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DATE: May 25, 2010

REPORT TITLE: **SERVICE ACCOUNTABILITY AGREEMENT FOR LONG-TERM CARE HOMES**

FROM: Janette Smith, Commissioner of Health Services  
Patrick O'Connor, Regional Solicitor

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### RECOMMENDATION

**That Region of Peel signing officers be authorized to execute the 2010-2013 Long-Term Care Service Accountability Agreements (LSAA) with the Mississauga-Halton and Central West Local Health Integration Networks (LHINs).**

#### REPORT HIGHLIGHTS

- The *Local Health System Integration Act* ("Act") requires Local Health Integration Networks ("LHINS") to enter into a service accountability agreement ("Agreement") with every Health Service Provider ("HSP") that receives funding from the LHINs.
- The Region of Peel has been presented with Agreements from the Mississauga-Halton and Central West LHINs for the Long-Term Care (LTC) services operated at each of the Region's five LTC homes, to be in effect July 1, 2010 through March 31, 2013.
- The legal terms contained in this template Agreement will be common to all of Ontario's 650 LTC homes operated by the for-profit sector, municipal governments and not-for profit organizations; the schedules attached to each Agreement will, in part, be specific to each LTC home.
- Despite the consultation process and negotiations on the terms of the Agreement, there are still some aspects of the Agreement which are a cause for concern such as: the lack of mutuality and contract certainty; the lack of any dispute resolution or appeal process and; the extent of LHIN powers in the Agreement.
- The Association of Municipalities of Ontario has been involved in consultations and has voiced concern that the Agreement applies a "one size fits all" across all LTC home operators and that the Agreement fails to recognize municipalities as responsible and accountable governments.
- While the content of the Agreements does raise some concerns, staff are of the view that these issues can be managed. Without signing the Agreement, the Region's LTC funding is at risk.
- The combined efforts of Region of Peel senior management and LHIN leadership to engage on local health system issues have been productive, and have affirmed the Region's position as a level of government responsible for policy and funding for a range of health and human services that operate independently of LHINs.

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### DISCUSSION

#### 1. Background

##### a) Local Health Integration Networks ("LHINS")

Ontario's 14 Local Health Integration Networks (LHINs) are mandated through the *Local Health System Integration Act* ("Act") to manage their local health systems across a wide range of health services. The LHIN mandate includes:

- Promoting the integration of the health system;
- Planning for local health service needs;
- Engaging the community in planning and setting priorities;
- Coordinating health services, improving the efficiency of the health system;
- Allocating funding and setting performance standards with health service providers.

The following components of the health system are funded by and accountable to LHINs:

- Hospitals;
- Community health centres;
- Mental health and addictions programs;
- Community care access centres;
- Community support services;
- Long-term care homes.

##### b) Service Accountability Agreements

As reported to Regional Council in April 2009, the *Act* requires each LHIN to enter into service accountability agreements with every health service provider that it funds.

The LHINs moved ahead creating template Agreements with standardized terms and conditions for all health service providers funded by LHINs. The purpose of these standardized template Agreements is to provide efficiencies for LHINs managing contracts across hundreds of providers and to ensure a level of equality, consistency and fairness.

In February 2010, the Region received notice from the Central West and Mississauga-Halton LHINs that the current service agreements with the Ministry of Health and Long-Term Care governing long-term care beds are to be replaced by Long-Term Care Service Accountability Agreements (LSAAs) with the LHINs before July 1, 2010.

##### c) Multi-Sector Service Accountability Agreements

In April 2009, a single standardized template Agreement (called "Multi-Sector Service Accountability Agreement", or "MSAA") was established by the LHINs for many community-based health service providers. With Council direction, the Region of Peel executed this Agreement with the Central West LHIN for Adult Day Services, Aging at Home Services, and Respite Care Services at four of the Region's long-term care homes, under protest.

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The terms and conditions in the Agreement for these services raised significant legal concerns regarding the broad and unreviewable discretionary powers granted to LHINs to act unilaterally, to impose additional requirements, or to terminate funding to health service providers. In general, the Agreement was viewed to be significantly unbalanced in favour of the LHIN, with the potential to negatively affect the Region's obligations and expenditures for these services.

Council's decision to execute the Agreement reflected the statutory powers of the LHINs to ultimately impose an Agreement on LHIN-funded health service providers, including the Region, regardless of any decision to sign voluntarily. This decision also demonstrated the Region's commitment to continue engaging the Mississauga-Halton and Central West LHINs in local health service planning affecting Peel residents.

### 2. Findings

In May 2010, the Region of Peel received Agreements and accompanying schedules from the Mississauga-Halton and Central West LHINs for the residential and care services at each of the Region's five long-term care homes. These Agreements will be in effect July 1, 2010 through March 31, 2013.

Consistent with the other LHIN template Agreements, the terms of these Agreements will be common to all of Ontario's 650 LTC homes operated by the for-profit sector, municipal governments and not-for profit organizations. For the Region, the Agreements will set the terms and conditions for the Region of Peel's 703 LTC beds, and approximately 40 million dollars in provincial funding through the LHINs.

#### a) LSAA Consultation Process

The template Agreement for LTC homes was developed on behalf of all LHINs by a steering committee co-chaired by Ministry and LHIN staff, in consultation with organizations representing service providers. The consultation process began in the fall of 2009 and has continued through to May 2010.

The following sector organizations were invited to participate in the consultations:

- Ontario Association of Non-Profit Homes and Services for Seniors (OANHSS);
- Ontario Long Term Care Association;
- Ontario Hospital Association;
- Association of Municipalities of Ontario (AMO);
- City of Toronto.

