INTRODUCTION

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.

Committees’ ability to satisfy their delegated responsibilities depends on a keen understanding of the key topics and trends they are likely to encounter in the coming year. That’s why, as part of our Governing Health initiative, we created this e-book. We wanted to offer practical suggestions for how our chief legal officer, chief compliance officer and chief governance officer colleagues can better assist the board committees that they regularly staff.

But the support 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 project. And 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 those who lead and those who support committee practice.

We hope you’ll agree!

Michael W. Peregrine
January 2021
Chicago, Illinois
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# 10 Basic Principles on the Role and Function of Board Committees

**Author:** Michael W. Peregrine, Partner, McDermott Will & Emery

Leading governance principles direct boards to maintain a well-developed committee structure, with clearly understood responsibilities, that is consistent with applicable state and federal law. Public disclosures concerning corporate governance should describe the structure and function of each board committee.

| **1** | **The Board's Authority to Act Through Committees of Directors Is Generally Recognized** under the common law. |
| **2** | **Committees with Delegated Powers Are Generally Recognized As a Necessary Means** by which the board may carry out its responsibilities. |
| **3** | **The Board May Create Such Committees**, with such representation from the board of directors, unless the company's articles of incorporation or bylaws provide otherwise. Such actions typically require majority board approval. |
| **4** | **Each Committee Is Entitled to Exercise the Authority of the Board**, to the extent provided by the board or in the articles or bylaws (and except as provided under state law). |
| **5** | **There Is, in General, a Presumption Against Wholesale Delegation of Board Authority** to a committee (due to concern about director abdication of responsibility). |

**Many State Laws Prohibit a Committee from Taking Certain Specified Actions**, for example:
- Distribution of the company’s assets, or dissolution
- Acts that require member approval
- Filling board and committee vacancies
- Election, appointment or removal of any officer, director or committee member, or fixing their compensation
- Adoption, amendment or repeal of articles or bylaws
- Adoption of mergers or consolidations, or approval of material asset sales
- Acting in a manner inconsistent with a board resolution when such resolution provides that it can’t be amended, altered or appealed by a committee.

**Most State Laws Provide for a Minimum Number of Directors** (e.g., one or two) to compose a committee and require that in all events a majority of committee members must consist of directors.

**Directors Do Not Abdicate Their Board-Based Duties and Responsibilities Simply by Delegating Authority** to board committees. They must monitor the performance of committees with delegated responsibilities.

**Committee Members Are Entitled to Rely on Information, Opinions, Reports, Statements, Decisions and Judgments** by corporate officers, executive management, and qualified outside advisors and experts, subject to certain restrictions.

**State Law Often Applies to Committee Functions the Same Procedural Requirements Applied to Board Meetings**, actions without meetings, notice and waiver thereof, and matters of quorum and voting.

*Sources: (i) Model Nonprofit Corporation Act, Third Edition (Adopted 2008, Committee on Nonprofit Organizations, American Bar Association); (ii) Illinois General Not-for-Profit Corporation Act; (c) Guidebook for Directors of Nonprofit Corporations, Third Edition (Nonprofit Organizations Committee), American Bar Association (2012).*
10 OVERARCHING GOVERNANCE ISSUES FOR ALL COMMITTEES

Author: Michael W. Peregrine, Partner, McDermott Will & Emery

One of the basic purposes of the corporate governance committee is to advise the board in connection with the composition, compensation, leadership, procedures, and structure and purpose of committees. To achieve this purpose, the governance committee may wish to consider a series of actions that relate broadly to all committees and their functioning in 2021:

1. **REVIEW THE CURRENT ROSTER OF BOARD COMMITTEES** and consider their continuing utility and function. Identify any candidates for consolidation or termination as well as any new committees that would fill a specified or projected governance need.

2. **RECONFIRM THE SCOPE OF THE COMMITTEE’S AUTHORITY.** For example, is it delegated specific powers to exercise on behalf of the board (and if so, is the scope of that delegation clear and unambiguous) or is it to act in an advisory capacity? Confirm awareness of statutory limitations on committee powers.

3. **EXAMINE THE COMMITTEE CHARTER** for consistency in form with that of other committees, and to confirm its completeness and/or need for refinement. Compare and contrast all committee charters to identify any potential for overlap, “scope creep” or excessively burdensome responsibilities.

4. **REVIEW THE COMMITTEE’S CURRENT SIZE, COMPOSITION AND DIVERSITY** and whether there is a need for any specialized expertise. Compare against state law for compliance. Evaluate performance of individual committee members in accordance with standard governance committee review criteria.

