



GOVERNING HEALTH 2022

KEY AGENDA ITEMS FOR BOARD COMMITTEES

THIRD EDITION

SUPPORTING COMMITTEE
EFFECTIVENESS IN A
CHANGING ENVIRONMENT

Prepared by
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(and Friends)

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INTRODUCTION

Welcome to the third edition in our Governing Health series of e-books designed to address the particularities of committee practice for the health system governing board.

As we noted in the first (January 2021) edition of this series, a well-organized, thoughtfully composed and industry-attentive committee structure can provide substantial support to the governing board, especially when multiple items compete for attention on the board's agenda. Delegating key tasks to standing and special committees can facilitate the efficiency and thoroughness with which the board fulfills its responsibilities.

In our previous editions of this series, we focused on (i) committees' ability to satisfy their delegated responsibilities through a keen understanding of the key topics and trends they are likely to encounter in the coming year; and (ii) the types of information committees need to receive and the frequency with which they should receive it.

In this latest edition, we're focusing on the unique and special issues committees should include in their 2022 agenda, especially those that are driven by the events of the last two years.

An important note: The information that committees need does not come exclusively from their legal advisors. Committees operate best when they receive input from a wide variety of industry experts familiar with the key relevant issues. So we reached out to several of our friends in other advisory disciplines—names you're sure to recognize—to help us with this third edition. We hope that you'll find that this collaboration provides a fresh perspective on some traditional governance challenges.

Internally at McDermott, we've referred to this as our "Duets" project, in reference to the manner in which famous recording artists collaborate with their friends to bring new life and energy to old standards. We've deeply enjoyed sharing various thoughts and perspectives with these accomplished colleagues. We think the "Duets" approach enhances the scope of the e-book and the value it provides to those who lead and those who support committee practice.

We hope you'll agree!

Michael W. Peregrine
January 2022
Chicago, Illinois

TABLE OF CONTENTS

2	Introduction
4	“Reliance” as a Critical Element of Committee Effectiveness
6	Top 10 Issues for the Health System Strategic Planning Committee
7	Advice for the Governance Committee: Don’t Let COVID-19 Govern
8	Priorities for the Patient Safety and Quality of Care Committee in 2022
10	Trends and Priorities for the Human Capital Committee
12	Top 10 Trends for the Communications Committee
14	10 Questions for the Compensation Committee
16	Top Priorities for the Audit Committee in 2022
17	10 Trends and Priorities for Your IT & Privacy/ Security Committee to Consider
19	10 Tips for the Finance Committee in 2022

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“RELIANCE” AS A CRITICAL ELEMENT OF COMMITTEE EFFECTIVENESS

By Michael W. Peregrine, Partner, McDermott Will & Emery LLP

The ability of the board of directors to rely on the advice, recommendations and decisions of its duly authorized committees is a fundamental element of effective committee practice. The chief legal officer can assist the board in periodically confirming the basis for reliance.

Many state business and nonprofit corporation statutes provide specific protection to directors and committee members in their good faith reliance on corporate records, as well as information, opinions, reports or statements presented to the company by any of the company’s officers or directors, or committees of the board. The principal caveats to reliance protection are that the director or committee member must “reasonably believe” the information to be within the other person’s professional or expert competence, and that person must have been selected with “reasonable care” on behalf of the company (see, e.g., 8 Del. Code 141(e)).

The greater the board’s reliance on the work of its committees, the more care and attention should be focused on supporting the reasonableness of reliance. Case law suggests that the presence of the following factors (among others) will be helpful:

- 1** The board’s delegation to the committee is reflected in its minutes.
- 2** The committee strictly adheres to its charter.
- 3** The board periodically evaluates the effectiveness of the committee and its members.
- 4** Committee deliberative processes are recorded with detail in its minutes.
- 5** The board is able to independently assess the details of committee reports.
- 6** The disinterested nature of the committee’s actions and oversight are disinterested in nature.
- 7** The board has confirmed the qualifications of experts engaged by committees.

8

The extent to which the board followed the advice or recommendations of the committee (or whether significant portions thereof were disregarded) is documented.

Effective board oversight of committee practice includes monitoring the presence of these and other elements established by governance law. Failure to do so can result in undesirable consequences should future board action, taken in reliance on committee efforts, be challenged.

