

## Governance Policies and Procedures Overview

Well thought-out policies and procedures set a clear expectation and standard for the manner and process in which certain situations and issues will be handled. Establishing a decision once in regards to specific situations and issues creates efficiency and consistency.

Policies are generally developed to manage the organization's risk exposure. They are written to prescribe the actions and procedures to be followed that may prevent potential problems from occurring. To protect the public or other vested parties, some policies are required by law or regulation, such as conflict of interest and whistleblower policies.

The existence of a policy alone isn't enough. Inherent in the adoption of a written policy is the expectation that the organization will follow the direction outlined in the policy. *Failing to make the policy available and known to all affected parties, educating trustees and/or employees about the policy or simply not ensuring that the protocols of the policy are consistently followed essentially nullifies its existence.* With board support and oversight, strong, effective and well-written policies will be adopted, periodically reviewed and updated, and consistently adhered to.

### Building a Sound Policy

A policy template should be adopted and consistently used. The policy format should be structured to allow specific sections to be referenced or cited as needed. Typical policy components include:

**Policy Title.** Each policy should be titled. The title should readily convey the issue addressed to facilitate easy and successful index or table of contents searches.

**Policy Number.** Many organizations also number their policies for tracking, indexing and updating purposes.

**Critical Dates.** The effective date, review date and any revision dates should all be outlined at the beginning of the policy.

**Responsibility.** The title of the individual(s), committee or other entity responsible for the development, review, revision, oversight and compliance with the policy should be noted.

**Purpose.** The purpose of the policy should be clearly and succinctly stated, and should indicate the intent or reason for creating the policy and its expected use.

**Policy Description:** This section of the policy should describe the expectations of the organization in regard to the specific topic, situation or issue being addressed. The description should include as much or as little detail as needed to ensure that expectations are clearly expressed, and misunderstanding or confusion are avoided.

**Procedures:** Any applicable processes or procedures should be clearly described in step-by-step detail that includes:

- Responsibilities
- Reporting
- Applicable time frames
- Locations
- Cross-reference to applicable rules, regulations, or other policies

**Definitions.** Define technical terms, acronyms, abbreviations or other obscure terms used in the policy.

**Signature of Approval.** The policy’s approval should be attested to by the signature of the accountable individual.

## Policies the Hospital Board Should Consider for Adoption

<u>Policy</u>	<u>Requirement/Comments</u>
<ul style="list-style-type: none"> <li>• Board meeting documentation</li> </ul>	<p>Contemporaneous documentation is a sound governance practice that provides for a record of proceedings of the board and its committees. Contemporaneous documentation is a required component in establishing a position of rebuttable presumption of reasonableness.</p>
<ul style="list-style-type: none"> <li>• Charity care</li> </ul>	<p>The policy’s existence is questioned in IRS’ Form 990, Schedule H, Part I</p> <p>A comprehensive, well-written charity care policy is critical documentation of the organization’s commitment to its mission to serve the community. The policy should address charity care eligibility, medically indigent eligibility and more.</p> <p>Responses will give the IRS a means of gauging both the objectivity and the “generosity” of the organization’s charitable benefits in their attempt to determine whether the organization’s community benefit is commensurate with its tax exemption</p>
<ul style="list-style-type: none"> <li>• Conflict of interest</li> </ul>	<p>The policy’s existence is questioned in IRS’ Form 990, Core Form, Part VI, Section B, 12(a-c)</p> <p>The Conflict of interest policy should address an annual disclosure by officers, directors or trustees and key employees of any interests that could give rise to conflicts</p> <p>The organization must regularly and consistently monitor and enforce compliance of the conflict of interest policy</p>