5. **REVISIT THE COMMITTEE CHAIRS AND VICE CHAIRS** for appropriateness of leadership roles, selection process and authority. Consider onboarding measures for new committee leaders. Evaluate the advantages and disadvantages of periodic rotation of board leadership roles and measures used to effect rotation.

6. **REVIEW THE EXTENT TO WHICH THE COMMITTEE’S FUNCTIONS RECEIVE ADMINISTRATIVE AND TECHNICAL SUPPORT.** Confirm the members of executive leadership and governance support personnel who staff committee meetings. Address the committee’s need and ability to access specialized external advisors.

7. **ENSURE THAT ALL COMMITTEES PREPARE MEETING MINUTES AND ACTIONS IN A CONSISTENT FORM.** Encourage appropriate horizontal coordination between committees with complementary authorities. Confirm frequency and format of committee reporting to the full board, and allow for emergency access.

8. **DETERMINE THE EXTENT TO WHICH THE COMMITTEE BENEFITS FROM PARTICIPATION OF MEMBERS WHO ARE “INDEPENDENT” as identified by board governance policies.** Place particular focus on those committees that may benefit from composition that includes a majority (or higher level) of independent members.

9. **BRIEF THE FULL BOARD ON ITS ABILITY TO RELY ON COMMITTEE ADVICE AND RECOMMENDATIONS, and the limitations of such advice.** Confirm that committee recommendations are presented to the board in a manner that facilitates the board’s reliance rights.

10. **IDENTIFY COMMITTEES WHOSE PERFORMANCE IS PARTICULARLY CRITICAL** to the effective operations of the board (e.g., audit and compliance, governance, executive compensation, enterprise risk). Ensure that these committees have authority, composition and meeting frequency consistent with their importance.
10 CONSIDERATIONS FOR THE AUDIT AND COMPLIANCE COMMITTEE

Authors: Scott D. Steffens, Partner, Grant Thornton and Michael W. Peregrine, Partner, McDermott Will & Emery

1. **EVALUATE INTERNAL CONTROLS** for changes made in processing and recording of transactions as a result of the COVID-19 pandemic and resulting work-from-home environment that will continue in 2021.

2. **EVALUATE INFORMATION TECHNOLOGY REQUIREMENTS AND CONTROLS** brought on by the pandemic to ensure that proper information and access controls exist as networks expand to include work-from-home arrangements. Explore any risks related to potential cyber threats and vulnerabilities.

3. **REVIEW RESOURCES IN THE FINANCE AND ACCOUNTING DEPARTMENTS** for adequacy of staffing levels and to assess any top-performing employees that may be at risk of leaving or being recruited to another organization. Demand remains high for top-performing financial staff, and succession plans should be updated or established.

4. **UPDATE INTERNAL AUDIT DEPARTMENT PLANS** to reflect new risks identified in 2020 stemming from the pandemic. More frequent engagement with the audit committee may be required as plans evolve and audits are completed.

5. **EXPLORE AUTOMATION OPPORTUNITIES.** Management and the audit committee should reflect on learnings from the work-from-home environment that may improve processes and reduce costs in the finance area.

6. **COMPLETE ANY REMAINING STEPS TO ENSURE AWARENESS OF THE DOJ COMPLIANCE PROGRAM EFFECTIVENESS CRITERIA** released in June 2020. Review compliance program conditions contained in high-profile government settlements (e.g., Boeing deferred prosecution agreement) for relevance.

7. **REVIEW THE CURRENT STATUS OF MANAGEMENT-TO-BOARD REPORTING OF MATERIAL AUDIT AND COMPLIANCE DEVELOPMENTS.** Elements to review include scope (i.e., clarity on scope of triggering events), frequency, level of detail and timing. Confirm the reasonableness of the board’s or committee’s expectation that such reporting will occur.

8. **CONFIRM THE SUFFICIENCY OF COMPLIANCE PERSONNEL AND RESOURCES.** In particular, confirm whether personnel responsible for compliance have sufficient seniority within the organization and sufficient resources to conduct their responsibilities, and possess sufficient autonomy from management.

9. **CONTINUE TO SUPPORT A CULTURE OF ETHICS AND COMPLIANCE WITH THE LAW** at all levels of the health system. For example, foster high-level commitment by the board of directors and corporate executives to implement a culture of compliance, and efforts by middle management to reinforce standards and encourage employees to abide by them.

