

Clause	Topic	AMA comments	Bupa amendments	Points to note
15.2(c)	Your Provider	Practitioners are responsible for the compliance of their “Providers” with the Terms and Conditions. AMA sought clarification that the term “Provider” was not intended to extend to receptionists and other administrative staff.	Bupa clarified that “Your Provider” is only intended to capture the provision of clinical care/ treatment.	
3(a)	Warranties	This clause originally referred to “consents, permits, approvals”. AMA asked for clarification about what this was intended to cover.	Bupa agreed to remove the reference to “consents, permits, approvals”.	
3(c)	Working with vulnerable people	AMA proposed amendments to clarify these requirements given that legislation varies across States and Territories.	Bupa accepted AMA’s amendments	
4(a)	Requests for copies of qualifications, licences and registrations	AMA noted that it may not be feasible for practitioners to provide copies of qualifications, licences and registrations in three business days in all cases, particularly given the obligation also applies to employees and contractors.	Bupa added a “reasonable endeavours” qualification to the new 3 business day requirement.	
4(b)	Obligation to notify Bupa of complaints	AMA noted that these provisions are substantially wider than the equivalent provision in the existing arrangements. AMA also noted that practitioners are not able to assess whether a complaint is “likely” and cannot notify Bupa of complaints that they do not know about.	Bupa: <ul style="list-style-type: none">) removed the reference to “or likely to be made”.) clarified that practitioners only need to notify Bupa when they are aware of a complaint; and) limited this provision to complaints made “to a complaints body or regulatory authority that may impact your ability to comply with this Agreement or impact the reputation of Bupa and/or Defence”. 	
6	Insurance	Version 1 of the agreement was not consistent with the medical indemnity insurance requirements that apply to medical practitioners and effectively required all medical practitioners to have insurance of \$20 million.	Bupa substantially amended the clause. It also acknowledged that employees and contracted doctors are not required to take out their own insurance.	
7(b)	Confidentiality and privacy	AMA was concerned that this clause would apply to information that practitioners held for other purposes.	Bupa narrowed this clause so that it only applies to information held in relation to the provision of funded services.	AMA continues to have some concerns about how this clause will operate in practice given that it will prohibit doctors from: <ul style="list-style-type: none">) using cloud-based record systems unless they can be sure that the system is hosted in Australia, the data is encrypted, or there are other controls to prevent the host entity and its staff from accessing it;) emailing referrals, reports or results (given that emails may be routed outside Australia or the recipient may be located outside Australia); or) mailing reports or results to patients based overseas.

