Integration Opportunities – A Legal Perspective

Karima Kanani
kkanani@millerthomson.com
416.595.7908
ROAD MAP

1. What is Integration?
2. Integration Opportunities
3. Integration Risk Management
4. Board Responsibilities
5. Wrap-up and Questions
WHAT IS INTEGRATION?

- *Local Health System Integration Act, 2006*
- LHSIA calls for identification of integration opportunities

**s.24** “Each LHIN and each HSP shall separately and in conjunction with each other identify opportunities to integrate the services of the local health system to provide appropriate, co-ordinated, effective and efficient services.”
WHAT IS INTEGRATION?

- Under LHSIA “Service” Means:
  - services or programs provided directly to people
  - services that support such a service or program
  - a function that supports the operations of a person or entity that provides a service or program
WHAT IS INTEGRATION?

• Under LHSIA “Integrate” includes:
  – to coordinate services and interactions
  – to partner in providing services or in operating
  – to transfer, merge or amalgamate services, operations, persons or entities
  – to start or cease providing services
  – to cease to operate, dissolve or wind up operations
WHAT IS INTEGRATION?

• Types of Integration
  – Voluntary Integration
  – Directed Integration
    • LHIN Integration Decision
    • Minister Integration Order
WHAT IS INTEGRATION?

- Voluntary Integration
  - most common
  - at the initiative of providers
  - LHSIA s.27(3) requires 60 day notice to the LHIN
  - LHIN has policy requirements on content of notice and when they will accept notice
WHAT IS INTEGRATION?

- Directed Integration – LHIN Integration Decision
  - LHSIA s.26(1)
  - LHIN may issue an integration decision when in public interest to do so
  - LHIN required to notify provider and public of proposed decision 30 days prior
  - decision will state purpose, parties, action to be taken and effective date
  - provider has 30 days to request LHIN to reconsider
  - restrictions on type of integration LHIN may direct
WHAT IS INTEGRATION

• Directed Integration – Minister Integration Order
  – LHSIA s. 28(1)
  – Certain types of integration can only be ordered by Minister
    • Cease operating, dissolve, wind-up
    • Amalgamation
    • Transfer all or substantially all operations
  – Number of procedural steps including notice to provider and public 30 days prior
INTEGRATION OPPORTUNITIES

- Collaboration/Joint Ventures
- Service Co-ordination
- Consolidation of Back-Office Functions
- Shared Management Services
- Program Transfer/Corporate Merger
INTEGRATION OPPORTUNITIES
Collaboration/Joint Ventures

• Examples
  – group purchasing
  – partnering in pursuit of contracts/engagements
  – technology hosting and data sharing

• Matters to be addressed include:
  – what are the contributions (financial and other) of the parties?
  – how will the relationship be governed? decisions made?
  – will the collaboration be implemented through a contract or by way of a separate corporation?
INTEGRATION OPPORTUNITIES
Service Co-ordination

• Examples
  – Regional service programs
  – Integrated services

• Lead Agency/Transfer Payment Agency

• Matters to be addressed include:
  – flow of funding and obligations
  – standards of service delivery
  – accountability and liability
INTEGRATION OPPORTUNITIES
Consolidation of Back-Office Functions

• Examples
  – human resources
  – Accounting
  – IT

• Generally purchased service

• Matters to be addressed include:
  – service commitment
  – costs and administrative fees
  – confidentiality
INTEGRATION OPPORTUNITIES
Shared Management Services

• Examples
  – senior management
  – Executive Director/CEO

• Matters to be addressed include:
  – scope of authority
  – accountability and reporting
  – allocation of liability
  – confidentiality
  – termination and replacement
INTEGRATION OPPORTUNITIES
Program Transfer/Corporate Merger

• Examples
  – single program transfer
  – transfer of all assets/operations of one organization and dissolution
  – full merger of assets/operations of more than one entity

• 2 Legal models
  – asset transfer
  – amalgamation
INTEGRATION OPPORTUNITIES
Program Transfer/Corporate Merger

- **Asset Transfer**
  - parties agree to assets/liabilities to transfer
  - if transfer all assets then predecessor to wind-up

- **Amalgamation**
  - requires same or similar objects
  - predecessors merge into new amalgamated corporation
  - all assets/liabilities merge
INTEGRATION OPPORTUNITIES
Program Transfer/Corporate Merger

• Matters to be addressed include:
  – corporate law requirements
  – charitable status
  – labour/employment
  – funding
  – existing liabilities
  – community politics
INTEGRATION RISK MANAGEMENT

• External due diligence on potential partners and acquisitions

• Internal review of legal implications from corporate, labour/employment and tax perspectives

• Ensure contractual agreements in place to:
  – provide clarity on roles and responsibilities
  – allocate risk and liability
  – establish standards and expectations
BOARD RESPONSIBILITIES

- Compliance with obligations to identify integration opportunities
- Generative governance
BOARD RESPONSIBILITIES

1. Board education
2. Operational review
3. Strategic planning
4. Community engagement
BOARD RESPONSIBILITIES

- When integration opportunities arise
  - ensure external and internal due diligence
  - ensure risk managed approach to implementation
  - best interests of the organization remains paramount
SUMMARY

- Organizations required to actively identify integration opportunities
- There are a spectrum of different integration opportunities
- Organizations should ensure a risk managed approach to integration
- Board education and pro-active planning are important to fulfill governance obligations
Questions?
Karima Kanani
kkanani@millerthomson.com
T: 416.595.7908
F: 416.595.8695

Karima Kanani is a Partner in the Health Industry Group at Miller Thomson LLP