

Community Accountability Planning Submission (CAPS) & Multi-Sector Service Accountability Agreement (M-SAA)

Frequently Asked Questions (FAQs) and Answers

Version 3.0 - March 2011

****FOR LHINS and Health Service Providers****

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A. Glossary of Terms

HSP means a health service provider as defined in LHSIA

CAPS means the Community Accountability Planning Submissions

CFMA means the Commitment to the Future of Medicare Act

LHSIA means the Local Health System Integration Act, 2006

M-SAA means the Multi-Sector Service Accountability Agreement

MOHLTC mean the Ministry of Health and Long-Term Care

Sector refers to the Community sector that includes CCAC, CHC, CSS and MH&A health service providers.

B. General Questions

B1. What is the Required Insurance rating HSPs must maintain under the M-SAA s.11.4 (b)?

A: The HSP will put into effect and maintain, with insurers having a secure A.M. Best rating of B+ or greater or equivalent for the period which the M-SAA is in effect.

B2. Is the Community Financial Policy applicable to Municipalities?

A: All municipal agencies receiving LHIN funding for programs must follow the Community Financial Policy for the LHIN funding they receive.

B3. Will LHINs be granting waivers for the balanced budget requirement in the M-SAA?

A: The Ministry LHIN Accountability Agreement specifies that LHINs must require balanced budgets for all health service providers funded by the LHINs. This requirement applies to the whole entity, not merely to programs funded by the LHIN. Except in the circumstances noted below, there should be no waivers granted to any HSP under an M-SAA.

Exceptions:

- (i) where the HSP is a hospital that has been or will be granted a waiver of the balanced budget requirement for 11/12 under the H-SAA; and
- (ii) where the HSP is a municipality and the municipality will not balance.

The granting of any waiver is subject to the Ministry's pre approval.

B4. Will LHINs be granting waivers to HSPs to provide an exemption from, or to allow additional time for developing, the Performance Agreements required under the 2011-14 M-SAA s.10.3 (b) Governance?

A: No. All LHINs will expect that HSPs have, or will have, within 60 days of the execution of the M-SAA, a Performance Agreement with its CEO that ties the CEO's compensation plan to the CEO's performance.

B5. How can we tie CEO compensation to performance plans when there is a freeze on salaries? If we introduce new performance standards and keep compensation the same could this not give rise to a claim for constructive dismissal?

A: Having a performance-based compensation plan with your CEO and the application of the *Public Sector Compensation Restraint to Protect Public Services Act*, 2010 on that plan are two separate issues.

An HSP is not required to increase compensation contrary to the salary restraint legislation to put a performance agreement in place. Putting a performance

agreement in place where none exists, or without increasing compensation, will not give rise to a claim for constructive dismissal. See s. 29(a) of the *Commitment to the Future of Medicare Act*. The CFMA provides in part as follows:

23(6) A service accountability agreement may provide that a HSP will enter into a performance agreement with its CEO to support the achievement by the HSP of the terms of the service accountability agreement.

23(7) If a service accountability agreement requires that a HSP enter into a performance agreement, the HSP and its CEO shall enter into a performance agreement within such period of time stipulated in the service accountability agreement, and the terms of the performance agreement shall be consistent with the service accountability agreement.

Exception – CEO

23(8) Despite subsection (7), a CEO shall not be required to enter into a performance agreement except with respect to that part of the individual's appointment, employment or contract that relates to his or her function or position as a CEO for the HSP.

Duty of HSP

23(9) A HSP has a duty to take all reasonable care to ensure that its CEO complies with any performance agreement and his or her duties under this Part, including taking such measures as may be necessary from time to time to enforce the HSP's rights under the performance agreement.

Where change in employment

29. (1) Where, as the result of entering into a performance agreement under subsection 23 (7) or the making of an order made under subsection 27 (1) or 28 (5), there is a material change in a CEO's terms of employment with a HSP, including a holdback, reduction or variation of the compensation package or a payment by the CEO,

(a) the change shall be deemed to have been mutually agreed upon by the CEO and the HSP;

(b) no proceeding shall be brought by or on behalf of the CEO for any payment, compensation, benefits or damages from the HSP, the Minister, a LHIN or any other person, despite any provision to the contrary at law or in his or her contract of employment; and

(c) the CEO shall not receive any payment, compensation, benefits or damages from the HSP, the Minister, a LHIN or any other person, despite any provision to the contrary at law or in his or her contract of employment.

