

Quality Assurance, Audit and Review

Instructions for providers with outcome agreements

April 2019

Background

Non-government organisations delivering disability support services for the Ministry of Health must provide services and conduct their practice or business in accordance with their contractual obligations, including Ministry of Health objectives, and any standards published or approved by the Ministry of Health and notified to the provider.

The Ministry's right to undertake audit activities comes from the Disability Support Service Outcome Agreements and is documented below.

The Ministry may conduct audit activities as part of its monitoring of the provider, or where it has reasonable concerns about the compliance of a provider with its obligations under the Outcome Agreement.

In the following requirements, the Ministry is referred to as the purchasing agency, and the organisation is referred to as the provider.

Requirements

1 Assurance

1.1 Access for audits

- a. If the purchasing agency is carrying out an audit of services delivered at the provider's premises, or services delivered by agents or subcontractors on behalf of the provider, the provider must fully cooperate with the purchasing agency and allow it, and/or its authorised agents, access to:
 - i. the provider's premises
 - ii. the records of the provider related to the services provided under the Outcome Agreement
 - iii. all premises where the provider's records are kept
 - iv. disabled people (People) and their families and nominated representatives
 - v. staff, subcontractors or other personnel used by the provider in providing the services.

- b. The provider must ensure that any sub-contracting or agency agreements it may enter into in relation to the services include a provision to the effect that the sub-contractor or agent must cooperate fully with the purchasing agency.
- c. The provider must ensure that the people appointed by the purchasing agency to carry out the audit have the access referred to in clause 1.1, during the hours they are entitled to audit.
- d. For the purposes of clause 1.1(a)(iv), within three business days after receiving notice of an audit under clause 1.2(a), or immediately in the case of an audit under clause 1.2(b), the provider must, as far as practicable, provide the purchasing agency, in writing, with the names and addresses of all Peoples' family, whānau and nominated representatives.
- e. The purchasing agency will ensure that providing access under this clause will not unreasonably disrupt the provision of the services to People.

1.2 **Notice of audits**

- a. Subject to clause 1.2(b), the purchasing agency will give the provider at least 10 business days prior notice of any audit, provided that the parties may agree to extend or reduce this notice period.
- b. If the purchasing agency believes that delay will prejudice the interests of any person, or that a serious breach of the Outcome Agreement may have occurred, the purchasing agency may carry out an audit without prior warning. If the purchasing agency exercises its rights under this clause, it will give the provider notice on its arrival at the provider's premises of the scope of and reasons for the audit to be carried out.
- c. The purchasing agency may also, during the course of an audit commenced under clause 1.2(b), expand the scope of the audit to matters not referred to in the notice if desirable, in the opinion of the auditor, to assess whether the provider is complying with its obligations under this Outcome Agreement.

1.3 **Times for audits**

- a. Subject to clause 1.3(b), an audit may be carried out between 9 am and 5 pm on any business day, or at any other time by agreement.
- b. The purchasing agency may carry out an audit under clause 1.2(b) at any time where reasonably necessary.

1.4 **Appointment of auditors**

- a. The purchasing agency may appoint its staff or third parties to audit, on the purchasing agency's behalf, and at its cost, any of the matters contained in this Outcome Agreement. Each person so appointed is an auditor.
- b. The purchasing agency will give the provider prior written notice of the names of the people to be appointed as an auditor.

- c. The provider may object to such appointments where any or all of those people appointed, whether purchasing agency staff or third parties, have a demonstrable conflict of interest, by advising the purchasing agency of the claimed conflict of interest and providing evidence that supports the provider's claim.
- d. If the purchasing agency receives advice from the provider under clause 1.4(c) more than five business days before an audit is to be conducted under clause 1.2(a), the purchasing agency will review the information provided and, if it agrees that there is a conflict of interest, the audit will not proceed until the purchasing agency has appointed a replacement auditor.
- e. If the purchasing agency receives advice from the provider under clause 1.4(c) either:
 - i. fewer than five business days before an audit under clause 1.2(a) or
 - ii. in relation to an audit under clause 1.2(b),
 the purchasing agency may conduct the audit up to and including the preparation of the draft findings report while it reviews the information provided. If the purchasing agency agrees that there is a conflict of interest, it will appoint a replacement auditor to verify the draft findings report before the purchasing agency prepares the final audit report.