10. **REAFFIRM THAT THE MANNER IN WHICH THE HEALTH SYSTEM HAS SET UP THE COMPLIANCE PROGRAM IS REASONABLE.** Confirm that the program has adequately identified, assessed and defined its risk profile, and that there is an awareness of why and how the company’s compliance program has evolved over time.
## 10 COMMUNICATIONS ISSUES FOR BOARDS AND THEIR COMMITTEES

**Author:** David Jarrard, President and CEO, Jarrard Inc.

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<td><strong>1.</strong></td>
<td><strong>BE VISIBLY ACCOUNTABLE.</strong> Use your role as a trusted voice on behalf of your organization. Be visible in the community and be prepared to answer questions about what your organization is doing.</td>
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<td><strong>2.</strong></td>
<td><strong>ADVOCATE FOR YOUR ORGANIZATION’S ESSENTIAL VALUE.</strong> Defend your system’s tax-exempt status. Regularly and consistently explain the service your organization has critically provided during the pandemic. Showcase how you are supporting your community and your employees. Build relationships with newly elected officials at all levels of government, and strengthen existing relationships.</td>
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<td><strong>3.</strong></td>
<td><strong>PREPARE FOR BIG CHANGE.</strong> Plan for impending shifts in care delivery, operations and models of care. Anticipate communications regarding the likely need to move towards value as volumes drop. Be the voice of authority and support for physicians affected by change.</td>
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<td><strong>4.</strong></td>
<td><strong>ANTICIPATE THE BRAIN DRAIN.</strong> Workforce shortages are likely as the pandemic fades and burnout increases. Establish internal programs to help current employees, external initiatives to attract and retain new talent, and union engagement strategies for potential labor strife.</td>
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<td><strong>5.</strong></td>
<td><strong>GO BEYOND REGULATION.</strong> Position your organization as a leader by doing more than the minimum on regulatory issues such as price transparency and the 21st Century Cures Act. Push your executive team towards patient-friendly programs and communicate their value to the public. Arm yourself for fallout from decisions to not comply.</td>
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<td><strong>6.</strong></td>
<td><strong>GEAR UP FOR PRESSURE FROM PRIVATE EQUITY.</strong> Expect ongoing vulnerability to competition from PE-backed providers, who may snap up physicians and nurses. Direct your organization to improve patient experience and offer greater convenience through digital offerings. Communicate the value of your services in response to lower perceived pricing.</td>
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<td><strong>7.</strong></td>
<td><strong>PRIORITIZE DIVERSITY, EQUITY AND INCLUSION (DE&amp;I).</strong> Be keenly aware of your organization’s efforts. Develop DE&amp;I programs that go beyond antiracism education to meaningfully increase diversity across your organization—especially in leadership and the boardroom. Work with community leaders to understand needs and impact, communicating your commitment to close racial disparities in care.</td>
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<td><strong>8.</strong></td>
<td><strong>ASSESS YOUR PANDEMIC RESPONSE.</strong> Review operations and performance, as well as internal and external communications programs (including media relations). Work with your executive team to develop or revise plans for the next large-scale crisis, and prepare to talk about those plans with employees and the public.</td>
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<td><strong>9.</strong></td>
<td><strong>REVISIT MANAGED CARE.</strong> Use the new price transparency rule to evaluate how your organization stacks up against the competition. Based on that information, determine whether it’s time to pursue new or different payer agreements.</td>
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<td><strong>10.</strong></td>
<td><strong>DEFEND YOUR DEALS.</strong> The partnership climate is different than it was 18 months ago. Ensure any deal is defendable—improving access or affordability. Develop extensive communications plans highlighting those benefits and tailored to a consolidation-weary public, skeptical Federal Trade Commission and exhausted employees.</td>
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TOP 10 PRIORITIES FOR EXECUTIVE COMPENSATION COMMITTEES

Author: Ralph E. DeJong, Partner, McDermott Will & Emery

1. REVIEW THE CEO’S EMERGENCY POWERS. Compensation committees and CEOs should reach a new understanding regarding the CEO’s ability to change executive compensation in a sudden crisis without the usual detailed committee-led prior review and approval process. They should include in that new understanding how the CEO can keep the committee informed of those changes, so that the committee can consider the short- and long-term ramifications of material changes to executive compensation.

2. KEEP THE EXECUTIVE SUCCESSION PLAN UP-TO-DATE. The COVID-19 crisis exposed holes in organizations’ executive succession plans. Compensation committees should work with senior leadership to create or update a detailed executive succession plan for key leadership positions. This plan should address who will step in if there is an emergency, who the longer-term successors are for each position and when they are expected to be ready, what is being done to develop the necessary skills and experience in the next generation of leaders, and what retention steps might be necessary to ensure that the most important future leaders do not leave the organization before succession occurs.