TOP 10 ISSUES FOR THE HEALTH SYSTEM STRATEGIC PLANNING COMMITTEE

Author: *Kenneth Kaufman, Chair, Kaufman Hall*

Board strategic planning committees will need to chart a path through the pressures and uncertainties of 2022 to ambitious transformation in 2025. Key action points for that transformation include the following.

- 1 Lead in health equity** by enhancing diversity among executive teams and boards, and by reducing major health disparities in the communities served.
- 2 Cultivate workforce development strategies** that make work attractive and meaningful for key worker segments.
- 3 Expand clinical services** to meet imperatives for access, requirements for top-flight facilities and opportunities for market growth.
- 4 Advance multi-channel care delivery**, including hospital at home and lower cost alternatives to hospital-based services.
- 5 Create a system for digital navigation**, giving patients a simple path from diagnosis to treatment to recovery.
- 6 Reimagine care models** tailored to specific population cohorts, emphasizing convenient access to preventive and routine care.
- 7 Expand intellectual and technology capabilities** necessary for ambitious transformation.
- 8 Double down on operating efficiency and financial stability** to improve long-term cost structure and to generate the necessary margin and capital.
- 9 Build a value-based care product portfolio** to take advantage of the inexorable movement from fee-for-service to value-based payment.
- 10 Expand intellectual and technology capabilities** through appropriate collaborations in service of ambitious goals.

ADVICE FOR THE GOVERNANCE COMMITTEE: DON'T LET COVID-19 GOVERN

Author: David J. Nygren, PhD, Principal, Nygren Consulting, LLC

COVID-19 presents restrictions that can make convening towards a common governance mission challenging. Business as usual for the governance committee won't work in this unusual time. Here are a few ways to work together effectively as the pandemic continues to evolve.

1

Look beyond COVID-19 and what a post-pandemic future may look like. We expect to get beyond COVID-19 eventually, so how do we pick up then and what do we do in the meantime? By the time we meet in person again, some members will have transitioned off the board, and others will be newly elected. We will have Zoomed effectively but may feel a sense of social isolation or disorientation. When we greet each other again, will we do the elbow bump, the reverential bow, an embarrassed handshake or an embrace? These are indeed peculiar times in governance.

2

Reflect on and review the committee structure. Many governance committees are using this "in between" time to re-structure and assemble the board of the future that they need to carry on the mission. Specifically, the governance committee is looking at the durability of the existing composition of the board, the commitment board members have after this hiatus brought on by COVID-19, and the willingness of board members to dive back into the most assuredly commanding work ahead.

The governance committee can use this opportunity to be reflective. It's a chance to take stock of the board as it is constructed. It's a chance to examine who is carrying the load and to ask the CEO what is required of the board in the next iteration. We cannot simply assume that things will be as they were; some areas of the board's committee structures may improve from reflection, while others may face challenges. The diffusion of focus is almost predictable, given the lack of direct, personal engagement with the institution.

3

Deepen director engagement. We know groups form in rather predictable ways. People want to attach to an institution to which they feel they belong and with a mission they embrace intensely. Belonging and believing in the mission matters. Whether we are able to assemble again as we did prior to COVID-19 is yet to be determined. But we still need to build commitment to our organizations and our institutions. Leaders must reach out in creative ways to board members and committee members to keep them engaged. That might entail more frequent phone calls, more routine communication, and encouraging connections with others related to the institution.

4

Convene purpose-built task forces. Attachment can also be increased by getting small groups together with a specific purpose. For instance, one governance committee convened a small group to study emeriti status, while another is interested in the recruitment process when interviewing prospective candidates utilizing new methods to ensure proper fit with the institution. Another has worked with the CEO to effect a merger and propose a unified board.

These task forces are not just merely working for themselves. They have taken seriously the need to build solutions to particularly thorny issues. But however it can be done, the principal objective is meaningful engagement with the committee to keep members involved and supportive of the CEO's priorities, and to build a board ready for the work ahead.

5

Stay on target. This "in-between" time can be very isolating for board members. They want to be engaged but rightly have health concerns as COVID-19 finds another penetrating venue into public health. If we are board members of a health system, we know the system is overwhelmed with patient care. If we are on a university board, we know the campus is probably back to online learning. If we are on a social service board, we realize that the needs have overwhelmed the resources. Boards are needed now more than ever. We must be there to govern the chaos and secure a healthy future for our much-loved institutions. If we are feeling distant, we can jump into the future that is ours to create.

