

## Staff Specialist Rights of Private Practice Arrangements

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**Functional Sub group** Corporate Administration - Finance  
Personnel/Workforce - Conditions of employment  
Personnel/Workforce - Salaries

**Summary** This Policy Directive addresses the rights of private practice arrangements for Staff Specialists in respect of fees that can be charged where medical gap cover insurance is held, the availability of medical indemnity, and the disbursement of funds from the No. 1 Account. This Policy Directive does not introduce any changes to existing practices, but does extend the period in which Staff Specialists can be reimbursed medical indemnity costs from 30 June 2016 to 30 June 2017.

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**Applies to** Local Health Districts, Board Governed Statutory Health Corporations, Chief Executive Governed Statutory Health Corporations, Specialty Network Governed Statutory Health Corporations, Affiliated Health Organisations, Public Health System Support Division, Ministry of Health, Public Hospitals, NSW Health Pathology

**Audience** Staff Specialists, HR staff, Finance, Payroll, Risk Managers

**Distributed to** Public Health System, Health Associations Unions, Ministry of Health

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**Policy Manual** Not applicable

**File No.** 01/5220-5

**Status** Active

### Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

## STAFF SPECIALIST RIGHTS OF PRIVATE PRACTICE ARRANGEMENTS

### PURPOSE

This Policy Directive addresses the rights of private practice arrangements for Staff Specialists in respect of fees that can be charged where medical gap cover insurance is held, the availability of medical indemnity, and the disbursement of funds from the No 1 Account. The Policy Directive does not introduce any changes to existing practices, but extends the period in which Staff Specialists can be reimbursed medical indemnity costs from 30 June 2016 to 30 June 2017.

### MANDATORY REQUIREMENTS

All Public Health Organisations (PHOs) are required to comply with the attached arrangements.

### IMPLEMENTATION

**Chief Executives** are responsible for ensuring that this Policy Directive is brought to the attention of Staff Specialists and staff who are involved with Staff Specialist private practice billing arrangements.

**Staff Specialists** are responsible for ensuring that their billing procedures are in conformity with the provisions of this Policy Directive.

### REVISION HISTORY

Version	Approved by	Amendment notes
January 2017 (PD2017_002)	Deputy Secretary, Governance, Workforce and Corporate	Updates made to Clause 4
September 2016 (PD2016_042)	Deputy Secretary, Governance, Workforce and Corporate	Updates made to Clause 5.
December 2014 (PD2014_048)	Deputy Secretary, Governance, Workforce and Corporate	Consolidates and updates PD2009_056, PD2013_040, and PD2005_534.

### ATTACHMENTS

1. Staff Specialist Rights of Private Practice Arrangements: Procedures

## Staff Specialist Rights of Private Practice Arrangements



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## **1 BACKGROUND**

### **1.1 About this document**

This Policy Directive deals with the rights of private practice arrangements for Staff Specialists, as established by section 2 of the *Staff Specialists Determination*, in respect of fees that can be charged where medical gap cover insurance is held, the availability of medical indemnity, and the disbursement of funds from the No 1 Account. (This Policy Directive does not introduce any changes to existing practices.)

