

Guidance for using the Back-to-Back Agreement

July 2025

Overview of the back-to-back template agreement

1. The PHO Services Agreement provides that a PHO may subcontract all or any of the primary health care services that the PHO provides for Health New Zealand Te Whatu Ora (**Health New Zealand**). The Agreement also provides that any subcontract entered into by a PHO must include certain mandatory clauses.
2. The back-to-back template agreement was developed as a template that PHOs can use to contract with Contracted Providers for PHOSA services. It is not mandatory for PHOs to use the back-to-back template. Nor do PHOs that use the back-to-back template agreement need to vary those agreements when the PHO Services Agreement or the back-to-back template is updated (see paragraphs 10 and 11 for more information on this).
3. PHOs can develop and use their own subcontracts if they wish, or can make changes to/adapt the back-to-back template to use as they see fit. However, certain clauses specified in the back-to-back template must be included in all subcontracts between PHOs and Contracted Providers. Any back-to-back agreement must comply with the general law, including the law on unfair contract terms, if applicable. PHOs and Contracted Providers should seek independent legal advice on their back-to-back agreements.
4. The back-to-back template was developed so that all PHOs have access to a template that includes:
 - (a) all mandatory clauses that must be included in each PHO's subcontracts (see Appendix 1);
 - (b) other clauses that will help ensure that a PHO meets its obligations under the PHO Services Agreement; and
 - (c) general terms that are often seen in back-to-back contracts, such as a dispute resolution clause and provisions relating to transfers and assignment, insurance, and notices.
5. If you have any feedback on, or suggested changes to, the back-to-back template agreement, please contact the national primary care team at primary.care@tewhatauora.govt.nz

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6. Because the contract template is an example only, PHOs who wish to use the template are free to delete or amend the terms in the template (except the mandatory clauses) as they choose.
7. A PHO and Contracted Provider can also agree to add terms to the template, including terms that specify in more detail the obligations of the parties and how the parties will work together. For example, clause 6 of the contract template (Reporting requirements) could be amended to expressly set out the information that the Contracted Provider will provide to the PHO to ensure that the PHO meets its reporting obligations to Health New Zealand that are set out in the PHO Services Agreement.
8. **Part G of the PHO Services Agreement:** Part G of the PHO Services Agreement provides for several matters to be determined outside the contract, including the Data Framework that will apply in respect of Contingent Capitation Funding, the Performance Targets that will apply to Performance-Based Capitation Funding, and various matters

relating to System-Level Measures. Once agreed, the back-to-back template operates to automatically apply these requirements to Contracted Providers (unless, if relevant, a Contracted Provider has opted out of receiving the applicable funding). That is because, as described below, the back-to-back template provides that Contracted Providers must comply with the terms of the PHO Services Agreement that are expressed as applying to Contracted Providers. This means that there will be no need to update back-to-back agreements between PHOs and Contracted Providers to reflect the new requirements.

