

FELDESMAN

# Governance Best Practices: Tips to Enhance Effectiveness and Avoid Common Pitfalls

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COMMUNITY  
HEALTH CARE  
ASSOCIATION  
of New York State

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# TODAY'S PRESENTER

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Carrie specializes in transactional and federal grant-related matters, helping her clients implement collaborative relationships that leverage benefits while ensuring compliance with applicable law. She works with a wide array of nonprofit health care entities, with a focus on federally qualified health centers (FQHCs).

Carrie helps her clients navigate the complex web of programmatic requirements and fraud and abuse laws in the context of implementing transactions between providers. She is also well-versed in matters regarding the health center program and the applicable Health Resources and Services Administration (HRSA) requirements.



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# Navigating Governance: Defining the Board's Role

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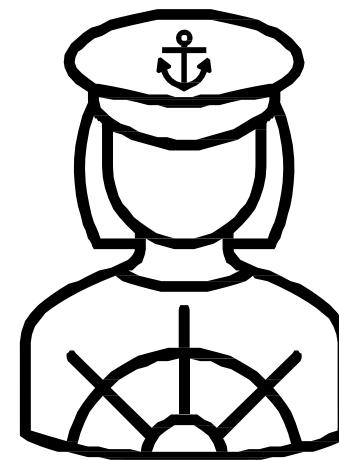


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## DEFINING THE SCOPE OF AUTHORITIES

**The role of the board is  
to steer, not row.**



## GOVERNING BOARD: KEY AUTHORITIES

HRSA Compliance Manual:  
Chapter 19 Footnote 13

“The governing board of a health center is generally responsible for **establishing and/or approving policies that govern health center operations**, while the health center’s staff is generally responsible for **implementing and ensuring adherence to these policies** (including through operating procedures).”

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# HIGH RISK AREAS: DISTINGUISHING BOARD ROLES FROM MANAGEMENT ROLES

## Board of Directors

Determines mission and vision, goals and strategy

Chooses direction, sets priorities, and makes policy

Selects and oversees CEO

Engages in strategic planning

Establishes measures of accountability

Evaluates health center performance

Supports the CEO

## Management

Determines how to *accomplish* goals and strategy

Implements procedures and necessary operational processes

Selects and oversees health center employees

Oversees and monitors daily operations

Collects data regarding health center services and patients

Provides Board with information and requests guidance

## ROGUE CONDUCT

- Avoid (and address) “rogue” conduct – Board members should not:
  - Individually speak for or act in an official capacity on behalf of the health center unless specifically authorized to do so
  - Publicly disagree with decisions made or actions taken by the full Board and/or management
  - Usurp the CEO’s authority or intervene in day-to-day administration of center
  - Communicate with center staff directly except as authorized

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## TIPS

- Establish a board work plan
- Discuss and define the role of board vs. CEO
  - May inform the CEO job description
- Foster open communication among board members
- Educate staff on the role of the board
- Develop protocols for board conduct



# MAXIMIZING BOARD EFFICIENCY: THE IMPORTANCE OF PREPARATION AND STRATEGIC TIME MANAGEMENT

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# THE BOARD'S CORPORATE FIDUCIARY DUTIES

## Duty of Care

The level of care that an ordinary prudent person would exercise in a like position under like circumstances

## Duty of Obedience

Observance of, and faithfulness to, the organizational mission

## Duty of Loyalty

Undivided allegiance to the organization when making decisions affecting the organization

**RIGHT FROM THE START:  
RESPONSIBILITIES of DIRECTORS of  
NOT-FOR-PROFIT CORPORATIONS**



Office of the New York State Attorney General  
Charities Bureau  
28 Liberty Street  
New York, NY 10005

(212) 416-8400

[www.charitiesnys.com](http://www.charitiesnys.com)

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# DUTY OF CARE

**Sufficient  
Time**

**Discussion**



**Context**

**Training**

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## TIPS

- Ensure board members are provided enough time to review materials
- Allow time for discussion
- Provide appropriate training
- Evaluate how the board is using its time
- Use committees wisely





# DUTY OF LOYALTY: IDENTIFYING AND MANAGING CONFLICTS OF INTEREST

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## HIGH RISK AREAS: CONFLICTS OF INTEREST

- Various federal and state rules regarding standards of conduct and identifying/managing “conflicts of interest”
  - IRS
  - OMB/HHS/HRSA
  - New York



## WHAT IS A CONFLICT OF INTEREST?

- In general, a conflict of interest exists when **someone in a position of trust** has **competing professional or personal interests** that would either **make it difficult** to fulfill his or her duties fairly or would **create an appearance of impropriety** that could undermine public confidence. Recipients of Federal funds are required to follow Federal regulations regarding conflicts of interest.

