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
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Jesstina McFadden
jmcfadden@millerthomson.com
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