PRIORITIES FOR THE PATIENT SAFETY AND QUALITY OF CARE COMMITTEE IN 2022

Author: Sandra M. DiVarco, Partner, McDermott Will & Emery LLP

1

Incorporate lessons learned from the pandemic as COVID-19 remains part of the healthcare landscape. As we enter 2022, the patient safety and quality of care committee has now had almost two years of experience functioning in a public health emergency. That experience will help inform the committee's work in 2022. The committee should consider how to best shape healthcare quality in the face of continued fluctuations and shifting mitigations, both for COVID-19 and for any other public health crises that emerge in the future. This vital role will make the committee one of the most important at the health system parent board level.

2

Remember the basics. Despite the exigencies of operating in a prolonged pandemic environment, the committee is well advised to remember the basics that underlie its role and operations. As hospitals and health systems adapt to new challenges, they cannot neglect the foundation of quality and patient safety, and their careful evaluation. A singular focus on COVID-19 risks missing important quality and safety considerations outside of the pandemic.

3

Consider the effects of staffing shortages. Healthcare facilities are facing unprecedented staffing pressures across the United States. Some of the more temporary but stressful shortages are due to the rapid spread of COVID-19 and its latest variant, Omicron, which has increased both infections and the need for close contact quarantines. Longer-term challenges regarding staffing include professionals changing careers or retiring early after living through the difficult realities of providing care during a pandemic. Some facilities also have lost staff due to vaccination mandates. Taken together, these staffing pressures mean that remaining clinical, technical and operational staff are working harder and longer, and therefore may be more likely to take "shortcuts" and make mistakes. The committee should take into account the staffing pressures faced by its system and hospitals, identify opportunities for improvement, and focus attention on quality issues to keep them front and center.

4

Revisit dashboards and reporting. Does the data collected and presented to the committee provide a wholistic view of safety and quality issues? The committee should consider expanding data collection and reporting to encompass metrics that may not have been tracked consistently, such as staffing levels and patient census in comparison to reported incidents, to see a broader view of safety and quality within the organization and help sharpen focus for 2022.

5

Give homework. Committee work cannot always be contained to scheduled meetings, particularly in times of crisis. Prepare committee members for "homework" to ensure that meetings are efficient and productive. Providing materials well in advance and including supplemental materials as needed to educate the committee on urgent or emerging issues can help the committee function more nimbly in 2022.

6

Talk directly with clinical stakeholders about safety, quality and performance indicators. Getting information directly from the source can help the committee more fully understand the multifactorial pressures on safety and quality within the organization. The ability to hear from those on the frontlines of care—whether medical staff leaders, the chief nursing officer, or heads of ancillary areas such as laboratory and pharmacy—can be invaluable for informing committee priorities.

7

Get on the same page with management, medical staff and the board. Just as the committee knows that quality cannot be viewed in isolation, the committee itself cannot operate in a silo. Alignment and engagement with healthcare system and facility management, medical staff leaders and the board permits the committee to target its efforts at those areas recognized by all these groups as important.

8

Recognize the impact of supply shortages and supply chain issues on quality and safety. Trickle-down effects from supply shortages and supply chain issues can directly impact safety and quality. While it may sound trivial to run out of a specific type of suture or other basic supply item, the inability to provide certain types of care or treatments for lack of necessary equipment and supplies can affect patient outcomes and the risk of injury. Monitoring whether and which supply chain issues are affecting the organization can inform the committee on potential patient safety and quality effects.

9

Consider staff burnout and trauma as part of ongoing safety assessments. Staff burnout—referred to by some professionals as a type of trauma—can impact the quality of care provided. Healthcare organizations are more frequently incorporating staff assessments as part of their planning and operations, to bring attention to areas where education and intervention may be beneficial. Assessing staff burnout and taking those results into consideration can help guide the committee and its priorities.

10

Drill down on the quality assessment and performance improvement plan. One of the board's key roles, as implemented by the committee, is ensuring quality and safety. The hospital- or system-wide quality assessment and performance improvement plan must address priorities for improved quality of care and patient safety, and the way the actions will be evaluated. Ensuring that an appropriate number and breadth of performance improvement projects are undertaken annually, with reporting of endpoints and results to the committee, helps foster ongoing quality efforts and keeps the committee and board apprised of pressure points and progress in these areas.