Region of Peel staff have been directly involved in discussions at the sector consultation table of the steering committee drafting the Agreement, working closely with their AMO and OANHSS counterparts. The final version of the template Agreement reflected some of the input provided by these sector representatives.

The Ontario Association of Non-Profit Homes and Services for Seniors' reports it is generally satisfied with the final version of the template Agreement. The Association has asked the MOHLTC to also release LTC funding details to accompany the Agreement and to reflect the costs of transitioning to the terms and regulations under the *Long-Term Care Homes Act*.

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**SERVICE ACCOUNTABILITY AGREEMENT FOR LONG-TERM CARE HOMES****b) Review of the LSAA Agreement**

The structure and content of this Agreement is substantially similar to the earlier Agreement for the Adult Day Services, referred to as the MSAA. Senior management and Legal and Risk Management staff who have been involved in the consultation process and who have reviewed the Agreement template are of the opinion that both the process and the content of this Agreement is, to some extent an improvement over previous Agreements. The LSAA consultation process has resolved some issues.

However, despite these efforts, there continue to be key aspects of the Agreement which are a continuing cause for concern, which include the following:

- i) **Lack of mutuality and contractual certainty.** Similar to MSAA, the Agreement for Long-Term Care contains terms which would allow the LHINS to unilaterally change the contract requirements or to impose new contractual requirements upon the Region, during the Term of the Agreement. The LHINS' ability to impose additional obligations, without any corresponding obligation to provide additional funding, could require increased Regional expenditures, without the benefit of appropriate budget planning.
- ii) **No dispute resolution or appeal process.** This template Agreement grants to the LHINS sole discretion to unilaterally determine whether the health service provider has breached the Agreement and thereafter to terminate funding, without providing the benefit of any appeal process or any dispute resolution process.
- iii) **LHIN powers.** The Agreement grants to the LHINS extensive powers and, in some cases, powers which arguably exceed the LHINS' statutory powers. For example, the Agreement gives the LHINS the power to discontinue funding (for instance, where the operator fails to meet performance indicators established by the LHIN), indirectly ceasing a home's operations. Sector associations contend that under the new *Long-Term Care Homes Act*, the Ministry alone has the exclusive right to cease a LTC home's operations. The LHINS' audit powers under the Agreement also exceed the LHINS' statutory audit powers.
- iv) Additionally, the Association of Municipalities of Ontario has participated in the consultation process and has voiced concern that the Agreement applies a "one size fits all" across all LTC home operators. The Agreement does not recognize municipalities as responsible and accountable governments, consistent with the principles that support the Provincial-Municipal Memorandum of Understanding.

**3. Proposed Direction**

While the Agreements are service agreements with the LHINS, it is important to note that the long-term care sector has been subject to increasing scrutiny and layered accountability that maintains a strong role for the MOHLTC in overseeing this sector. The table in Appendix I summarizes the division of roles and responsibilities between the MOHLTC and the LHINS.

The Region of Peel senior management and the Regional Chair together with leadership from the Mississauga-Halton and Central West LHINS has initiated a more structured dialogue to address a number of local health system issues affecting Peel residents. These productive discussions have affirmed the Region's position as a level of government

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responsible for policy and funding for a range of health and human services that operate independently of LHINs.

Health Services senior management is of the view that any issues that arise that relate to the Agreements can be adequately managed by the Region of Peel. Accordingly, staff recommends that Council authorize the execution of the 2010-2013 Long-Term Care Accountability Agreements.



Janette Smith  
Commissioner of Health Services



Patrick O'Connor  
Regional Solicitor

**Approved for Submission:**



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D. Szwarc, Chief Administrative Officer

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c. Legislative Services

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**APPENDIX I**

**MOHLTC and LHIN Roles and Responsibilities in the Long Term Care Sector**

<b>Ministry of Health and Long-Term Care</b>	<b>Local Health and Integration Networks</b>
<ul style="list-style-type: none"> <li>• Setting the policies for the long term care homes e.g. funding policies.</li> <li>• Determining total per diem per bed funding.</li> <li>• Compliance, inspection and enforcement of long term care homes.</li> <li>• Licensing and approval of long term care beds.</li> <li>• Setting fees for licensing.</li> <li>• Management of Development and Redevelopment program.</li> <li>• Approving changes of ownership, sale of businesses and amalgamations of providers for purposes of licensing.</li> <li>• Approving long term care homes management contracts.</li> <li>• Acting as the lead in the event of a bankruptcy and approving a third-party management company.</li> <li>• Ministry funded programs.</li> <li>• Administering the Subsidy Calculation Worksheet, reviewing Audited Annual Report, Revenue Occupancy Report and processing reconciliations on behalf of the Local Health Integration Networks (LHINs).</li> </ul>	<ul style="list-style-type: none"> <li>• Provide and administer the following types of long term care home funding:               <ul style="list-style-type: none"> <li>○ Per Diem funding (Levels of Care) funding.</li> <li>○ Non-Per Diem funding (such as: Registered Practical Nurse Funding, Construction Cost Funding, Convalescent Care Bed funding).</li> </ul> </li> <li>• Monitor the achievement of specific performance goals under the Long-Term Care Service Accountability Agreement.</li> <li>• Performance improvement.</li> <li>• Review and monitor: Occupancy/ Utilization of beds, Placement refusal trends, Transfer request trends, and Wait list profiles.</li> <li>• Participate, as appropriate, in the preparation and submission of funding requests related to long term care homes through the Ministry annual planning cycle.</li> <li>• Approve the designation of existing long-stay beds as short-stay beds.</li> <li>• Set performance targets within the context of a provincial framework.</li> <li>• Recovery of unspent LHIN operating funds identified through the Revenue Occupancy Report.</li> <li>• Re-allocate operating funds recovered through the revenue occupancy report.</li> </ul>