



Primary Care Networks

Guidance Note 6: Clinical Director

WHAT IS THE ISSUE?

The Clinical Director will provide leadership to the PCN. They will work and liaise with other PCN Clinical Directors, the practices within the PCN and LMCs. All Clinical Directors have already been appointed.

The core issue is who should engage the Clinical Director and whether that engagement should be one of employment or self-employment. The question for the PCN is the level of control that it requires over the Clinical Director. Broadly speaking, an employee will be under the firm control of the PCN. Mutual obligations and duties will go both ways - the Clinical Director will have a duty of loyalty to serve the PCN to the best of their abilities. The PCN in turn will have a stronger duty of care toward the Clinical Director. A self-employed Clinical Director will have contractual and professional duties toward the PCN, but will be more independent in their overall engagement.

It is important that:

- whether employed or self-employed, the working patterns reflect either the close relationship of employment or the more independent one of self-employment. This will avoid any questions from HMRC
- practices are aware that it is unlikely responsibilities and liabilities to the Clinical Director can be placed fully at arm's length. Even if self-employed, the Clinical Director will have a close ongoing relationship with the PCN. Unless that Clinical Director is also providing services as a business person in their own right elsewhere, they are likely to have certain employment rights as a 'worker'. Although some Clinical Directors will also be partners within their GP practice, this alone is unlikely to negate the suggestion they are a 'worker'. As such they may have rights to holiday, sick pay, and whistleblower status.

If the Clinical Director is self-employed, regardless of the employer, they will not have access to the NHS Pension Scheme. In terms of the NHS Pension Scheme, and the current capped allowances, it is quite possible that the Clinical Director will not want access to the scheme in this role.

Whether self-employed or not, the practicalities of who engages the Clinical Director will be the same as in Guidance Note 2 – Employment & Pensions and Guidance Note 5 – VAT & Funding Implications:

- the Lead Practice, Hybrid and Federation models allow for the simplicity of a single



employer whilst the Flat Practice model's joint employment structure is workable but might create some complexities in terms of reporting lines and responsibilities. Indemnities for additional employment / engagement costs can be agreed between the practices.

- where the provision of funds to pay the Clinical Director is not paid directly to the Clinical Director but is provided by one practice to another, the VAT risk can be mitigated if certain terms are included in the contract of employment / engagement
- if the Clinical Director funding is used as follows:
 - The practice where the Clinical Director is a partner or employee releases that partner from some or all practice duties in order to fulfil the CD role and
 - The practice continues to pay the Clinical Director as normal and
 - The practice then employs a locum to cover the Clinical Director's practice duties and
 - The practice, not the Clinical Director, receives the Clinical Director funding (i.e. to pay the locum)

then this will be a supply of healthcare services between members of a network and VAT exempt. The worker in question, the locum, is a health professional within the profession which they are registered to practise.

The Clinical Director is likely to be one of the GPs from the practices within the network but could be any appropriately qualified person. We refer to Guidance Note 3 - Governance, Accountability, Liabilities & Internal Arrangements, but again for simplicity it would be best if the Clinical Director reported into a board consisting either of one GP from each practice or all partners from member practices. For any future appointments of a Clinical Director, we recommend a process of applications (both internal and external) and an interview process subject to a final decision by the board.