TRENDS AND PRIORITIES FOR THE HUMAN CAPITAL COMMITTEE

Authors: Tim Cotter, Managing Director, Sullivan Cotter, Kathy Hastings, Executive Workforce Practice Leader, SullivanCotter and Cathy Loose, Employee Workforce Practice Leader, SullivanCotter

COVID-19 has not only accelerated dramatic shifts within the healthcare industry, it also has become a catalyst for change in workforce strategies. This chapter highlights key trends and priorities for the human capital committee to consider as it plans for the upcoming year and beyond.

- 1** **New sourcing models:** Traditional sourcing models are proving ineffective in addressing widespread workforce shortages, accelerated retirements, increasing employee burnout and changing skill requirements. Organizations facing wild swings in clinical staffing demands are considering various options, including outsourcing, traveling nurses, international staff and returning retirees. The committee should address strategic staffing needs and sources taking into account the increasing cost of talent on the open market and the demands on the internal talent pipeline.
- 2** **Workforce flexibility:** Many organizations have adopted remote work policies or hybrid business models out of necessity. However, remote work for employees directly involved in patient care and service is not possible. The committee should consider the pros and cons of approaches to attract remote workers where viable, but also should aim to improve the onsite employee experience. Improvements may include flexible work hours, commuter allowances, childcare services, dining lounges and career advancement opportunities.
- 3** **Employee engagement:** Employee engagement can have a significant impact on organization culture, financial results, patient experience and quality of care. Scorecards capturing employee survey results can identify areas of strength and weakness. The committee should understand the key drivers of workforce engagement to help direct cultural change, focus on key improvement areas and reduce turnover.
- 4** **Reskilling and upskilling:** Research has highlighted the criticality of strengthening talent pipelines and building workforce skill sets to respond to shifting organizational priorities and external (market) supply pressures. The committee should review plans to bolster the talent pipeline through a combination of reskilling/upskilling, professional development and training efforts.
- 5** **Integrated total rewards strategy:** Despite COVID-19's disruption to the workforce, total rewards strategies have failed to evolve. Organizations continue to address compensation and benefit programs in silos as part of their talent acquisition and retention strategy. The committee should consider an integrated total rewards strategy with market-differentiating programs that can attract and retain an increasingly diverse workforce. Considerations include total rewards portfolio management with an assessment of the cost, value and impact of various programs on recruitment, retention and engagement; differentiated benefit offerings allowing for more individual choice and flexibility to recognize generational or varying workforce needs; and greater communication to highlight the value (short- and long-term) of total rewards programs.
- 6** **Increased focus on employee health and wellbeing:** COVID-19 and increasing workload demands continue to take a toll on employees' mental and physical health. Family health issues and childcare needs create additional pressures. Consider whether a range of improved benefits offerings (such as mental health services, paid medical leave, enhanced sick and disability pay, flexible paid time off and childcare) will help to increase retention and improve employee wellbeing.
- 7** **Diversity, equity and inclusion (DE&I):** Healthcare leaders recognize that advancing DE&I in the workforce is an important step toward advancing health equity and improving organizational performance. Addressing racial and gender bias is also a way to help attract key talent and create a diverse and equitable workplace. The committee should track progress on meeting DE&I goals by considering best practices and market trends.

8

Social responsibility: Organizations are considering their social responsibility to the communities they serve. Hiring programs that promote employment for those with a criminal record allow a second chance for individuals who have struggled to find meaningful employment. Other evolving initiatives include living wage (versus minimum wage) efforts and enhanced career opportunities for entry-level roles that are often filled by local residents. The committee should identify opportunities to demonstrate social responsibility in human resources (HR) practices.

9

Reimagined HR operating models: Market pressures have forced HR leaders to assess and transform HR operating models to ensure agility, maximize cost efficiency and address employee needs. The committee should evaluate HR's efforts to evolve from an operational and tactical function to a strategic business partner to support this transformation. Considerations include building responsive service delivery teams; developing efficient standard HR processes, systems and policies; and creating a business-savvy talent pool that can work with managers to solve problems and address workforce issues.

10

Digital transformation: The pandemic has accelerated the development of innovative technology designed to support healthcare's digital transformation. These advancements have also played a key role in supporting the HR transformation process. The committee should review efforts to provide education and training to democratize technology and empower employees to utilize this skill set.

When implementing a more holistic approach to managing human capital, healthcare leaders and the human capital committee should aim to find the appropriate balance between controlling costs and maximizing value as they look to retain and recruit the talent they need to meet organization objectives and support employee wellbeing.

