) for its premises. If practices in a cost share arrangement prefer to be parties to a single lease, and to share the rent and other outgoings of that lease, then clause 1 will be inappropriate and would need to be replaced by a more appropriate provision. Likewise, if the surgery happens to be owned by one or more of the participating medical practitioners. Paragraph (d) of section 3 and paragraph (a) of section 6 of the Schedule may each need to be amended to reflect the actual arrangement.

**Sharing of expenses**

The intention is that the expenses of the common practice establishment, including such common expenses as salaries of shared staff, will be shared. The transaction bears some resemblance to a partnership in that the parties are to be liable in defined proportions for certain expenses. In fact, however, it is not a partnership because the intention is that each practice will be carried on independently, with the fees earned by that practice being retained by it for its own benefit. This is confirmed by clause 8 of the standard document. Unlike a partnership, there will be no sharing of profits. Conversely, all or most costs which are attributable solely to a particular practice will be met by it.

Practices who wish to use the standard agreement will need to check the lists which appear at sections 3 and 6, respectively, in the Schedule. Section 3 lists the items of expenditure which are to be covered by the cost share agreement. Section 6 lists items of expenditure which are excluded from the arrangement and which each practice will therefore have to meet individually. The parties to the contract will need to focus on these lists and ensure that they accurately reflect their wishes. So if, for example, it is preferred that the costs of reaccreditation and training courses and conferences should be shared, rather than having to be met by the particular medical practitioner who incurs the cost, then that item would need to be transferred from section 6 to section 3. The costs to be shared under the standard agreement are both recurring and exceptional expenses. The former include most of the items in section 3. The latter include one-off items of expense, such as the purchase of an expensive item of surgery equipment, the repainting of the surgery, or the cost of making a shared staff member redundant.

The standard agreement provides for the parties to meet and fix a budget for the items to be bought jointly during the year. Each medical practitioner will pay his or her monthly contribution to the budget into the group practice's bank account (see below) which will be drawn upon accordingly to meet the shared costs.

## Cost share formula

This is referred to in clause 2(2) of the standard agreement. Prior to entering into this agreement, the practices to be covered by it will need to work out a formula for apportioning costs. While an equal sharing arrangement has the attraction of simplicity, it may be that a more complex formula will be appropriate in other situations, particularly where one of the medical practitioners has a much busier practice - reflected in that medical practitioner being responsible for a higher proportion of the group's costs than the other medical practitioner(s). In such situations, the cost share formula might be based on the relative proportions of patients seen by each doctor, or alternatively, the percentage of fees received by each medical practitioner over the particular period. Take a straight-forward example. Suppose that in a cost share arrangement consisting of two medical practitioners, Dr A has 60% of the total number of patients on his/her register, and Dr B has 40% on his/her register. Here, the formula might provide for the two medical practitioners to contribute on a 60/40 basis to the group's costs. Such a formula is likely to operate equitably because, everything else being equal, a medical practitioner who has the majority of the patients is likely to have a higher call on surgery resources. Even so, as circumstances may change, the standard contract provides for a review of the formula at stated intervals (see clause 2(3)).

It will often be wise for the initial period to be a relatively short trial period (eg. three or six months), to allow an assessment to be made as to how fairly the formula is operating. Adjustments can then be made for later periods. For instance, in many situations it may be sensible to start with an equal share arrangement. Then, if experience over the first few months shows that one medical practitioner is attending to a higher proportion of patients than the other(s) the formula could be modified to better reflect the fact that the first-mentioned medical practitioner is using a higher proportion of the common resources than the other(s).

## Bank account

It is recommended that the parties establish a separate bank account to deal with the income and outgoings for the arrangement. The standard contract provides for this at clause 4, which also deals with division of any credit balance at the termination of the arrangement. The subject of cheque signing authority is dealt with elsewhere in the document (see clause 7(2)(e)).

## Decision-making

Clause 6 refers to the method of decision-making on management and other issues. In terms of the standard document, each medical practitioner would have one vote for every complete sum of $100 which that medical practitioner is liable to contribute under the current cost share formula. Of course, the parties may prefer to adopt some other voting system in their particular group practice - eg. if there is an uneven number of medical practitioners, and each contributes in equal shares, a majority vote on a head count will be a democratic way of reaching decisions. Where a voting method different from the one in the standard contract is to be adopted, clause 6(5) should be struck out, and the preferred method inserted either in its place or as one of the special conditions in clause 19.

## Administration

Clause 7 of the standard draft refers to the arrangements for the day-to-day administration of the agreement, the keeping of an income and expenditure account and rights of access to the group's minutes etc. It provides for the appointment of an administration practitioner on a rotating basis. As this role may turn out to be arduous each medical practitioner will need to satisfy him or herself that he or she will be able to commit the time to it when their turn comes around. If not, some other arrangement will need to be considered. In a large group practice, the role might more conveniently be dealt with by a permanent, full time practice manager.

Clause 7 needs to be read together with clause 9, which sets out the limits of the administration practitioner's authority. Any such limits should be specified in Section 7 of the Schedule. For example, if the administration practitioner's spending authority is to be limited to $1000, then this should be stipulated. And different limitations might well apply according to the kind of supplies or equipment that is being considered.

## Shared staff

The standard agreement would treat the group medical practitioners as joint employers of any shared employee for most purposes, eg. industrial obligations (such as the obligation to pay wages, and liability to pay compensation if the employee successfully brings a claim of unjustified dismissal). However, an exception has been written into the contract for situations of vicarious liability. If, for example, a negligent action of the employee causes loss to a patient or a third party, then the particular medical practitioner for whom the employee was carrying out duties at that time would be solely liable.

## Other matters

Other clauses in the contract specify the obligations of confidentiality (clause 10) and of security (clause 11), and the rights conferred by the contract (clause 13), as well as arrangements to apply on termination (clause 15), and on assignment of the medical practitioner's interest in the agreement (clause 16). There is also an arbitration clause in the event of dispute (clause 18). If the parties wish to cover additional issues, then this should be done by way of special conditions designed for the particular situation. Examples of other matters that are sometimes dealt with in cost share arrangements, are provision for new patients to be allocated to the medical practitioners on an equal basis and surgery attendance and on-call requirements.

**Schedules**

If the members of your group practice decide to use the NZMA's standard contract, you will need to complete the details in the Schedule. Sections 1 and 2 are self-explanatory. As to Sections 3 and 6, you will need to make sure that the listed items accurately and fully reflect the matters that you wish to be covered by, or excluded from, the cost share arrangement. Sections 4 and 5 deal with the important issues of the cost share formula and periodic review periods for that formula: see above commentary under the headings *Sharing of expenses* and *Cost share formula.*

## Need more help?

Contact the NZMA:

**Phone** | 0800 65 61 61
**Email** | Robyn Fell: robyn@nzma.org.nz