



association of family health teams of ontario

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Dear Nadia,

RE: Family Health Team Agreement – Recommendations from AFHTO Legal Counsel

Thank you once again for allowing AFHTO to consult with our legal counsel on the proposed new FHT contract. We have received a very thorough analysis of the changes being proposed between the current contract and the new contract and would like to highlight comments and/or recommendations on a few for your consideration:

Section	Summary of Provision	Comments/Recommendations
Parties	The agreement is currently between the Ministry and the FHT	The Assignment clause could allow the Ministry to transfer the agreement to another agency of the government (like the LHINs) – as previously articulated, this clause will create some anxiety with FHTs as there is no expressed intent or timeline associated with the clause. <i>Recommendation: should there be an intent to transfer the agreements from the Ministry to the LHINs (for example), please ensure consultations happen early in the process and there is ongoing communication with AFHTO and the FHTs.</i>
Parties	FHTs to be incorporated as not-for-profit corporation	Unless exempted by the Ministry, all FHTs will need to become incorporated. <i>Recommendation: Going through the incorporation process can take a long time so it is important that the Ministry provide guidance, funding support and time to allow the FHT to go through the process.</i>
3.2 Affiliated Physician Collaboration	It is a condition of continued funding that the FHT be	Rather than focus on involving physicians in the FHT governance this requirement highlights the need for

	<p>affiliated with an Affiliated Physician Group (one of: a FHN, FHO or Rural and Northern Physician Group Agreement).</p> <p>All physicians who are signatories to the physician services agreement must agree to be affiliated with the FHT.</p>	<p>affiliation between the FHT and the affiliated physician group.</p> <p><i>Recommendation: To be able to demonstrate compliance with this obligation, a simple affiliation agreement may need to be signed between the FHT and the Affiliated Physician Group, with a mechanism established to have new physicians also agree to the affiliation.</i></p> <p>AFHTO has developed a case study entitled <i>Fostering FHT-Physician Teamwork</i> which also provides examples of MoUs, letters of understanding etc...that can be leveraged for teams looking for an affiliation agreement.</p> <p><i>Question for the Ministry: how does the FHT then work with solo physicians and other physicians in the community who are not part of the affiliated physician group? What will be the expectation from the Ministry with regards to an affiliation agreement, especially for those teams that are looking at expanding their reach into the community?</i></p>
5.1 Governance	<p>There is a new requirement that, <i>prior to the execution of this agreement</i>, the FHT must establish a governance structure that addresses, at a minimum, the matters listed in Schedule A – Appendix 1.</p>	<p>It may be a challenge for FHTs to update their governance documentation (by-laws and Board policies) to reflect these new requirements by April 1st. FHTs who have not yet done so in the past, will also require time to do a skills-based exercise with their Boards with the implementation of a new matrix. In addition, for many FHTs, changes to by-laws requires approval at Annual General Meetings and that can take up to a year depending on when the AGM is being held.</p> <p><i>Recommendation: As with incorporation, moving to a skills-based Board will take some time so it is important that the Ministry provide guidance, funding support and time to allow the FHT to go through the process.</i></p> <p>AFHTO will continue to support Boards with their governance journey through our Governance and Leadership Program.</p>
6.3 Conflict of Interest	<p>An annual conflict of interest attestation must be submitted.</p>	<p>The attestation is supposed to be attached to the document and appears to be missing.</p> <p><i>Recommendation: include the conflict of interest attestation as part of the ARI attestation document.</i></p>
7.7 Revised Schedules	<p>The MOHLTC can replace any of the Schedules (including</p>	<p>Note that the MOHLTC can unilaterally amend any Schedule to this agreement, and the FHT's only recourse is to terminate this agreement (on 90 days' notice).</p>

