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Governance Notes

Designed for governance support professionals in the healthcare industry.

Top 10 Governance Trends for Hospitals and Health Systems in 2019

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This article provides governance trends for the remainder of 2019 based on current developments in the healthcare industry:

1. **Greater engagement:** The incredible pace of industry change will test the capacity and effectiveness of the governing board. Healthcare directors will face increasing board service demands (e.g., preparation, education, attendance, and participation in board activities and oversight). To improve director concentration, boards may limit directors' outside board service, reduce their assignments within the organization, or dismiss oversubscribed directors.
2. **Enhanced decision-making:** Fiduciary engagement and the need for enhanced decision-making by the board are closely intertwined. The seismic forces currently roiling healthcare present profoundly consequential strategic options that involve significant risk, major mission shifts, and short windows of opportunity. In this environment, a more aggressive decision-making process, still grounded in duty of care principles and satisfying the business judgment rule, merits serious consideration.
3. **Mission drift:** As hospitals and health systems adjust their operational portfolio away from the "inpatient bed tower" model to a more diversified platform of care, the board will need to be alert to suggestions of "mission drift." This term refers to when a non-profit corporation's business affairs begin to shift from its stated purposes to some alteration or derivative thereof, without proper regulatory/judicial approval.[1]
4. **Boardroom civility:** It will be increasingly incumbent on governance to assure comity and cooperation in boardroom functions to enhance constructive skepticism, self-reflection, and open discussion between directors. An expectation of civility will support the board's efforts to achieve informed decision-making, vigorous oversight, and increased participation in boardroom discourse, while discouraging director complacency, excessive deference, and disruptive behavior.
5. **Oversight of culture:** The board should expand its oversight of workforce culture to include gender equity concerns. The recent McKinsey/LeanIn.org report identifies a dramatic power imbalance in the workplace that can negatively impact

Key Takeaways

As governance support professionals reflect on these trends, they should consider the following questions:

- What are we doing to ensure that directors are engaged and have the time necessary to focus on strategic issues?
- Does the board have an aggressive decision-making process that allows it to respond in a quick, yet thorough, manner? If not, do we need to restructure board policies and procedures to support this?
- Do we have a boardroom environment that encourages respect, cooperation, generative discussions, increased participation, and vigorous oversight?
- Are there members with diverse representation (including gender, race, age, experience, and thought) on the board?
- What are the current director refreshment protocols (board self-assessments, recruitment goals, board renewal tools, etc.)? Do these need to be updated to ensure the board is able to fulfill its increased fiduciary expectations?

1 For more information on "mission drift," see Michael Peregrine, "Emerging Health System Structural Issues," System Focus, The Governance Institute, January 2019.

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organizational performance and reputation.[2] The fundamental message to corporate boards is that sexual discrimination and harassment, and gender parity issues, are intertwined.

6. **Conflicts of interest:** The seismic evolution in healthcare—and the new transactions and business relationships it generates—has the potential to render the organization's existing conflicts identification and resolution process obsolete. Complicating factors include the diversification of health system portfolios, officers' and directors' interest in investing along with the health system, the rapid consolidation of the inpatient healthcare market, and the evolving determination of who is a "competitor."
7. **Individual accountability:** Boards will be expected to address material concerns arising from recent revisions to DOJ's Individual Accountability for Corporate Wrongdoing Memorandum (Yates Memo). The audit and compliance committee will need to re-emphasize accountability and communicate the government's focus on managerial levels within the corporate hierarchy. Board leadership will want to address with management the tension between the benefits of pursuing, and requirements for obtaining, cooperation credit. It should also discuss how individual leaders' conduct may be evaluated for accountability.
8. **Expand focus on diversity**: New state laws, legislative initiatives, and governance best practices will prompt expanded board and committee diversification efforts. As candidates are considered for each open board seat, boards should embrace the perspective that diversity across all dimensions—gender, race, age, experience, and thought—is fundamental to well-performing governance and long-term economic value.
9. **Director refreshment:** Increased fiduciary expectations of hospital/health system governance demand more rigorous, efficient, and thoughtfully managed director refreshment protocols, including vigorous annual board and director evaluations, director recruitment goals that address long-term corporate needs and the competitive environment, and the judicious application of board renewal tools (e.g., term limits, retirement age, and "fitness to serve" requirements).
10. **Preservation of tax-exempt status:** Themes arising from the Tax Cuts and Jobs Act, as well as Senator Charles Grassley's decision to reassume Chairmanship of the Senate Finance Committee, are likely to increase scrutiny on the tax-exempt status of healthcare organizations. The Strategic Planning Committee will be called to extend greater effort in preserving charitable status, and promoting the unique benefits of healthcare services delivery through the non-profit corporate model, as opposed to the for-profit model.

2 LeanIn.Org and McKinsey, *Women in the Workplace*, 2018.

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