Key clauses in the back-to-back template

9. Set out below is a summary and explanation of certain key provisions in the contract template.
10. **Clause 2 (Application of the PHO Services Agreement):** Clause 2 describes how the PHO Services Agreement applies to the back-to-back contract. In short:
 - (a) certain parts of the PHO Services Agreement are incorporated into the back-to-back contract;
 - (b) Contracted Providers must comply with the terms of the PHO Services Agreement that are expressed as applying to them. An example is clause B.17 of the PHO Services Agreement, which provides that Contracted Providers must not accept referrer inducements or incentives;
 - (c) words that are capitalised in the back-to-back contract have the same meaning as in the PHO Services Agreement, unless the context requires otherwise; and
 - (d) Referenced Documents referred to in the PHO Services Agreement apply to and form part of the back-to-back contract.
11. Under clause 2.4, variations to the PHO Services Agreement and the Referenced Documents are automatically incorporated into the back-to-back contract. This means that PHOs and Contracted Providers do not have to sign new back-to-back contracts every time changes are made to the PHO Services Agreement or Referenced Documents. Rather, existing back-to-back agreements that follow the back-to-back template will be deemed automatically varied to reflect relevant changes to the PHO Services Agreement.
12. If changes are made to the PHO Services Agreement that substantively affect the rights and/or obligations of PHOs and Contracted Providers, it is open to PHOs and Contracted Providers to formally vary their existing back-to-back agreements to reflect those changes (in accordance with the relevant terms of their agreement). PHOs might also choose to provide information to their Contracted Providers, explaining the changes that have been made to the PHO Services Agreement/back-to-back template, and how they apply to their back-to-back agreements. Again, this is not a requirement, and is relevant only if a PHO is using the back-to-back template (or if the PHO's back-to-back agreements differ from the template but include a clause equivalent to clause 2.4 described above).
13. **Clause 3 (Our obligations and how we will work together):** Clause 3 describes how the PHO and its Contracted Provider will work together. Specifically:
 - (a) clause 3.1 recognises that the PHO Services Agreement requires the PHO to work with its Contracted Providers in a way that gives effect to the objectives for the delivery of primary health care services set out in that Agreement
 - (b) clause 3.2 has been included because PHOs have a number of obligations under the PHO Services Agreement that they can only meet with the assistance of their Contracted Providers

- (c) clause 3.3 requires both the PHO and the Contracted Provider to carry out their roles and responsibilities under the back-to-back contract in a collaborative and co-operative way, and to exercise their rights in a reasonable manner.
14. **Clause 4 (Services provided by the Contracted Provider):** If a Contracted Provider is providing services for the PHO in addition to the Nationally Consistent Services described in Schedule 1 of the back-to-back template (which include First Level Services, General Medical Services, and Immunisation Services), those services can be included in new schedules that are added to the back-to-back template.
 15. A PHO and a Contracted Provider can also agree to service delivery principles if they wish (see clause 4.2).
 16. **Clause 5 (Practitioners and Service providers):** Clause 5 reflects requirements in the PHO Services Agreement about the qualifications and experience of practitioners and service providers. Clause 5.3 requires Contracted Providers to provide the PHO with specified Practitioner information. This allows the PHO to provide that information to Health New Zealand, which the PHO is required to do under the PHO Services Agreement.
 17. **Clause 6 (Children's Act 2014):** This clause reflects various obligations set out in the Children's Act 2014 relating to child protection policies and worker safety checks.
 18. **Clause 8 (Location of Services):** Clause 8 can be used if the PHO and Contracted Provider want to specify locations where the Services must be provided. The clause as drafted does not limit where Services may be provided. However, if the PHO itself is subject to any geographical limitations under its PHO Services Agreement with Health New Zealand, the PHO could apply those same limitations to the Contracted Provider. That can be done by adding a new clause 8.2 that sets out those limitations.
 19. **Clause 9 (Claims and payment for Services):** Clause 9 covers claims and payments for services. For services covered by the PHO Services Agreement (including the Nationally Consistent Services), Part F of the PHO Services Agreement applies, except that:
 - (a) references to "Health New Zealand" should be read as "PHO"; and
 - (b) references to "PHO" should be read as "Contracted Provider",
 unless the context requires otherwise. This means that PHOs and Contracted Providers will need to be familiar with how Part F works.
 20. **Clause 12 (Audit):** The audit provisions in clause 12 give effect to the audit provisions in the PHO Services Agreement that require the PHO to ensure its Contracted Providers comply with the audit provisions of the PHO Services Agreement.
 21. Clause 12.3 refers to section 22G of the Health Act 1956. Section 22G requires a PHO to make its records available for the purposes of verifying claims if requested by the Director-General of Health, or the chief executive of Health New Zealand. The PHO Services Agreement requires PHOs to ensure that its Contracted Providers are under the same obligation. Clause 12.3 has been included for that purpose.
 22. **Clause 16 (Termination):** Either the PHO or the Contracted Provider may terminate the back-to-back contract for any reason by giving 6 months' notice (clause 16.3). It is important to note that this clause deals only with the Contracted Provider leaving the PHO with which it has signed the back-to-back contract. It does not give the Contracted Provider the right to join another PHO. The Contracted Provider must separately obtain the agreement

