BUDDLE FINDLAY

Legal update - the PHO Services Agreement

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12 September 2013

As reported in an earlier health sector legal update, the new PHO Services Agreement between District Health Boards (DHBs) and Primary Health Organisations (PHOs) came into force on 1 July 2013. Buddle Findlay drafted the Agreement on behalf of the Ministry of Health, DHBs, and PHOs.

Background – the Government's policy for primary health care

The Agreement reflects the Government's strategy for primary health care, which is set out in its Better, Sooner, More Convenient (BSMC) policy. The policy aims to provide better services for patients by ensuring that primary and secondary health care professionals work collaboratively as part of an integrated health care system. That collaboration is expected to result in:

- Better sharing of patient information
- Patients receiving a more continuous health service and getting treatment more quickly
- Health professionals being more involved in the health care system and decisions about service delivery
- More health services being provided in the community.

The Government expects both DHBs and PHOs to drive the integration of the health system, and has signalled that it will hold both accountable for doing so.

New obligations, clearer functions, roles, and responsibilities

One way in which that is achieved is through the new PHO Services Agreement. Like the PHO Agreement (which the PHO Services Agreement replaced), the new Agreement is the mechanism through which primary health services (which include first level and urgent care services, general medical services, and immunisation services) are funded, and sets out the service specifications for those services. However, the Agreement also places new obligations on both DHBs and PHOs to drive the integration of the health system, and aims to clarify the role of PHOs. This is reflected in the new Part A of the Agreement.

Part A sets out the reasons why the DHB and the PHO have entered to the Agreement, which include achieving the objectives of the BSMC policy. In addition, Part A sets out the functions of PHOs and the outcomes that PHOs must endeavour to achieve. These include that PHOs will:

- Facilitate and promote service development, coordination, and integration
- Participate in the development of the DHB's annual plan
- Contribute to ensuring the clinical and financial sustainability of the health system
- Ensure patients receive quality, coordinated care delivered by multi-disciplinary teams, that is easy to access and is provided close to home.

New minimum requirements for PHOs

Another new feature of the PHO Services Agreement is the inclusion of minimum requirements for PHOs. The minimum requirements are intended to be a minimum standard that a PHO must meet in order to become and remain a PHO. The requirements are significant, and include, for example, that the PHO will be able to demonstrate:

- A high level of clinical leadership and engagement by having the explicit support of local clinical leadership across a range of disciplines, and the ability to build and maintain effective collaborative relationships locally and nationally
- An advanced level of capability and capacity by having the proven ability to form strategic and operational alliances with DHBs in their district/region and other provider networks to deliver transformational change in the health sector.

The Ministry is leading the development of a new integrated performance and incentive framework that will monitor the

performance of the health system generally, and whether PHOs are meeting the minimum requirements in particular. This framework will replace the current PHO Performance Programme.

Alliance agreements

Another important feature of the new Agreement is the express requirement that each PHO is to enter into an Alliance Agreement with the DHB to establish a health alliance. Health alliances are alliances between DHBs, PHOs, and other health providers involved in the delivery of primary and secondary services at a district or regional level. Members of alliances enter into an Alliance Agreement, which provides for the alliance (led by an Alliance Leadership Team) to make decisions about the delivery of health services. Nine alliances have been operating across the country since 1 July 2010. However all DHBs and PHOs are required to be part of an alliance from 1 July 2013.

Other important changes and clarifications

As well as making general drafting improvements, the new PHO Services Agreement clarifies requirements relating to after-hours services and continuation of services, and includes a new provision relating to contracted provider agreements.

After-hours services are provided as part of a first level and urgent care services. As has always been the case, urgent care services must be available to 95% of a PHO's Enrolled Population within 60 minutes travel time, on a 24-hours a day, 7 days a week, 52 weeks a year basis. The Agreement now expressly provides that the PHO will ensure that if it or its contracted providers cannot meet that requirement, it must put in place alternative arrangements for continued provision of urgent care services.

The Agreement also clarifies that if there is any temporary or permanent cessation of first level or urgent care services by a PHO or its contracted provider, the PHO will ensure that it or the provider has put in place alternative arrangements for the continued provision of services.

Finally, the Agreement provides that any new subcontracts that the PHO enters into for first level services will come into force on 1 July of the year after the PHO first notified the DHB of the new subcontract (unless the DHB and PHO agree otherwise). That is to ensure new subcontracts come into force at a time that fits in with DHBs' annual planning cycles.

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