

Payroll tax and health care practices

Where are we now?

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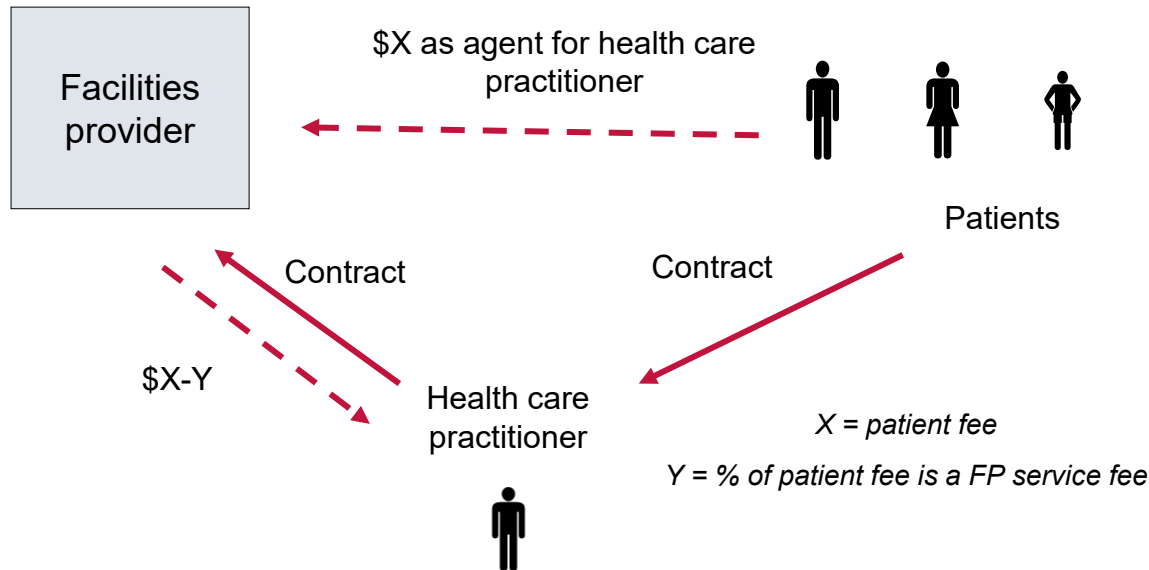
22 August 2022

Payroll tax

- Common law employee **but more.**
- “Relevant contract” provisions. Key issues:

Issue One	Is the health care practitioner (HCP) providing services to the facility provider (FP)?
Issue Two	Does an exemption apply? <ul style="list-style-type: none">• Is the HCP providing services to the public generally?• Are the services of the HCP being provided by two or more people?• Do they work for less than 90 days in the financial year
Issue Three	Is the FP paying taxable wages to the HCP?

