Contracting Your Services

Many geriatricians supplement their income by contracting their services to organizations that care for older people.

Select from the FAQs below for an overview of the process.

- What kinds of opportunities are available? Scroll to page 1
- What should be covered in a contract? Scroll to page 1
- What should be avoided in a contract? Scroll to page 2
- What about exclusive arrangements? Scroll to page 2
- What is expected with regard to referrals? Scroll to page 2
- Who provides liability insurance? Scroll to page 2
- What should be considered when negotiating a fee? Scroll to page 3
- Can I operate an office practice within a facility where I have contracted my services? Scroll to page 3
- Sample contract Scroll to page 4

Contracting Your Services

What kinds of opportunities are available?

- The traditional role of geriatricians who contract their services has been that of medical director for a nursing home.
- However, many other types of organizations may seek and benefit from an association with a geriatrician. These include retirement communities, assisted living facilities, hospital-based programs, and hospice programs.

Contracting Your Services

What should be covered in a contract?

- A contract should be negotiated and signed with each organization for which you provide contract services.
- The contract should clearly outline the specific terms of the arrangement and include duties to be performed, fees for services, insurance coverage, and notice of contract termination.
- A sample contract (scroll to page four) is provided to give you an idea of a typical agreement. This is a sample agreement only, and should not be relied on as a substitute for legal advice. Before entering into any agreement, the geriatrics practice should consult an attorney. Specific scope of duties, nature of facility, and demographics would likely require some modifications of this document. The AGS makes no representation regarding the applicability or completeness of the sample agreement, and expressly disclaims any and all liability arising from its use. This sample is presented for educational purposes only, so that you have some familiarity with contract language and content.
Contracting Your Services

What should be avoided in a contract?

- Fees by contractual agreement should not be paid to compensate or to induce the geriatrician to provide care to residents of the facility. Billing Medicare and being paid by the facility for care is termed “double dipping” and is illegal.

- The contract might include providing health services for employees of the facility. This is appropriate because no third-party insurance is being billed for the same service.

- Some new facilities may seek to tie the fee of the medical director to their census. This should be avoided especially if the medical director is also providing patient care at the facility because it suggests a relationship between payments to the medical director and patient care. When a new facility has limited funds because of start-up costs and lack of revenue, the contract fees should be negotiated to increase over time rather than by census.

- You should also avoid having the number of hours you spend in the facility be specified. Your role is to fulfill the duties outlined in the contract, and the specific number of hours may vary greatly from week to week.

- The contract should not include a non-competition clause. Such clauses typically prohibit the physician from providing similar services for another facility during the term of the agreement and for a specified term thereafter, and greatly restrict the physician’s practice options.

Contracting Your Services

What about exclusive arrangements?

- If multiple facilities are located in the same geographic area, they may be competing for the same pool of clients, and a facility may attempt to restrict its medical director from providing similar services at a competing facility. You should avoid exclusive agreements.

- It is important to point out that you are providing a service. In this sense, your contractual agreement is not dissimilar to those made with many other service providers, e.g. insurance or food services.

Contracting Your Services

What is expected with regard to referrals?

- The facility may view you as an important source of referrals. You should disabuse them of this misconception and avoid preferentially referring patients to a certain facility because you have a relationship with that facility.

- In addition, this type of referral arrangement could make it difficult or impossible for you to contract with more than one facility.

- Patient referrals should be made based on what is in the patient’s best interest.
Who provides liability insurance?

- Facilities may ask you to provide your own liability insurance. This will depend on the specific facility and the demographics.
- You should check with your insurance carrier that the scope of your duties will be covered under your existing policy, and ask if the duties outlined in the contract will affect your premiums.
- Medical directors, especially of skilled nursing facilities, are increasingly likely to be included in malpractice suits brought against the facility.

Contracting Your Services

What should be considered when negotiating a fee?

