

BILL 36: LOCAL HEALTH SYSTEM INTEGRATION ACT, 2005 PRELIMINARY ANALYSIS

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On Thursday November 24, 2005, the Honourable George Smitherman, Minister of Health and Long-Term Care, introduced Bill 36: the “*Local Health Integration System Integration Act, 2005*”.

The stated **purpose** of the legislation is to provide for an integrated health system to improve the health of Ontarians through better access to health services, co-ordinated health care and effective and efficient management of the health system at the local level by local health integration networks (**LHINs**).

The following is a preliminary analysis of the key legislative impacts of the legislation from the perspective of “**Health Service Providers**” (**HSPs**).

HSPs are defined in section 2 of the new Bill and include public hospitals; psychiatric facilities (with some exceptions); the University of Ottawa Heart Institute; charitable homes for the aged; municipalities that maintain homes for the aged; nursing homes; community care access corporations; community service providers; community health centres; community mental health and addiction service providers and others as specified by regulation.

PLEASE NOTE: This is not intended to be a comprehensive review of the *Local Health Integration System Integration Act, 2005* nor is it intended to provide legal advice. Readers should not act on this information without seeking specific advice on the particular matters that are of concern to them.

Links

Bill 36 has received First Reading. Second Reading debates took place November 29th. The official version is available at:

http://www.ontla.on.ca/documents/Bills/38_Parliament/session2/b036_e.htm

The Ministry of Health and Long-Term Care (**Ministry**) website includes a 19-page compendium describing the Act and the press releases related to this legislation at:

http://www.health.gov.on.ca/english/public/legislation/lhins/hu_lhins.html

The law firm of Cassels Brock LLP has also produced a brief analysis of the legislation with specific attention to the impact for HSPs at:

<http://www.casselsbrock.com/publicationdetail.asp?aid=893&pid=16>

Key Legislative Outcomes

1. The legislation will continue the existing 14 LHINs but will create new corporate structures for those LHINs. The geographic maps for the LHINs are available on the Ministry website: http://www.health.gov.on.ca/transformation/lhin/lhinmap_mn.html

LHINs will be Crown Agents. LHINs will not be charities. The Lieutenant Governor in Council will appoint their members and their Board of Directors. (sections 3-4)

A summary of the 14 objects of the LHINs is:

- to promote the integration of the local health system;
 - to identify and plan for and make recommendations to the Minister about the health service needs and funding needs;
 - to engage the community in planning and setting priorities for that system;
 - to respond to concerns that people raise about the services that they receive;
 - to evaluate, monitor and report on the performance of the local health system and its health services;
 - to assist in the development of the provincial strategic plan;
 - to improve the integration of the provincial and local health systems and the co-ordination of health services;
 - to improve access to health services and to enhance continuity of health care;
 - to disseminate information on best practices and to promote knowledge transfer;
 - to bring economic efficiencies to the delivery of health services;
 - to fund health service providers for services and equipment;
 - to enter into agreements to establish performance standards and to ensure the achievement of performance standards by health service providers that receive funding from the network;
 - to ensure the effective and efficient management of resources; and
 - anything else the Minister specifies by regulation. (section 5)
2. LHINs will be required to report information as requested to the Ontario Health Quality Council created under the *Commitment to the Future of Medicare Act, 2004*. (subsection 13(6))
 3. The Minister will develop a “**provincial strategic plan**” for the provincial health service. This plan must be publicly available. (section 14) However, Bill 36 does not specify that the plan must be in place before LHINs initiate their work. Nor does it specify whether this is a one-time plan or whether it is a plan to be reviewed and amended as necessary over time.

4. LHINs will develop “**integrated health service plans**” (**IHSPs**) for their local health systems. These IHSPs must be consistent with the Ministry’s strategic plan and must be publicly available. However, Bill 36 does not specify whether this is a one-time plan or whether it is a plan to be reviewed and amended as necessary. (sections 15 and 16) The Bill does require that LHINs engage with the community on an on-going basis for the IHSPs and for setting priorities. How and with whom LHINs effect **community engagement** may be prescribed in regulations – although if regulations are not passed, community engagement processes may vary from LHIN to LHIN.
5. HSPs are also required to engage their communities when developing plans and setting priorities for the delivery of health services (subsection 16(3)). And just as with LHINs, how and with whom HSPs do community engagement may be prescribed in regulations. Again, if regulations are not passed, community engagement processes may vary from HSP to HSP.
6. The Ministry will fund LHINs. LHINs will have “**accountability agreements**” with the Ministry. (sections 17 and 18)
7. LHINs will fund HSPs for services provided in or for their geographic area. However, there may be regulations that govern how funding may be provided. LHINs will have “**service accountability agreements**” with HSPs for those services as such agreements are understood under the *Commitment to the Future of Medicare Act, 2004*. All HSPs will be required to enter into service accountability agreements (not just hospitals). LHINs may require audits. (section 19)
8. Through consequential amendments, there are significant changes proposed to the *Commitment to the Future of Medicare Act, 2004* giving powers to LHINs. For example, LHINs will be able to issue compliance directives (whereas such power had been reserved for the Minister).

