



MILLER THOMSON
AVOCATS | LAWYERS

FORWARD TOGETHER

Coffee Talk

Health Industry Seminar Series



VANCOUVER CALGARY EDMONTON SASKATOON REGINA LONDON KITCHENER-WATERLOO GUELPH TORONTO VAUGHAN MARKHAM MONTRÉAL



MILLER THOMSON
AVOCATS | LAWYERS

FORWARD TOGETHER

Bill 41, the *Patients First Act* – What You Need to Know

Kathryn Frelick

kfrelick@millerthomson.com

416.595.2979

Jesstina McFadden

jmcfadden@millerthomson.com

416.595.2990

January 18, 2017

Overview

- Bill 41: Key provisions and changes
- LHIN powers and authorities and implications for voluntary governance
- Impact on liability, employment and stakeholders

Bill 41: *Patients First Act, 2016*

- Introduced as part of Ontario government's ongoing work under the Patients First: Action Plan for Health Care
- Intended to strengthen patient-centred care in Ontario
- Not without controversy

Key Provisions and Changes

- Bill 41 makes fundamental changes to the foundation for health service delivery in Ontario by:
 - Amending 19 pieces of legislation, including:
 - *Local Health System Integration Act* (LHSIA)
 - *Commitment to the Future of Medicare Act* (CFMA)
 - *Public Hospitals Act*
 - *Excellent Care for All Act* (ECFAA)
 - *Home Care and Community Services Act*
 - Repealing the *Community Care Access Corporations Act*
- The most significant amendments are to LHSIA re: the role and mandate of the Local Health Integration Networks (LHINs)

Key Provisions and Changes: Role and Responsibilities of LHIN

- Bill 41 significantly expands the LHINs' role/mandate and increases LHIN oversight re: provision of health care and services
- Creates LHIN authority to directly deliver services currently provided by CCACs
 - Management and delivery of home and community care (including services, equipment and supplies) – directly or through contracts with service providers
 - Placement for LTC, supportive housing, hospital chronic care/rehabilitation beds and community programs/services
 - “Health sector organizations” under ECFAA for service provision and placement functions

. . . LHIN Role/Responsibilities

- Expands scope of Health Service Providers (HSPs) funded by and accountable to LHINs to include:
 - Family Health Teams
 - Aboriginal health access centres
 - Hospices/palliative care service providers
 - Nurse-Practitioner-Led Clinics
 - Physiotherapy clinics
 - Providers of primary care nursing services, maternal care and inter-professional primary care programs/services
- Does not include physicians, podiatrists, optometrists or dentists, or community services providers when providing services purchased by LHIN
 - But, “physician resource needs” added to planning objects of LHINs

... LHIN Role/Responsibilities

- Local planning and oversight:
 - Increases engagement re: population/public health
 - Provides for division of LHIN regions into geographic sub-regions - local planning, funding and service integration
 - LHIN Patient and Family Advisory Committee(s)

Community Care Access Centres

- Mechanisms established under Bill 41 permit LHIN to essentially “step into the shoes of the CCACs” and assume the role and all of the responsibilities of the CCAC
 - Minister can issue transfer orders - transferring CCAC’s assets, liabilities, rights and obligations, and employees to the LHIN
 - Minister can issue orders to dissolve a CCAC that is subject of a transfer order

Implications for Employees

- Transferred employees continue as employees of LHIN – as of date of transfer
- LHSIA very prescriptive re: employment relationship
 - Continuous employment – not termination, severance or constructive dismissal
 - CCAC rights, duties and liabilities transferred to LHIN
 - Employment contract, collective agreement remain valid – no right to terminate
 - Addresses status of collective agreements, pay equity, seniority
 - Employment not affected by dissolution of CCAC

Employees – Risk Management

- Notice obligations re: transfer order – employees, bargaining agents, public
- Early identification of labour/employment issues and concerns
- Proactive communication and engagement with affected employees and union(s) – CCAC and LHIN
- Legal advice

“Public Interest” Authorities

- Existing LHIN authority to require HSP integration “in the public interest”
- Lieutenant Governor in Council, Minister or LHIN can now take other actions where they consider it to be in the public interest
- Applies to:
 - issuing operational and policy directives
 - appointing Investigator and Supervisor
 - setting terms of or amending SAA
 - issuing provincial standards

Public Interest - Considerations

- In making a decision in the public interest, the LGIC, Minister or LHIN may consider any matter they regard as relevant, including the:
 - Quality of the management and administration of the LHIN or HSP
 - Proper management of the health care system generally
 - Availability of financial resources for management of the system and for delivery of services
 - Accessibility to health services in the LHIN's/HSP's geographic area or sub-region
 - Quality of care and treatment of patients (LHSIA s. 35)

Ministry / LHIN Powers and Authority and Impact on Voluntary Governance

1. Ministry Directives

- Operational or policy directives to LHIN or public hospitals (PHA) (public interest)
- Provincial standards for provision of health services by LHIN or HSPs (public interest)
- May be general or particular in application
- LHIN/HSPs must comply
- Protection for denominational HSPs

