

Agenda for Teleconference 12.2.16, 2.30 pm

1. Ministry of Health pre-Christmas advice to providers and recent update
2. MoH Contract Variation
3. ACC travel guidance – lead providers, contract variation
4. Union provider advice for employees
5. Removal of fair travel funding from contract rate.
6. Impact of minimum wage increase 2016.
7. Disadvantage any party (variation to settlement agreement)
8. Disadvantage Employees (section from Bill)
9. Legislation –update on legislation (second reading)
10. General Questions

1. Ministry of Health provider information update

(MoH Update is on HCHA Website)

Key points of difference between pre-Christmas and recent:

- Highlighted that Exceptional Travel time and distance should be rounded to the nearest full minute and kilometre.
- Introduced a grace period until 2 May 2016 where the funder field can still be used in a claim when the agreement number is not yet known.
- Included scenarios on Exceptional Travel on a return trip home and claiming where one visit with Exceptional travel is funded by ACC.
- Enhanced the scenarios with sample claim data and sample response files

Questions

2. MoH Contract Variation

- Provided pre-Christmas, on HCHA website and MoH website
 - Questions
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3. ACC Travel Guidance and contract variation

- Contact your lead providers who should have received draft travel guidance and contract variation from ACC, and with whom you need to negotiate contract variation re IBT.
 - Questions
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4. Union/provider advice for employees

- On HCHA website and emailed to all providers.
 - Ministry version.
 - IEA – possible clauses – emailed to providers
 - Questions
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5. Fair travel removal from contract rate

- As per MoH employer/funder information.
 - Questions
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6. Impact of minimum wage increase 2016

(from Settlement Agreement)

A4.2 The parties acknowledge that the travel costs funding model is based on an hourly rate significantly below the sector average contract rate. Accordingly, any statutory minimum wage increase is likely to have a material impact on the sector in relation to the payment of travel costs.

The Settlement Agreement recognises that there will be an increase to the minimum wage from 1 April 2015, and costings have been based on a minimum wage of up to \$14.75 per hour from the beginning of this Agreement (1 July 2015). If:

The Minimum Wage increase in April 2015 means the rate is higher than \$14.75; and/or

From July 2015 there are any further adjustments to the statutory minimum wage;

within 20 working days of notification of (a) and (b) above, a meeting between the parties will be held to seek to agree a process to identify and quantify the impact or potential impact of the minimum wage adjustment on the provision and on-going sustainability of services. The reporting requirements of Cabinet Minute 14 (10) 14 will apply.

A4.3 If any party invokes this clause in relation to a potential variation required as a result of a minimum wage increase, the procedure in this clause will be carried out as a national process. As part of the national process all reasonable steps will be taken to notify all parties of the potential variation and invite them to participate in the national process.

A4.4 All parties will act in good faith and use best endeavours to identify and quantify the impact or potential impact of the minimum wage increase within the timeframe.

A4.5 Where the parties are not able to agree that there is an impact on the provision of services as a result of a minimum wage increase, an independent assessment will be sought within one month of notification of the issue and the parties will be guided by the results of the independent assessment which should be provided within 20 working days.

A4.6 Where all parties agree, or the results of an independent assessment indicate, that there is an impact on the provision of services resulting from the minimum wage increase, all parties will then seek to:

agree a variation which may include without limitation:

reconfiguration of the services; and/or

adjustment to prices or payments in respect of the services; or

present to the Minister of Health and Minister of Finance, pursuant to Cabinet Minute (14) 30/21,

A4.7 The Agreement may be varied any time on written notice:

(a) if it is necessary to comply with a change in law; or

(b) if it is necessary to comply with a Crown direction; or

(c) if the Crown funding agreement between the parties is varied or amended and the effect of any such variation or amendment is that a variation is needed so the parties can comply with obligations under the Crown funding arrangements

A4.8 Any variation must be in writing and must be signed by all parties.

A4.9 The procedure in this clause may be utilised only once in respect of each minimum wage increase.