- Fees vary in different parts of the country and depend on the type and size of the facility as well as on the services requested. For example, the medical director fee for a small nursing home will be much less than that for a large, multi-service retirement community that provides skilled nursing care, assisted living, and home health care.
- Remember during negotiations that the skills, experience, and reliability of a quality medical director are of great value to the facility. Large facilities often have operating budgets of many millions of dollars, and you are providing needed and important services. Don't let the low rate of pay from Medicare negatively influence you in asking for fees as part of a contract negotiation.
- As a rule of thumb, begin by asking for 30% more than you expect, and negotiate down if needed.

Contracting Your Services

Can I operate an office practice within a facility where I have contracted my services?

- If you choose to operate a small medical office within a facility and the facility is agreeable, you should consider paying for the use of the space and staff time that the facility is providing for you.
- When Medicare pays a healthcare provider for medical office services, an overhead component is included in the payment. Although there are no clear guidelines on this, Medicare views billing for office-based services as incurring the usual expenses associated with running an office practice.

Sample Contract

Disclaimer:

"This is a sample agreement only, and should not be relied on as a substitute for legal advice. Before entering into any agreement, the geriatrics practice should consult an attorney. Specific scope of duties, nature of facility, and demographics would likely require some modifications of this document. The AGS makes no representation regarding the applicability or completeness of the sample agreement, and expressly disclaims any and all liability arising from its use."
AGREEMENT BETWEEN FACILITY AND MD GROUP

THIS AGREEMENT is made by and between FACILITY located at ********** and MD Group with offices at **********

WHEREAS, MD GROUP is a multi-specialty physician group practice that employs physicians to provide healthcare services in the field of geriatrics and other specialty healthcare services to patients, and consulting and advisory physician services to facilities and programs; and

WHEREAS, FACILITY operates a long-term care facility, an assisted-living facility and services, home care services, and other programs and services to patients, residents and seniors in the community; and

WHEREAS, FACILITY and MD GROUP wish to enter into an agreement pursuant to which MD GROUP shall provide to FACILITY physician services elected by and for the convenience of FACILITY residents on-site at FACILITY.

Now, therefore, for and in consideration of the covenants hereinafter contained and of other good and valuable consideration, it is mutually agreed as follows:

1. MD GROUP RESPONSIBILITIES:

1.1. MD GROUP will assign physician(s) ("MEDICAL DIRECTOR") to provide medical director services to FACILITY’s long-term care facility in accordance with the Public Health Code. MEDICAL DIRECTOR shall:

1.1.1. be a physician licensed to practice medicine in STATE;

1.1.2. assist in the development and implementation of such medical/administrative policies as are necessary for the smooth, effective and safe functioning of FACILITY;

1.1.3. assist FACILITY administration in developing and implementing a budget for equipment, supplies and personnel in FACILITY;

1.1.4. assure that quality medical care is provided in FACILITY;

1.1.5. regularly document the medical care provided in FACILITY;

1.1.6. serve as a liaison between the medical staff and the administrator of FACILITY;

1.1.7. approve or disapprove a patient's admission to FACILITY in accordance with FACILITY’s by-laws; MEDICAL DIRECTOR shall have the authority to review any patient's records or examine any patient prior to admission for such purposes;

1.1.8. assure that each patient in FACILITY has an assigned personal physician;

1.1.9. provide or arrange for the provision of necessary medical care to each patient in FACILITY if such patient’s personal physician is unable to do so;

1.1.10. approve or deny applications for membership on FACILITY’s active organized medical staff after consultation with existing active organized medical staff, if any, and subject to the ratification of the governing body;

1.1.11. in accordance with FACILITY’s by-laws, suspend or terminate the privileges of a medical staff member if that member is unable or unwilling to adequately care for a patient in accordance with standards set by any applicable local and state statutes and regulations, any federal regulations that may apply to a federal program in which FACILITY participates, or FACILITY by-laws;
1.1.12. be available to the nurses to discuss the care and treatment of patients as may be required from time to time;

