Academy of Nutrition and Dietetics

CONTRACT CONSIDERATIONS

When evaluating whether to contract with a telehealth company to provide nutrition services, RDs should conduct a careful and thorough review of the agreement. Contracts with telehealth companies can vary significantly in terms of structure, level of control, risks, rights, and duties. A deliberate review can help RDs protect their professional integrity and achieve their goals. What is fair and reasonable in a contract is best understood in the context of evaluating and comparing the terms and conditions of contracts from multiple companies. When reviewing a proposed contract, RDs should pay close attention to the following considerations.

Employment Status

Determine whether you have a choice to be engaged as an employee or as an independent contractor. Evaluate the implications of this distinction, including issues related to control, liability, and compensation. Companies generally prefer to engage individuals as independent contractors versus employees to avoid the added costs associated with employment, which they can shift to independent contractors.

EMPLOYEES

May receive benefits such as:

- paid time off
- health insurance
- retirement contributions
- malpractice coverage
- access to company-provided technology
- Companies are also required to pay half of the cost of payroll taxes (i.e., Social Security, Medicare, and unemployment benefits)

INDEPENDENT CONTRACTORS

(i) provide for their own business structure and benefits;

(ii) do not receive paid time off, health insurance, or retirement contributions;

(iii) pay one hundred percent (100%) of payroll taxes (which is twice the amount of payroll taxes paid by employees);

(iv) manage tax withholdings and reporting income to the Internal Revenue Service; and

(v) deduct business expenses not available to employees.

Independent contractors typically have greater flexibility and control over employees as to when and how they provide services. However, RDs should ask about scheduling expectations in both employment and independent contractor arrangements, as some companies offer similar levels of flexibility regardless of classification. In certain cases, RDs may be able to negotiate employment terms that provide scheduling flexibility comparable to that of an independent contractor.

Whether an employment or independent contractor agreement is most appropriate for a particular RD depends on that RD's individual circumstances, priorities, and professional needs. For example, some RDs may prefer an independent contractor arrangement because it can offer opportunities for business deductions and tax-advantaged retirement contributions that are not available in an employment model. Other RDs may place greater value on employer-sponsored benefits that are typically available only to employees.

In practice, even when an employment arrangement may be more advantageous for an RD, a telehealth company may offer only an independent contractor model to manage labor costs. Because independent contractors generally do not receive employee benefits, they often expect, and often receive higher hourly compensation than employees who provide similar services.

Companies and RDs should consult with their tax and legal advisors for their opinions about whether the Internal Revenue Service (IRS) would classify the proposed arrangement as an employment or independent contractor relationship based upon the

EMPLOYMENT STATUS (CONTINUED)

IRS's published guidelines.

In either option, RDs should confirm and compare who is responsible for:

- Purchasing and maintaining professional liability and other types of insurance; and
- Covering technology, licensing, and continuing education expenses.

Compensation

The goal is for you to be paid fair market value for your services. The contract should specify either how much you will be compensated, such as a fixed amount for a base salary and incentive amount related to productivity, or how you will be compensated, such as a fixed dollar amount per appointment or per unit of time.

- Fair market value is determined by such factors as supply and demand of RDs available to provide telehealth services and what other companies are paying for similar services. Typically, there is a range for fair market value compensation based on such factors as productivity, the amount of cash collected for services, and the overhead of the companies.
- Productivity can be measured in a number of ways, including cash collections, billed charges, time worked, hours of availability, appointments scheduled, and number of patients seen.
- Some contracts may also offer incentive compensation if certain targets are achieved. The terms of incentive compensation plans are best laid out in advance and in writing with sufficient specificity to avoid misunderstandings and to limit the level of discretion in how the plans are applied. RDs should be wary of any proposed incentives that do not align with best practices or support independent clinical judgement.
- Be mindful of your potential total compensation which will be determined not just by the payment per appointment but also by:
  - how many patients the company is likely to steer to you because of its marketing, operations, and reputation;
  - how many hours (and when) you are available to provide telehealth services;
  - the state(s) where you are licensed and authorized to practice;
  - the clinical outcomes for your patients; and
  - your ability to form relationships and retain patients.
- Pay attention to whether the compensation or compensation methodology can be changed without your approval.
- Be careful comparing offers of compensation in employment versus independent contractor models unless you make adjustments for projected costs related to payroll taxes and benefits.

Questions to consider asking the company include:

- Is compensation for services rendered by RDs dependent on cash collected from the patient or payor? Who is at risk for non-payment?
- What does the company project as your monthly/annual volume of patients and total compensation?
- Are there any limits, outside of clinical judgement, on the number of visits, frequency of visits, and duration of visits?
- What data/reports will you have access to and how often?
- What is the financial consequence of cancellations of appointments by patients, RDs, and the company without sufficient notice?
- What is the process for identifying and correcting errors in data gathering about your productivity or performance?
- What appeal process does the contract provide to protect the RD if the company withholds payment for services the RD has already rendered based on alleged fraud or other concerns about inappropriate conduct?

For more information about contract considerations, please refer to the Academy's *Best Practices for Registered Dietitians Working with Telehealth Nutrition Companies to Provide Nutrition Services*.