Washington Healthcare News

wahcnews.com

Articles, Interviews and Statistics for the Healthcare Executive

VOLUME 5, ISSUE 3 MARCH 2010

Board Governance: The Fun is Just Beginning

By Robert Walerius
Healthcare Attorney and Partner
Miller Nash LLP

By Casey Moriarty
Healthcare Attorney
Miller Nash LLP

The start of a new decade brings a number of challenges to hospitals and their governing boards. In addition to the numerous issues now facing governing bodies, 2010 will include a greater focus on board governance, including, for starters, the possible implementation of healthcare reform, increased oversight of patient safety and quality of care, and the prevention of fraud and abuse. Hospital governing boards are up to the challenge.

Healthcare Reform

In 2009, both houses of Congress passed comprehensive healthcare reform. However, at the time this article was written, the House and Senate bills had not been reconciled. Additionally, the January election of a Republican U.S. Senator from Massachusetts, which eliminated the Senate Democrats' filibuster-proof majority, has made passage of a final bill uncertain. What is clear is that with or without federal mandated healthcare reform, the way healthcare is delivered in the United States must change, and dramatic steps will need to be taken to reduce waste and increase efficiency.

The role of hospital boards in implementing and overseeing the changes required is currently uncertain, but informed decision-making will be essential for survival. An urgent task of hospital boards will be to understand the change in Medicare and Medicaid reimbursement and how it will impact their hospitals. Additionally, board members will have to grasp the implications of complying with new fraud and abuse regulations and ensuring safe and high quality patient care. It is a given that a large part of any type of reform will be paid through reductions in Medicare payments and aggressive government fraud and abuse enforcement.

There is general consensus that mandated reform will significantly increase healthcare spending with only lip service to improving quality and changing how an inefficient healthcare system works. The cumulative effect will force hospitals and physicians to work even closer together at a time when each face financial challenges not previously experienced.

How can boards respond? For starters, board members will need to be informed and educate themselves on how new legislation will impact their hospital; it is a matter of fiduciary responsibility.

Boards will want to examine how they are organized, with specific focus on board committee struc-

ture. Many hospital boards currently have a committee structure that includes finance, audit, strategic planning, quality of care, and board education, which will all need to be engaged to help boards respond to the challenges ahead. However, boards should also consider forming new committees or expanding responsibilities of current committees to focus on direct collaboration with members of the medical staff.

The emphasis on cooperation between hospitals and physicians is an important part of any type of healthcare reform. For example, both the Senate and House bills propose a pilot program that incentivizes the creation of accountable care organizations ("ACOs"). ACOs are integrated health systems generally consisting of primary care physicians, specialists, and a hospital, which are jointly responsible for patient care. By working together and meeting quality of care and cost thresholds, ACOs will be rewarded with Medicare incentives. Policy makers hope that encouraging the proliferation of ACOs will increase quality of care while eliminating wasteful over utilization of resources. Each hospital board should review the positives and negatives of creating and developing ACOs, and how to encourage physicians to enter into such an organization with the hospital.

Quality of Care

Improving patient safety and the quality of healthcare has long been a primary goal of the government and healthcare organizations. Policy makers and governmental bodies are increasingly holding hospital boards accountable for patient safety and the quality of care in their hospitals—but it appears that many boards have not taken notice.

For example, a 2009 study by professors at the Harvard School of Public Health titled "Hospital Governance and the Quality of Care" found that fewer than half of the hospital boards in the United States rated quality of care as one of their two top priorities. Instead, the boards focused on financial issues, assuming that management and other personnel would ensure adequate care of patients. Yet the study's central finding was that hospitals with boards that take an active role in overseeing patient care have better quality of care records than hospitals whose boards have little or no influence over patient care.

In light of this study and increased regulatory and payer interest on patient safety and quality of care, boards should be briefed about incidents that cause significant patient injuries and how such incidents can be avoided in the future. It is important for hospital boards to realize that focusing on financial issues at the exclusion of patient care could be detrimental and even disastrous.

Fraud and Abuse

In 2009, the Office of Inspector General ("OIG") announced that it had recorded receivables of nearly $4.5 billion through its fraud and abuse audits and investigations. In light of this success, there is no doubt that OIG fraud and abuse enforcement efforts will escalate in 2010. In fact, President Obama's 2010 budget increases the amount of money spent on enforcement activities by 50 percent over 2009's budget.

An additional tool that the federal government will use in 2010 to curtail Medicare fraud is the expansion of the Recovery Audit Contractor ("RAC") program into Washington, Oregon, and other states. The purpose of the RAC program is to identify and recover Medicare overpayments. In the initial three-year RAC demonstration from 2005 to 2008, which was conducted in California, Florida, and New York, the program recovered almost $1 billion in Medicare overpayments. The recovery of Medicare dollars will increase in 2010 and thereafter. Hospital boards should know how their hospitals are preparing for these audits.

Fraud and abuse enforcement is a central component of healthcare reform as one of the ways to pay for new federal programs. Among many other provisions, the proposed legislation requires that a Medicare or Medicaid overpayment be reported within 60 days after the overpayment is identified. Any known overpayment retained beyond the 60-day period could subject the providers to penalties under the False Claims Act, which includes large civil and criminal penalties.

Hospital boards should ensure that their organizations have adequate compliance programs and training so that employees understand complex fraud and abuse as well as billing rules and to whom questions can be addressed. With the increased scrutiny on Medicare payments in 2010 and government success in recovering overpayments, it is unlikely that the government will show mercy if it discovers improperly billed claims.

Conclusion

Every year brings new sets of is-

sues to hospitals and their boards. In the wake of the difficult financial year of 2009, the new decade brings new and unprecedented challenges, which will stretch hospitals to the maximum. In order to make 2010 a successful year, boards will have to guide their hospitals on a course that balances financial responsibilities, compliance, and patient care. Indeed, those who enter a hospital boardroom in 2010 should prepare themselves for the challenge of a lifetime! But hospital boards are up to the task, and guiding a hospital to meet those challenges will provide board members with immense personal satisfaction.

Robert Walerius is a healthcare attorney, partner, and leader of Miller Nash's healthcare practice team. He can be reached at bob.walerius@millernash.com or (206) 622-8484.

Casey Moriarty is an attorney at Miller Nash LLP working on the healthcare and education teams. He can be reached at casey.moriarty@millernash.com or (206) 622-8484.

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