

THE FC & PC RELATIONSHIP

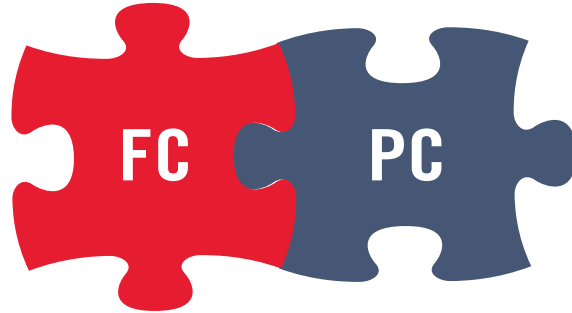


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FRANCHISE COMPANY (FC)

LEGAL SETUP

- Owned by Franchisee
- Can be LLC, S-Corp, C-Corp
- Need Federal ID #
- Governed by Operating/Shareholders Agreement
- Cannot use “ American Family Care” or “AFC” in entity name

INSURANCE SETUP

- Business Owners Insurance – named insured
- Medical Professional Liability – named insured

CREDENTIALING WITH HEALTH INSURANCE COMPANIES

- This company is NOT credentialed

OPERATIONS

- Establish bank account in entity name
- This company is on all agreements
- Payroll - Agreement with payroll vendor for non-medical personnel (i.e. marketing rep, regional business consultant)

REVENUE

- FC bills management fee to PC in a method that meets state regulations (i.e. flat fee or percentage of revenue, etc.)

EXPENSE

- All expenses run through this company

PROFESSIONAL COMPANY(PC)

LEGAL SETUP

- Owned by Lead Physician* (PT Docs should be added)
- Must be Professional Company (legal medical entity for State)
- Need Federal ID#
- Governed by Shareholder/Member and Stock/Member Transfer Restriction Agreement
- Cannot use “ American Family Care” or “AFC” in entity name

INSURANCE SETUP

- Business Owners Insurance – additional insured
- Medical Professional Liability – named insured

CREDENTIALING WITH HEALTH INSURANCE COMPANIES

- This company is credentialed with insurance companies

OPERATIONS

- Establish bank account in entity name
- Payroll – agreement with payroll vendor (signed by PC owner) billed to FC

REVENUE

- All patient billing is recorded in this company
- All revenue is deposited into this company's bank account

EXPENSE

- Management Fee from FC in NY, IL, CA, and FL
- All Collected Revenues transferred to FC in all other states**

* Lead Physician owns PC under stock restriction agreement. Employment Agreement exists between Lead Physician and the PC.

** This information is based on the best of our knowledge at this time. Please check your state laws.

FAQ

LEGAL STRUCTURE

What should the franchisee company/professional corporation structure look like?

The structure of the franchisee company ("FC") and urgent care center relationship will depend on the laws of the state where the franchise is located. If the particular state does not have a corporate practice of medicine law (discussed further below) the FC may own and operate the urgent care center directly through a limited liability company or other entity of its choosing. Many states prohibit or restrict the corporate practice of medicine. These laws are intended to prohibit or restrict non-physicians from controlling or influencing a physician's medical decisions. Unfortunately, the laws and the enforcement of them vary greatly around the country, and there is no true form or model that will fit every state and every business arrangement.

In states with corporate practice of medicine laws urgent care centers may only be owned and operated by an entity, such as a professional limited liability company or professional corporation ("PC"), which is owned by licensed physicians. In those states, non-physician owners (such as the FC) may not provide professional medical services, own or operate an urgent care center. In states that prohibit or restrict the corporate practice of medicine, one or more local physicians will form a PC, which will be owned solely by physicians for the purpose of establishing and owning the urgent care center. Although the FC may not employ physicians or participate in the PC, a common structure used by those who are experienced in this area allows the FC to monitor and participate in the center's operations through a management agreement and stock restriction agreement.