Commitment to the Future of Medicare Act, 2004

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/04c05_e.htm#BK27

9. LHINs and HSPs are required to “identify opportunities to integrate services”. (section 24)

And “**integrate**” includes:

- to co-ordinate 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; and
- to cease to operate or to dissolve or wind up the operations. (section 2)

And LHINs may direct this integration by:

- providing or changing funding to a HSP;
- facilitating and negotiating integration; or
- issuing integration decisions. (section 25)

10. LHINs will have the authority to issue “**integration decisions**” to HSPs in 3 cases:
- to recognize an existing integration of services;
 - to require HSPs to proceed with an integration (except cannot order a HSP to cease operating); and
 - to stop an integration effort. (sections 25-27)

Please note, the term “in the public interest” is used throughout Bill 36 - predominantly in the context of integration decisions. See sections: Explanatory Notes for Part V; Preamble (f); 26(1); 27(4); and 28(1).

If a HSP does not agree with the integration decision, it may request that the LHIN reconsider its decision (request must be submitted within 30 days – no dates for response by LHIN). The Bill does not provide recourse for HSPs to appeal to the Ministry. The procedural fairness requirements of the *Statutory Powers Procedures Act* are specifically excluded (therefore – no right to see evidence or have a hearing for example). These integration decisions could be subject to judicial review. (subsections 25(7); 26(3); 26(4); 27(6); 27(7))

11. LHINs will not have the authority to order organizations to close or cease operations. However, on advice of a LHIN, the Ministry can order a HSP to integrate including to cease operations or amalgamate with other HSPs. (section 28) And a LHIN or the Ministry can apply to Court for an order directing a HSP to comply with an integration decision or a Ministerial integration order. (subsection 29(3))

And the Lieutenant Governor in Council can make regulations to order a public hospital to cease performing prescribed non-clinical services and transfer those services to a prescribed entity. Consequential amendments will also be made to the *Public Hospitals Act* dealing with orders to cease operations.

12. The Lieutenant Governor in Council can also make regulations to devolve Ministerial powers to the LHINs. And this list of devolved powers will be available on the Ministry’s website. (section 34)
13. While the Bill speaks to LHINs funding HSPs for services provided in or for their geographic area, it is unclear how provincial programs and services that cross LHIN boundaries will be planned and funded.
14. Through complementary amendments to the *Community Care Access Corporations Act, 2001*, all existing Community Care Access Corporations (**CCACs**) will continue however there may be changes to the number of CCACs in the future. Changes to the corporate structure of CCACs are proposed so that CCACs will once again have the autonomy and authority to choose their own membership and Board of Directors and Executive Director.

The 5 existing objects of CCACs remain the same (these are already set out in the *Community Care Access Corporations Act, 2001*):

- to provide (directly or indirectly) health and related social services and supplies and equipment for the care of persons;
- to provide (directly or indirectly) goods and services to assist relatives, friends and others in the provision of care for such persons;
- to manage the placement of persons into long-term care facilities;
- to provide information to the public about community-based services, long-term care facilities and related health and social services; and
- to cooperate with other organizations that have similar objects.

Please note, through the complementary amendments, one object would be added. That is, “to carry out any charitable object that is prescribed and that is related to any of the objects described in paragraphs 1 to 5.” And note, by regulation, the Lieutenant Governor in Council may prescribe new objects for the purpose of this 6th object.

Community Care Access Corporations Act, 2001:

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/01c33_e.htm

15. If an HSP is subject to an integration decision by a LHIN, there could be labour relations impacts. It is important to note that complementary changes are proposed to the *Public Sector Labour Relations Transition Act, 1997*.

16. Consequential amendments are also proposed for a number of other Ontario statutes including, for example:

- *Charitable Institutions Act*;
- *Health Facilities Special Orders Act*;
- *Homes for the Aged and Rest Homes Act*;
- *Long-Term Care Act*;
- *Ministry of Health and Long-Term Care Act*;
- *Nursing Homes Act*;
- *Pay Equity Act*;
- *Personal Health Information Protection Act, 2004*;
- *Public Hospitals Act*;
- *Social Contract Act, 1993*; and
- *Tobacco Control Act, 1994*.

We will continue to develop this analysis as we identify key issues of interest.