1.5 **Audit process**

- a. In carrying out any audit, the purchasing agency and/or auditors may:
 - i. have access to health and disability information about any past or current People
 - ii. observe the provision or delivery of the services
 - iii. interview and/or survey People and/or their families (including, without limitation, either in writing or by way of an interview)
 - iv. interview and/or survey any staff, sub-contractors or other personnel used by the provider in providing the services (including, without limitation, either in writing or by way of an interview),
 in accordance with the Privacy Act 1993 and any code of practice issued under that Act covering health information held by health providers.
- b. Each auditor may take copies of any parts of the records for the purposes of the audit in accordance with the Privacy Act 1993, and any code of practice issued under that Act covering health and disability information held by health and disability providers.
- c. The provider must allow each auditor to use any photocopier at its premises, but the provider is not required to supply paper. If there is no photocopier at the provider's premises, the auditor may remove the relevant records from the provider's premises for the purposes of copying such records, and will return those records on the same day or, if that is not practicable, within 24 hours or a timeframe agreed between the purchasing agency, auditor and the provider.
- d. For the purposes of clause 1.5 (a)(iv), during the course of an audit the provider must provide opportunities for the auditors to interview staff, sub-contractors or other personnel used by the provider in providing the services, in private, without the provider or its manager being present. At the request of a staff member, sub-contractor or other person being interviewed, a support person (excluding the provider or its manager) may be present at any interview.

- e. Following the completion of the site visit, the auditor must discuss the preliminary findings of the audit with the provider.

2 Reporting and completion

The parties must make all reasonable endeavours to meet the timeframes detailed for preparation of the draft and final audit reports and any necessary provider response, but it is acknowledged that these time frames may need to be extended for any complex matters or special circumstances, for example, unexpected illness of an auditor or key staff members of a provider, or large volumes of documents that must be reviewed. All parties will endeavour to act promptly and keep each other informed of the reasons for any delays and expected completion dates.

2.1 Draft Findings Report

- a. The purchasing agency will submit a draft findings report to the provider within 10 business days of the site visit, or the date on which the provider provides all necessary records to the auditors, whichever is the later.
- b. To the extent that the purchasing agency wishes to incorporate in the draft findings report any information provided in interviews conducted under clause 1.5 (a)(iii) and (iv), the purchasing agency will only identify the person who provided the information in the draft findings report with the prior consent of the persons concerned.
- c. If the provider disagrees with any of the findings in the draft findings report, the provider may respond to the purchasing agency within five business days of receiving the draft findings report, indicating why it does not agree with the findings and providing any additional information supporting that position.

2.2 Final Audit Report

- a. The purchasing agency must prepare a final audit report that takes into account the provider's comments on the draft findings report.
- b. The final audit report must include:
 - i. a summary of the provider's comments, if any, on the draft findings report
 - ii. the final findings report, including a statement as to whether or not the provider is compliant with its obligations under this Outcome Agreement
 - iii. actions that the provider must take, if any, to become compliant with its obligations under this Outcome Agreement ('compliance requirements')
 - iv. the timeframe within which the provider must complete the compliance requirements
 - v. the actions required to verify that the provider has met the compliance requirements. This may include a follow up visit by the auditor.
- c. The final audit report will be sent to the provider within 10 business days of the date on which the auditors have received all necessary information from the provider to complete the final audit report, or determined that such information will not be provided.

2.3 **Provider in default**

- a. The provider is in default if it has not completed a compliance requirement specified in the final audit report within the timeframe set in accordance with clause 2.2(b).
- b. Where the provider is in default, the purchasing agency may give the provider notice of default, and such notice shall state:
 - i. where the compliance requirement was to be completed within two business days, that the provider has a further period of not fewer than two business days from the date of notice of the default to complete the relevant compliance requirement
 - ii. where the compliance requirement was to be completed within 2 to 10 business days, that the provider has a further period of not fewer than 10 business days from the date of the notice of default to complete the relevant compliance requirement
 - iii. in all other cases, that the provider has a further 20 business days from the date of the notice of default to complete the compliance requirements.
- c. If, by the end of any period stated under clause 2.3(b), the provider has not completed the compliance requirement(s), the purchasing agency may:
 - i. vary the compliance requirement
 - ii. extend the timeframe to complete the compliance requirement
 - iii. implement any of the remedies provided in Appendix 9 of the provider's Outcome Agreement
 - iv. withhold payment under clause 12.1-12.3 of the Framework Terms and Conditions, on the basis that the provider's failure to complete the compliance requirement within the timeframe described in clause 2.3 constitutes the provider failing to perform the services in accordance with the Outcome Agreement
 - v. terminate this Outcome Agreement in accordance with clause 11.2 of the Framework Terms and Conditions, without having to consider whether to enter a remedy plan, as the provider has already been given reasonable notice and opportunity to satisfy the compliance requirements.
- d. When the purchasing agency is satisfied that the provider has completed all compliance requirements, the purchasing agency will notify the provider in writing that it is now compliant.