TOP 10 TRENDS FOR THE COMMUNICATIONS COMMITTEE

Author: David Jarrard, CEO, Jarrard Phillips Cate & Hancock

- 1 Ongoing workforce shortage.** Hospitals and health systems have experienced an exodus of nurses and other clinicians due to burnout or higher compensation from other healthcare companies. Be prepared to talk to employees and the public about how your organization is reorganizing, evaluating compensation and implementing technology to free up resources.
- 2 Organized labor empowerment.** The workforce shortage, caregiver burnout and recruiting war are empowering labor unions that smartly position themselves as the advocate for nurses, healthcare technicians and other staff. Owning the message of support for healthcare workers in both word and deed, fearlessly engaging with your staff and fixing what needs fixing is key.
- 3 Activists' portrayals of hospitals as "Big Business."** Provider organizations are increasingly being labeled as large, even monopolistic, profit-driven machines. This can create intentional wedges between organizations, the communities they serve and their employees—who continue to be appropriately lauded as heroes. Activate your board to tell the story of your organization and how it supports its people and community. Seek opportunities to educate the public on the finances of healthcare.
- 4 Scrutiny of nonprofit status.** Researchers, activists and the media are looking into levels of charity care provided, attempting to quantify community benefit and even questioning whether some providers "deserve" their tax exemption. Be prepared to demonstrate how your organization delivers on its mission. That includes taking a more open, proactive approach to explaining the numbers.
- 5 Increased pressure in payer negotiations.** With the push to frame hospitals as financially focused Big Business, payers are becoming more aggressive and using their own scale to go after providers for lower rates. Deploy your government relations and payer negotiation teams to build relationships with state and local lawmakers, media and even payer reps to smooth the way for your next contract.
- 6 Spotlight on consolidation.** As expected, Washington has been taking a close look at mergers and alleged anti-competitive practices. Deals are harder to do, and some are being retroactively reviewed. At the same time, media and activists are highlighting health systems' expansions as another line in the Big Business attack. Develop clear communications about how any deal will affect care for the communities in question, and work to understand community concerns.
- 7 More questions directed at the board.** Savvy activists recognize the healthcare board's role in oversight, making that body a target for pressure. When issues arise, expect to be asked, "How did you let it get this bad?" Minimize risk not by getting defensive or trying to spin, but by taking the time now to learn exactly what's going on across the organization. Work with your executive team to identify problems yourself and then fix them in fulfillment of your mission.
- 8 Employees' growing online platform.** Over the past two years, healthcare workers have become more vocal about health-related issues on their personal social media accounts. That activity is often positive, but there have been instances of employees revealing negative stories. Have your team review its social media policies, but don't act to suppress employee activity. Instead, engage with advocates and detractors alike to understand and improve.

9

Building interest in transparency. Regulatory requirements and consumer/patient expectations are forcing providers' hand when it comes to offering insight into pricing. But transparency goes further than just the cost of care and should be seen as an opportunity to lead, not merely check boxes. Plan for educational pushes to help your community understand the finances of healthcare. Be proactive in making it easier for people to get the information they want and need.

10

Desire for human-centered design. The pandemic forced providers to increase deployment of better technology and alternative care models such as remote patient monitoring and hospital at home. Patients liked what they experienced. Expect an ongoing push towards streamlined care that allows patients to interact with their providers when and how they want.

10 QUESTIONS FOR THE COMPENSATION COMMITTEE

Authors: Ralph E. DeJong, Partner, McDermott Will & Emery, Tim Cotter, Managing Director, SullivanCotter and Bruce Greenblatt, Managing Principal, SullivanCotter

This chapter highlights key areas for the compensation committee to consider as it plans for the upcoming year and beyond.

1

What is likely to be the committee's primary priority in the coming year? Retaining and developing top leadership talent at a reasonable cost will be critical, given accelerated retirements, increased burnout, changing business priorities and intense competition for skilled leadership. Buying talent on the open market will be expensive, and alternative employment opportunities for top talent within and outside of healthcare abound. Health systems must provide leaders with compelling reasons to stay. This is best accomplished through culture and programs focused on executive development, supported by competitive compensation that takes into account executive preferences.