The PC will enter into a management agreement with the FC. The FC will provide administrative and management services to the PC in connection with the day-to-day operations of the center. The PC will pay a management fee to the FC. The fee may be a flat monthly amount or a percentage of the PC's revenues less expenses, depending on the specific state law. American Family Care has created PC documents and management agreements that conform to different states' models.

See file: Management Agreement.doc

Which responsibilities would each PC/FC take on? Which company name is used for each application (malpractice, credentialing, payroll, bank accounts, etc.)?

In corporate practice of medicine states, the PC will be responsible for performing all professional medical services. The FC will provide all administrative, non-medical services. There may be specific state law requirements regarding what duties must be performed by the PC, or what approval rights the PC must have. The FC will provide overall day-to-day management of the center's operations, including leasing office space and equipment for the center, ordering supplies, accounting and marketing.

Corporate practice of medicine laws require that all physicians be employed or contracted by the PC. All physicians who provide services at the center will be paid by the PC utilizing an approved payroll service provider, Professional Employer Organization (PEO) and covered under the malpractice insurance of the PC. The FC will employ non-physician personnel. The professional urgent care services will be billed under the name and billing number of the PC, although the FC will act as the administrative billing agent on behalf of the PC. Collections for professional services will be deposited in a bank account in the name of the PC. Although the FC will facilitate payor contracting, the payors will contract with the PC. The details of this arrangement are set forth in the American Family Care form management agreement between the PC and the FC.

Do the physician employment agreements and incentive programs need to be specific for my state?

Yes. Certain states prohibit non-professional entities from employing physicians to provide professional services. In those states, the PC will employ all physician personnel. Other state laws, such as fee-splitting and anti-referral, non-compete and employment laws may govern specific terms of physician employment, compensation and incentive programs. American Family Care has provided a template physician employment agreement.

See file: Physician Employment Agreement.doc

What happens when the lead physician resigns or dies?

The PC's governing documents, such as a stock restriction agreement, will contain restrictions on the physician owner's interests in the PC. For example, the documents will require that if the employment of the physician with the PC is terminated the physician's membership interest will automatically be transferred to a physician designated by the FC. American Family Care has a template stock restriction agreement.

See file: Shareholder and Stock Transfer Restriction Agreement.doc

Can a non-physician sit on the board of the PC?

In most cases, no. If a PC is necessary because of corporate practice of medicine restrictions, most state laws allow only licensed physicians to serve as members of a PC's board. However, a non-physician may participate in PC board meetings as a non-voting observer. As the contracted management agent, the FC will often participate in board meetings. Additionally, the stock restriction agreement will require that the PC obtain the consent of the FC before engaging in certain acts, such as transferring or selling interests, distributing profits, entering into an agreement with a third-party payor or filing a petition for bankruptcy.

What does the FC structure or FC document look like and what if I want to bring in a partner?

The internal structure of the FC will vary depending on whether there is a single owner or multiple owners. Physicians may also be investors in the FC if their investment is structured in compliance with federal and state laws. The owners of the FC will enter into an operating agreement (or similar governing document). Similar to any small business arrangement, the owners and their legal counsel will negotiate the specific business terms of the documents, including percentage ownership, voting, governance, capital contributions, distributions, tax issues, buyouts, transfers and noncompetes. The operating agreement may require a high level of customization to fit the specific internal structure and business terms agreed upon by the investors. Your corporate attorney will provide you with an operating agreement (for an LLC) or shareholder's agreement (for a corp).

See files: Stock Purchase Agreement.doc, Operating Agreement Sample.doc

The legal process and laws vary by state. How do I implement the correct structure for my state?

Arrangements involving health care services and physicians are highly regulated at the state level. There is much less uniformity among state laws in this area than in other areas of law. State laws impact all of the documents in the arrangement, including the management agreement, operating agreement, stock restriction agreement, employment agreement and PC documents (if necessary). Individual franchisees and physicians may desire other modifications to fit their business needs. These arrangements are not "one size fits all." American Family Care has designed various templates based on research, recommendations and its experience from prior franchisee models. These templates are intended to be used by the franchisee and its counsel as a starting point to create customized documents based on the applicable laws and business deal.