1.1.13. recommend to the Administrator any purchases of medical equipment and/or services necessary to assure adequate patient care;

1.1.14. assist in the development of and participate in staff orientation and training program in cooperation with the Administrator and Director of Nurses;

1.1.15. review all incidents and accidents that occur on the premises in order to identify hazards to health and safety at FACILITY;

1.1.16. participate in the development of patient care policies and review such policies to ascertain if FACILITY’s operations are consistent with policy;

1.1.17. serve as a member of FACILITY’s committees, as mutually agreed; and

1.1.18. perform such other duties and have such other responsibilities as specified in the applicable STATE Public Health Code, and other licensure or certification requirements.

1.2. MD GROUP will assign physician(s) (“ADVISORY PHYSICIAN”) to provide consultative and advisory services to FACILITY-related assisted-living, home care and other programs and services. ADVISORY PHYSICIAN shall:

1.2.1. apprise FACILITY administration on a regular basis of the condition of medical services;

1.2.2. advise FACILITY administration on health issues of residents;

1.2.3. advise FACILITY administration regarding employee health issues;

1.2.4. provide wellness programs for staff and residents;

1.2.5. participate as member of FACILITY Quality Assurance committee;

1.2.6. assist in reviewing, revising and approving health- and medical-related policies and procedures;

1.2.7. provide or arrange for the provision of educational services for FACILITY staff as mutually agreed;

1.2.8. participate in information and education programs for seniors in the community as mutually agreed;

1.2.9. assist FACILITY staff in determining placement appropriateness;

1.2.10. assist residents in obtaining a personal physician or specialist; and

1.2.11. assist FACILITY in the provision of health screening services.

1.3. MD GROUP will assign physician(s) (“ATTENDING PHYSICIAN”) to provide professional clinical services elected by and for the convenience of FACILITY residents on-site at FACILITY. ATTENDING PHYSICIAN shall:

1.3.1. assume the role of personal physician for residents who elect services;

1.3.2. provide primary health care services on-site at mutually agreed times for the convenience of FACILITY residents; and
1.3.3. arrange for specialty physician and hospital services as well as urgent or emergent services at the sole discretion of the Advisory Physician or the covering physician.

1.4. MD GROUP shall have the following rights, duties and responsibilities in addition to assigning physician(s) to the performance of duties as described herein:

1.4.1. MD GROUP shall designate physician(s) licensed to practice medicine in STATE to cover during periods of any physician's absence.

1.4.2. Medical records for clinical services rendered to individual residents will be the property of MD GROUP; should an acceptable information release document be presented, copies of medical records may be maintained at FACILITY.

1.4.3. MD GROUP will have sole authority and responsibility to bill residents and/or the applicable payer for professional clinical services rendered to individual residents, and resulting collections will be retained by MD GROUP.

2. FACILITY RESPONSIBILITIES: FACILITY shall:

2.1. compensate MD GROUP for the physician services provided by MD GROUP hereunder;

2.2. cooperate with the physician in the pursuance of physician's responsibilities hereunder; and

2.3. provide support for the functions involved in the Medical Director responsibilities.

3. RELATIONSHIP OF THE PARTIES

3.1. Nothing contained in this Agreement is intended to create or shall be construed to create an agency, partnership, employer/employee, or joint venture relationship between the parties. Each party shall remain solely liable for its own debts, obligations or liabilities without, however, in any way modifying the obligations each party has assumed herein.

3.2. MD GROUP has entered into this Agreement on an independent basis and physician is not an employee of the FACILITY for purposes of compensation or fringe benefits or within the terms of any federal or state statutes or regulations relating to fair labor practices, workers compensation, unemployment compensation or the withholding of income and social security taxes.

