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Governance Implications Of Health Care Reform

Law360, New York (January 06, 2010) -- With the impending passage of health care reform, it becomes important to consider the likely governance-related implications for hospitals and health systems. The ultimate legislation will arguably have the most significant impact on the health care financing system since the enactment of Medicare in 1965.

By its actions, Congress will essentially be handing hospital/health system boards an enormous homework assignment, the likes of which they have not previously confronted.

Hospital and health system boards will thus be presented with an unprecedented fiduciary challenge to which they will be expected to respond both swiftly and effectively.

Since the primary role of corporate governance is to provide oversight of operations and advice to management on strategic direction, it will be critical for the board to quickly consider and comprehend the new legislation.

The board will need to be front and center as the effects of the reform legislation are realized within the hospital and throughout the health system.

Board members will be expected to demonstrate an enhanced duty of care as they work with management to evaluate the strategic implications of health care reform and determine responsive strategies.

The impact of reform on corporate governance will be felt not only through the exercise of the board's general oversight duties, but also on the structure through which the board conducts its duties.

Will board size need to be increased to adequately address health care reform issues?
What will be the most appropriate committee structure to respond to reform-related

challenges? What new skill sets will be important in future board leaders? A reform-prompted reconsideration of board structure and composition must be conducted.

The following committees will be acutely important in this process: Hospitals and health systems should begin placing governance-related reform planning on the board agenda for first quarter 2010.

- Finance: evaluating the impact of changes in federal reimbursement/Medicare payment rates and arrangements with private insurers.

Together with the Quality of Care Committee, focusing on new operating models which will better position the hospital to be responsible and accountable for the quality, cost and overall care of the patient community, including consideration of possible new forms of physician integration, such as accountable care organizations and medical homes.

- Governance/Nominating: ensuring the proper mix of committees and the right qualifications for new directors.

- Executive Compensation: designing new models of compensation to incentivize management to effectively respond to the new environment and to achieve new reform-prompted goals.

- Audit: establishing policies with respect to, and monitoring compliance with, the new supplemental requirements for I.R.C. Sec. 501(c)(3) tax-exempt status for hospitals.

- Quality of Care: focusing on new challenges with respect to clinical processes and outcomes, patient care and utilization.

- Compliance: responding to the many significant new antifraud provisions in the new legislation and the corresponding new government enforcement emphasis on eliminating Medicare/Medicaid fraud and abuse.

- Board Education: ensuring that the board receives the proper amount of education on the new law in the shortest practical time (i.e., a comprehensive board education program, not just a 15-minute presentation by the CEO over lunch at the next board meeting).

These and other challenges will require close cooperation between board and management if the board is to be successful in contributing to the strategic direction of the hospital/health system in a post-reform environment.

It thus makes sense to begin placing governance-related reform planning on the board agenda for first quarter 2010.

--By Michael W. Peregrine (pictured) and J. Peter Rich, McDermott Will & Emery LLP

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