	the Service Plan and the Budget), upon consultation with the FHT.	<i>Recommendation: similar to the Assignment clause recommendation, if this is being entertained it is really important that the Ministry start consultations early with AFHTO and the FHTs and keep ongoing communication channels open.</i>
9.1 Other Funding Terms	The Ministry can impose additional terms and conditions on the use of the funds at any time, in its sole discretion.	This new power effectively gives the Ministry the ability to add to the FHT's contractual obligations at any time. <i>Recommendation: While this is not an unusual clause for a government funding agreement, it would be preferable if the Ministry provided reasonable (e.g., at least 90 days' notice) before imposing a new term or condition, to allow the FHT time to react and to respond.</i>
14.1 Indemnity	This indemnity is the other side of the "Limitation of Liability" coin, requiring the FHT to indemnify and save harmless the Ministry from any claims (broadly defined) relating to the FHT operations, Service Plan or this agreement.	The biggest negative to this clause is that the previous funding agreement capped the FHT's liability by limiting the FHT's obligation to the Ministry to its insurance proceeds. There is no cap in this agreement. <i>Recommendation: The previous cap was a comfort to the FHT directors that the Ministry would not attempt to pursue directors personally when FHT funds were exhausted. Recommend a return of the cap or, alternatively, a commitment that the Ministry not seek recourse against a FHT director as long as the FHT director complied with his/her obligations under this agreement (e.g., declared conflicts, acted in the best interests of the FHT).</i>
15.1(d) Insurance	The FHT must have at least \$2M in cyber insurance.	This is a new requirement. It is a prudent requirement, provided the insurance is not prohibitively expensive. <i>Recommendation: as this is a new insurance requirement, the Ministry should ensure that any additional costs for the cyber liability insurance be added to the FHT funding allocation.</i>
18.1 & 18.3 Termination for Convenience	Either party may terminate on 90 days' written notice to the other.	A 90 day wind-down is better but the language from the previous funding agreement committed that the Ministry "compensate the FHT for any amounts required by the FHT to terminate the obligations it has entered into pursuant to this Agreement". <i>Recommendation: Prefer that 18.3 instead read - "reasonable and orderly wind-down of the Service Plan until the end of the notice period, which includes any amounts required by the Recipient to terminate the obligations it has entered into pursuant to this Agreement."</i>

		<p>The previous agreement made it very clear that the compensation of the FHT on wind-down applied regardless of whether the agreement was wound down voluntarily or due to breach. This agreement is ambiguous.</p> <p><i>Recommendation: Section 18.3 should be revised to state that it applies whether notice to terminate is given under section 18.1 (voluntarily) or under section 19.0 (termination for cause).</i></p>
19.1 Termination by Ministry for Cause	Paragraph (e) makes it a breach of the agreement where the FHT has an employed physician and that physician no longer has a Physician Services Contract in effect, which can lead to termination.	<p>This language applies to only those limited number of FHTs that employ physicians. There is concern that it triggers breach and termination if only one physician leaves and the others remain. This would give tremendous leverage to the employed physicians, who could threaten to leave the FHT, which decision could be fatal to the FHT corporation as a whole.</p> <p><i>Recommendation: Recommend that the trigger for breach to be when an employed physician leaves and there is no longer a critical mass of physicians to serve the FHT patient population.</i></p>
19.2 Termination by Ministry for Cause	In the discretion of the Ministry, the Ministry may determine a breach can be remedied and give the FHT the opportunity to remedy the breach.	<p>In the previous agreement, the Ministry gave 30 days to the FHT to remedy the breach. In this agreement, the language is simply “an opportunity” with no fixed remedial window.</p> <p><i>Recommendation: Prefer the window to remedy the breach to be at least 30 days.</i></p>
22.1 Representations and Warranties	There is a requirement that “no FHT-funded service provided by an IHP shall be eligible for delegated service billing”	<i>Question for Ministry: presumably this means for IHPs that provide services like filling out WSIB forms where there is an automatic payment that is issued, the IHP cannot hold on to that payment? Can you provide further clarity with regards to that clause? Would the expectation then be that payment goes to the FHT or elsewhere?</i>
31.1 Survival	This section lists the sections that survive termination or expiration of the agreement.	This section refers to sections that do not exist – this list needs to be updated before finalization.
34.2 Amendment	This provision says that the agreement may be modified by written agreement of the parties.	<p>This conflicts with:</p> <ul style="list-style-type: none"> • section 7.7, which allows the Ministry to unilaterally alter the Schedules • section 9.1, which allows the Ministry to unilaterally add terms to this agreement

		<i>Recommendation: Refer to these sections in section 34.2: "Except as contemplated in sections 7.7 and 9.1, ..."</i>
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I hope you find the recommendations helpful as you finalize the new FHT contract – there are also a few questions that have been posed that requires some clarity that hopefully you will be able to articulate before finalizing the contract. We would be happy to talk further at your convenience but hoping we will be able to finalize this contract as soon as possible.

Please do not hesitate to contact me if you have any questions.

Yours sincerely,



Kavita Mehta
Chief Executive Officer