Services

29(2) Subsection (1) applies with necessary modification to a contract or agreement for services between a HSP and a CEO.

B6. Is the Performance Agreement between a CEO and the HSP tied to a LHIN's funded position only?

A: No. The Performance Agreement has nothing to do with a LHIN's funded position. It does however have to do with achieving the HSP's obligations under the M-SAA.

A “Performance Agreement” means an agreement between an HSP and its CEO that requires the CEO to perform in a manner that enables the HSP to achieve the terms of the M-SAA and any additional performance improvement targets set out in the HSP’s annual quality improvement plan under the Excellent Care for All Act, 2010.

B7. What if the CEO is not funded through the LHIN's (for example municipalities or large multi-service organizations)?

A: It doesn’t matter. The performance agreement is an agreement that requires the CEO to perform in a manner that enables the HSP to achieve the terms of the M-SAA and any additional performance improvement targets set out in the HSP’s annual quality improvement plan under the Excellent Care for All Act, 2010.

B8. What if LHIN funded services account for only a fraction of overall services provided?

A: It doesn’t matter. The amount of funding that an HSP receives from the LHIN has no bearing on the need for a performance agreement. When an HSP enters into an M-SAA with a LHIN, the HSP's Board has a fiduciary duty to ensure that the terms of that M-SAA are fulfilled. The Board's only employee is the CEO and so the only means of ensuring that the Board's duties are fulfilled is through the CEO. The performance agreement is a tool that enables an HSP's Board to ensure that the HSP's CEO is fulfilling the terms of the M-SAA. Having a performance agreement is also a best practice and allows the board to set and track the achievement of goals for the HSP. The M-SAA requirement that an HSP enter into a performance agreement with its CEO is permitted by the CFMA.

B9: Who is the CEO? What if the organization is so big that it would be inappropriate to hold the CEO accountable, but it would be appropriate to hold a lesser position accountable?

Under the M-SAA the term “**Chief executive officer**” means any individual who holds the position of chief executive officer with the HSP, and any individual who, regardless of title,

- (a) holds a position with the HSP similar to that of chief executive officer, or
- (b) performs functions for the HSP similar to those normally performed by a chief executive officer;

The M-SAA is an agreement between the LHIN and the HSP. It is signed on behalf of the boards of directors of the two organizations. The board’s only employee is the CEO, so it is appropriate that the obligation to achieve the terms and conditions of the M-SAA should rest with the CEO. If the CEO wishes to enter into performance agreements with his or her employees to ensure that they too act in a manner that enables the CEO to fulfill his or her performance obligations, that would be up to the CEO.

B10. If an HSP currently has a Performance Agreement with their CEO, but it does not tie compensation to performance, do they need to amend their current CEO Performance Agreement?

A: Yes.

B11. Does the expectation of a Performance Agreement between a CEO and the HSP change the employment status of the CEO from permanent staff to contract staff?

A: No.

B12. What is the “Supply Chain Guideline” referenced in the Procurement of Goods and Services s. 4.8(ii)? What rules do HSPs have to follow?

A: In April 2009, the Broader Public Sector (BPS) Supply Chain Guideline was issued. The BPS Supply Chain Guideline currently applies to BPS organizations, including HSPs, receiving more than \$10 million per fiscal year from MOHLTC and/or the Ministry of Education and Training, Colleges and Universities. This guideline is available at: http://www.fin.gov.on.ca/en/bpssupplychain/documents/scg_1-0.pdf.

The application of the BPS Procurement Directive is set out in the BPS Procurement Directive itself:

- The Directive will apply to hospitals and CCACs as of April 1, 2011. This means that as of April 1, 2011, hospitals and CCACs will no longer be subject to the BPS Supply Chain Guideline, and instead will be required to comply with the BPS Procurement Directive.
- The Directive will apply to all other publicly funded organizations (including HSPs) that received \$10 million or more of public funds in the previous fiscal year, as of January 1, 2012. This means that as of January 1, 2012, any HSP that received \$10 million or more of public funds in the 2011-12 fiscal year will no longer be required to follow the BPS Supply Chain Guideline, and instead will be required to comply with the BPS Procurement Directive.

