

Preface

Being a hospital or health system board member has become more difficult during the last five years, and there appear to be even more challenges coming.

Some experts have suggested that many boards are little more than a collection of high-powered people engaged in low-level activities, rather than groups thinking and working strategically (Taylor, Chait, and Holland 1996). However, increasing numbers of boards are making concentrated efforts to function effectively and to adopt or adapt best practices from other, more successful boards.

In addition, changes in the law and other areas should cause many boards to examine how they are structured and how they conduct their business. Some of these changes include the following.

Healthcare Reform

On March 30, 2010, President Barack Obama signed H.R. 4872, the Health Care and Education Reconciliation Act of 2010, which modified the Patient Protection and Affordable Care Act (ACA), H.R. 3590. These laws provide the foundation for changes made by Congress to the current healthcare delivery, payment, and insurance systems. The legislation may have the most significant impact on the healthcare financing system since Medicare began in 1965. The law goes into effect in phases between 2010 and 2016 with full implementation in 2020. Hospital and health systems management and boards must fully understand the components of this new legal framework.

Some aspects of the legislation may be beneficial to hospitals and health systems, such as changes to insurance markets, malpractice reform, and funding to help with high volumes of preventable readmissions. From another angle, hospitals and health systems may well be adversely affected by scheduled payment cuts. The legislation also transforms tax-exempt status and pricing transparency. How these different aspects will balance in the long run remains to be seen.

The secretary of the U.S. Department of Health and Human Services will have the power to implement much of the legislation. For example, the secretary will develop a method for assessing hospital performance in quality improvement, relating it to reimbursement. As the phrase “the secretary shall” appears more than 1,000 times in the law, boards should follow the rulemaking process closely.

IRS Form 990

The Internal Revenue Service's (IRS) redesigned Form 990 dramatically increases the number of questions dedicated to the corporate governance of tax-exempt hospitals and health systems. This increase reflects the IRS's close scrutiny of corporate governance and the perspective that a well-governed organization is likely to be a tax-compliant organization.

The Form 990 governance emphasis contains 20 separate questions relating to the governing body and management, board policies, and disclosures.

Trustees should be aware of how many voting members on their organization's board are considered independent. The definition of "independent" indicates a director or a director's relative is not compensated by the organization or a related organization as an officer or employee; did not receive more than \$10,000 a year as an independent contractor of the organization or a related organization; and did not receive a material financial benefit (more than \$50,000) from the organization or a related organization. Conflicts of interest must be disclosed annually.

Other key issues include

- Reviewing the organization's Form 990 by the board or a specifically designated board committee
- Explaining "best practices" policies, including a written whistleblower policy with protections against retaliation and a document retention and destruction policy
- Justifying and structuring of salaries and perks for key employees
- Sufficiency of current policy on conflict of interest
- Examining the organization's assessment and response to community needs

Boards could use the IRS Form 990 to their advantage as a management tool, conducting a yearly audit using the form as a guide.

American Competitiveness and Corporate Accountability Act of 2002

Commonly known as the Sarbanes-Oxley Act, this legislation mainly relates to publicly traded companies, but it also has some provisions with which several states are now asking nonprofit organizations to comply. The five main areas nonprofits should address include sections relating to

1. Audit committees being made up of independent members, including a financial expert

2. The audit committee's relationship to external auditors
3. Establishment of an audit committee charter and code of ethics
4. A requirement for executive certification of financial statements
5. Establishment of certain internal controls

Rating Agencies

Rating agencies now ask questions of the governing board before rating a hospital's bonds. Some areas of exploration have included

- Whether the board has adopted certain sections of Sarbanes-Oxley
- Whether the audit shows any material weaknesses
- Whether audit adjustments go to the board for its review
- How the management letter from the external auditors is used

Quality of Care

Quality, the most fundamental objective of all healthcare services, is now a public issue, no longer closely held solely by the professions. Its link to the cost of care has also moved to the forefront of the public's attention. Managing to achieve optimal, cost-effective quality and safety will continue to be a dominant governance issue for many years.

Hospitalists

The rapid emergence of hospitalists is one example of a significant change in the organization of hospital practice, and it has implications for the financial and quality relationships between the hospital and individual physicians. This change will undoubtedly alter the role of the traditional medical staff, which is already declining and becoming more disorganized as physicians increasingly identify with medical groups and specialty associations. How the board relates to these developments while maintaining responsibility for quality and safety will be the issue.

Other Challenges for Boards

- Development of accountable care organizations resulting from the ACA
- Growing consumer demand, fueled by the Internet, for information and accountability

- The effect of the baby boomer age wave on healthcare financing and delivery
- The continued nursing shortage and a predicted physician shortage
- The growth of complementary and alternative medicine

In these turbulent times, hospitals and health systems are fortunate to still have sincere, well-meaning individuals willing to take on the formidable task of being board members. It is important to provide support for the work of both new and seasoned members as they deal with new ideas or challenges to old ones.

Although I have worked with many boards of directors throughout my career in the healthcare industry, I am continually intrigued by boards of similar health organizations from similar communities, which vary so much in their efficiency and efficacy. Certainly, no individual agrees to serve on a board to be ineffective. However, many otherwise competent individuals have never received job descriptions or an effective orientation session, and they simply don't know their roles and responsibilities as productive healthcare board members.

This book is designed to be used by both new and experienced board members. It focuses on the best practices of board structure and function and board members' responsibilities. I developed this book during the several years I spent running hospitals and later attending eight to ten management-contract hospital board meetings a month. The work has been further advanced during my subsequent years serving on boards, working and interacting with boards, teaching graduate students about governance, consulting, and doing research about boards.

The book is structured to be perused in sections—allowing the reader to go to specific areas of interest or need—or it can be considered as a whole. My goal is to present information in a format that will be helpful regardless of the expertise of anyone using it.

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Reference

Taylor, B. E., R. P. Chait, and T. P. Holland. 1996. "The New Work of the Nonprofit Board." *Harvard Business Review* 74 (5): 36–46.