2

Beyond compensation strategies, how can health systems encourage executive retention and related personal and professional development? The committee should consider the following actions:

- Incorporating talent risk assessments in the succession planning process, with consideration for critical long-term leadership needs
- Ensuring the availability of career development opportunities and progressive employment experiences
- Providing high-value mentoring
- Ensuring a supportive and team-oriented culture that offers work-life balance.

3

What compensation-related actions can support executive retention and development? Given the changes occurring within many health system leadership teams, the committee should:

- Identify the value that the system's executives place on the components of the executive compensation plan, as traditional approaches may no longer be valued by executives (e.g., supplemental executive retirement plans (SERPs) with long vesting periods, cash compensation programs with significant variable components)
- Ensure that skill sets, leadership potential and system leadership needs are taken into account when compensation actions are determined
- Consider program design features that encourage retention (e.g., long-term incentive plans with overlapping/rolling cycles, class vesting of the SERP benefit)
- Assess the current and projected total retention value (of all compensation and benefits having a retention component) and consider making adjustments to increase retention as needed
- Implement retention agreements for critical and hard-to-replace executive roles, as well as other tailored arrangements (e.g., incentive programs customized for specific business units).

4

What executive salary adjustments are expected in the healthcare market in the coming year?

Surveys indicate that merit increase budgets will be approximately 3%, but the committee should anticipate larger budgets, especially in systems that have made conservative pay decisions since the onset of the COVID-19 pandemic. A greater number of market and pay equity adjustments may be necessary because of competition for talent, the evolution of executive roles, inflation and pay equity initiatives.

5

How are executive incentive programs evolving? Most health systems have not made major structural changes (e.g., participation, award levels) in their incentive programs recently because of the pandemic, and those programs should now be reviewed to make sure they are competitive and effective. Contemporary incentive programs reflect new performance priorities and measures of success, such as financial sustainability; climate impact; diversity, equity and inclusion (DE&I); deployment of new healthcare delivery models; and proliferation of innovation-related joint ventures. In larger systems, long-term incentive plans are the norm to ensure separate focus on strategic objectives such as growth and efficiency.

What compensation-related actions should the committee consider to address the continuing pandemic-related uncertainty in the operating environment? Given current workforce challenges, potential surges and the uncertainty of the pandemic, the committee should:

6

- Anticipate the need for discretion by relying on business judgment and facts and circumstances when making incentive and other pay decisions in order to reward strong performance and crisis leadership, while maintaining strong financial stewardship
- Expand the range of incentive plan performance standards around target to account for the potential variability in forecasted results, and/or adjust “circuit breaker” requirements
- Incorporate a formal discretionary component into the incentive program for the coming year.

What components of the executive compensation philosophy and strategy may require assessment in light of the rapidly changing healthcare environment? The committee should consider assessing the peer group, competitive positioning, and fixed and variable compensation:

7

- Peer Group: Examine the current peer group to ensure it reflects actual talent competitors, and consider whether the peer group needs to vary by business unit. Consider adding nontraditional organizations where justified by the system’s recruitment and retention experiences.
- Competitive Positioning: Consider using broader definitions of competitive positioning rather than a specific market percentile to better support attraction, retention and cost control, and to allow better pay alignment based on an executive’s impact, performance and potential.
- Fixed and Variable Compensation: Evaluate the balance between fixed compensation (base salary, vested retirement supplements) and variable compensation (incentive pay and at-risk retirement supplements).

Are there emerging areas of media focus related to health system executive compensation practices? In certain major markets, the media have focused intensely on the financial arrangements with board members and executives when their systems have an investment interest in for-profit startup ventures. The committee should ensure that board members and executives are not conflicted in such situations, and that their duty to serve the best interests of the system is not compromised. Some systems have prohibited board members and executives from investing in or receiving compensation from startup ventures in which the system has an interest. Other systems manage these situations through well-crafted conflict of interest policies.

8

How can the committee best support the health system’s DE&I initiatives? The committee should consider the following actions:

9

- Determining how DE&I priorities will impact talent strategy, succession planning and compensation program design
- Ensuring that DE&I initiatives are broadly focused and include recruitment, mentoring, development, advancement and retention components (and not hiring only)
- Assessing pay equity and ensuring that processes are in place to maintain equity over time
- Including DE&I measures in annual and/or long-term incentive programs.

Are there potential future issues that should be on our radar screen? The committee should monitor the following:

10

- Tax legislation for its impact on executive compensation program design, and for potential impact on the Section 4960 excise tax on annual remuneration over \$1 million paid to any covered employee (generally one of the five highest paid employees of the organization in any year after 2016)
- Congressional, Federal Trade Commission and state law developments related to the use and design of noncompetition provisions, commonly found in executive employment and separation agreements.

