Coffee Talk – Board of Directors Series

The Ontario Health Team Application: What Directors Need to Know

October 3, 2019

Karima Kanani
kkanani@millerthomson.com
416.595.7908
@KarimaKanani
© 2019 Miller Thomson LLP. All rights reserved. All Intellectual Property Rights including copyright in this presentation are owned by Miller Thomson LLP. This presentation may be reproduced and distributed in its entirety provided no alterations are made to the form or content. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP which may be requested from the presenter.

This presentation is provided as an information service and is a summary of current legal issues. This information is not meant as legal opinion and viewers are cautioned not to act on information provided in this publication without seeking specific legal advice with respect to their unique circumstances.
Agenda

1. Connecting Care Act, 2019
2. Ontario Health Teams: Ministry Criteria
3. Ontario Health Team Application
4. Ontario Health Team Governance
5. Role of the Board in System Transformation
Connecting Care Act, 2019
Where are we now?

- Bill 74 introduced into the Legislature on February 26, 2019
- April 18, 2019 - Bill 74, *The People’s Health Care Act, 2019* received Royal Assent
- *Connecting Care Act, 2019* in force as of June 6, 2019 (not all provisions effective immediately)
Connecting Care Act, 2019

- Creation of Central Agency – “Ontario Health”
- Creation of Integrated Care Delivery Systems (Ontario Health Teams)
Connecting Care Act, 2019
Ontario Health

- Establish Ontario Health as Province-wide Central Agency
- Crown agency with Board of Directors of up to 15 directors appointed by Lieutenant Governor in Council
- Has already been established as “Health Program Initiatives” and will be continued as Ontario Health
- Initial Board of Directors appointed on March 8th
Connecting Care Act, 2019
Ontario Health

• Central Agency to consolidate:
  - 14 LHINs
  - 6 provincial health agencies
    • Cancer Care Ontario
    • eHealth Ontario
    • HealthForceOntario Marketing and Recruitment Agency
    • Health Shared Services Ontario
    • Ontario Health Quality Council
    • Trillium Gift of Life Network
  - Other entities by regulation (that receive funding from Ministry/Agency & provide programs/services consistent with Agency objects)

• Ontario Health Board of Directors has already assumed governance control
Connecting Care Act, 2019
Ontario Health Teams

• Integrated Care Delivery System = Ontario Health Team
• Minister may designate a person or entity or a group of persons or entities as an integrated care delivery system provided that they have the ability to deliver in an integrated and coordinated manner at least three of the following types of services:
  ➢ Hospital services
  ➢ Primary care services
  ➢ Mental health or addictions services
  ➢ Home care or community services
  ➢ Long-term care home services
  ➢ Palliative care services
  ➢ Any other prescribed health care services or non-health care service that supports the provision of health care services

• Must also meet any prescribed conditions or requirements
Ontario Health Teams
Ministry Criteria

“Ontario Health Teams are groups of providers and organizations that are clinically and fiscally accountable for delivering a full and coordinated continuum of care to a defined geographic population”
Ontario Health Teams Ministry Criteria

1. **Self-Assessing Readiness**: Interested groups of providers and organizations submit Self-Assessment of readiness

2. **Validating Provider Readiness**: Based on Self-Assessments, groups of providers identified as:
   - In Discovery
   - In Development (Those in development will be invited to make an application to become an OHT candidate)

3. **Becoming an Ontario Health Team Candidate**: Based on full application process, those identified as meeting readiness criteria may be selected to begin implementation of the model

4. **Becoming a Designated Ontario Health Team**: Once ready to receive an integrated funding envelope and operate under a single accountability agreement, designated as an Ontario Health Team

Groups may be asked to collaborate with additional providers
Ontario Health Teams

Ministry Criteria

• Currently voluntary and provider driven but stated goal is “for all health service providers to eventually become Ontario Health Teams”

• Intended to be across the Province over time, selected through Self-Assessment submission and Application process by invitation

• Wave 1: 31 OHTs proceeding to full Application; 43 OHTs identified in development; other OHTs identified in discovery or innovative

• Wave 2: Self-Assessment due December 4th
# Ontario Health Teams

## Ministry Criteria

<table>
<thead>
<tr>
<th>Assessment Process</th>
<th>Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open call for Self-Assessments</td>
<td>April 3, 2019</td>
</tr>
<tr>
<td>Deadline to submit Self-Assessments</td>
<td>May 15, 2019</td>
</tr>
<tr>
<td>Selected groups will be invited to submit a full application</td>
<td>July 17, 2019</td>
</tr>
<tr>
<td>Deadline to submit full applications</td>
<td>October 9, 2019</td>
</tr>
<tr>
<td>Announce Ontario Health Team Candidates</td>
<td>Fall 2019</td>
</tr>
<tr>
<td>Deadline for second round of Self-Assessments</td>
<td>December 4, 2019</td>
</tr>
</tbody>
</table>

