

GOVERNANCE IN CRISIS: WHAT HEALTHCARE BOARDS SHOULD BE DOING IN THE WAKE OF COVID-19

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The COVID-19 pandemic is unprecedented in many respects, but notably in its effects on the healthcare system. While management and staff operate on the front lines, the board has a tremendous responsibility to guide the organization through this difficult time. This is not the time for “business as usual.” The board must ensure that the organization’s operations are adapted commensurate with the challenges posed by the pandemic—for example, challenges related to patient care, the welfare of employees and medical staffs, short-term and long-term financial health. This advisory highlights the important role of the board and ways that the boards of healthcare organizations can add value during the COVID-19 pandemic.

THE ROLE OF THE BOARD DURING THE CRISIS

The board serves the high level function of advancing the organization’s mission and ensuring business continuity through policy development, strategic planning and ensuring sufficient funding and availability of resources. The board is not directly involved in management; it is an oversight body that guides and supports management in implementing policies and processes approved by the board.

As an agent of the organization, the board must fulfill its function within the framework of its fiduciary obligations to the organization. The board’s fiduciary responsibilities did not disappear during the COVID-19 crisis. In fact, the crisis has created a heightened responsibility for the board to adjust its oversight proportionate to the demands of the crisis. The following highlights three well-known fiduciary duties and what they mean for the boards of healthcare organizations during this crisis;

Duty of Care. The board must make careful, informed decisions. This requires that the board understand the organization and the effects of the pandemic on a granular level. To accomplish this, the board must deepen its engagement and strengthen its partnership with management and clinical leadership, ask difficult questions, deliberate, and consult with experts.

Duty of Loyalty. The board must act in good faith and in the best interests of the organization; its directors cannot prioritize their personal interests. The crisis may present circumstances that make abiding by this duty difficult—for example, the desire to test a family member exhibiting symptoms but who might not otherwise have access to a test.

However, it is important that the board remain resolute. The public trust, which is immensely important during this time of crisis, depends on it.

Duty of Obedience. The board of a nonprofit organization must abide by—that is, be obedient to—applicable laws and regulations and not engage in unlawful, unauthorized activities. The board should consult legal counsel and other experts to ensure that the organization remains compliant.

ISSUES FOR BOARD CONSIDERATION

The novel nature of the virus adds a layer of uncertainty, and consequently, of responsibility for the board in its oversight capacity. Any plan of action by the board requires careful consideration of the issues presented. The following list highlights potential issues and questions that the board should consider in taking necessary action to combat the crisis. In making its assessments, the board should evaluate the needs of the organization according to three specific assessment periods: (1) prior to a surge in COVID-19 cases, (2) during the peak and (3) recovery.

Patient Safety. The board needs to understand the impact of the pandemic on patient safety through its partnership with management and clinical leadership:

- Is there sufficient access to critical medical supplies and equipment, such as personal protective equipment (PPE)?
- What changes are needed to patient triage and discharge policies?
- Is there sufficient bed capacity? Can off-site facilities be utilized if needed?
- What are effective measures for infection identification, management, and prevention?
- Are preoperative systems needed to re-train out-of-practice providers due to the elimination or reduction in elective surgeries?
- When can the hospital safely resume performing elective procedures?

Employment Matters. The board needs to ensure a healthy and sufficiently trained workforce and determine ways to best support employees and clinical staff:

- What policies should be established for cross-training in infectious disease?
- How can we ensure sufficient access and appropriate use of PPE to reduce the risk of infection among staff?
- What changes to physician credentialing may be needed to address potential staffing shortages? What other adjustments are needed to address shortages among other clinical staff?
- If liquidity is a concern, what policies should be adopted to address difficult employment matters like furloughs, layoffs, and other cost reduction?
- What changes to personnel practices may be needed to support the staff—e.g., additional psychological, emotional, and spiritual support for staff involved in caring for COVID-19 patients?

Management of Scarce Resources. The board needs to find ways to ensure that the organization can most effectively manage the allocation of scarce resources:

- How can telehealth be used for triage and assessment to limit staff exposure to the virus?

