

Projected Corporate Governance Trends for Nonprofit Hospitals and Health Systems

A review of current developments has led me to the following perspective on governance trends for 2007:

1. **Focus on Mission.** Boards will face increasing pressure to address fundamental issues that go to the heart of the organization's charitable mission—chiefly, the IRS commissioner's publicly expressed difficulty in distinguishing between not-for-profit and for-profit health care delivery systems, and looming battles over federal income, and local property, tax exemptions.
2. **It's Not Going Away.** Reports of Sarbanes-Oxley's demise are greatly exaggerated. Continuing "front page" scandals in both the for-profit and nonprofit sectors serve to remind the public and legislators that regulatory oversight of corporate governance remains necessary.
3. **More Attention to Executive Compensation.** The board's role in executive compensation decisions will be at the core of regulatory scrutiny in 2007. The focus on the compensation committee will continue to grow, especially with respect to committee member and consultant independence, oversight of retirement benefits, discretionary expenditures, and transparency of committee decisions.
4. **Conflict-of-Interest Management.** Boards will continue to come under significant pressure to effectively manage the conflict-of-interest process, in part through board conflicts education, preventing potential conflicts, and conducting independent board review of individual disclosures. This will particularly be the case with respect to non-financial conflicts, conflicts arising from the use of overlapping boards and officers, and physician/director conflicts.
5. **Directors as Vendors.** Boards will be called upon to more closely address the implications of authorizing officers and directors to simultaneously conduct business with the organization. Boards will need to balance the benefits of this practice against the associated legal and "optical" implications.
6. **Compliance Oversight.** Emphasis on the board's fundamental obligation to oversee the effectiveness of its corporate compliance program will markedly increase in 2007. The compliance committee's independence and the transparency of the compliance reporting process will also be at issue.
7. **Size, Structure and Composition.** Greater attention will be paid to the board's size, structure and composition. Emphasis will center on the proper board size needed to oversee the organization's affairs, the benefits of a diverse board membership, the independence of board and committee members, and the impact of constituent representation.
8. **Beware the Mischief Maker.** A combination of factors will motivate certain board members to pursue contrarian—or worse—conduct in response to specific board actions. These factors parallel the rise of shareholder activism in the public company sector, and may, in extreme situations, lead to significant board controversy.
9. **No Free Golf.** Substantial public focus on ethics reform will pressure boards to refine, restrict or, in certain cases, terminate governance policies/practices relating to many arrangements previously considered as director/officer "perquisites," including officer and director travel and entertainment, spousal travel, gifts and other "in-kind" board benefits and discretionary executive expenditures.
10. **Corporate Structure Challenges.** The advancing maturity of the traditional "holding company" corporate structure model will require boards to revisit organizational configuration. The attraction of "systemness" and related concepts must be balanced against the need to preserve board oversight, satisfy regulatory requirements concerning tax-exempt status and protect against "piercing the veil"-type corporate liability.

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