© 2019 Miller Thomson LLP
Ontario Health Teams
Self-Assessment

• Self-Assessment prescribes minimum readiness criteria to be considered for OHT selection
• Expectations stated for first year and at maturity
• Self-Assessment completed jointly by initial intended members of OHT
• 8 core components self-evaluated
• Board approval not required but highest level of approval possible encouraged
Ontario Health Teams Application

• 7 Sections, 2 Appendices:
  1. About your population
  2. About your team
  3. How will you transform care?
  4. How will your team work together?
  5. How will your team learn and improve?
  6. Implementation planning and risk analysis
  7. Membership approval
    • Appendix A: Home and Community Care
    • Appendix B: Digital Health
Ontario Health Teams Application

• Application requires a plan and evidence of ability to meet the plan
• Each team will be provided information on “attributed population”
• First OHTs will be selected on basis of readiness and capacity to execute AND willingness to champion model for rest of Province
• Application will be evaluated by 3rd party reviewers
• Application is non-binding on signatories
Ontario Health Teams Application

• Key Application Requirements:
  ➢ Members/Affiliates of OHT
  ➢ Member Status and Representations
  ➢ Digital Health Plan
  ➢ Risk Analysis
  ➢ Governance and Leadership Structure
Ontario Health Teams Application: Members/Affiliates

- Application Section 2.1 requires identification of Members of OHT:
  - Member Physician/Physician groups
  - Member Organizations

- Application Section 2.6 requires identification of collaborating physicians/organizations who intend to collaborate or be affiliated with the OHT

- Non-binding Declaration of Intent to be Member or Affiliate recommended; may change status
Ontario Health Teams Application: Members/Affiliates

• Role of Member
  - Member to sign Application and ancillary documents to support Application requirements (example, Attestation)
  - “Year 1 Agreement” required between Ministry and all OHT Members (distinct from existing funding/accountability agreements)

• Role of Affiliate
  - Affiliates may choose whether to participate in future coordination or collaboration initiatives
  - No additional documents required at this time
Ontario Health Teams
Application: Member Status/Reps

• Application Section 5 states:

“Identify whether any of your team members have had issues with governance, financial management, compliance with contractual performance obligations, or compliance with applicable legislation or regulation. Where there are issues, describe whether there is a plan in place to address them.”

• Accountability and performance management structures also required
Ontario Health Teams Application: Member Status/Reps

• To support parties to complete OHT Application, Member attestations recommended on:
  ➢ Legal compliance
  ➢ Governance and financial management practices
  ➢ Contract compliance and litigation

• Obtain additional due diligence where there are issues

• To be executed by CEO/Executive Director and Board Chair
Ontario Health Teams Application: Digital Health Plan

- Application Appendix B addresses Digital Health Plan:
  - Current State Assessment
  - Digital Health Plan to address identified gaps from Current State Assessment
    - Virtual care
    - Digital access to health information
    - Digitally enabled information sharing
    - Digitally enabled quality improvement
Ontario Health Teams
Application: Digital Health Plan

• PHIPA
  ➢ PHIPA obligations for data sharing/access remain
  ➢ Consider PHIPA status: HIC, HINP
  ➢ Privacy Impact Assessment
Ontario Health Teams
Application: Digital Health Plan

• Due Diligence
  ➢ Inventory and assess terms of existing agreements

• Risk Management
  ➢ Risk and liability allocation through contract and insurance
Ontario Health Teams Application: Risk Analysis

• Application Section 6 addresses implementation planning and risk analysis

➢ Describe any risks, contingencies and mitigation strategies you have identified regarding the development and implementation of your proposed Ontario Health Team

<table>
<thead>
<tr>
<th>Patient Care Risks</th>
<th>Resource Risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Scope of practice/professional regulation</td>
<td>• Human resources</td>
</tr>
<tr>
<td>• Quality/patient safety</td>
<td>• Financial</td>
</tr>
<tr>
<td>• Other</td>
<td>• Information &amp; technology</td>
</tr>
<tr>
<td></td>
<td>• Other</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Compliance Risks</th>
<th>Partnership Risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Legislative</td>
<td>• Governance</td>
</tr>
<tr>
<td>• Regulatory</td>
<td>• Community support</td>
</tr>
<tr>
<td>• Other</td>
<td>• Patient engagement</td>
</tr>
<tr>
<td></td>
<td>• Other</td>
</tr>
</tbody>
</table>
Ontario Health Teams Application: Risk Analysis