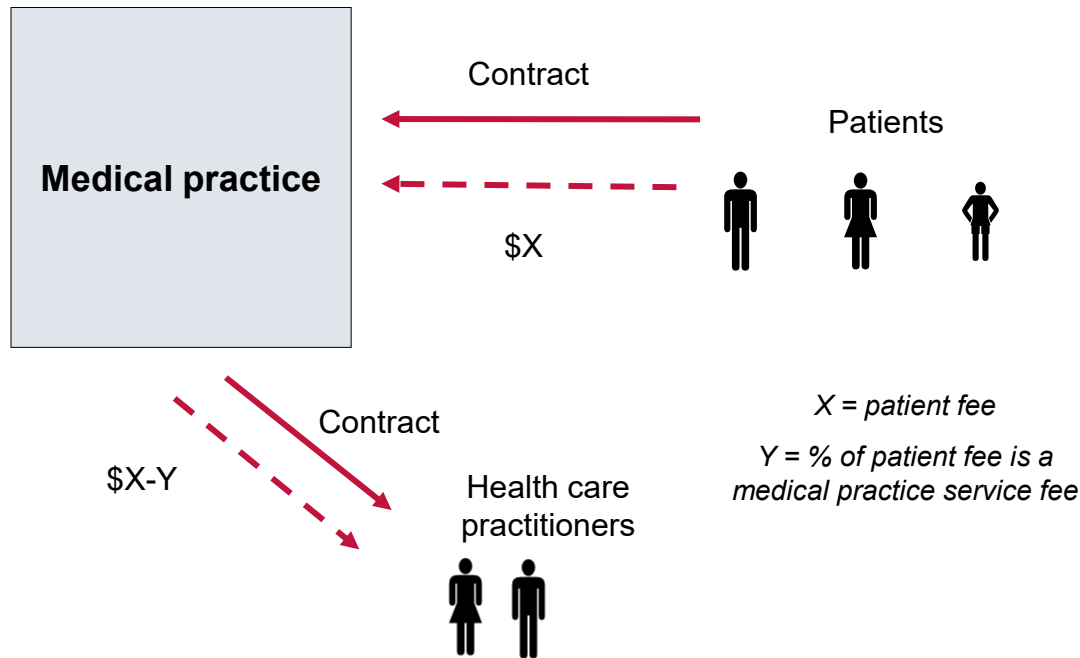
Tenancy and agency model



Features of model

- HCP invoices patients under HP's ABN. Actual billing is performed by FP as service to HCP.
- FP invoices HCP for its services
- Medicare provider no. of HCP is used on invoice
- FP collects money from patients and, after deducting its fee, pay the balance of HCP

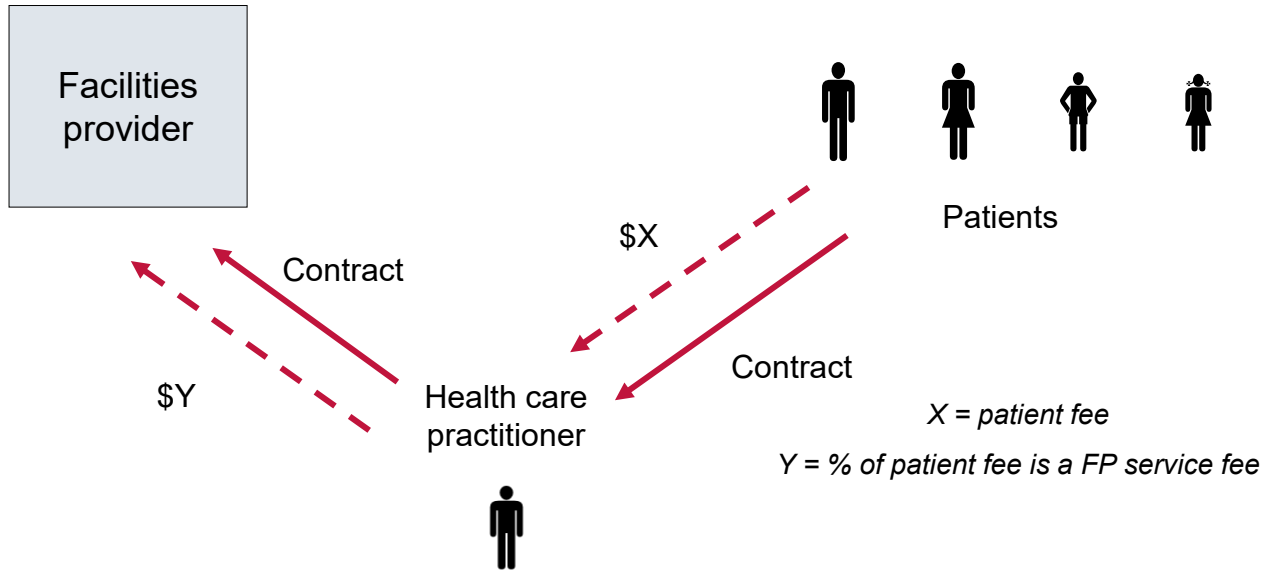
Contractor model



Features of model

- Practice invoices patients under practice ABN
- Contracted doctor invoices practice
- Remuneration of doctor is still usually a % of billings but does not need to be.
- Medicare provider no. of doctor is still used

