

SALE OF BUSINESS OVERVIEW

A. OVERVIEW

Ontario Health atHome (OHaH) may be notified by one of its service providers that the service provider is selling all or a portion of its business. This is confidential information that should not be shared with other stakeholders without the consent of the service provider.

There are two types of sale that will impact OHaH, a sale of assets owned by the service provider or a sale of the majority of the shares. In the Clinical Services Agreement and the Medical Equipment and Supplies Agreement, prior to completing a sale of business a service provider must obtain written consent from OHaH to assignment of the contract to the buyer (in an asset sale); or obtain written consent from OHaH to the change of control of the service provider (in a sale of shares). Under the agreements, OHaH have a contractual obligation not to unreasonably refuse to consent to the proposed transaction and under contract law to act honestly and in good faith.

Legal Services has developed a standard consent document to be used for each of the different sale processes, which will need to be signed by the current service provider, buyer and the OHaH. Generally, the cost of legal services is to be paid for by the service provider or the buyer. In addition, OHaH will need time to conduct financial and other (experience, legal, etc.) due diligence on the buyer before consent is granted.

B. PROCESS

Notice of the sale is provided by the provider to OHaH (should go to CEO but does not always). OHaH will undertake the following process when contacted about the sale of business of one of its service providers:

1) Find out as much information about the transaction as possible from the service provider. Ask the following questions:

- It is a share purchase or an asset purchase?
- When is the anticipated closing date for the transaction?
- Who is the buyer?

2) OHaH will request financial information, experience information and legal information from the buyer (due diligence questions). The information that will be required from each region:

- A list of each of the contracts (including all contracts in effect and any amendments and extensions to such contracts) that a region has with the service provider; and
- The name of the individual(s) at OHaH who will sign the consent (signing authority). (CEO for large SPO contracts)

- 3) Legal will work with OHaH to draft the appropriate consents and whether to place conditions on consent.
- 4) Once OHaH has signed off on the language of the consent, they are sent to the seller – if conditions are placed on the consent a period of negotiation may occur.
- 5) Execution of the consents must occur prior to closing of the transaction.

C. PREQUALIFIED ENTITIES

If the buyer has been prequalified as part of the prequalification process some of the due diligence information may not be required, as this may have already been submitted and reviewed as part of the prequalification process.

OHaH and any prequalified service provider should be aware that if a sale of business transaction results in a significant change to a Service Provider that, immediately prior to the transaction, is prequalified, (such as, for example, all of the assets are transferred out of the entity, the entity is dissolved, etc.), the entity's prequalification status may be adversely affected by the transaction and the Service Provider will need to apply for prequalification prior to participating in any subsequent RFP process initiated by OHaH.

Due Diligence Checklist

Note: The following due diligence questions to be answered by the purchasing (buyer) organization.

FINANCIAL

1. Most recent audited financial statements of the buyer (in the case of an asset sale) or the buyer and the target company (in the case of a share sale).
2. Any proforma balance sheet prepared for the post-transaction entity.
3. If the buyer is not a current Ontario Health atHome (OHaH) provider, audited financial statements for its two fiscal years immediately prior to the closing date of the transaction, and if the most recent audited statement will be more than 6 months old as of the closing date of the transaction, any interim financial statements produced since the audited financial statements.

EXPERIENCE

Asset Sale

1. Does the buyer have any other current contracts with Ontario Health atHome? What is the value (in dollars and, if applicable, hours or visits) of all current Ontario Health atHome contracts?
2. Does the buyer have any equivalent experience (hospital, clinic, hospice, long-term care home or retirement home) and if so what is the value of the contract (in dollars and, if applicable, hours or visits).
3. What is the buyer's intention regarding the Service Provider's current staff.
4. If a buyer does not have an Ontario Health atHome contract or equivalent experience, what is the buyer's plan for delivery the services?

Share Sale

1. Does the buyer have any current contract(s) with Ontario Health atHome? What is the value (in dollars and, if applicable, hours or visits) of all current Ontario Health atHome contracts?
2. What is the buyer's intention regarding transition and integration of the new business (i.e. keep as a separate business, division, integrate into existing business etc.)?

TRANSITION

1. What is the buyer's plan for transition?

LEGAL

1. The buyer should provide details regarding the following litigation matters for the three year period prior to the transaction:

Description Required		Buyer's Disclosure	
Provide details of any labour relations strikes or labour relations actions that may materially adversely affect the buyer's ability to deliver the Services as described in the Services Agreement with the OHaH.			
Provide details of any violation of wage or other fair labour practices and standards by the buyer.			
Provide details of any occurrences of default on a contract, or disqualification in an OHaH RFP process (not a simple failure to proceed in the RFP process) or being prohibited from providing services to OHaH.			
Provide details of any contract that the buyer (or an affiliate of the buyer) has failed to complete, in which the buyer (or an affiliate of the buyer) has been terminated or in which the buyer (or an affiliate of the buyer) has received formal written notification that the buyer (or an affiliate of the buyer) has committed a material breach. Include any Quality Improvement Notices (QIN) issued, date opened, OHaH involved, and a description of the issue(s).			
Provide details of any conviction or investigation of the buyer (or an affiliate of the buyer) for a violation of the criminal law or any other regulations or requirements relating to professional matters or any other matters relevant to its business.			
Provide details of any administrative or regulatory offences, charges or penalties imposed on the buyer and the outcome of such.			
Provide details of any insolvency, bankruptcy or similar applications by or against the buyer.			
State any complete or ongoing lawsuits, arbitrations or legal actions arising from contracts undertaken by the buyer (or an affiliate of the buyer).			
<i>Year</i>	<i>Award FOR or AGAINST Buyer (or affiliate)</i>	<i>Name of client, cause of litigation, and matter in dispute</i>	<i>Disputed amount (current value in Canadian dollars)</i>

2. The buyer should indicate whether any of the litigation matters disclosed is covered by insurance.