3. EXAMINE THE OVERALL RETENTION EFFECT OF EXECUTIVE COMPENSATION AND BENEFIT PROGRAMS. Losing key executives before or during a crisis can be very damaging. Recent developments (such as Form 990 reporting, the 21% excise tax on annual remuneration over $1 million for the five highest paid employees, and tax treatment of certain arrangements) have caused organizations to smooth out compensation and avoid bunching pay in later years. This has reduced the retention effect of conditioning significant portions of compensation on longer service periods. Committees may wish to consider a variety of approaches to increase the retention effect.

4. CONSIDER BUILDING AN APPROPRIATE LEVEL OF DISCRETION INTO ALL EXECUTIVE COMPENSATION AND BENEFIT ARRANGEMENTS (when permitted by tax law rules). This includes both positive and negative discretion—the flexibility not to pay something, or to pay it later, when the organization is in crisis, and the flexibility to pay something different or additional when extraordinary circumstances supersede programmatic compensation approaches.

5. CONSIDER WHETHER THE EXECUTIVE PAY PROGRAM IS OVERLEVERAGED. The compensation committee should evaluate the balance between base salaries and performance-based incentive pay to make sure that base salaries are sufficiently competitive to recruit and retain key leadership talent when incentives are less likely to be achieved or paid.

6. REEVALUATE EXECUTIVE INCENTIVE COMPENSATION PROGRAMS to make sure they provide effective incentive opportunities and awards for the most critical members of the executive team. Do the incentive goals and opportunities reflect the organization’s recovery and rebuilding priorities? Should incentives continue to include a strict financial circuit-breaker?

7. TAKE A FRESH LOOK AT LONG-TERM EXECUTIVE PAY OR BENEFIT PROGRAMS. Some of these programs may have been on autopilot for many years, and the COVID-19 crisis likely has underscored the need to review them. Most prominently, the compensation committee should conduct a thorough review of supplemental executive retirement plans to understand the actual current cost and future projected costs under a wider range of financial scenarios, to assess the long-term financial feasibility and to add discretion to suspend contributions or benefit accruals in a crisis.

8. FINE-TUNE THE MOBILE LEADERSHIP MODEL. The COVID-19 crisis has underscored the necessity of enabling executives to conduct their work outside the traditional office setting. A more mobile leadership model has implications for paid time-off programs (which make less sense as formal programs for executives), for staffing and tracking productivity and availability, and for performance evaluation.

9. MAKE A PLAN FOR RESTORING EXECUTIVE COMPENSATION IN THE WAKE OF COVID-19. With many organizations coming out of a period of executive pay reductions, an absence of or reduction in incentive pay awards, and other benefit reductions, compensation committees should consider whether and how to restore executive compensation. Will the compensation that leaders lost in 2020 be added to future opportunities? Will things change so fast that market compensation data will lag actual practice, and will committees have to rely much more on their own judgment and discretion?

10. MODIFY EXECUTIVE PERFORMANCE EVALUATION PROGRAMS to include crisis management skills, informed by lessons learned from responding to the COVID-19 emergency and the management of employee teams working remotely and in crisis mode.
10 TIPS FOR FINANCE COMMITTEE OVERSIGHT

Author: Andrew Majka, Managing Director, Kaufman Hall

In a time of pervasive uncertainty, the finance committee is challenged to ensure that the organization makes decisions based on a sound assessment of resources and risks for the current and future environment.

NOW IS THE TIME TO UPDATE THE STRATEGIC FINANCIAL PLAN. Don’t wait for certainty—it doesn’t exist. This plan is the essential connection between the system’s mission and strategic plan (and associated capital requirements), and the financial capabilities and constraints within the context of an acceptable risk and credit rating.

MAKE SURE YOU UNDERSTAND TODAY’S FINANCIAL POSITION, including capital capacity, risk appetite, refined capital needs and anticipated funding shortfalls. Make informed decisions in balancing trade-offs among capital, cash, debt, operations, philanthropy and alternate funding sources. Establish contingency plans around future states versus a steady state.

MAKE PERFORMANCE IMPROVEMENT YOUR NO-REGRETS STRATEGY. A wildly uncertain environment makes revenue unpredictable. Focus with great urgency on improving what you can control—your internal performance. Extend traditional cost reduction into improving service distribution, clinical variation and care management.

CONSIDER ALTERNATIVE BUDGETING PROCESSES THROUGH COVID-19 AND BEYOND. The sudden and unpredictable variations brought about by COVID-19 have made annual budgeting virtually impossible. Momentum is building toward more flexible budgeting processes, such as dynamic rolling forecasting, to better adapt to the environment in real time.

