



Legal Considerations for Health Center Boards

August 22, 2021

Virtual Participants

Chat
(use to talk with peers)



The screenshot displays a virtual meeting interface. On the left, there are two windows: a 'Chat' window and a 'Polling' window. The 'Chat' window shows messages from participants like Brian Long, James Hensel, and Laura Wiggins. The 'Polling' window shows a poll question: '#1.) What is your biggest business writing challenge? (NO RIGHT ANSWER - OPEN QUESTION)'. The poll results are: Conclusion (45%), Grammar and/or Types (20%), Content Structure (10%), Tone (16%), and Other (0%). In the center is a video feed of a man in a dark suit and white shirt. On the right is a presentation slide with the title 'UDS Reporting: Preparing, Doing, and Utilizing' and the subtitle 'Cultivating Health Center Operations'. The slide features a colorful graphic of a flower and the CURIS logo. At the bottom of the interface, there is a navigation bar with 'Request Support' and '12:09pm Eastern' on the left, and 'Session Support Profile Options Windows' on the right. The Digitell logo is in the bottom right corner.

Polling/Q&A
(participate in polls, ask questions to faculty)



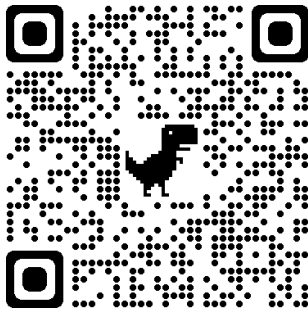
In the Room Participants

WIFI

Network Name: NACHC Conference **Password:** Patients

Option 1: Online

- Scan the QR Code OR
- Go to <https://chi.cnf.io/>, click on “CSB1 - Legal Considerations for Health Center Boards”



or

Option 2: Conference App

- Open the App
- Click on “Sessions”
- Select 8/22/2021
- Find “CSB1 - Legal Considerations for Health Center Boards”
- Click on “Feedback/Polling”
- Ask or “up vote” questions

Panelists

- **Jacqueline C. Leifer, Esq.**, Senior Partner, Feldesman Tucker Leifer Fidell LLP
- **Deborah Morrison**, Board Chair, Roanoke Chowan Community Health Center
- **Moderator: Avni Shridharani, MHS**, President, Community Health Strategies LLC

Objectives

- Identify top legal considerations for health center boards.
- Understand the important role that an effective corporate compliance program plays in protecting the health center.
- Consider questions boards can ask related to oversight of corporate compliance, Health Center Program compliance, and other key legal areas.