The new BPS Procurement Directive, as well as implementation tools, are available at: <http://www.fin.gov.on.ca/en/>.

B13. Are the Supply Chain Guidelines applicable to Municipalities if they receive more than \$10 million per fiscal year from the MOHLTC and/or the Ministry of Education and Training, Colleges and Universities?

A: The BPS Supply Chain Guideline currently applies to BPS organizations, including HSPs, receiving more than \$10 million per fiscal year from MOHLTC and/or the Ministry of Education and Training, Colleges and Universities.

B14. What are moral rights and why do they need to be referenced in the PFA (paragraph 4)?

A: Moral rights are rights of integrity recognized under the Canadian Copyright Act. They cannot be licensed, but they can be waived and are commonly done so. In order for a LHIN to fully utilize the rights that the HSP is licensing to the LHIN, moral rights in the deliverables need to be waived.

B15. What is the reporting requirement for HSPs who are not required to provide services in French under the provisions of the French Language Service Act? Is there a standardized template for this reporting?

A: Article 8.1(c) of the M-SAA specifies that if the HSP is required to provide services to the public in French under the provision of the *French Language Services Act*, the HSP will be required to submit a French language services report to the LHIN. The French language services report can be found on WERS.

If the HSP is not required to provide services to the public in French under the provisions of the *French Language Service Act*, it will be required to provide a report to the LHIN that outlines how the HSP addresses the needs of its local francophone community. There is no standardized template for this reporting; each HSP will need to work with the LHIN to identify the appropriate format required.

B16. Was the Ontario Hospital Association (OHA) consulted in the development and review of the M-SAA?

A: Members of the M-SAA Steering Committee corresponded with representatives from the OHA during the M-SAA template review and development. The OHA indicated they would respond to any concerns raised by the Hospital sector with M-SAAs as needed.

B17. What is the requirement for HSPs to implement Rai-CHA? What is the requirement for HSPs to implement OCAN?

A: Each LHIN will determine the requirement for HSPs to implement Rai-CHA and OCAN within their LHIN.

B18. How can LHINs and HSPs access all the Policies listed in Schedule D?

A: LHINs can access the policies through the MOHLTC FIM website (<http://www.mohltcfim.ca>). Each LHIN will be advised to post these policies on their individual websites in order to provide broad access to HSPs.

Q: What is the definition of ‘Subcontracting’ within the M-SAA (s.3.2 Subcontracting for the Provision of Services)?

A: An HSP subcontracts services when the HSP enters into a contract with another party for that party to provide services for which the HSP is responsible under the M-

SAA. The LHIN provides funds to the HSP to provide services pursuant to the terms of an M-SAA. If the HSP enters into a contract with another party to provide some of those services on behalf of the HSP, that is a subcontract.

C. Technical Questions

C1. How is the indicator Balanced Budget - Fund Type 2 defined?

A: As per s. 4.5 (b) of the M-SAA, “Annual Balanced Budget” means that, in each fiscal year of the term of the Agreement, the total expenses of the HSP are less than or equal to the total revenue, from all sources, of the HSP.

The need to balance Fund type 2 budget (i.e. the budget for the programs funded by the LHIN) is a core accountability indicator with a performance target of zero. While most HSPs will be in a balanced budget position for Fund Type 2, there are some HSPs that rely on revenues from other Fund Types (1 and 3) to balance Fund Type 2. In the situation where HSPs have, in practice, used designated revenues from other Fund types to balance in Fund type 2, those HSPs should begin to budget those other revenues in Fund type 2. This gives a more accurate representation of the HSP’s overall budget.

HSPs will be advised as follows: Any revenue that is used to offset a Fund type 2 expense, regardless of the source, is to be treated as Fund type 2 revenue. LHINs are not mandating or requiring the transfer of Fund type 1 or 3 revenues, just show an accurate budget forecast. LHINs should refer to the Community Financial Policy (2011) Section b.ii , which outlines all of the other sources of funding that must be budgeted in Fund type 2.