What type of professional entity should be used?

If the applicable state corporate practice of medicine law requires the Center

to be owned by a professional entity owned by licensed physicians, the state law may provide for more than one choice of entity. The most common physician professional entity is a professional corporation ("PC"). In many states, other entity forms, including professional limited liability companies ("PLLC") or professional associations, are available for physician practices. All entity forms provide liability protection for the physician and require corporate filings with a state agency. A PLLC may have state and federal tax advantages for the physician. The Franchisee and the physician owners of the professional entity should consult with their business and tax advisors to determine the best form of entity available under specific state law. American Family Care maintains template Operating Agreements for PCs and PLLCs.

Who should employ the various individuals that assist in operating the urgent care center (the FC or the PC)? For instance, the PC will employ the lead physician and all other clinical staff, but should the FC employ the remaining non-clinical staff or could the PC employ these individuals as well?

Corporate practice of medicine laws require that licensed professionals be employed by a professional entity, such as the PC or PLLC. Generally, the FC will employ all urgent care center personnel except for the licensed clinical professionals. As part of its management services, the FC will lease the administrative, non-licensed staff to the PC for the operation of the center. Employing and providing more personnel to the PC justifies the amount of the management fees payable to the FC under the management agreement, and creates administrative efficiencies for the center.

Should only the PC personnel perform the employee evaluations for the clinical personnel?

The PC and the lead physician should be responsible for the overall supervision and evaluation of the clinical aspects of the center, including clinical employee performance. However, the FC and its human resources/administrative personnel may facilitate and administer the evaluation process for the PC and the clinical personnel. The FC and its administrative representatives may also provide input and evaluate the non-medical aspects of clinical employees' performance (e.g., attendance, compliance with the center's non-clinical policies).

Do you foresee any problems with giving the FC third party beneficiary rights in the Lead Physician Employment Agreement to enforce the restrictive covenants therein?

Yes. Corporate practice of medicine laws prohibit a non-professional entity (such as the FC) from employing or exercising any influence over the employment of physicians and licensed professionals. The FC should not be a party or a third-party beneficiary to an employment agreement between the PC and the lead physician. The PC's enforcement of the restrictive covenant may be addressed in an agreement among the FC, the PC and the lead physician shareholder of the PC, such as a Shareholder and Stock Transfer Restriction Agreement or Membership Interest Transfer Restriction Agreement in the case of a PLLC.

Is there any mechanism we could put into the Management Agreement whereby the FC could control the amount of compensation paid to the lead physician and/or clinical personnel of the PC?

The Shareholder and Stock Transfer Restriction Agreement or Membership Interest Transfer Restriction Agreement provides for certain events that would cause a transfer of the lead physician shareholder's stock or membership interest to another designated physician. These "transfer events" may include the approval of expenditures, including compensation payments in excess of budgeted amounts, or the modification of budgets.

See Section 10(b)(vii) of the Shareholder and Stock Transfer Restriction Agreement and Section 11(b)(vii) of the Membership Interest Transfer Restriction Agreement.

What kind of lawyer do I need?

There is no specific type of "urgent care" lawyer. It would be most efficient to engage an attorney who is experienced in representing physician group practices and physician owned businesses. A law firm that has diverse experience in a number of practice areas, including health care, business, tax and employment law would best be able to serve the needs of the FC. An attorney that does not have experience in these areas may lead to additional time (and fees) for that attorney to learn the legal issues.

INSURANCE QUESTIONS

Which entity is named on my business insurance and liability insurance?

Always list your franchise entity (FC) as the named insured when applying for business owner's insurance and medical professional liability insurance.

How should the other entities, besides the FC, be noted on my policies?

For both the business owner's insurance and medical professional liability insurance list the American Family Care Franchising LLC entity, the master American Family Care entity (even if you do not own the master entity), the Professional Company (PC) and any other entities you may own that pertains to the operation of the center. When listing each entity identify what they are in relationship to your franchise center (national franchise, master franchise, physician owned, owns autos, etc.), list what each entity does for your franchise and, for those you own, list the owners and their ownership percentages.