• Enterprise risk assessment of:
  ➢ Proposed OHT governance and operational structure
  ➢ Specific integration initiatives
  ➢ Member vulnerabilities

• 360 review: financial, legal, labour, reputational, etc.
Ontario Health Teams
Application: Governance/Leadership Structure

• Application Section 4 requires proposed governance and leadership structures for the OHT:

“Describe the planned Year 1 governance structure(s) for your proposed Ontario Health Team and whether these structure(s) are transitional. If your team hasn’t decided … describe … plan to formalize the working relationship.”
Ontario Health Teams
Application: Governance/Leadership Structure

- OHTs to self-organize
- Governance model to be “self-determined and fit-for-purpose”
- Governance model must:
  - Be conducive to coordinated care
  - Support achievement of performance targets
  - Enable achievement of accountability objectives
- OHT leadership and governance structure to include patients, physicians and clinical leadership
Ontario Health Teams
Application: Governance/Leadership Structure

- Application asks whether governance structure “transitional”
- As OHT matures OHT governance will evolve

OHT Development Process

Planning and Design ─ Operational Integration ─ Financial Integration ─ Corporate Integration
Ontario Health Teams
Application: Governance/Leadership Structure

Operational Coordination → Shared Management → Joint Board Governance → OHT Corporate Entity

Most OHTs are here
Ontario Health Teams
Application: Governance/Leadership Structure

- In early stages MOH has indicated that independent SAAs will be maintained, OHT governance through Contract and Committee most likely
- As single fund holder, discussions proceed and operational efficiencies are identified over time, OHT governance models may shift
- Some health service providers already operating with integrated shared management, joint Board and integrated delivery corporations
Ontario Health Teams
Application: Governance/Leadership Structure

- Collaborative governance through:
  - Contract (OHT Agreement)
  - Committee (Steering Committee)
Ontario Health Teams
Application: Governance/Leadership Structure

• MOH requirement: Formal agreement between OHT partners setting out governance structure

• Key terms (not exhaustive):
  - Membership
  - Steering Committee
  - Dispute Resolution
  - Service Population
  - Central Brand
  - Integration Process
  - Performance Management
  - Risk Allocation
  - Representations
  - Health Information Management
  - Confidentiality
  - Cost Share

• Nothing in OHT Agreement will fetter independent authority of each Member
Ontario Health Teams
Application: Governance/Leadership Structure

• Committee Structure
  ➢ Steering Committee
    (leadership vehicle of the OHT composed of senior executives of OHT Members)
  ➢ Other sub-committees
    (governance, digital health, quality)
  ➢ Engagement committees?
    (patients, community)
Ontario Health Teams
Application: Governance/Leadership Structure

• OHT Agreement not required to be completed or submitted with Application

• Non-binding stepping stone MOU/ Interim Agreement/ Statement of Intent being entered into in some OHTs to:
  - Support Application by demonstrating transitional leadership and plan to formalize OHT governance structure
  - Establish a framework and rules of engagement for potential OHT Members to work together toward the development of the OHT
  - Create interim Steering Committee to lead the OHT development process
Ontario Health Teams
Application: Governance/Leadership Structure

• Stepping stone MOU also includes other key terms of interest:
  ➢ Confidentiality
  ➢ Joint public communications
  ➢ Independent governance
  ➢ Cost sharing
Role of the Board in System Transformation

- Generative Framing questions; Shifting the cognitive paradigm
- Strategic Prospective and Reactive
- Fiduciary Oversight and Policy
Role of the Board in System Transformation

• Board Duties:
  - **Fiduciary** – oversight/stewardship of operations and assets
  - **Strategic** – priorities and strategies re: resources, programs and services
  - **Generative** – underlying purpose and values; long term sustainability
Role of the Board in System Transformation

- Board Chair sign off from each OHT Member required for OHT Application (non-binding)
- For Application, Board to ensure requirements satisfied and appropriate Application support tools and stepping stone documents in place
- Following Application, Board engagement and ultimately approval on go-forward OHT Agreement and governance and leadership framework (binding)
- In Year 1 OHT implementation, Board governance authority remains status quo
Karima Kanani leads the corporate commercial practice in the Toronto Health Industry Group at Miller Thomson LLP. She provides corporate counsel to health and social service organizations of all sizes. Karima is a leading advisor and frequent industry speaker on health system transformation and integration across the care continuum. She has been named as one of the "Best of the New Generation of Lawyers" (Precedent Magazine) and as a “Rising Star” and "Leading Canadian Corporate Lawyer to Watch" (Lexpert Magazine).