## **2 FEES THAT CAN BE CHARGED WHERE MEDICAL GAP COVER INSURANCE IS HELD**

1. Eligible persons treated as private (chargeable) patients by Staff Specialists when exercising rights of private practice, are able to be charged above the Medical Benefits Scheme (MBS) fee in the following circumstances:
  - i. The patient has medical gap cover insurance from a health fund, so that the fund will cover the “gap” between the MBS fee and the fee charged by a hospital on behalf of the Staff Specialists and
  - ii. The patient will not have any out of pocket expenses in relation to the particular service involved.
2. The approval to charge eligible patients above the MBS fee is subject to the following provisions:
  - i. The arrangements can apply to all episodes of treatment and attendance in respect of which hospitals issue bills on behalf of Staff Specialists and
  - ii. The relevant Public Health Organisation (PHO) must have given prior approval to a Staff Specialist’s participation in the arrangements.
3. There is no obligation on a PHO or a Staff Specialist to become involved in these arrangements. Where a PHO does elect to become involved, they will need to arrange for procedures to be put in place so that when a patient indicates an election to be treated as a private patient, information is sought on where that patient has available health fund gap cover insurance with a health fund, in order that the necessary billing arrangements can be implemented by the hospital on behalf of the Staff Specialist.
4. The need to operate a more complex billing system may involve further administrative work, possible software revision, and possible additional extra costs. Where such additional costs can be clearly demonstrated, arrangements can be made to recoup them on a cost recovery basis. The costs so recovered:
  - i. Should be the first charge on the monies received where patients have been charged above the MBS fee
  - ii. Are to be in addition to infrastructure fees levied and
  - iii. Are to be accounted for in the same manner as infrastructure fees received in respect of private practice revenue.

In assessing whether additional charges are to be made, regard should be had to any additional revenue from infrastructure fees that would be received as a result of the high charges that would be involved.

### **3 APPROVED LEVEL OF ACTUAL ACCOUNTING COSTS FOR PARTNERSHIPS**

Approval for the payment from the relevant sub-ledger of the No. 1 Account of actual accounting costs associated with establishing and operating partnerships for Staff Specialists who have elected a Level 2 to 5 right of private practice arrangement are up to the following amounts:

- \$2,420 for established costs
- \$5,500 p.a. for ongoing costs.

These amounts will be reviewed from time to time as appropriate.

### **4 PROVISION OF MEDICAL INDEMNITY**

1. Staff Specialists are indemnified by the NSW Treasury Managed Fund (TMF) in the circumstances set-out in this section. TMF cover will not be provided to Staff Specialists:
  - a. if the conduct constituting the tort to be indemnified was criminal and / or arose out of fraudulent, dishonest or malicious conduct, acts or omissions, except where the employee had no knowledge of and could not have reasonably been expected to know of the conduct, acts or omissions.
  - b. for the legal costs associated with personal representation for coronial inquests, inquiries of the Health Care Complaints Commission (HCCC) or other disciplinary matters. (Consideration should be given to making alternative arrangements to provide indemnity cover for these types of matters.)
2. TMF indemnity is subject to certain qualifications including:
  - a. The Staff Specialist has a signed contract of liability coverage with the public health organisation with which he or she is engaged. Staff Specialists with a contract of liability coverage should refer to their contract for specific details of the applicable terms and conditions of cover.
  - b. The Staff Specialist agrees that the management and conduct of the claim passes entirely to the PHO and the TMF.
  - c. Any decision as to whether a claim is to be settled or defended rests with the TMF.

#### **3. Staff Specialists Level 1**

Staff Specialists employed by PHOs who have elected a Level 1 private practice arrangement, are indemnified through the TMF against liability for claims arising during the course of treating both public and private (i.e. chargeable) patients in public hospitals or as part of other services provided by the PHO.

#### **4. Staff Specialists Level 2 to 5**

Staff Specialists employed by PHOs who have elected a Level 2 to 5 private practice arrangement, are indemnified through the TMF against liability for claims arising during the course of treating public patients in public hospitals or as part of other services provided by the PHO.

Where a Staff Specialist who has elected a Level 2 to 5 private practice arrangement has entered into a contract of liability coverage for indemnity under the TMF, indemnity is also provided in respect of services provided as part of the exercise of rights of private practice to private rural and / or paediatric patients in or at public hospitals or as part of other services provided by the PHO.

## **5 REIMBURSEMENT OF MEDICAL INDEMNITY COSTS**

The scheme by which medical indemnity costs incurred by Staff Specialists who have elected a Level 2 to 5 private practice arrangement can be reimbursed, will remain in place until 30 June 2017.

