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# COFFEE TALK - DIRECTORS SERIES

## What Directors Need to Know: The New H-SAA

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# AGENDA

1. Setting the stage: *Patients First Act* and amendments to LHSIA
2. Review of key changes and requirements in the new H-SAA
3. Governance/operational compliance review



## *Patients First Act, 2016*

- *Local Health System Integration Act, 2006*
- H-SAA Template - 2008
- *Patients First Act, 2016* – significant amendments to LHSIA
- Updated H-SAA Template – 2018
  - explicitly recognizes LHSIA and Patient's First: Action Plan for Health Care



## Funding and Accountability

- LHINs given tools/authorities to become point of accountability for local health system planning in regions and sub-regions
- LHINs may negotiate and enter into service accountability agreements (“SAAs”) with HSPs (CFMA provisions repealed)
- Increased LHIN oversight of HSPs to which it provides funding

# Service Accountability Agreements

- LHIN to notify HSP of intention to enter into or amend SAA
- Parties to negotiate SAA terms and conditions within 90 days of notice
- Detailed process where SAA/SAA amendments cannot be negotiated within 90 days:
  - LHIN/HSP must develop written description of issues
  - 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



# Expanded Ministry/LHIN Authorities

- Directives by Minister (PHA)
  - Operational or policy directives issued to the board of a hospital (subject to public interest test)
    - May be general or particular in application
    - Charter protection for denominational hospitals
    - Board required to carry out every directive



# Expanded Ministry/LHIN Authorities

- LHIN Authorities
  - Engage in or permit an operational or peer review or financial audit
  - Appoint an investigator to report on the quality of management, care and treatment provided (public interest)
- Authority of LGiC to appoint hospital investigators and supervisors under PHA still exists



# Public Interest Test

- Certain actions may only be taken where it is in the public interest, considering:
  - Quality of management and administration
  - Proper management of the health care system in general
  - Availability of financial resources for management of the health care system, delivery of health care services
  - Accessibility of health services in the geographic area or sub-region where located
  - Quality of the care and treatment of patients





## H-SAA Key Changes

- Expanded definition of Applicable Policy
  - Previously policies/standards/manuals identified and agreed
  - Now includes those “available to the Hospital” on website of ministry or agency and those provided by LHIN, ministry or agency to the Hospital
  - Notably does NOT include those adopted unilaterally by one or more LHINs



## H-SAA Key Changes

- New H-SAA Indicator Technical Specifications
  - Not attached as a schedule; must obtain
  - "as amended or replaced from time to time", allows LHIN to amend requirements and bypass LHSIA amendment protocol



# H-SAA Key Changes

- New Program Parameters
  - Includes operational, financial, service standards/policies/guidelines of MOHLTC that Hospital has been made aware of, or ought reasonably to be aware of
  - Note required by MOHLTC, not LHIN
  - H-SAA requires compliance but does not address potential governance conflicts with best interests



## H-SAA Key Changes

- New Review authority of LHIN
  - Financial or operational audit, investigation, inspection or other form of review requested or required by LHIN under terms of LHSIA
  - Expanded authority under *Patients First Act*
  - Hospital to cooperate in every Review and Facilitation



## H-SAA Key Changes

- New reference to Mandate Letter
  - LHIN will share MOHLTC Mandate Letter to assist in collaborative efforts



# H-SAA Key Changes

- Subcontracts must:
  - Enable Hospital to meet obligations of H-SAA
  - Not limit or restrict ability of LHIN to Review



## H-SAA Key Changes

- Policy requirements within 60 days:
  - Conflict of interest policy
  - Code of conduct for directors, officers, employees, professional staff, volunteers
- Immediate policy required to not restrict/refuse Hospital services based on geographic area



## H-SAA Key Changes

- New provisions on Digital Health
  - Assist LHIN to plan/implement digital health plan
  - Hospital planning to include plans to achieve agreed digital health initiatives
  - Track Hospital's performance to LHIN plan
  - Comply with MOHLTC standards
- Process to address adverse impact of compliance





## H-SAA Key Changes

- Use of rebates, refunds, credits and interest received from H-SAA funding
  - To be used to provide Hospital Services (includes clinical services and activities that support those services)