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7(c)	Requests for copies of patient information	AMA noted that it may not be practicable for a doctor to obtain the patient’s consent and provide the file within 5 business days, particularly if the information requested is not for a current patient and the files are stored offsite.	Bupa qualified the 5 business day requirement with “reasonable endeavours”.	
7(d)	Information to be included in patient records	AMA raised concerns about the level of detail that Bupa required practitioners to include in patient records. AMA also noted that medical practitioners were not in a position to verify all information provided by patients. AMA also objected to a provision (clause 8 of version 1) which gave Bupa ownership of intellectual property in deliverables and did not include any licence back to practitioners.	Bupa amended the clause to align with the standard set by the Health Insurance (Professional Services Review) Regulations 1999. It also qualified the clause with the words “to the best of your knowledge”. Bupa also deleted in its entirety a clause which sought to give Bupa ownership of any intellectual property created under the agreement.	AMA continues to be concerned about the obligation to ensure that records are “complete” given that: J Patients may ask for information not to be included. J The concept of “complete” is not expressly linked to the purpose for which the report was prepared.
7(f)	SPAM	AMA noted that practitioners should be able to opt out of receiving information from Bupa’s partners	Bupa accepted AMA’s amendments.	
7(g)	Notification of IT or privacy issues	AMA noted that this obligation should be limited to breaches or incidents related to the funded services.	Bupa accepted AMA’s amendments.	
9	Defence policies	AMA noted that practitioners should be provided with a copy of any policies that they are required to comply with. AMA also noted that there should be a transition in process for any new policies.	Bupa agreed to provide relevant, specific policies and procedures to practitioners where applicable to the provision of their services and a reasonable period of time to enable practitioners to comply.	
9.1(c)	Standard of care	Version 1 of the agreement referred to “scientific principle of evidence-based medicine”. Members were concerned that this would allow Bupa to introduce managed care.	Bupa replaced these words with a requirement that: “the practitioner’s peers could reasonably conclude that the services rendered or initiated by the practitioner were acceptable to the general body of their profession”.	
5(c) 9.3	Transmission of clinical reports	AMA raised concerns about new references to e-Health standards in the Terms and Conditions.	Bupa added a clause confirming that Bupa’s automated Booking and Referral System “satisfies the required standards of health information transmission”. It also added an obligation on Bupa to “provide” the new standards to practitioners (if this clause was triggered).	Bupa wants providers to use Bupa’s online portal to lodge clinical reports. Practitioners who elect to use their own electronic systems will be responsible for ensuring data is not transferred outside Australia or accessible from outside Australia. This is a potential issue for practitioners who use email or cloud-based systems. Bupa can withhold payment if providers do not provide clinical reports within 5 business days.
9.4 9.5	Other providers	AMA queried the statement that: <i>It is the expectation of Defence and Bupa that where practicable the on-referral for Pathology, Imaging and Radiology and Optical services is delivered by Bupa’s network of providers, a list of which</i>	Bupa has acknowledged that it will not be “practicable” to use preferred providers that do not operate outside business hours for emergency imaging, blood banking, pathology for management out-of-hours.	Bupa has a strong preference that all services be provided by contracted providers. This includes surgical assistances and anaesthetists.

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		<p><i>can be found at on bupa.com.au/adfprovidernetwork and may be updated from time to time.</i></p> <p>AMA also queried a statement that suggested that Bupa could refuse to pay unless preferred providers were used.</p>	<p>Bupa also clarified its statement about the relationship between payments and recommendations. The amended clause acknowledges that Defence has the right to:</p> <p><i>approve or not to approve the funding of care for EP, based on your or Your Providers clinical recommendation. It is expected that you or Your Providers will give due consideration to any preferred supplier arrangements that may be appropriate in making this recommendation.</i></p>	
10	Incident management	AMA proposed amendments which substantially narrowed the types of issues that need to be notified.	Bupa accepted AMA's amendments.	
11	Information about requests for unfunded services	<p>AMA raised a number of concerns about the interaction of this clause with the practitioner's obligations under the Privacy Act.</p> <p>AMA also sought clarification about a provision (clause 13 of version 1) which sought to regulate unfunded services.</p>	<p>Bupa accepted AMA's amendments.</p> <p>Bupa deleted the clause relating to unfunded services.</p>	
12	Prescribing medications	AMA sought clarity about how this clause was intended to operate in practice.	Bupa accepted AMA's amendments.	
14.1	Fees	AMA sought assurance that the fees would be reviewed.	Bupa amended this clause to provide that the Schedule of Fees "will be subject to annual review".	While Bupa has confirmed in writing to the AMA that "the fees payable to AMA's members pursuant to the Provider Terms and Conditions will be indexed annually, with due consideration given to CPI", Bupa has not contractually committed to this in the Terms and Conditions or the Fees Schedule.
14.2	Invoicing	AMA sought clarification about the payment arrangements for practitioners who elected not to use Bupa's online portal.	<p>Bupa agree to set out on its website:</p> <ul style="list-style-type: none">) any minimum details for invoices that are issued outside the Bupa system; and) the payment period for any invoices that are not issued by practitioners using Bupa's portal system. 	Bupa wants providers to use Bupa's online portal to make claims. Providers who continue to use other systems (including paper-based systems) are likely to experience payment delays.
16	Variation		<p>Bupa agreed to:</p> <ul style="list-style-type: none"> • notify all doctors when it has accepted their application to join Bupa's provider network; • provide doctors with a copy of the current terms and conditions (given that Bupa may have changed them after the doctor applied); and • specify the timeframe for any new guidelines or procedures to be implemented. 	Bupa can make unilateral changes to the Terms and Conditions.