2. LHIN Investigators/Supervisor

- Ministry may appoint Investigator(s) to report on quality of management and administration of LHIN (public interest)
- Report in writing to Minister (public)
- May also appoint LHIN Supervisor (public interest)
- May issue Minister directions to LHIN with regard to matters within the jurisdiction of Supervisor

3. Funding and Accountability

- Funding of HSPs may now extend beyond LHIN boundary to include services provided in another LHIN
- SAAs with HSPs – now dealt with under LHSIA (CFMA provisions repealed)

3. Imposed SAAs

- Detailed process set out where SAA or SAA amendments cannot be negotiated within 90 day period, before terms of SAA are imposed, including:
 - LHIN/HSP must develop written description of issues (60 days)
 - Mandatory meetings of CEOs and Board Chairs
 - LHIN provides offer to settle and notice to Minister
 - If HSP rejects offer, reasons to LHIN and Minister
 - LHIN must consider reasons before imposing SAA

4. LHIN Directives

- May issue operational or policy directives to HSPs (public interest)
 - exceptions – LTC homes and public hospitals (which are subject to Ministerial directives under PHA)

4. LHIN Directives – Process

- Notice to Minister and each HSP required (process not prescribed)
- Safeguards for denominational HSPs
- Must comply
- May be general or particular
- Must be made available to public
- Where conflict → laws

5. LHIN Directives – Audits/Reviews

- LHIN may direct that HSP:
 - Undergo financial audit
 - Engage in or permit an operational review or peer review of the HSP's activities

6. LHIN – HSP Investigators

- Authority to appoint investigator(s) to investigate and report on:
 - Quality of the management of HSP
 - Quality of care/treatment of persons by HSP
 - Any other matter relating to HSP if in public interest
- Applies to HSPs that receive funding, except LTC homes
- Written notice to Minister and HSP

6. LHIN – HSP Investigators

- Broad investigative authority
 - Access to premises, inspection, production of records (including PHI), authority to question persons
 - Obligation to produce and assist – HSP, employees and service providers / physicians
- Must report in writing to LHIN/HSP and make report publicly available

7. LHIN – HSP Supervisor

- LHIN may appoint supervisor for HSP to which it provides funding (public interest)
 - Exceptions – public and private hospitals, LTC homes
- At least 14 days notice to Minister and HSP unless immediate action required (i.e. lack of quorum)

7. LHIN – HSP Supervisor

- Exclusive right to exercise powers and authority of governing body, directors, members, shareholders, etc. unless otherwise provided
- Same rights of access as board and CEO
- HSP Supervisor shall report to LHIN and report is to be made public
- LHIN may issue directions to HSP Supervisor and HSP must comply

8. LHIN – Voluntary Integration

- Notice requirements to LHIN regarding voluntary integration
 - Increased notice to LHIN from 60 to 90 days
 - May proceed with integration at any time if LHIN notifies HSP that it will not object
 - Exception – integration that requires a decision of the Minister or a director under IHFA or LTCHA

8. LHIN – Voluntary Integration

- Prescribes requirements/form of notice
 - Description of integration proposed
 - Analysis of financial, service delivery, health system, human resource implications
 - Description of community engagement process, where applicable, and analysis of any issues
 - Description of proposed timing/staging
 - Description of level of approval received by HSP
- Within 90 days of notice, LHIN may request more information from HSP
 - HSP shall provide information within 30 days
 - Time limit for LHIN response extended by additional 60 days

Implications for Voluntary Governance

- Preserves independent board governance, however, what if obligations conflict?
 - Fiduciary responsibility to community/patients
 - Duty to act in best interests of corporation
- Operational and Policy Directives
 - Financial and human resource implications
 - Priority setting
- New and enhanced powers and authority to direct/impose obligations
- Implications for HSPs with partial funding

Impact on liability and stakeholders

Limitations on liability - LHSIA

- Statutory protection / immunity for actions (including decisions, directions, orders, etc.) done in good faith in the execution of a power or authority under LHSIA
 - Crown, Minister, LHIN, LHIN employees and directors, investigators, supervisors and staff
 - May bring application for judicial review
- Statutory protection/immunity as it relates to transfer of programs, services, employees

Limitations on liability

- No protection from liability for claims relating to the delivery of health care services (does not extend to services delivered by a service provider)
- Transfer of existing liabilities, including civil claims
 - Whole new area of exposure/liability for LHINs

Questions?

Kathryn Frelick

kfrelick@millerthomson.com

416.595.2979

Jesstina McFadden

jmcfadden@millerthomson.com

416.595.2990

FORWARD TOGETHER



MILLER THOMSON
AVOCATS | LAWYERS

MILLERTHOMSON.COM



© 2016 Miller Thomson LLP. All Rights Reserved. All Intellectual Property Rights including copyright in this presentation are owned by Miller Thomson LLP. This presentation may be reproduced and distributed in its entirety provided no alterations are made to the form or content. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP which may be requested from the presenter(s).

This presentation is provided as an information service and is a summary of current legal issues. This information is not meant as legal opinion and viewers are cautioned not to act on information provided in this publication without seeking specific legal advice with respect to their unique circumstances.

VANCOUVER CALGARY EDMONTON SASKATOON REGINA LONDON KITCHENER-WATERLOO GUELPH TORONTO VAUGHAN MARKHAM MONTRÉAL