4. DISCLAIMER REGARDING REFERRALS. While the parties hope that the quality of their respective services commend them to the residents of FACILITY and the patients of MD GROUP, the choice in securing health care, residential and assisted-living services will be made solely by residents and patients. Therefore, it is specifically acknowledged and agreed by the parties hereto that any services provided by FACILITY to MD GROUP or payments made by FACILITY to MD GROUP pursuant to this Agreement will not in any way require, and are not contingent upon, the admission, recommendation, referral or any other form of arrangement for utilization by residents or patients of any services offered by MD GROUP or FACILITY.

5. TERM AND TERMINATION. This Agreement shall remain in full force and effect for a term of two (2) years beginning DATE and continuing through DATE. It is the intent of the parties to renew this Agreement for successive terms of one year. Either party may terminate this agreement without cause by notifying the other in writing sixty (60) days in advance.

6. AUTHORITY. Both parties warrant to the other that they have full right and authority to enter into this Agreement and to pay and perform all obligations assumed hereunder.

7. LIABILITY PROTECTIONS. FACILITY shall maintain, at its expense, such policies of general liability insurance as shall be necessary to protect FACILITY, MD GROUP, and MD GROUP physician(s) from claims arising from use of facilities. FACILITY shall also maintain, at its expense, professional liability insurance coverage showing MD GROUP as an additional insured solely in regard to the services provided hereunder by MEDICAL DIRECTOR and ADVISORY PHYSICIAN. MD GROUP shall maintain, at its expense, professional liability protection on behalf of MD GROUP and physician(s). (This may vary depending on facility and demographics.)
8. **COMPENSATION.**

8.1. FACILITY shall compensate MD GROUP $_____ per month in return for services described herein.

8.2. The parties acknowledge and agree that the compensation set forth herein represents the fair market value of the services provided by MD GROUP and physician(s) to FACILITY, and has been negotiated in an arm's length transaction and has not been determined in a manner which takes into account the volume or value of referrals or business that may otherwise be generated between the parties.

9. **NON-DISCRIMINATION.** The parties agree that they shall not discriminate on account of race, sex, color, religion, national origin or handicap or other characteristic protected by law.

10. **MISCELLANEOUS**

10.1. This Agreement constitutes the entire agreement between the parties and may not be amended except by a writing duly executed by both parties.

10.2. This Agreement shall be interpreted and governed in accordance with the laws of the State of **********.

10.3. This Agreement supersedes any prior Agreement between the parties relating to the provision of services by physician(s) to FACILITY.

10.4. Neither party may assign or transfer this Agreement or any part hereof, without the other party’s prior written consent. There are no third-party beneficiaries of or to this Agreement.

10.5. During the term of and following termination of this Agreement, each party shall keep strictly confidential any proprietary information regarding the other party. All information which is reasonably treated by any party as being proprietary shall be presumed to be proprietary. Each party shall take reasonably necessary precautions to prevent unauthorized disclosure of proprietary information and shall require all of its officers, employees and other personnel to whom it is necessary to disclose the same, or to whom the same has been disclosed, to keep such proprietary information confidential. Upon termination of this Agreement, each party agrees to return to the other, within ten (10) days of the termination of this Agreement, all proprietary information of the other party in such party’s possession.

10.6. No failure by either party to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall constitute a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise of any right, power or privilege. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies provided by law or otherwise.

10.7. If any provision of this Agreement is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement that can be given effect without the invalid provision. In such event, all parties agree that the court making such determination shall have the power to alter or amend such provision so that it shall be enforceable to an extent that is consistent with the intention of the parties.

11. **NOTICES** Any notice required under this Agreement shall be by certified mail, return receipt requested, addressed as follows:

FACILITY

CONTACT

ADDRESS
IN WITNESS WHEREOF, the parties hereto intending to be legally bound have executed this Agreement as of the day and year above written.

FACILITY

CEO

Date

© Copyright 2006 American Geriatrics Society
Adapted with permission from AGS to the NEBGEC Web. Accessed 5-11-06