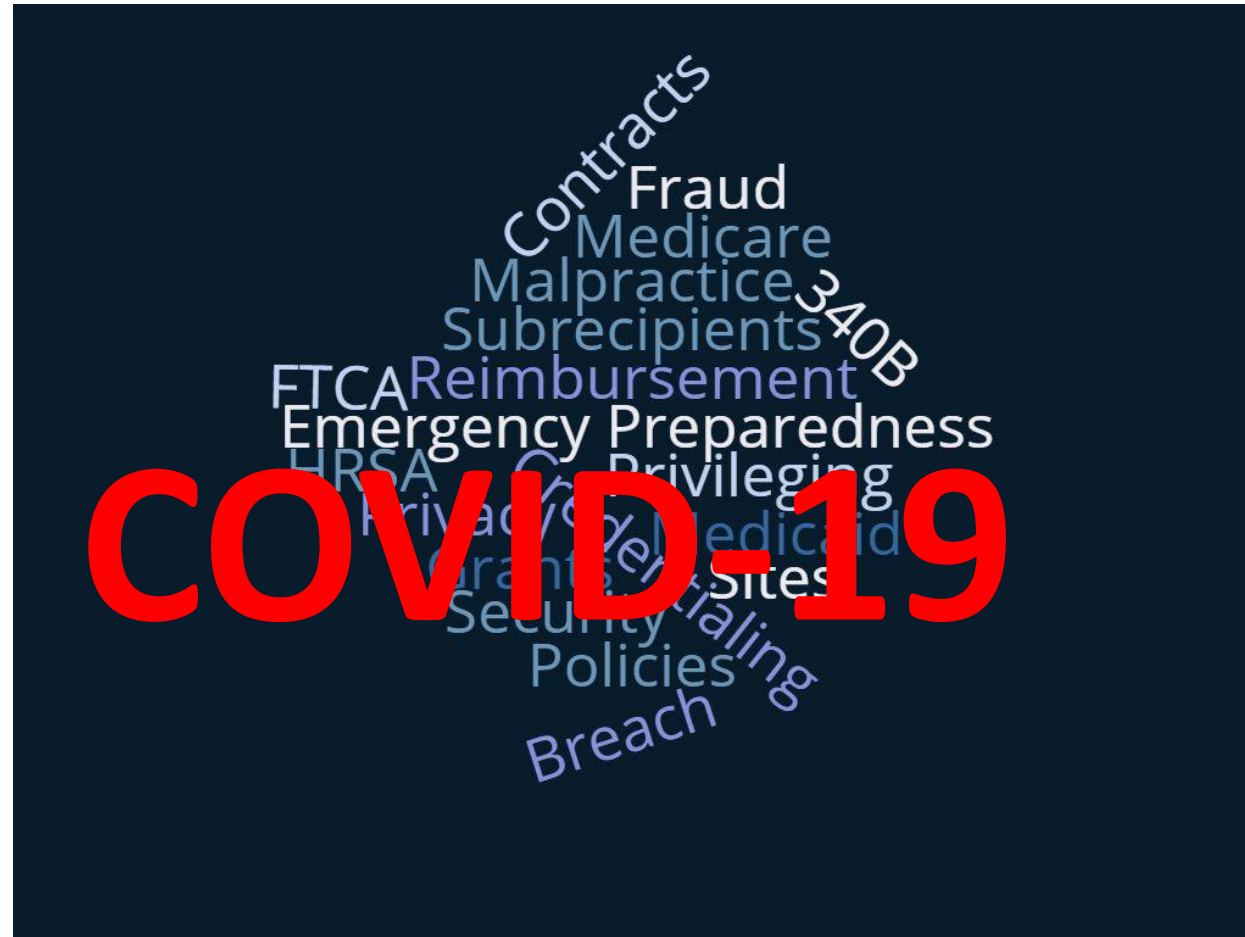
Poll

If you are a health center board member, how long have you served on the board?

1. Less than 1 year
2. 1-3 years
3. 4-6 years
4. 7 years or more



Why Compliance Matters



Poll

Does your health center have a corporate compliance program?

1. Yes
2. No
3. Not sure



The Board's Role in Corporate Compliance Programs

Section 330
Implementing
Regulations require a health center's Board to ensure that the health center is operated in compliance with all applicable Federal, State and local laws and regulations (See 42 C.F.R. § 51c.304(d)(3)(v))



Patient Protection and Affordable Care Act **mandates** a compliance program as a condition of enrollment in Medicare, Medicaid, and CHIP



The Board is responsible for establishing, overseeing, and periodically evaluating the health center's compliance program

OIG Corporate Compliance Program Guidelines

*OIG Compliance Program for
Individual and Small Group
Physician Practices (65 Fed. Reg.
59434 et. seq., October 5, 2000)*



Corporate Compliance Program “Do’s and Don’ts”



- ✓ Resolve to establish the compliance program
- ✓ Budget sufficient funds and resources to carry out compliance functions and ensure that other health center projects do not “tie-up” these funds/resources
- ✓ Approve the policies and procedures that provide the framework for the compliance program
- ✓ Participate in training and education regarding the compliance program
- ✓ Delegate authority to appropriate persons to conduct compliance activities
- ✓ Insist on regular reports from the management team regarding compliance-related activities and results/consequences, if any
- ✓ Meet sufficiently often to update policies and procedures, reflecting compliance activities
- ✓ Be prepared to be consulted and act aggressively if any material compliance problems are identified



- x Succumb to the temptation to be an outlet for employees who want to “end run” the established compliance process
- x Expect management to report all allegations (as opposed to substantiated compliance concerns)
- x Pay lip service to compliance without a true commitment, including a commitment with words, actions, and financial support

Poll

Does your health center require board members to disclose debarment, suspension or other exclusions from participation in state or federally funded programs?