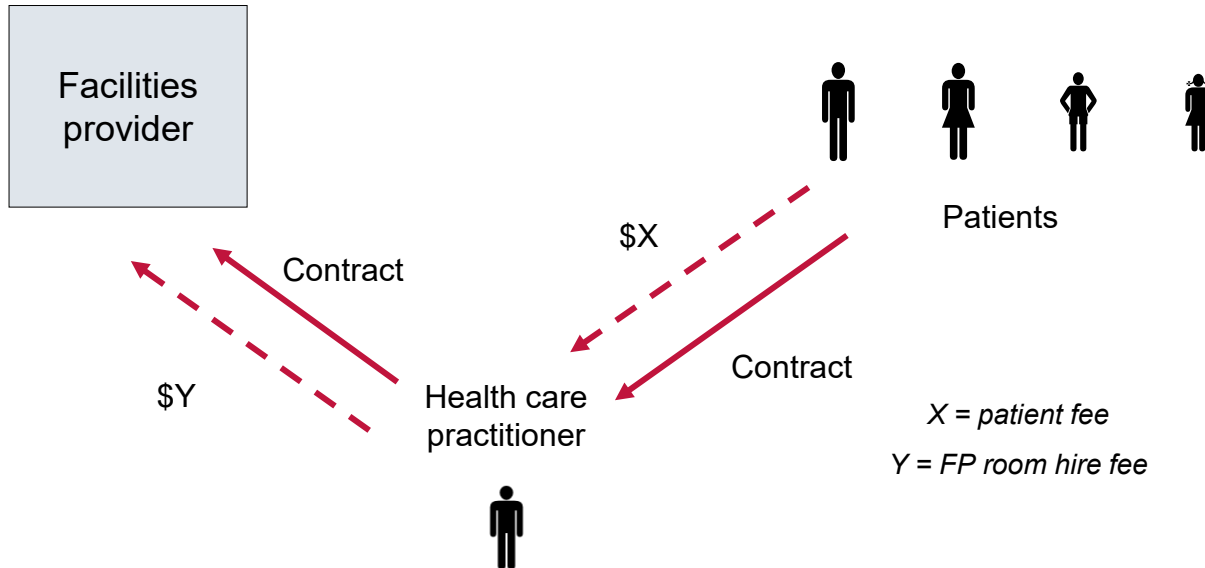
Health practitioner collection model



Features of model

- As with tenancy and agency model except patient fees are paid to doctor

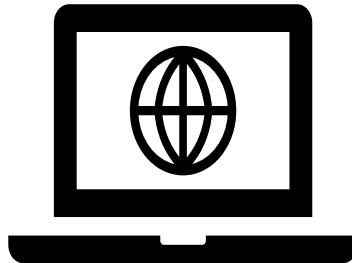
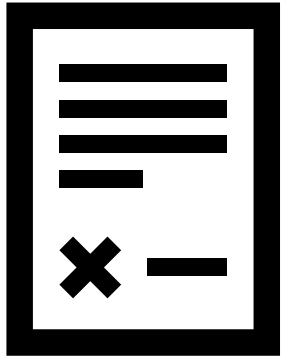
Room hire model



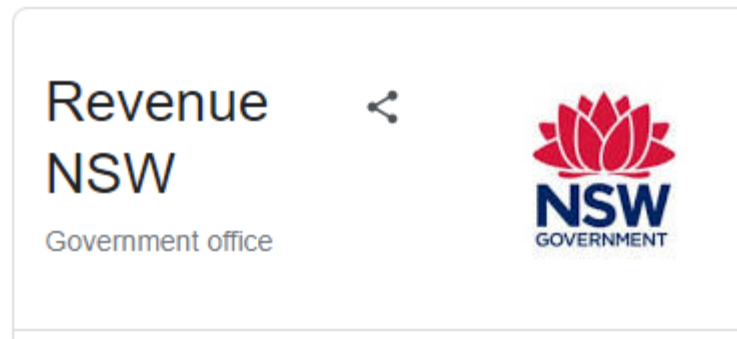
Features of model

- As with tenancy and agency model except:
 - patient fees are paid to HCP;
 - FP's fee usually not based on % of billings

Other considerations



Why are we here?



Revenue Ruling PTA 041



Relevant contract arises?

A contract between an entity that conducts a medical centre and a practitioner is a relevant contract if **all** the following apply:

1. the practitioner carries on a business or practice of providing medical-related services to patients
2. **in the course of conducting its business**, the medical centre:
 - (a) provides members of the public with **access to medical-related services**
 - (b) engages a practitioner to supply services to the medical centre by **serving patients on its behalf**
3. an exemption under section 32(2) of the Act does not apply.

‘Contract’ includes an agreement, arrangement or undertaking, whether formal or informal and whether express or implied.

FPs providing access to medical services and practitioner serving patients of the FP

- Provides members of the public with access to medical-related services
 - *Commissioner of Taxation v Healius Ltd* [2020] FCAFC 173
- Holds out to the public that it provides patients with access to medical services of a practitioner
- Practitioner supplies services to the medical centre by serving patients on its behalf
 - Are the patients the patients of the medical centre or the practitioner?
 - Economic substance v legal form
 - Control over who practices at centre, hours and days when they practice and space where that occurs

Exclusions

Three exceptions relevant to health care practice arrangements:

1. Providing services to the public generally

*The provision of services to patients for or on behalf of a single medical centre **may not** satisfy the requirement that services are provided to the public generally (see, for example, the Thomas and Naaz case).*

2. Working 90 days or less in a financial year

3. Services performed by two or more persons

- Evidence to substantiate the claim for an exclusion is required to be retained by the medical centre for at least 5 years.
- The onus is on the medical centre to establish that they fall within one of the exclusions.

Wages and third-party payments

Example 12

ABC Pty Ltd (“ABC”), which operates a medical centre, enters into a contract with Dr Wolf who agrees to serve patients for or on behalf of ABC. The contract is a relevant contract under section 32(1) and none of the exemptions under section 32(2) of the Act apply.