<u>Policy</u>	<u>Requirement/Comments</u>
<ul style="list-style-type: none"> <li>Debt collection</li> </ul>	<p>The policy’s existence is questioned in IRS’ Form 990, Schedule H, Part III, Section C, 9(a-b)</p> <p>The IRS, lawmakers and others hold not-for-profit hospitals accountable for providing charity care and community benefit in exchange for their tax-exempt status. Aggressive or unfair hospital billing and collections practices have been criticized. Failure to readily inform and assist eligible patients with access to charity care and other financial assistance has been viewed as failure to fulfill community benefit obligations. Adoption of and adherence to written billing and collections policies, including a bad debt policy, can demonstrate the organization’s commitment to its mission to serve the community.</p>
<ul style="list-style-type: none"> <li>Document retention and destruction</li> </ul>	<p>The policy’s existence is questioned in IRS’ Form 990, Core Form, Part VI, Section B, 14.</p> <p>In addition to other state and federal document retention requirements, The Sarbanes Oxley Act (Section 802(a) (18 U.S.C.§ 1519) makes it a crime to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of an official proceeding. This provision of Sarbanes-Oxley is applicable to both for-profit <u>and not-for-profit</u> organizations.</p>
<ul style="list-style-type: none"> <li>Executive compensation</li> </ul>	<p>The policy’s existence is questioned in IRS’ Form 990, Core Form, Part VI, Section B, 15(a-b) and Schedule J, Part I,</p> <p>The answers selected in Schedule J, Part I, question 3 demonstrate to the IRS the extent to which the board has made a good faith effort to ensure a reasonable compensation structure and if it has established a “rebuttable presumption of reasonableness.”</p> <p>A financial penalty may be imposed on trustees who “knowingly, willfully and without reasonable cause” allow or approve “excess benefit” (i.e., excess compensation) to be paid to the organization’s executive(s). By following the provisions of Treasury Regulations Section 53.4958.6(a) regarding “rebuttable presumption of reasonableness,” trustees can reduce risk exposure when setting executive compensation:</p> <ul style="list-style-type: none"> <li>The hospital’s board of trustees, or their approved compensation committee, reviews and approves the compensation. All members must be free from conflict of interest.</li> <li>The board or authorized committee determines the reasonableness of the compensation through review and comparability information such as that cited in Form 990: independent compensation consultant, Form 990 of other organizations, compensation surveys or studies.</li> </ul>

<u>Policy</u>	<u>Requirement/Comments</u>
<ul style="list-style-type: none"> <li>Expenses and reimbursement</li> </ul>	<ul style="list-style-type: none"> <li>The board maintains contemporaneous, detailed meeting documentation regarding the compensation review and approval.</li> </ul> <p>Per Treasury Regulations, Section 4958-4, all economic benefits, cash and noncash compensation are considered for purposes of evaluating the reasonableness of the compensation. The information in this section contributes to the IRS data in evaluating excess benefit that may be paid by the organization. More specifically, the Government Accountability Office (GAO) report of July 28, 2006 indicated widespread use of supplemental executive retirement plans (SERP) which has many concerned about excessive future payments.</p>
<ul style="list-style-type: none"> <li>Form 990 Review</li> </ul>	<p>The policy's existence is questioned in IRS' Form 990, Schedule J, Part I, 1(b) and 2.</p> <p>The IRS is examining all sources of compensation and benefits in evaluating whether or not excess benefit transactions have occurred. Similar to the concerns that prompted Sarbanes-Oxley regulations governing for-profit entities, the IRS is looking for effective governance and administrative controls within the organization. Failure on the part of hospitals in general to maintain oversight and administrative policies and procedures could result in the extension of Sarbanes-Oxley type regulations to not-for-profit hospitals.</p> <p>Form 990's Core Form questions if the governing board has reviewed Form 990 prior to filing. The process used must be described in Schedule O.</p> <p>Failure to file Form 990 on a timely basis, failing to furnish any required information or furnishing incorrect information may subject the organization and the board to penalties. In addition, failure to complete certain areas on the form may trigger an IRS compliance check, which may, depending on the circumstances, evolve into a more detailed examination.</p>
<ul style="list-style-type: none"> <li>Gift acceptance</li> </ul>	<p>The policy's existence is questioned in IRS' Form 990, Schedule M, Part I, line 31.</p> <p>Form 990 questions if the policy includes review of non-standard contributions ("non-standard" refers to items not reasonably expected to be used to satisfy the organization's exempt purpose, aside from the need for money).</p> <p>In other IRS regulations, charitable organizations are required to:</p> <ul style="list-style-type: none"> <li>Provide written disclosure statements for quid pro quo contributions in excess of \$75</li> </ul>