- Office of the Inspector General for the Department of Health and Human Services.

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# HIGH RISK AREAS: CONFLICTS OF INTEREST

- Conflict of Interest (COI): A significant financial interest that could directly compromise or bias professional judgment and objectivity related to the management of federal financial assistance.
  - Must disclose COI to HRSA, in writing
  - Must provide HRSA with any information regarding the plan and/or measures taken to eliminate, mitigate or otherwise resolve the COI



## Conflict of Interest (COI) Policy

- [Purpose](#)
- [Applicability and Relationship to Other Policies](#)
- [Definitions](#)
- [Situations Presenting Potential Conflicts of Interest and Actions Applicable to Such Situations](#)
- [Disclosure Requirements by Recipient Type](#)
- [Timing of Disclosures](#)
- [Content and Template for COI Disclosures](#)
- [HRSA Actions](#)

## HIGH RISK AREAS: CONFLICTS OF INTEREST

- The board of each nonprofit must adopt, implement and oversee compliance with a Conflict-of-Interest Policy “to ensure that its directors, officers, and key persons act in the [nonprofit’s] best interest and comply with applicable legal requirements.”



**Conflicts of Interest Policies Under the  
Not-for-Profit Corporation Law**

**Charities Bureau**  
[www.charitiesnys.com](http://www.charitiesnys.com)

**Guidance Document**  
**Issue date: September 2018**

# NEW YORK CONFLICT OF INTEREST REQUIREMENTS

## MUST INCLUDE THE FOLLOWING:

- Define the circumstances that constitute a conflict of interest;
- Set forth procedures for disclosing a conflict of interest to the audit committee or the board;
- Prohibit anyone with a conflict of interest from being present during or participating in the deliberation, voting on the issue that resulted in the conflict, or influencing the deliberation or vote on the issue that resulted in the conflict;
- Require the nonprofit to document the existence and resolution of each conflict;
- Require directors to sign annually a statement that identifies entities in which they serve as an officer, director, trustee, member, or employee and with which the corporation has a relationship; as well as any transaction of the nonprofit in which the director might have a conflicting interest.

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## TIPS

- Discuss the meaning and importance of addressing conflicts of interest
- Policy should be clear and comprehensive, taking into account all applicable laws
- Consider how conflicts are identified and managed
- Conflict identification, assessment and management should be an ongoing process



# THE EVOLVING BOARD: STRATEGIES FOR ENHANCE BOARD COMPOSITION

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# CORE HEALTH CENTER REQUIREMENTS: GOVERNING BOARD COMPOSITION

- Community-based governing board of 9 – 25 members
- **Consumer members:** at least 51% must be patients of the health center project
  - Must reasonably represent the populations served by the health center in terms of demographic factors such as race, ethnicity and gender
  - Parents/guardians of patients qualify as “consumer members”
- **Non-consumer members:** must represent the community served and, as a group, have broad range of skills and expertise (e.g., finance and banking, legal affairs, business, health, social services, community affairs, etc.)
  - No more than 50% of the non-consumer members may derive more than 10% of their income from the health care industry (Note: health center has discretion to define “health care industry”)

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## ASSURING COMPLIANCE WITH BOARD COMPOSITION REQUIREMENTS

- Health center employees and immediate family members (i.e., spouses, children, parents, or siblings through blood, adoption, or marriage) of employees may not be health center board members

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## TIPS

- Identify upcoming vacancies
- Review needs assessment and strategic plan
- Identify gaps
- Implement recruitment strategies
- Ensure compliance with the HRSA governance requirements



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A faint, light pink outline of a heart is centered in the background of the slide.

# Thank you!

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