- of the other PHO, and the other PHO must give notice to Health New Zealand in accordance with the timing requirements in clause B.14 of the PHO Services Agreement.
23. If a Contracted Provider wants to change PHOs, the clauses in the PHO Services Agreement and the termination provisions in clause 16 of the back-to-back contract template mean:
- (a) The Contracted Provider must give whatever notice is required in its back-to-back contract with its existing PHO. The back-to-back template specifies a notice period of six months.
 - (b) As long as the notice period in the back-to-back contract is complied with, the "receiving" PHO and Health New Zealand can agree to the transfer occurring at any time. The PHO Services Agreement specifies a default transfer date of 1 July in the calendar year after the calendar year in which notice of the transfer was given by the PHO. However, Health New Zealand and the receiving PHO may agree to an earlier date. (See clause B.14 of the PHO Services Agreement).
24. **Clause 19 (Alternative arrangement on failure to deliver Services):** This clause sets out the PHO's rights if the Contracted Provider does not provide the Services as required under the back-to-back agreement. In particular, the clause provides that the PHO may take whatever action is reasonably necessary to make alternative arrangements for the provision of the relevant Services, and sets out when the PHO can require the Contracted Provider to pay the cost of making such alternative arrangements.
25. **Clause 27 (Contracts and Commercial Law Act):** Clause 27 provides that all obligations of the Contracted Provider set out in the back-to-back contract confer a benefit on Health New Zealand, and that Health New Zealand may enforce those obligations directly against the Contracted Provider. Clause 27 is included because the standard position under contract law is that only a party to a contract can enforce the other party's compliance with the contract. However, as the back-to-back contract involves the provision of publicly funded health care services, Health New Zealand has an interest in ensuring compliance with the back-to-back contract by Contracted Providers.
26. **Schedule 1 – Nationally Consistent Services:** Schedule 1 provides that:
- (a) the Contracted Provider must provide certain Nationally Consistent Services in accordance with the relevant parts of the PHO Services Agreement; and
 - (b) the PHO will pay the Contracted Provider in accordance with the relevant Schedules to Part F, and in accordance with Schedules G1 to G3.
27. Clause 2.2 of Schedule 1 provides that the PHO will pay the capitation payments for First Level Services including Urgent Care Services it receives from Health New Zealand to the Contracted Provider no later than 2 Business Days after the PHO receives the payments from Health New Zealand.

Appendix 1 – Mandatory clauses

Each PHO must include the clauses set out in the table below in its subcontracts with its Contracted Providers (whether or not it uses the back-to-back template).

	Mandatory clause	PHO Services Agreement clause reference	Back-to-back contract template clause reference
1	Annual practicing certificate and registration The Contracted Provider must ensure that it and/or each Practitioner who provides the Services holds an annual practising certificate and a current registration from the appropriate New Zealand statutory body.	Clause B.13(2)(a)	Clause 5.2
2	Payments The PHO may recover, by way of set-off against any Payments due to the Contracted Provider, the reasonable costs of providing Services for any period that the Contracted Provider does not provide, either itself or by means of alternative arrangements, the Services.	Clause B.13(2)(d)	Clause 9.5
3	Contracts and Commercial Law Act We agree that all obligations of the Contracted Provider set out in this Agreement confer a benefit on Health New Zealand, and Health New Zealand may, in accordance with the Contracts and Commercial Law Act 2017, enforce those obligations directly against the Contracted Provider.	Clause B.13(2)(c)	Clause 27
4	Information about Claims The Contracted Provider agrees that in respect of any claims for payments that it makes under this Agreement, section 22G(2) of the Health Act 1956 applies to the Contracted Provider as if the Contracted Provider was a provider under section 22G(1) of the Health Act 1956.	Clause B.35	Clause 12.3