<u>Policy</u>	<u>Requirement/Comments</u>
<ul style="list-style-type: none"> <li>Joint venture</li> </ul>	<ul style="list-style-type: none"> <li>Provide contemporaneous written acknowledgement (substantiation) for contributions \$250 or more</li> <li>Provide qualified appraisal for contributions over \$5,000</li> </ul> <p>The policy’s existence is questioned in IRS’ Form 990, Core Form, Part VI, Section B, 16(a-b).</p> <p>A joint venture policy should require evaluation of the venture under applicable Federal tax law to protect the organization’s exempt status</p>
<ul style="list-style-type: none"> <li>Public disclosure</li> </ul>	<p>It is important to note that availability of specific documents is required by the Internal Revenue Code (IRC). Failure to provide public access to these documents can result in significant financial penalties and can erode public trust and confidence in the organization.</p> <p>Preparation and disclosure of the organization’s community benefit report demonstrates the hospital’s accountability to the people of the community it serves. It is also a means of informing people of the myriad of services and benefits available to them through the hospital</p> <p>Form 990’s Core Form, Part VI, Section C also inquires about the hospital’s disclosure of governing documents, conflict of interest policy and financial statements. Public disclosure and transparency are viewed by the IRS and others as a means of ensuring accountability, sound governance and legal and regulatory compliance.</p>
<ul style="list-style-type: none"> <li>Whistleblower protections</li> </ul>	<p>The policy’s existence is questioned in IRS’ Form 990, Core Form, Part VI, Section B, 13.</p> <p>The Federal False Claims Act allows non-governmental individuals to file against federal contractors on the basis of alleged fraud against the government. Such action is known as “whistleblowing.” Specific and detailed requirements for filing are established by the Act. Rewards are paid and are dependent upon the amount of the recovery resulting from the reported actions. The Act includes protections against retaliation for individuals filing reports of fraud and abuse (“whistleblower protections”).</p> <p>The Sarbanes-Oxley Act also includes protections against retaliation for individuals filing reports of fraud and abuse. The Act imposes criminal penalties against those who take steps in retaliation against individuals reporting illegal actions. This provision of Sarbanes-Oxley is applicable to both for-profit <u>and not-for-profit</u> organizations.</p>

## Other Policies to Consider

The IRS aligns independent, effective governance practices and organizational oversight with a greater likelihood of sound fiscal management and tax compliance. Failure to maintain conflict-free governance and decision-making could result in severe penalties to both board members and the organization in addition to loss of public trust and confidence in the organization. The board should have in place the policies and procedures expected of a highly effective governance structure. The ability to cite the existence of sound policies and practices such as a conflict of interest review and enforcement process, and the ability to demonstrate the board's adherence to the policies and procedures are strongly recommended not only as a risk management practice, but also as a demonstration of sound business and ethical oversight worthy of the community trust and support.

The board of trustees should also consider the advisability of developing policies and/or procedures including, but not limited to the following areas:

- Board Education
- Board Meeting Conduct
- CEO Expectations and Performance
- Complaints Review
- Confidentiality
- Disruptive Behavior in the Workplace
- Donor Recognition
- Investment – Master Investment Policy
- Investment – Daily Cash
- Investment – Retirement Plan for Employees
- Investment – Sale of Securities
- Organizational Communication
- Role of Board Committees and Task Forces
- Safe Hospital Environment
- Selection of External Auditors

## **For Additional Assistance**

If you have questions or need information, please contact us by calling (630) 613-7580 or by sending an e-mail to [barb@governwell.net](mailto:barb@governwell.net).

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