2.4 **Material or repeated failure**

If, the purchasing agency believes, based on reasonable grounds:

- a. the provider's non-compliance with its obligations under this Outcome Agreement, as stated in a final audit report, is material; or
- b. on the basis of a final audit report and any previous final audit report relating to any audit of the provider's premises, the provider has repeatedly failed to comply with its obligations under this Outcome Agreement,

the purchasing agency may give the provider a single period of not fewer than 20 business days to complete any or all compliance requirements specified under clause 2.2 (b)(iii) and, if by the end of that period, the provider has not completed the relevant compliance requirements, clause 2.3 shall not apply and, despite clause 3.4, the purchasing agency may terminate this agreement under clause 11.2 of the Framework Terms and Conditions, without having to consider whether to enter a remedy plan, as the provider has already been given reasonable notice and opportunity to satisfy the compliance requirements.

2.5 **Advice to family members**

The purchasing agency may advise any person's family or nominated representative about the progress of an audit at any time during the course of or following the audit, where the purchasing agency has serious concerns, based on reasonable grounds, about the health and safety of any person.

2.6 An audit is completed when the purchasing agency notifies the provider that it is compliant.

2.7 **Publication of final audit report**

- a. Subject to clause 2.7 (b), the purchasing agency may publish the final audit report on its website and in any other medium.
- b. A final audit report will not be published while that final audit report is being reviewed under clause 3 or is the subject of dispute resolution under clause 7.1-7.6 (inclusive) of the Framework Terms and Conditions.
- c. Subject to the Privacy Act 1993 and any code of practice issued under that Act, the provider must make the final audit report available to any person for reading on request.
- d. If a person requests a copy of the final audit report, the provider may require that person to pay reasonable costs for copying.

2.8 The purchasing agency retains the right to conduct an audit after this Outcome Agreement ends, but only in respect of services provided prior to termination, or following termination under clause 11.1 or 11.2 of the Framework Terms and Conditions.

3 Audit review

3.1 If the provider disputes any element of the final audit report, it may apply to the purchasing agency for a review of the audit.

3.2 The purchasing agency will review the audit only if it receives an application for review under clause 3.1 no later than 10 business days after the final audit report is sent to the provider.

3.3 **Audit review process**

- a. The purchasing agency will notify the provider that the application for review has been received.
 - b. The purchasing agency will request information in relation to the issues raised by the provider from the auditors.
 - c. The purchasing agency's Chief Legal Advisor, or a person responsible for this function within the purchasing agency, will review all information relating to the audit.
 - d. Following the Chief Legal Advisor's review, the purchasing agency will discuss its response to the issues raised with the provider.
 - e. Both parties must use their best endeavours to resolve the issues raised by the provider.
 - f. If the parties agree with any issues raised by the provider, the purchasing agency will amend the final audit report accordingly.
 - g. If the parties are unable to resolve any issue raised within 20 business days from the date the provider's application for review was received, then either party may require mediation under clause 7.3 of the Framework Terms and Conditions.
- 3.4 The provider must comply with all its obligations, including any compliance requirements issued under clause 2.2 (b), while the review process is carried out, but the purchasing agency may not terminate this Outcome Agreement under clause 2.3(c) until the review is complete.
- 3.5 Where the provider has completed any compliance requirements in the final audit report issued under clause 2.2 (b) ('the original requirements'), which are amended or removed under clause 3.3 (f) ('the amended requirements'), the purchasing agency will reimburse the provider an amount equal to the purchasing agency's assessment of the difference between the reasonable costs of complying with the original requirements and the amended requirements.

4 Financial management and audit

- 4.1 The provider must operate sound financial management systems and procedures in relation to:
- a. the services
 - b. its premises
 - c. persons where the provider is maintaining or managing a person's personal funds.
- 4.2 If the provider receives monies from other sources on behalf of a person, except payments for the services, these monies shall be noted in a separate accounting record held on behalf of that person, and the provider will keep full records of all such monies for inspection by either the person on whose behalf such funds are being held or his/her authorised agent, or by the purchasing agency or its authorised agent. The provider shall make these funds available to the person as requested or needed by that person or his/her legal representative.