## H-SAA Key Changes

- Balanced budget waiver
  - LHIN has broader authority to waive balanced budget obligation
  - *"the LHIN may, in its discretion, waive the obligation to achieve an Annual Balanced Operating Budget on such terms and conditions as the LHIN may deem appropriate"*



# H-SAA Key Changes

- Reallocation of funds
  - LHIN may recover funds to temporarily reallocate to another provider if Hospital has reduced Hospital Services outside of Performance Corridor



## H-SAA Key Changes

- New System Planning requirements
  - Hospital may inform LHIN of integration opportunities in health system
  - Hospital will inform LHIN through "pre-proposal" if considering integration of services with other person/entity
  - Pre-proposal is NOT s. 27 Notice of Voluntary Integration
  - Pre-proposal requirement does not prevent Hospital from submitting s.27 Notice at any time



## H-SAA Key Changes

- **French Language Services reporting:** ALL Hospitals whether or not subject to the *French Language Services Act* must report on FLS to the LHIN annually
- **Community Engagement/Integration reporting:** report annually using LHIN template on community engagement and integration activities
- **System Impacts:** promptly inform the LHIN of any matter the Hospital becomes aware that materially impacts or likely to materially impact the health system

# H-SAA Key Changes

- New governance requirements
  - At least quarterly Hospital Board to receive report on Hospital's performance of its H-SAA obligations (including performance targets and balanced budget)
  - Hospital Board Declaration signed by the Chair that Board has received the reports
  - Covenant to follow good governance practices
  - Undertake accreditation with governance review and address deficiencies

## H-SAA Key Changes

- New corporate reps, warrants and covenants required, e.g.:
  - Valid entity with power to fulfill obligations
  - Hospital services to be delivered by qualified persons
  - Hold requisite permits/licenses/consents
  - All information provided is and will continue to be materially true and complete (provide notice if it is not)



# H-SAA Key Changes

- Issue Resolution
  - Amended process and more prescribed detail on issues statement
  - Nothing prevents LHIN from exercising statutory or legal right





# H-SAA Key Changes

- Insurance
  - New insurance requirements; confirm with insurer
  - Note standard of indemnity exclusion changed from "gross negligence" to "negligence"; better for Hospital



# H-SAA Key Changes

- LHIN Acknowledgement
  - New requirement to acknowledge LHIN funding support on Hospital's website and in all publications (includes annual report, strategic plan, integration communications etc)



# Board Governance Duty

- Directors must:
  - Act honestly and in good faith with a view to the best interest of the corporation; and
  - Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances
  - Objective standard

# Board Governance Duty

- H-SAA requires Board approval prior to execution
- To provide Board approval, must ensure:
  - Satisfaction with funding to meet operational needs
  - Ability to comply with performance standards and targets
  - Representations are true and correct
  - Ability to comply with all obligations
- No funding until H-SAA signed but may be granted exception if need more time for Board approval



# H-SAA Compliance Items to Request/Confirm

- Copy of Ministry/LHIN Accountability Agreement
  - Definitions (Digital Health Board, Health System Funding Reform)
  - H-SAA funding provided in accordance with Accountability Agreement
- H-SAA Indicator Technical Specifications
  - New document?
  - Compliance required throughout
- Applicable Policy
  - Confirm current requirements



# H-SAA Compliance Action Items

- Confirm subcontracts are H-SAA compliant (see subcontractor requirements s. 3.3/s.12.4.3)
- Confirm/implement new policies:
  - Conflict of Interest
  - Code of Conduct for Directors, Officers, Employees, Professional Staff and Volunteers
  - No restriction of Hospital services based on geography
- Review all representations to confirm ability to attest (s. 10)



# H-SAA Compliance Action Items

- Review Digital Health Plan to assess potential adverse impact and, if any, notify the LHIN (s. 3.7)
- Confirm good governance standard
- Confirm accreditation status
- Confirm compliance with insurance requirements
- Ensure protocols in place to meet new reporting, notification and acknowledgement requirements



# Summary

- *Patients First Act* expanded authority of LHINs/MOHLTC
- H-SAA update has changes to format and content
- H-SAA requires Board approval and to render such approval Board must:
  - Be educated on the new terms of the H-SAA
  - Ensure ability to comply with all representations and obligations
- Continued H-SAA compliance will require internal updates to compliance management programs to align with new requirements





# Questions?

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