Are the additional entities covered?

In most instances the additional entities that are listed are covered only with respect to the activities of the named insured, and are not provided coverage if the named insured is not a party to the claim.

Do the separate entities require additional coverage?

If there is a need for the other entities to have additional insured status they will need to purchase a separate policy. Your insurance vendor can give you additional guidance on this question. How do I get a center application for insurance?

See the vendor list for contact information of approved insurance vendors.

Are there additional requirements for my insurance policies?

When submitting the medical professional liability center application, please include a copy of the national American Family Care protocols for x-ray over read, pre-surgical physicals and sports physicals.

What should I consider when I am securing general liability insurance?

When selecting a contractor to provide build out construction be sure you are named as additional insured under the general liability (GL) insurance (not just a certificate holder), and make sure they carry at least \$2,000,000 of liability coverage (must include completed operations). The contractor needs to be insured by an "A" rated (by A. M. Best) insurer. They should cover the course of construction insurance (including theft). They are responsible for any deductible that may apply. You should be given proof of the contractor's WC insurance with employers' liability at a \$1,000,000 limit. You should be granted a waiver of subrogation from their GL and WC insurer. (This needs to be given in writing from the insurer via a certificate or endorsement). Your lawyer can provide you with standard wording for the construction contract you would enter into.

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AGREEMENT SUMMARIES

The following documents are located on the AFC Intranet Library in the Legal Forms folder.

Visit Library > Franchise Resources > Legal Documents > Operating Agreements.

Stock Purchase Agreement

This is a contract by which the Professional Corporation ("PC") issues stock to the PC's lead physician. This document is to be executed in conjunction with the Shareholder and Stock Transfer Restriction Agreement.

Membership Interest Purchase Agreement

This is a contract by which the Professional Limited Liability Corporation ("PLLC") issues a membership interest to the PLLC's lead physician. This document is to be executed in conjunction with the Membership Interest Transfer Restriction Agreement.

Shareholder and Stock Transfer Restriction Agreement

This is a contract between the Franchise Company ("FC"), PC and PC's lead physician restricting the transferability of the PC's stock. This contract stipulates that the stock shall automatically transfer to the FC's designated transferee upon the occurrence of certain events such as the physician's death, disability, termination of employment or loss of medical license, and the FC's election to exercise an option to purchase the stock. This contract also provides that the FC may nominate an observer to attend and follow the PC's Board meetings.

Membership Interest Transfer Restriction Agreement

This is a contract between the Franchise Company ("FC"), PC (as a Professional Limited Liability Company or "PLLC") and the PLLC's lead physician restricting the transferability of the PLLC's membership interests. This contract stipulates that the membership interests shall automatically transfer to the FC's designated transferee upon the occurrence of certain events such as the physician's death, disability, termination of employment, loss of medical license or the FC's election to exercise an option to purchase the membership interest. This contract also provides that the FC may nominate an observer to attend and follow the PLLC's Board meetings.

Operating Agreement

This is an agreement between the members of a limited liability company ("LLC") or Professional Limited Liability Company ("PLLC") that governs the LLC's/PLLC's business and the member's financial and managerial rights and duties. Operating Agreements generally address the members' percentage interests in the LLC/PLLC, their rights and responsibilities, voting, management of the LLC/PLLC, how profits are allocated, what happens when a member wants to sell his/her interest, dies, or becomes disabled.

Physician Employment Agreement

This is a contract between the PC and the PC's lead physician. This contract provides for terms of employment for the physician, including his/her compensation, fringe benefits, duties and obligations, professional liability insurance, and restrictive covenants (confidentiality and non-compete provisions).

Management Agreement

This contract between the FC and PC provides for the administrative and management services that the FC will provide to the PC in connection with the day-to-day operations of the center and in consideration of which the PC will pay a management fee to the FC. The fee may be a flat monthly amount or a percentage of the PC's revenues less expenses, depending on the specific state law.