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• LHINs may negotiate and enter into service accountability agreements ("SAAs") with HSPs (CFMA provisions repealed)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 by-pass 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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