GET CLOSER TO THE PREMIUM DOLLAR. In light of revenue, expense and capital challenges, consider strategies that will bring you more of the insurance premium dollar. While it’s not feasible for most systems to become their own health insurers, consider strategies for risk-sharing and closer alignment with certain insurers.

UNDERSTAND YOUR CAPITAL CAPACITY. The appetite to fund growth, ambulatory migration, transformative strategies, technology and partnerships is insatiable. Now more than ever, you need to objectively understand your current and near-term capital capacity under alternate scenarios.

ALLOCATE CAPITAL WITH GREAT DISCIPLINE. As capital freezes thaw and we look to the future, organizations that establish a more corporate-based, competitive and disciplined capital allocation process (tied to the mission and strategic plan and supported by the financial plan), with a clear bias towards realistic return on investment, will likely be more successful over time.

REEXAMINE HOW MUCH RISK IS APPROPRIATE IN YOUR DEBT AND INVESTMENTS. With so much uncertainty ahead, now is the time to consider how much risk is appropriate in your debt structure and investment strategy, and whether your debt and asset strategies are aligned.

DEVELOP FINANCIAL TALENT. The finance function is often overlooked in the race for talent. Organizations should identify the financial skills they need, and in what places, and the pipeline for attracting and developing people with those skills. Similar questions apply to the finance committee.

ENSURE THAT PARTNERSHIPS ARE ACCRETIVE. The finance committee has special role in ensuring that the business case, financial due diligence, determination of financial accretion or dilution, resource allocation, funding and other elements of any partnership are appropriately vetted.
7 KEY FOCUS AREAS FOR THE GOVERNANCE COMMITTEE

Authors: David Nygren, PhD, Principal, Nygren Consulting and Zachary Morfín, PhD, Consultant, Nygren Consulting

As we begin to imagine a world beyond the control of COVID-19, we will not just be picking up where we left off when last we were together. Institutions will not revert to the old patterns of governing. Several dynamics have shifted, and the governance committee needs to be prepared.

1. **Craft the board agenda with ambition and vision.** Everything around us has changed, requiring renewed passion and clarity on the strategic and capital shifts, use of real estate assets and workforce planning. Reclaiming the mission is foundational to bringing board members close to the institution again. While some may have grown quite comfortable Zooming, more will seek out opportunities to convene and discuss again.

2. **Take a close look at your leadership.** Operational leaders spent the last year adapting budgets, roles and processes to accommodate the pandemic’s challenges. As leaders reset the agenda post-COVID-19, governance committees will realize the gap between where they were and what they face tomorrow. Take stock of how board members remain engaged: some will naturally step to the side, but it is important to harness productive members for the big work ahead.

3. **Re-forge key connections.** The hibernation over the last year and absence from board social interaction has a consequence to engagement. Imagine how to reorient the board to the work and to one another. It is no small task to bring people together as if for the first time and relaunch the work together.

4. **Focus on recruiting the skills needed for the future.** It is nearly impossible to feature the great merits of the institution and the delight of serving on the board in the current COVID-19 environment, but that will change. Focus on the competencies for the future. The work ahead will be intense due to capital financing, technology, artificial intelligence, and lingering effects of COVID-19 on workforce development and staffing levels.

5. **Plan for regulatory and financial shifts.** Reducing the federal deficit will have consequences for available capital to fund broader social initiatives. Institutions will be constrained, and the governance committee must be mindful of treasury, capital reserves, philanthropy and managing constraints while building a deeper conviction towards the common good. This will affect recruitment, retention, and the very conversation of governance.

6. **Prioritize risk awareness and oversight.** It is understandable that risk has slid off the board’s radar amid the urgency of adaptation. Achieving stability after COVID-19 will not be easy work, and the risks will be profound. For hospitals, for example, clinical and financial risk are immense. For banks, the risks of default on loans make borrowing more risky. The governance committee must track and protect the institution from unnecessary risk while stabilizing the business.

7. **Support the board in advancing greater diversity, equity and inclusion.** Create a vision for the organization regarding equity and anti-racism. Reevaluate board composition, decision-making processes and culture, and bring equity issues to board conversations. Confirm that strategy and policy reflect equity and inclusion, ensure financial resources are allocated to support the work, and foster agreement on how to assess progress toward equity and inclusion, holding the CEO accountable. Sponsoring anti-racism training and programming for the board is often required. At the core, demonstrating a personal commitment to grow and better understand racism, and one’s own biases and privilege, is the starting point from which broader change can manifest.
10 BEST PRACTICES FOR THE BOARD'S HUMAN CAPITAL COMMITTEE

Authors: Kathryn E. Hastings, Executive Workforce Practice Leader, SullivanCotter and Timothy J. Cotter, Managing Director, SullivanCotter

The board human capital committee plays a key role in guiding human resources strategies as healthcare organizations face today’s challenges. Human capital is critical to organizational strategy, and the committee should test whether the components of the human capital strategy—namely, people, process and technology practices—can sustain the organization.

