



## Governance in the Time of Coronavirus: Tips for Board Effectiveness During the Pandemic

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Is the role of governance during the Covid-19 crisis to be business as usual? The emphatic answer is no. Boards can add tremendous value to their systems and hospitals during this crisis and provide crucial support to their executives. But they can also easily add unnecessary burden and cost. Here are a variety of specific policies and practices that boards can consider adopting now to stay ahead of the Coronavirus crisis curve.

1. **Pass emergency spending resolutions to increase limits on CEO discretionary spending.** Most organizations have clear limits on the amount the CEO can spend and going above that limit requires specific board approval. If a situation arises that requires such spending in the middle of a Covid-19 crisis it is likely to be an emergency requiring immediate action, and going through the process to convene a meeting of the board will be time consuming at best, and if many of the board members have fallen ill, impossible at worst. Do it now.
2. **Pass a resolution to approve authority to apply for waiver to Section 1135 of the Social Security Act.** On March 13, 2020 President Donald Trump declared a national emergency under the National Emergencies Act and made an emergency determination under the Stafford Act. This allowed the authorization of waivers of certain Medicare, Medicaid and Children's Health Insurance Program (CHIP) requirements under Section 1135 of the Social Security Act. On that same day, the Centers for Medicare and Medicaid Services (CMS) announced a set of waivers specific to the COVID-19 pandemic. These waivers can provide crucial flexibility to hospitals in effectively responding to the pandemic by enabling them to take necessary actions without violating EMTALA, or bed limits on Critical Access Hospitals, or medical staff credentialing requirements (by allowing physicians from another state, or recently retired providers to have clinical privileges in critical situations for example). But hospitals or states typically must apply to be eligible for these waivers. Assess if such a board authorization is necessary in your situation and if so, pass it now.
3. **What happens if your CEO becomes incapacitated with COVID-19?** And the COO? And the CFO? Require your CEO to develop an emergency executive succession plan that goes multiple layers deep. This plan should immediately be shared with the board along with all the contact information of all possible interim CEOs. Likewise, the contact information for the Board Officers and members should be shared with all possible interim CEOs.
4. **Assure the board can function.** Most boards are largely composed of members who are in the older age groups that are at greater risk of serious, incapacitating sickness with COVID-19. What happens if the Chair of the board and the board officers fall ill at the same time? Who will be the point person with the CEO? Who will speak for the board to the community and media? Who will have

the authority to convene and preside at an emergency meeting of the board? Develop a deep emergency interim board leadership succession plan that assumes your board may need to appoint new officers on very short notice. Decide who these interim board leaders will be now, to save time later and maintain board continuity should the worst happen.

5. **Make certain the board can act with diminished numbers.** Emergency meetings of the board may be required to take unprecedented, but necessary board action. Review your board meeting quorum requirements and consider adopting emergency resolutions to reduce them if they are too high to ensure your board can legally act with diminished numbers. Confirm the legal ability of your board to meet and act by phone or virtual means, adjust the requirements now to provide maximum flexibility later.
6. **Rethink the Executive Committee.** Many boards have been moving away from having an Executive Committee. This can be a best practice in normal times, but these are not normal times. If your board does not have an Executive Committee or has one with a very limited scope of authority, consider creating an emergency, time-limited Executive Committee with delegated board authority. If you have an Executive Committee, review its authority and confirm it can act appropriately on behalf of a disabled board.
7. **Review your rules, procedures and logistics for convening an emergency board meeting.** Pay attention to who can call a meeting; the length of the required notice period; minimum quorum requirements; and, limitations on topics that can be addressed, and actions that can be taken during the meeting. Determine what decisions require a super-majority vote of the board. Consider passing emergency, time-limited amendments as necessary to assure governance nimbleness.
8. **Protect the CEO.** Many CEOs are pulling double or triple duty during this crisis, leading your organization while they are also involved in state and national hospital association and other external activities. To prevent them being drained during the crisis, consider imposing bans on travel and limiting CEO time spent on outside boards and activities. Anticipate a time when your organization is under such pandemic surge pressure that it will be “all hands-on deck” and require 100% of your CEO’s time. Provide appropriate board cover for executives to enable them to focus on leading your organization through the pandemic.
9. **Assure Leadership Continuity.** Many hospitals and system executives in peak COVID-19 hotspot areas take pride in rounding in patient care areas to “show the flag” to caregivers, to “go to the Gemba” and to be visible leaders. While laudable and indicative of true leadership, what happens if the entire executive team falls ill at the same time? Ask your CEO to designate an “Executive in Reserve.” One who is asked to isolate themselves, NOT do rounding, and to only participate in executive team and other meetings by virtual means. Act to ensure that if the Executive Team falls ill, at least one member will still be available to lead.