7. Disadvantage – any party (Variation to the Settlement Agreement)

This clause applies if any party to the agreement can show they are overall financially disadvantaged by the application of Part A of the agreement in comparison to existing arrangements prior to 1 July 2015 and the overall intention of the agreement (as set out in the principles in the settlement agreement) and related financial arrangements agreed by the parties to the Agreement. The settlement parties agree the issue must, in the first instance, be raised with the other relevant settlement party (or parties) who can assist in remedying the alleged financial disadvantage. The parties must work together in good faith and with urgency to remedy any alleged financial disadvantage.

If the settlement parties are unable to reach an agreement as to whether there has been financial disadvantage or how to remedy such financial disadvantage the party (or parties) will notify all the parties in writing of the alleged financial disadvantage and the remedy sought. The parties must proceed to mediation and agree the appointment of a mediator, to attempt to rectify the situation. In the case of providers and funders, such mediation will occur via a national mediation mechanism similar to that set out for minimum wage increase adjustments in the funder variation agreement contained in Part A of the Agreement (because any such issues will need to be addressed on a nationally consistent basis and likely via reference to the Agreement's noted Cabinet minutes). The parties will agree to an appropriate process in writing.

The parties agree that an issue of whether an employee is overall financially disadvantaged is an employment relationship problem for the purposes of the Employment Relations Act 2000. The parties agree that, in respect to qualifying employees and whether they have been financially disadvantaged overall by application of Part A of the agreement, it is intended that the relevant assessment will be a comparison between the employee's usual travel-related remuneration (based on the employee's employment agreement) in the four weeks prior to 1 July 2015 and the four weeks following full implementation of the agreement on 1 March 2016. Alternatively, if the employee can demonstrate that they are worse off under the new model specifically in respect of travel-related time and expenses, this may be used as a comparison also. The parties acknowledge that as qualifying employees work irregular hours and have changes in clients this will need to be taken into account by pro-rating any assessment. (The intention being to enable a comparison of like with like where possible). The parties acknowledge that this process (and implications) is yet to be determined or tested, so the intended assessment above may need to be adapted once further analysis is completed.

The parties confirm that the agreement, once all the conditions at clause 3.1 have been met (including this variation) and the agreement is unconditional, is a binding contract between the parties and can be enforced by any party in a Court of law.

8. Disadvantage – employees (from the Bill, second reading)

10 No HCS employee to be financially disadvantaged

- (1) **Subsection (2)** applies if, because of the operation of **section 8**, an HCS employee's post-commencement travel entitlement is less than the employee's pre-commencement travel entitlement.
- (2) The HCS employer must compensate the employee for the reduced entitlement by inserting a term in the employee's employment agreement that has the effect of requiring the employer to pay the employee an amount for travel between clients greater than that required by this Act.
- (3) The amount must be no less than the amount that is equal to the employee's total entitlement before 1 July 2015.
- (4) An HCS employer and an HCS employee—
 - (a) may agree to enhance a term inserted in the employee's employment agreement under **subsection (2)**; but
 - (b) may not agree to otherwise amend or remove the term at any time while the employee is employed by the employer.
- (5) In this section,—

post-commencement travel entitlement means an HCS employee's total entitlement under this Act for travel between clients in the pay period immediately after 1 March 2016

pre-commencement travel entitlement means the total amount an HCS employee would have been entitled to for the following travel under the terms of his or her employment agreement at 30 June 2015 were **section 8** not in force:

- (a) travel between clients in the pay period immediately after 1 March 2016; and
- (b) travel described in **section 8(1)(b)** in the pay period immediately after 1 March 2016.

9. Legislation

- Update – second reading 11.2.2016
- In-committee stage 16.2.2016

<http://www.legislation.govt.nz/bill/government/2015/0067/latest/DLM6693509.html>

Online video of speeches is available at:

<http://www.inthehouse.co.nz/video/41482>

10. QUESTIONS