TOP PRIORITIES FOR THE AUDIT COMMITTEE IN 2022

Author: Scott D. Steffens, Partner, Grant Thornton LLP

- 1 Continue executive sessions.** Maintain regular private meetings with management, the auditors, the internal auditor, and the chief information and legal officers. Allocate adequate time for meaningful questions and dialogue.
- 2 Understand back to work, remote and hybrid staffing plans for the finance team.** Demand for financial resources remains extremely strong, and creative staffing options to maintain team continuity are critical. Ask financial leaders about steps taken for your organization's team.
- 3 Assess ongoing changes to internal controls.** Review changes in procedures and controls that are a direct result of staff working remotely. Changes that were initially temporary may have become permanent and may result in improved controls or areas of exposure.
- 4 Anticipate increases in audit fees.** Spoiler alert: some may be significant. Discuss current and future fees with your external auditors. Salary costs for qualified CPAs are quickly increasing at rates far in excess of standard inflation. Supply challenges coupled with very high demand have required most firms to provide mid-cycle compensation increases at percentages well into the double digits and, in some cases, large stay bonuses to keep staff on board.
- 5 Embrace environmental, social and governance (ESG) discussions.** ESG practices continue to evolve for all organizations and could impact the way organizations go to market and consider future business opportunities. Some opportunities may be accompanied by new or more complex business risks.
- 6 Evaluate insurance coverage over cyber risk.** Cyber insurance premiums are increasing rapidly, and coverage levels and notice periods may also be changing. Confirm that coverage levels are appropriate for risks of data loss to your organization.
- 7 Inquire about diversity.** Ask service providers to provide information about the diversity of the teams that work with your organization and what programs are in place to attract, maintain and develop more diverse talent. Ask your management teams for the same information about the finance professionals in your organization.
- 8 Revisit management's liquidity and cash flow forecasting.** Significant changes in operations and cash flows during the pandemic have dramatically changed how and when some organizations collect and disburse cash. Many organizations have been caught flat-footed because of failure to identify and manage such changes well in advance.
- 9 Confirm any supply side interruptions.** Exempt organizations or health systems may experience shortages of critical supplies that will impact the ability to consistently deliver services to constituents. Review steps that management has taken to ensure that the stream of critical supplies is maintained without impacts to purchasing or quality controls.
- 10 Reaffirm governance's commitment to financial reporting quality.** Encourage management to benchmark external financial reporting practices to similar organizations. Ask your auditors to do the same. Identify areas where external reporting can be enhanced to improve transparency, all within the confines of the applicable professional standards.

10 TRENDS AND PRIORITIES FOR YOUR IT & PRIVACY/SECURITY COMMITTEE TO CONSIDER

Stephen W. Bernstein, Co-Leader, Digital Health Practice, McDermott Will & Emery LLP

