

# Does Anyone Know How You Are Getting Paid?

Complex consulting contracts can make it unclear how to comply with a company's invoicing requirements.

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It seems that all companies have their own unique way of compensating the physicians who advise them during collaborative activities. At Primacea, we have reviewed payment schemes used by more than 100 pharmaceutical and medical device suppliers, ranging from multinational giants to startups. The complexities of tracking and ultimately complying with each company's creative legal terms and invoicing requirements can be nearly impossible for a busy physician and can ultimately lead to lost dollars (or worse).

This article describes some of the typical yet complex provisions in medical consulting agreements and provides guidance to physicians on structuring and implementing successful invoicing systems.

Please be aware that this article is not intended to provide legal advice or to replace a review by counsel, which we would advise in every situation.

## NOT-SO-SIMPLE HOURLY RATE

Most agreements pay consulting physicians on an hourly basis, sometimes with limits. A typical agreement might pay \$400 per hour, not to exceed \$4,000 per day. Other agreements take some reading. Here is a sample of language we recently saw:

Consulting fees:

\$2,500.00 per one full day

\$1,250.00 per half day

\$313.00 per hour

The Company will pay the Consultant at the hourly rate if the Consultant works less than 4 hours in a day, at half-day rate if Consultant works between 4 and 6 hours, and at full day rate if Consultant works more than 6 hours in a day.

If an event cancels, prior to 48 hours of the designated start date, the Consultant shall be paid 50% of the agreed fee. If the Consultant has already started his/her travel for an event that cancels, then the full amount agreed upon will be honored.

Not every agreement has a linear relationship between hours worked and compensation earned. In the example just mentioned, working a few minutes more than 6 hours doubles the compensation (which then remains unchanged for even more than 6 hours of additional work).

Some assignments guarantee a minimum payment over a specified time period, usually to compensate physicians for setting aside time for the company's projects. In such cases, the contract can call for invoicing "at the rate of \$400 per hour with a minimum annual charge per year of \$10,000." Although this may seem like a good deal, physicians need to be sure to track their time accurately to prove that they have actually provided services (otherwise, there are regulatory risks).

## NOT ALL TIME IS BILLABLE

Startup companies frequently compensate physicians with a combination of cash and stock options. At times, the understanding is that the stock options are in return for services up to a certain number of hours per month or per year. This results in invoicing terms like "\$300 per hour for all hours in excess of 4 per month." Again, accurate time tracking is critical.

## WHAT IS A NONWORKING WEEKEND?

Some clauses use nonstandard terms. Here is an example of compensation for travel time outside of the United States:

\$1,800 per day for each travel day for outside-the-US travel exceeding 8 hours of travel time; \$1,200 per day for travel outside the US in which the travel includes a non-working weekend.

Given this clause, does travel originating in Chicago on a Sunday night and arriving in Tel Aviv on Monday morning meet the definition of including "a non-working weekend"?

## TRAVELING BLUES

Most physicians have a performance aspect to their primary compensation (such as relative value units), so time spent traveling to labs, trials, presentations, or advisory board meetings costs physicians real money. The good news is that more and more companies are willing to pay physicians for travel time, as long as the travel is just for the company-related activity, and the physician is not going to the location for another event.

The structure of these payments varies widely. Many companies pay for travel at an hourly rate (such as half the consulting rate). This is ideal because it allows physicians to track time and invoice using the same structure as their consulting services. One company pays only when the duration of travel exceeds 5 hours, in which case they pay for 4 hours of consulting.

Some companies require monitoring the distance to be traveled and provide a tiered fee. Although we can appreciate the idea in theory, in practice, it is difficult. For instance, what happens if the company books a flight from Cincinnati to Provo through Dallas? Does the connection distance count?

## SHOULD I HIRE A PROGRAMMER TO CALCULATE THIS BILL?

Companies operating under a corporate integrity agreement can specify payment classifications that bring to mind the complexities of ICD-10. Let's examine a real agreement for consulting services and compensated travel time. All consulting services are paid at the rate of \$500 per hour. There are nine categories of travel time:

- Flight time up to 2 hours
- Flight time of 2 hours to up to 5 hours
- Flight time of 5 hours up to 7 hours
- Flight time of 7 hours up to 9 hours
- Flight time of 9 hours up to 12 hours
- Flight time of 12 or more hours
- Flight time from Western Hemisphere to Europe
- Flight time to Asia, Australia, or Africa
- Driving time

Driving time is the easy option:

"Travel time by car as determined in accordance with the estimated drive time as documented by using a commercially available Internet mapping tool."

"Flight time" is determined by adding all in-flight hours for both inbound and outbound flight segments. We assume that adding the flight times on the airline itinerary is sufficient, as most physicians do not know the breakdown of scheduled flight times in terms of taxi time and in-air time.

Once flight time has been determined, it is mapped to a specified "travel time allotment." In the case of a flight time of 7 to 9 hours, the travel time allotment is 10 hours.

The invoice is then calculated as the travel time allotment (10 hours in this case) times 80% of the \$500 hourly consulting rate (\$400 per hour) for a total of \$4,000.

## IT IS ALL IN THE TIMING

Companies can impose a time limit on invoicing, often stating that they need to close their books on a periodic basis. The standard time period is between 60 and 120 days. However, we have seen requirements for invoicing as short as 30 days. For expense reimbursements, one company required submission within 10 days.

The penalty for failing to submit a proper, timely invoice is losing any right to payment. This is an obvious but remarkably harsh remedy, given that most physicians are doing this work outside of their day job. In the case of contracts with guaranteed annual payments (often timed with the anniversary of the contract's effective date), delays in invoicing for the guaranteed payment would result in substantial financial losses to the physician.

## WHAT ELSE SHOULD PHYSICIANS KNOW?

Physician contracts are drafted by lawyers who are focused on issues other than the complexity of generating invoices. Although complex structures may solve a particular internal issue, they are counterproductive because they create unneeded complexities and result in excess costs to manage the questions and inevitable errors. The best companies we see keep their pay and reimbursement structures simple, which makes it easier for both the companies and the physicians to comply with the terms. For their own personal interests, physicians need to understand the financial provisions of their contracts and negotiate to simplify those that are overly complex or burdensome to implement. ■

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