- What criteria should be used to ethically prioritize care to patients?
- How should the hospital determine which services and types of procedures can be deferred and for how long?

Financial Stability. The board needs to understand the long-term and short-term financial challenges of the organization so that it can implement a strategy for assessing emergency funding needs and how to free up liquidity and access to funds as needed:

- What are the emergency funding needs of the organization?
- What funding sources—foundations, grants, individual and corporate donors—can be tapped to meet funding needs of the organization?
- What enhanced reimbursement through the CARES Act and other state and local resources can be used?

Liability Exposure and Legal Compliance. In the ever-evolving legal landscape created by the crisis, it is especially important for the board to remain apprised of potential liability exposure and potential insurance coverage issues:

- How can risk management and legal counsel be incorporated into the decision-making process of the board?
- What measures need to be adopted to protect the organization from OSHA and other employment/safety complaints?
- What changes to standard of care policies should be adopted so that patients and the community feel safe?

ACTIONS THE BOARD CAN TAKE

The board must find ways to add value and avoid actions that impose unnecessary costs and undue burdens on the organization. The following are concrete examples of actions the board can take to better position the healthcare organization to withstand the crisis:

1. **Establish an effective crisis management plan.** An initial step for the board should be to establish a crisis management plan and ensure that it is well funded. A component of the crisis management plan should be a communication strategy, which should include increased internal communications with executives, as well as community engagement opportunities. Community trust is key, so accurate, clear, and transparent communication is important. The crisis management plan should also contain an emergency succession plan in the event that members of the leadership, as well as key clinical personnel, are incapacitated due to the contagious virus.
2. **Act through board resolutions.** During the crisis, time is of the essence. Taking steps that empower management to make decisions in real time is important. Going through the process of convening an unessential meeting is highly inefficient. The board should pass resolutions instead. For example, many organizations require board approval for CEO spending over a certain limit. Increase that limit by board resolution. Another effective use of resolutions is to approve applications for Section 1135 Waivers. CMS has announced a set of waivers specific to the COVID-19 pandemic. These waivers allow hospitals to take necessary actions without violating EMTALA, bed limits or medical staff credentialing requirements. If board authorization is needed, pass a resolution now.

3. **Establish an Emergency Governance Structure.** The board should revisit its decision-making model and find ways to reduce the governance burden. Healthcare organizations often have large community-based boards that are not well-suited to the demands of the crisis. The board may want to consider acting through an executive committee or other standing committees or establishing a temporary emergency committee to act with the full force of the board. The board may also want to consider adopting emergency meeting protocols that establish emergency quorum and other meeting requirements—e.g., virtual meeting and voting mechanisms. Any conflicts between system and subsidiary boards should be eliminated to facilitate prompt decision-making and action by the organization.
4. **Protect the Chief Executive.** Executive time is a scarce resource during the crisis. The board should find ways to limit the strain on the CEO. An example you might want to consider is screening director calls through the chairman of the board.
5. **Consult Experts.** Bioethics may be an area of particular focus during a surge in COVID-19 cases if patient prioritization becomes necessary. Additionally, one thing that is certain amid all the uncertainty is that the medical and legal landscape will change. It is imperative that the board is armed with the appropriate defense: expert advice.
6. **Recalibrate.** The board should be involved in all aspects of assessing the hospital's response to the COVID-19 pandemic. As the hospital moves through the different stages of the pandemic, the board should evaluate “lessons learned” and potential opportunities for improvement.

For questions, please contact a member of our [COVID-19 Task Force](#).

RECOMMENDED RESOURCES

[CDC Information for Healthcare Professionals about COVID-19](#)

[CMS Coronavirus Waivers & Flexibilities](#)

[CMS 1135 Waiver at a Glance](#)

[CMS Non-Emergent, Elective Medical Services, and Treatment Recommendations](#)

[COVID-19 Healthcare Planning Checklist](#)

[Medicare Telehealth FAQs](#)

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