- 1 **Regularly visit and revisit your organization's security risk assessments/analyses.** The Office for Civil Rights is intensely focused on this process and expects periodic reviews of an organizations' security risk profile, including data inventories and assessments of vulnerabilities.
- 2 **With ransomware a more frequent occurrence and unfortunate reality, intensify your proactive defense efforts.** A formal risk analysis coupled with a gap analysis is your organization's roadmap to action. The sooner defense efforts can be implemented, the better. Such efforts may include penetration testing, systematic methods for reviewing logs, and scenario planning for incident response. An ounce of prevention equals a pound of cure.
- 3 **Review your cyber-insurance coverage in-depth** and work with your insurance brokers to evaluate your needs and opportunities for both segmented/specialized coverage and greater limits. The insurance markets are complex and strained these days. Consider what coverage you have, what it covers and what is excluded. Consider whether it is sufficient and, if not, whether you can supplement and at what cost.
- 4 **Evaluate your use of cloud technologies** and whether increased use of them can reduce cost and create opportunities in the long run. When will you pull trigger if you haven't already? Cloud usage can enhance opportunities for interoperability and data integration while also enhancing efficiencies and security. Are you missing true business and growth opportunities by not using the cloud?
- 5 **When evaluating your cloud opportunities, also consider your current level of interconnectivity among your existing systems.** Do they seamlessly work together? Does the connection between and among your systems create enhanced opportunities for efficiency and communication that is greater than the sum of the individual systems? If not, why not? Do you need upgrades to the interfaces, the systems themselves or both?
- 6 **Continue to visit your efforts relative to implementation of interoperability requirements,** but do so with a patient access, care coordination and service orientation to enhance your service delivery and patient-centered approach. Also begin to pay attention to the [Trusted Exchange Framework and Common Agreement](#) promoted by the Office of the National Coordinator, slated to open for participation in Q1 2022. Consider applying to become a Qualified Health Information Network to facilitate more seamless sharing of patient data for continuity of care across jurisdictions and regions.
- 7 **Check in on your organization's telehealth strategy.** How did this effort work during the pandemic, and what is the future pivot to deliver care via telehealth? Is there an optimal balance between in-person and remote care, and if so, what are the quality of care implications? What are the economics around this hybrid care delivery approach? How are patients utilizing and feeling about your telehealth offering? Are physicians incorporating telehealth into their workflow, and are they doing so easily?
- 8 **What is your data strategy regarding uses of your own data?** Have you been approached by others in connection with data licensing arrangements where your organization would in-license data or out-license deidentified data to others? What is your business and compliance approach to these efforts?
- 9 **Do you have an organized approach around machine learning and use of artificial intelligence involving our own data to improve care delivery?** How have you evaluated and accounted for bias within these tools? Who are the internal and external experts advising your organization on this innovation from the operational, regulatory and care delivery standpoints?

10

Understand and evaluate where innovations surrounding data ingestion, use, transformation and deployment exist within your organization. Who is involved with these efforts? What strategies are being deployed to evaluate data sources within the organization and conduct associated regulatory assessments of uses of such data?

10 TIPS FOR THE FINANCE COMMITTEE IN 2022

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- 1 Anticipate changing capital market and investment volatility conditions.** The Federal Reserve is moving to a tighter monetary policy to address rising inflation concerns. Higher borrowing rates, investment earnings volatility and market dislocations are possible over the coming year.
- 2 Re-confirm credit profile targets.** Now is the time to consider optimal and achievable credit profile targets taking into consideration current position, anticipated recovery path, capital needs and liquidity requirements. Credit profile targets will inform guardrails in establishing operating and capital budgets and provide comparative month to month transparent feedback to the Finance Committee as to progress.
- 3 Focus on holistic balance sheet management.** Healthcare balance sheets confront dual mandates of generating resilience (offsetting risk) and generating returns. Getting the balance between these mandates right will be critical at every juncture.
- 4 Consider whether resources are making their optimal contribution.** What resources are readily available to the organization (e.g., unrestricted cash and investments)? Which are accessible (e.g., debt capacity or non-core real estate holdings) but would need a transaction or event to unlock their optimal resource management contribution? Are there any resources that should be repositioned?
- 5 Use the financial plan as a dynamic tool to identify and manage risk.** Identify and draw attention to material and plausible threats to the organization's operations or financial position, quantify the magnitude of these risks, and ensure that planning is in place to hedge against them if they become reality.
- 6 Pay close attention to financial covenants.** The lesson of COVID-19 is that the devil is in the details. If you're going to violate existing covenants, start now with the remediation process. And if your organization is accessing the debt market, re-evaluate your covenants to ensure that the tests themselves, the definitions and the default triggers can respond to systemic shocks like COVID-19.
- 7 Maintain a disciplined capital allocation process.** Ensure that the process is closely linked to mission and the strategic plan, is supported by the financial plan and credit profile targets, and the portfolio of allocation decisions is clearly biased towards realistic returns on investment over time.
- 8 Consider alternative budgeting processes.** Ongoing operational volatility and the prospect of increased non-operating volatility continue to challenge traditional "point in time" static budgeting processes. Consider alternatives such as rolling forecasting to better manage through uncertainty on real time basis.
- 9 Prepare for the transition from LIBOR.** The transition away from LIBOR as a reference rate is scheduled to be complete as of June 30, 2023. Take inventory of LIBOR exposure in all borrowings and commitments and ensure that processes are in place to insert fallback language with a clearly specified reference rate as documents are renewed, refinanced or amended.
- 10 Build a deep talent pool.** Pandemic-related changes in the workforce (including work-from-home arrangements and heightened rates of early retirement) make succession planning, retention strategies and talent cultivation in the finance department and finance committee leadership more important than ever.

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