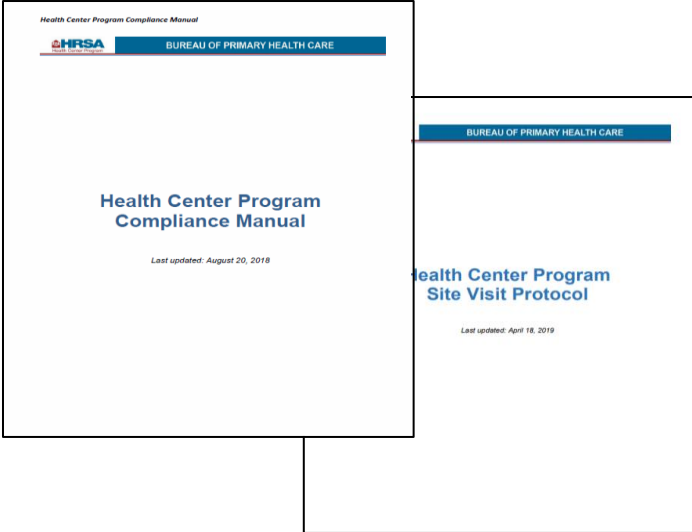
1. Yes
2. No
3. Not sure



Debarment, Suspension and Exclusion

- Individuals who have been suspended or excluded from participation in, or had any sanction imposed by, a Federal or State health care program, or who have been any debarment from participation in any Federal Executive Branch procurement or non-procurement program, are **not eligible** to serve on a health center Board or to provide services that are payable by Federal or State health care programs as an employee, contractor or volunteer
- Health centers should have a **policy and procedure on screening** Board members, employees, contractors and vendors to ensure they have not been suspended, excluded or debarred

Health Services and Resource Administration (HRSA) Health Center Program Compliance



Health Center Program Compliance Recommendations

Pre-OSV

- Be aware of board role
- Focus on continuous compliance
- Review the Health Center Program Compliance Manual and Site Visit Protocol
- Review, revise, approve changes to Bylaws, policies, etc. (as necessary)

During OSV

- Respond to questions
- Ask for clarifications
- Be prepared with examples especially regarding common discussion areas:
 - Financial oversight
 - Quality improvement/assurance
 - Strategic planning and scope of services
 - Conflicts of interest
 - Board Composition

Post-OSV

- Review report, including areas of non-compliance findings
- Review conditions and management's official response
- Review and approve new policies, etc. developed as part of the official response

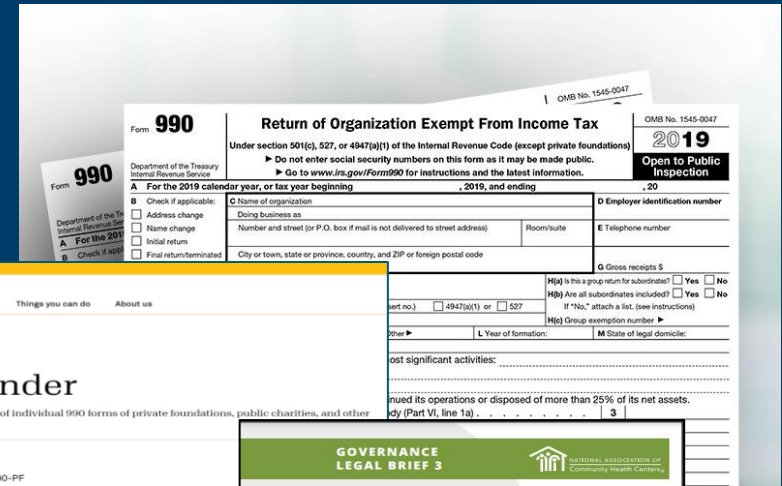
Poll

Please share any practices that have worked well for your board related to HRSA Health Center Program Compliance.



Hot Topics

- Internal Revenue Service (IRS) Form 990
- CEO Compensation
- Pandemic-Related Adjustments to Bylaws and Policies
- Political Activity





Corporate Compliance

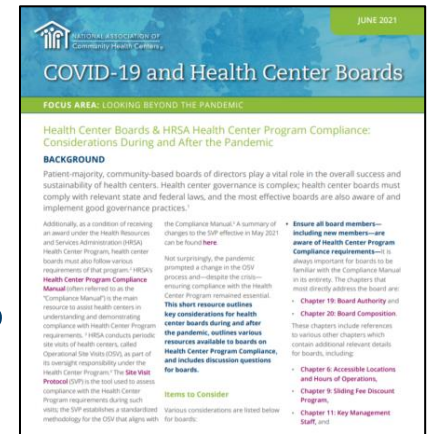
Tool: Board Discussion Questions

- How often does the board hear from the Corporate Compliance Officer?
- Does the full board understand the board's role for oversight of Corporate Compliance?
- Does the budget include adequate funding of the Corporate Compliance Program?
- Does the health center have a policy and procedure on screening Board members, employees, contractors and vendors to ensure they have not been suspended, excluded or debarred?