ABC is taken to be an employer under section 33 of the Act. Dr Wolf is taken to be an employee under section 34(a).

The contract provides patient fees including bulk billed Medicare rebates are to be assigned by Dr Wolf to P Pty Ltd (P Co). At the end of each month P Co is required to pay 30% of the revenue to ABC and 70% to Dr Wolf.

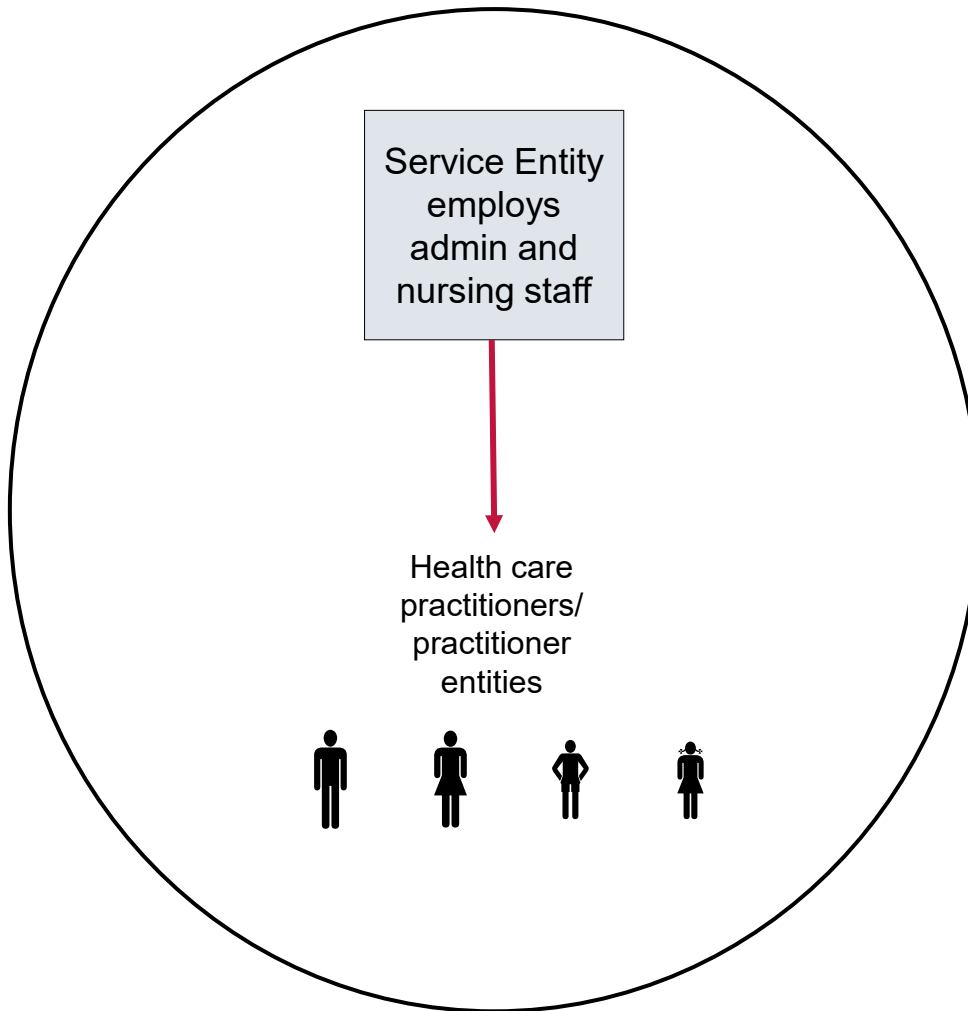
Under section 46 of the Act, the payments by P Co to Dr Wolf are taken to be wages paid by ABC to Dr Wolf because the payments are remuneration for the services of Dr Wolf that would have been wages if they had been paid or payable by ABC (a person taken to be an employer) to Dr Wolf (a person taken to be an employee).

What is not a relevant contract?

- Tenancy contract
- What does this mean?
- When will a tenancy contract be a relevant contract?



Grouping



- Service entity will be grouped with each practitioner/practitioner entity business as they share common employees
- All of the businesses could be treated as one group under section 74 of the Act. That is, larger group is formed which includes the service entity plus all practitioner entities.

Implications

When is a health care practice arrangement a relevant contract?

Still depends



Implications

- Focus on exemptions
- Structuring so no holding out?
- Contract
 - *Thomas and Naaz* was lost on contractual terms
 - Does the contract require the practitioner to work from the centre? If so, fatal.
- Audit experience
- Providing services to the public generally?
 - Untested

Questions?

Your presenters



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