PEOPLE PRACTICES

1. Improve and recast the employment experience. As healthcare organizations redesign their workplaces and ways of working, enhancing the employee experience should be a key consideration in human resources strategy. Redesign efforts must address culture; relationships within and across employee groups; the physical environment; and operational policies, procedures and practices. The needs of employees in home environments versus those working onsite must also be considered. Organizations will need to create an environment where the workforce is comfortable delivering care/service in the manner, location and time desired (i.e., increasingly in ambulatory and virtual settings). Organizations will need to develop a broader workforce strategy that clearly articulates their value proposition for all types of workers.

2. Evaluate the organizational structure. Changes in organizational structure may be required as healthcare organizations move increasingly toward ambulatory and virtual settings and seek to secure greater synergies and efficiencies from recent and expected acquisitions. The committee can help management think through how the organizational structure, roles and staffing levels should evolve to better align with the manner in which care/service is delivered and the desired culture and employment experience. Comparative data sets are available to support such efforts.

3. Focus on diversity, equity and inclusion (DE&I). DE&I should be a focal point when addressing near- and long-term talent issues. A comprehensive response to DE&I considerations is required when evaluating and enhancing the primary components of the human resources program, such as sourcing, selection, compensation, and advancement and development—all of which affect DE&I outcomes. Supportive actions to consider include:
   - Increasing the transparency of DE&I objectives and the organization’s progress toward these goals.
   - Tying a portion of leadership incentives to measurable advancements in DE&I initiatives.
   - Accelerating the pace of leadership’s efforts to drive system-wide DE&I initiatives and to help ensure the long-term goal of equitable demographic representation of the communities served by the organization.
   - Moving beyond pay equity initiatives that only address impermissible pay differences within jobs and job classes, and pursuing actions related to selection, talent pipeline, advancement, development and more to ensure that members of protected groups are appropriately represented within the higher-paying jobs.

4. Prioritize employee health and wellbeing. As the pandemic continues and new issues emerge. It is critical that organizations address physical safety and provide emotional and mental health services for employees and their families. Many organizations are responding broadly to support employee wellbeing with emergency medical leave, flexible work arrangements, childcare provisions, dietary support, financial assistance, mental health services, and enhanced sick and disability pay and paid time off programs. Given the diverse nature of the healthcare workforce, this effort may require programs tailored to the unique needs of each group (home-based, clinical, administrative, etc.) as opposed to a uniform approach.

5. Increase the responsiveness of human resources policies and practices. The committee should determine if a review of policies and practices can help to ensure relevancy for increasingly diverse workforces. There are now five generations serving within the healthcare workforce, and there are significant differences in what they value, their expectations of the organization and their career aspirations. Human resources policies and practices should be evaluated for their ability to attract and retain employees from diverse talent markets and
backgrounds, and should be responsive to their requirements for pay, benefits, developmental opportunities, career aspirations, work hours and flexibility. Important considerations include the following:

- The development of increasingly flexible total reward programs to better meet these diverse needs will be imperative.
- To help address skill shortages in the near term, organizations may need to motivate older employees to continue employment. This will require creating a positive organizational view of experienced employees and addressing their job-related needs.

**Explore nontraditional talent markets.** In response to the projected scarcity of clinical workers, healthcare organizations should consider sourcing talent from nontraditional markets. Taxes, cost of living and quality of life considerations may make certain parts of the country less desirable, and workers may be more willing to change their location. Nontraditional workforce sources such retired workers, nonviolent offenders and individuals requiring training that can be done on the job should also be considered. Additionally, disruptors are often found in talent markets outside of those monitored by healthcare organizations.

**Review organized labor strategies.** Given healthcare industry consolidation, layoffs, cost cutting, employee burnout and a more supportive regulatory environment under the new administration, organized labor will likely be active in the near term. Issues that may lead employees to seek third-party representation should be identified and addressed, and leadership should be trained to identify and respond to this activity. Organized labor strategies may need to be reevaluated and reframed, as DE&I is likely to be a prominent issue.