- 4.3 Where the purchasing agency has serious concerns, based on reasonable grounds, that the provider is not operating sound financial management systems and procedures and/or that its financial solvency is placing the continued provision of services at risk, without limiting any of the purchasing agency's other rights in this Outcome Agreement, the purchasing agency may:
- a. request that the provider provide the Audit and Compliance team, or an alternative auditor appointed by the purchasing agency at its cost, within 10 business days of the request:
 - i. the provider's financial statements (as defined in Section 8 of the Financial Reporting Act 1993), or accounting information relating to its current financial position, including access to its expenditure and revenue transactions, including accounts relating to individual or all persons' personal funds
 - ii. the provider's financial statements or accounts for its most recent complete financial year
 - iii. a solvency certificate from a chartered accountant
 - b. Arrange for that auditor to audit:
 - i. the correctness of the information the provider furnished under clause 4.3(a)
 - ii. the provider's calculations of the cost of providing the services
 - iii. the provider's financial position.
- 4.4 The auditor:
- a. may advise the purchasing agency if he or she considers that the provider's financial position may prejudice, or otherwise affect its ability to carry out its obligations under this Outcome Agreement
 - b. may advise the purchasing agency if he or she considers that the provider is not appropriately managing any person's personal funds.
- 4.5 If the auditor so advises the purchasing agency under clause 4.4 (b), the purchasing agency may carry out an audit.

5 Review

- 5.1 A review initiated under this clause 5.2 must relate solely to matters applicable to the provision of disability support services nationally for the purpose of ensuring nationally consistent and applicable provisions.
- 5.2 Subject to compliance with clause 5.3, the purchasing agency may, including on the provider's request, at any time initiate a review of:
- a. the whole or any part of this Outcome Agreement, nine months from the commencement date of the Outcome Agreement
 - b. the whole or any part of a service that forms part of this Outcome Agreement before the end date of that service
- by giving the provider 10 business days' written notice.

- 5.3 The written notice initiating a review under clause 5.2 must describe the purpose for the review, issues to be addressed and any proposals in existence at the time of the notice. Any proposals developed subsequent to the commencement date will be communicated to the Provider in writing as soon as possible after they have been developed.
- 5.4 Following a review initiated under clause 5.2, the purchasing agency may propose amendments to the whole or part of the Outcome Agreement, including documents incorporated into the Outcome Agreement by reference. Both parties will then seek to agree on what amendments, if any, will be made to the Outcome Agreement. Clause 5.4 does not require either party to withdraw from or compromise what either party considers to be fundamental policy, principles, objectives or requirements arising from the Outcome Agreement.
- 5.5 To help the parties reach an agreement, the parties may agree to appoint an independent person with relevant expertise to analyse the impact, financial or otherwise, of any proposed amendment. The independent expert is to act as an expert and not as an arbitrator and their advice will not be binding. All costs associated with the appointment of the independent expert are to be shared equally between the parties or otherwise as determined by the independent expert.
- 5.6 Any amendments to the Outcome Agreement that are specific to the provider are to be made by agreement between the parties. For the purposes of clause 5.6, 'amendments' includes, without limitation, adding a new provision to be included or incorporated by reference into this Outcome Agreement or deleting an existing provision of this Outcome Agreement.
- 5.7 If the parties are unable to agree on any such amendment within three months of the date of the written notice of the review under clause 5.2, both parties will then refer the matter in writing to its respective chief executives for discussion.
- 5.8 If the parties' respective chief executives are unable to agree on what amendments, if any, should be made to the whole or part of the Outcome Agreement within one month of the matter being referred to them, then the matter will be referred in writing to the Minister for determination. Any determination by the Minister under clause 5.8 will be binding on both parties.
- 5.9 Any amendments agreed under clauses 5.4 or 5.7 will take effect under this Outcome Agreement from a date agreed to by both parties. Any amendments determined by the Minister under clause 5.8 will take effect from the date specified by the Minister.
- 5.10 Any review of the Outcome Agreement initiated by the purchasing agency before the commencement date of this Outcome Agreement will be deemed to have been initiated in accordance with clauses 5.2 and 5.3 above.

Glossary

Audit	<p>Refers to monitoring, audit, inspection, investigation, review, financial audit or evaluation of performance of a provider and its compliance with the requirements of an Outcome Agreement and includes:</p> <ul style="list-style-type: none">• the quality of services delivered in relation to performance requirements• Business Viability Standards• standards and policies relevant to the services provided, including purchasing agency objectives• safety and clinical standards• outcomes achieved by people using the service• compliance with obligations under the Outcome Agreement• verification of claims made for payment.
Auditor	<p>Any person appointed to carry out an audit by the purchasing agency (and includes 'evaluators' as appropriate).</p>
Business Viability Standards	<p>Means the standards which have been approved by the Ministry of Health to ensure provider capability. The Business Viability Standards are available on the Ministry website at https://www.health.govt.nz/our-work/disability-services/contracting-and-working-disability-support-services/contracts-and-service-specifications</p>
Purchasing agency objectives	<p>Means the standards or policies published or approved by the purchasing agency that the provider will abide by. These can be found on the Ministry website at https://www.health.govt.nz/our-work/disability-services/contracting-and-working-disability-support-services/disability-support-services-operational-policy</p>



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