10. **REDUCE THE GOVERNANCE BURDEN on EXECUTIVES!** Board and committee meetings take a significant amount of executive time to prepare for, attend, and follow up. Now is not the time to bog down your executives. So:
  - A. Postpone or cancel non-critical board and committee meetings.
  - B. If you must have board meetings: Replace in-person meetings with conference call or video conference meetings; Streamline the agenda to contain only items of immediate importance and to reduce meeting length; Maximize use of Consent Agendas; Use Unanimous Consent Resolutions via email where possible.
  - C. During the crisis many board members will want to help, or ask for information or updates, or even give direction. However well intended, this consumes executive time and attention when it is best devoted elsewhere. Create an interim policy requiring that all board member communication to the CEO, Executives and Clinical Leaders go through the Board Chair (or appropriate Board Committee Chair). The Board Chair can then triage the requests for information, helpful suggestions, and concerns and determine which should be communicated to management, when, and how. Take the time of the Board Chair, not the executives and clinical leaders!
  - D. Both the strengths and weakness of human nature will emerge during this crisis. Anticipate that board members with sick loved ones may call the CEO or clinical leaders imploring for special access to tests, treatment, N95 masks, ventilators, or medication. Develop a policy that addresses this. Think carefully about if a strategic case can be made for key board leaders to be tested or treated in a way that helps maintain leadership capability, but this should be a board discussion and decision. It should **not** be left to the CEO to decide whether to grant a favor to a board member in the heat of a critical moment. Strongly consider a policy that prohibits board member requests for special favors, tests, treatment, or equipment.
11. **Separate Board Meetings from Information Update Sessions.** Your board will want to be updated with information about Covid-19 impact on your hospital. But these updates should be held as information-only update calls, NOT as board meetings. Why? As said before, board meetings take executive time to prepare for. More importantly, a board can only act legally during a meeting and board members, however well intentioned, may regress to “solutionizing” during meetings where the primary purpose is informational and pass motions in the heat of the moment that may not be well thought out and that could distract management attention and have negative impact. Further, you won’t have to worry about meeting quorum requirements. Have frequent update calls, but don’t have them as scheduled board meetings.
12. **Develop Specific Board Confidentiality Policies for the Pandemic.** Some of the information communicated to the board during the update calls will be very challenging and difficult and board members may be tempted to share it with their family and friends. This could have negative

unintended consequences in the community and could even spark panic. So, develop or re-affirm a firm confidentiality policy that prohibits board members from communicating any information unless they have been specifically authorized to do so. This will give cover to board members: when asked by a friend about this type of information a board member can say “Sorry, I can’t talk about it, I am under a very restrictive confidentiality agreement,” and then refer the friend to a hospital sanctioned website or information source.

13. **Develop Specific “Talking Points” for Board Members to Share with the Community.** The executives, board leaders and clinical leaders should develop a set of talking points that board members are both authorized and encouraged to share with friends and community members. In response to community questions or concerns you want every board member to give the same response. The confidentiality policy and the approved talking points go hand-in-hand to make certain that the board is appropriately engaged in communicating with the community.
14. **Think the Unthinkable.** We have learned from the current COVID-19 hotspots that hospitals have “quietly begun preparing a bleak triage strategy to determine which patients may have to be denied complete medical care in the event that the health system becomes overwhelmed by the coronavirus in the coming weeks.” (New York Times, March 20, 2020). This could happen in your system or hospital. The board should make certain that triage and rationing policies and protocols are under development NOW. Once developed, have them approved by the board to provide cover for physicians and care givers and to relieve their stress burden, both in the moment and in the future. Make certain that such difficult, unthinkable decisions are SYSTEM decisions, and not forced on individual physicians or care givers, or made in a situational way.
15. **Implications for Systems with Subsidiary Hospital Boards.** Many systems have delegated authority to subsidiary hospital boards, and this could easily inhibit efficient decision making in critical situations. Review these specific subsidiary hospital board authorities to identify areas where they may conflict with likely necessary future System board decisions relating to the pandemic. These may include amending credentialing requirements; triage and rationing decisions; emergency consolidation of capacity (one hospital in the system dedicated to Covid-19 patients, another dedicated to “routine” emergencies, births, and care, for example). Amend these subsidiary board authorities now to assure that necessary system decisions can be made quickly when the time comes.

Michael Leavitt, the Former Governor of Utah and former Health and Human Services Secretary said “Everything we do before a pandemic will seem alarmist. Everything we do after a pandemic will seem inadequate.” Boards must think and act now to make the unprecedented and challenging decisions necessary to minimize the many disruptions that are just around the corner of the COVID-19 pandemic.



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