**PROCESS PRACTICES**

**Focus on human resources process transformation.** Human resources processes should support the emerging workplace, integration of the healthcare organization and alignment with human capital strategies. Healthcare delivery is rapidly evolving, and the function of human resources must keep pace. Potential actions may include:

- Outsourcing select administrative services and enhancing employee self-service capabilities.
- Centralizing human resources services, which are often fragmented by mergers.
- Establishing roles that focus on applying technology and artificial intelligence to human resources services.
- Redesigning human resources roles to better respond to the needs of a diverse workforce and support the desired employment experience.

**TECHNOLOGY PRACTICES**

**Make technology investments in human resources.** In order to reduce costs, improve services to employees and enhance human resources and management decision-making, organizations should consider adopting new technology that improves human resources processes and outcomes in sourcing, selection, compensation and benefits administration, employee self-service, employee development and assessment, as well as real-time monitoring of employee engagement.

**Respond to technology disruption.** COVID-19 has significantly increased the healthcare industry’s adoption of new technology platforms—disrupting, in many ways, how traditional services are provided. The pace of innovation and disruption is expected to accelerate in the coming years, and human resources will need to become skilled in reinventing work processes by deconstructing and reconstructing jobs as technology is used for increasingly complex tasks, reskilling employees whose jobs change because of technology, and sourcing talent to take on tasks that are new to the organization.
10 HEALTH TECHNOLOGY, PRIVACY AND SECURITY CONSIDERATIONS FOR THE BOARD IT COMMITTEE

Author: Stephen W. Bernstein, Partner, McDermott Will & Emery

1. **EVALUATE AND BOLSTER YOUR DIGITAL FRONT DOOR** along with the rest of your digital home to more effectively deliver remote care visits. Consider how easy (or difficult) it is for patients and providers to schedule and participate in a telehealth visit, and evaluate what corresponding systems (e.g., scheduling, recordkeeping, prescriptions and follow-up procedures) are in place to ensure a seamless and frictionless experience.

2. **CATALOG AND EVALUATE YOUR TECHNOLOGY AND/OR DATA COLLABORATION RELATIONSHIPS** to determine if they are robust and delivering value to your operations and care delivery, and at what cost and serving what benefit. Consider who else might be a worthy partner for these activities.

3. **READY YOUR TECHNOLOGY AND PROCESSES FOR INTEROPERABILITY REQUIREMENTS** while recognizing and promoting the importance of sharing information across your system and with other parties across the entire patient value delivery chain, especially patients and collaborating caregivers at different systems.

4. **ENSURE THAT YOUR POPULATION HEALTH PROGRAMS ARE PROACTIVE IN AUTOMATING CARE REMINDERS** for follow-up visits and testing in way that ensures patient engagement. Evaluate your data systematically to determine if you are being proactive with preventative care protocols across your patient population segmented by age, demographics, social determinants of health and disease state.

5. **EVALUATE YOUR DATA RELATIONSHIPS.** Is your data being shared with vendors to procure a necessary service, and if so, have you evaluated the compliance and economic implications and opportunities for the relationship?

6. **EVALUATE THE USES OF YOUR DATA** and whether there are additional opportunities for its use, including deidentifying it and using the resulting data for research, outlicensing and other healthcare improvement purposes. When engaging in these projects, ensure that you have built the proper legal, cultural and customer trust systems.

7. **REVISIT YOUR PRIVACY AND SECURITY RISK ASSESSMENTS**, including your policies, procedures and training methodologies for your team to ensure that your systems are as secure as possible. Phishing attacks and ransomware are rampant, and a proactive systematic review with prompt remediation steps will protect against downtime, defense costs and reputational damage.

8. **REVIEW YOUR CYBER-RISK INSURANCE COVERAGES**, not just the amounts, but the scope of coverage, including coverage for internal investigations, external forensic analyses, remediation steps, legal and other fees incurred in responding to governmental investigations, associated penalties, and settlement amounts for class actions suits and even ransomware payments.

9. **ENGAGE IN SCENARIO PLANNING**, including testing response team readiness relating to system backups, hot sites, data storage and maps for crisis communications among both your internal team and your external constituents.

10. **BUILD A TEAM THAT IS CHARGED WITH IDENTIFYING BOTH INTERNAL AND EXTERNAL INVESTMENT OPPORTUNITIES** that center on driving innovation for care improvement that will result in speedier access to cutting-edge technology and reduced costs.
**10 "DO-TOS" FOR THE PATIENT SAFETY & QUALITY OF CARE COMMITTEE**

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Recent public health events – and their broad impact on the healthcare sector and population health – have shined a light on the vital role played by the board’s quality and patient safety committee. Heading into 2021, the quality and patient safety committee has a lengthy “to do” list and expanded areas of focus, including:

1. **Modernize board and committee members’ view of the interrelationships between quality, safety and compliance.** Infection control and emergency preparedness compliance are key examples of areas where traditional silos obscure opportunities for durable change.