1. Staff Specialists who have elected a Level 2 to 5 private practice arrangements are authorised to receive reimbursement from the relevant sub-ledger of the No. 1 Account of amounts paid in order to obtain medical indemnity cover relating to the exercise of their rights of practice which is not covered by TMF indemnity. This includes all amounts paid in relation to membership of medical indemnity provider organisations and insurance (excluding those costs incurred in respect of outside private practice as specified below at section 5(4)).
2. In circumstances where an agreed group of partnership pools private practice billings, it is a matter for the members of the agreed group of partnership to determine the manner in which claims for reimbursement are to be made, having regard to the possibility that there may be insufficient funds to meet all costs. Each agreed group or partnership will need to advise their PHO of the approach they wish to take in respect of reimbursement prior to reimbursement being paid.
3. Reimbursement is only payable where originals or certificated copies of renewal forms, receipts or other documents provided by the medical insurer have been provided, which show the amount of the membership subscription or premium payable, and the amount paid.
4. The amount that can be reimbursed will reflect only the costs relating to obtaining indemnity cover in respect of a Staff Specialist's private practice billings in the public hospital system (not relating to any outside private practice component). Staff Specialists can obtain reimbursement only for that part of their indemnity costs that would have been paid exclusive of any outside practice billings. Any additional premium or membership costs that arise from or are due to outside practice will not be reimbursed.
5. The costs for which reimbursement can be made also include payments made during a financial year to purchase run off cover where a Level 2 to 5 Staff Specialist proposes to acquire TMF cover in respect of all patients treated as private patients under the private practice arrangements, and as a consequence purchases run off cover from a medical defence organisation. For such reimbursement to be made, it will be necessary for a Staff Specialist to provide evidence that is acceptable to the relevant PHO that an election to Level 1 private practice arrangements has been

made of that a contract of liability cover for the treatment of private rural and / or paediatric patients has been signed, and that the reimbursement is only of costs incurred in purchasing run off cover and does not involve any other costs (such as obtaining medical indemnity cover for patients treated outside the public health system as part of outside practice).

6. PHOs are to reimburse only the GST - exclusive amount of the medical indemnity costs. It is a matter for the individual Staff Specialist or the Staff Specialist partnership, as appropriate, to claim input tax credits in relation to the GST paid on these costs.
7. Where a Staff Specialist ceases employment in the New South Wales public health system, having obtained reimbursement for indemnity costs which relate to a full year of practice, before the conclusion of that year, a pro rata repayment of that extent of the reimbursed costs which corresponds to that proportion of the year of practice which remain following the cessation of the employment should be recovered from the Staff Specialist. Where a Staff Specialist increases the proportion of outside practice so as to reduce the amount of indemnity insurance costs payable that relate to public hospital private practice, the amount of any reimbursed indemnity costs that no longer relates to private practice billings should also be removed with effect from that time.

## **6 DISBURSEMENT OF FUNDS FROM THE NO. 1 ACCOUNT**

1. The following charges are to be made on a monthly basis against the relevant sub-ledgers of the No. 1 Accounts, in the order given and only to the extent that funds are available:
  - a. Monthly infrastructure charges.
  - b. Approved costs for Levels 2 to 5 Staff Specialists, which are accounting costs for partnerships as provided for at section 3 above and reimbursement of medical indemnity insurance costs as provided for at section 5 (1) above.
2. Where a Staff Specialist is entitled under the Determination to a guaranteed level of drawings under Level 2, 3 or 4 rights of private practice arrangements, supplementation shall take into account and be reduced by any amounts paid to the Staff Specialist for approved costs (i.e. under section 5 (1) above). (Therefore supplementation in these circumstances would be the amount of the guaranteed supplementation, minus amounts already paid or payable as approved costs under section 6 (1) (b) above and drawing rights under section 6 (1) (c) above.)
3. Approved costs and drawing rights are only to be paid to the limit of funds that are available in the No. 1 Account during the financial year. If there are insufficient funds to pay fully for approved costs, a partial reimbursement is payable, to the extent that funds are available. (There would be no entitlement to drawing rights in these circumstances.) At the end of the financial year, PHOs are to raise a tax invoice for the residual funds in the No. 1 Account (called the annual infrastructure charge) and transfer the appropriate residual funds to the No. 2 Account.