2. **Ask tough questions and listen to all voices** to ensure that the committee has the full breadth of information and feedback it needs from management and leadership, and is free to consider diverse points of view.

3. **Coordinate patient safety and emergency preparedness efforts** to ensure that the organization’s perspective on use of scarce resources, equipment and staff aligns with state regulations and best practices.

4. **Incorporate emerging care modalities**, including increased use of telemedicine and hospital care rendered in the home, into quality and safety tracking and planning efforts.

5. **Renew attention to quality assurance and performance improvement plan priorities.** Priorities outside of those directly related to COVID-19 should be enhanced to avoid slippage and inadvertent gaps in areas that may not have been of immediate concern during surge periods.

6. **Prepare for the anticipated “next normal”** where patients (and regulators) focus more than ever before on clinical quality and outcomes. Ensure that quality and safety initiatives are enterprise-wide, shared among constituencies and tied to actionable results. Patients will remain hesitant to return for care if they cannot validate the quality and safety of a healthcare facility.

7. **Evaluate the role of staff stress and “burnout”** in relation to quality and safety matters. It is at the industry’s peril to shelve pre-pandemic efforts to better recognize staff burnout and avoid its negative effects on patient care and safety—particularly as even more demands have been placed on healthcare providers and support staff.

8. **Continue to prioritize committee meetings and work**, even when time is tight. Active committees are productive committees, and time is of the essence for quality and safety issues.

9. **Ensure that quality and safety programs use sound data and data collection methods.** Apply internal auditing standards to quality and safety data in the same way that the finance committee would audit financial information to drive targeted actions based on solid information.

10. **Champion the need to allocate resources specific to quality and safety.** Many segments of the healthcare industry, even large health systems, are experiencing financial strain, but ensuring that there are resources around quality and safety is vitally important. These resources should include human resources, technology and data resources, and continuing education.
10 KEY TOPICS FOR THE STRATEGIC PLANNING COMMITTEE

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1. REIMAGINE YOUR BUSINESS MODEL FOR THE POST-COVID-19 ECONOMY. COVID-19 has accelerated the on-demand, direct-to-consumer business model of the internet economy. How will your health system function as part of this new business, social and economic construct?

2. UNDERSTAND THE LATEST FACE OF DISRUPTION. In what ways has the pandemic changed the nature of disruption in healthcare? Are big-tech innovators and national retailers more of a threat? What are their next moves? Is your health system more vulnerable to these new entrants?

3. RE-EXAMINE YOUR VIEWPOINT ON PARTNERSHIPS. Given the financial and competitive impact of COVID-19, health systems are reassessing their partnership strategies. Does your health system need a partner for financial strength or new capabilities? Are you in a financial position to acquire other systems?

4. ASSESS CHANGES IN THE COMPETITIVE MARKET. The sudden growth of telehealth and the promise of digital healthcare have changed the current and future competitive environment. Which competitors—traditional and otherwise—have advanced expertise in this area and will be your toughest competitors?

5. MONITOR THE COURSE OF REGULATION. Pay careful attention to the impact of Biden administration policies on the healthcare industry, ranging from payment methodologies to regulatory enforcement. Will the expected pendulum swing affect strategic initiatives?

6. CHAMPION HEALTH EQUITY. What is your system’s commitment and strategy to meaningfully remedy deficiencies in the delivery of healthcare to minority communities? How will you address the social determinants of health?

7. TAKE A LEADERSHIP ROLE IN HUMAN CAPITAL DEVELOPMENT. How will you ensure racial and gender equity in hiring, especially in executive roles? How will you ensure that you have the innovative thinkers to support your system in times of uncertainty?

8. RECOMMIT TO INNOVATION. COVID-19 forced health systems to accelerate their telehealth programs by years within just a few months. How will you build on that progress? What other aspects of digital health require your efforts? How will you test and measure your innovation initiatives?

9. ENSURE A HIGH-FUNCTIONING BOARD/MANAGEMENT DYNAMIC. Identify and pursue the relationship of management and the board, and the scope of their partnership, that will be necessary to guide the health system into the future.

10. INTENSIFY YOUR FOCUS ON CORPORATE CITIZENSHIP. Re-evaluate the health system’s core purposes in light of the principles of corporate social responsibility. Should the system focus on a broader range of stakeholders when thinking about its responsibility as a corporate citizen?
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