Health Center Program Compliance

Tool: Board Discussion Questions

- What type of Health Center Program-related board education has been provided?
- Did we have findings in our last OSV final report and have they been corrected?
- Do we have any conditions on our HRSA Notice of Award and have they corrected?
- Are we in compliance with all board-focused requirements?
- When is our next OSV and how can we prepare as a board?
- Does our board use a work plan to help it ensure the board focuses on routine and required items, as well as strategic issues and opportunities?
- How does our board ensure we also focus on good governance practices in addition to complying with HRSA requirements?



Learn More:
Attend CTuB1 -
Where Things
Stand on HRSA's
Operational Site
Visit:
**August 24, 8:45-
10:00am**
Plaza H-K

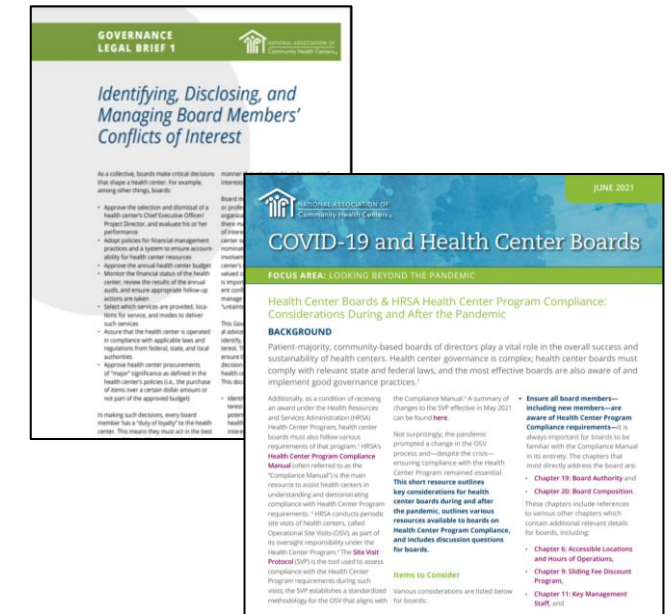
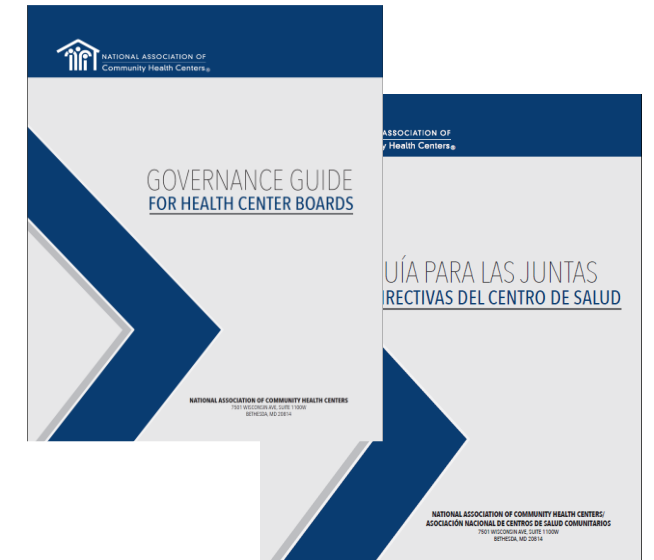
Source: [Health Center Boards & HRSA Health Center Program Compliance: Considerations During and After the Pandemic](#)

NACHC Resources

NACHC has a variety of resources to support boards related to legal oversight.

- [Governance Guide for Health Center Boards](#), Chapter 6: Oversight of Health Center Risks
- [Health Center Boards & HRSA Health Center Program Compliance: Considerations During and After the Pandemic](#)
- [Governance Legal Brief Series](#)
 1. [Identifying, Disclosing, and Managing Board Members' Conflicts of Interest](#)
 2. [Protecting Health Center Board Members from Personal Liability](#)
 3. [CEO and Senior Executive Compensation](#)
 4. [The Board's Role in Evaluating Collaborative Relationships](#)

Visit the Health Center Clearinghouse Governance “Quick Finds” for More Resources at <https://www.healthcenterinfo.org/quick-finds-governance/>



Additional Resources

Corporate Compliance

- *Evaluation of Corporate Compliance Programs, Department of Justice (June 2020)*
Available at: <https://www.justice.gov/criminal-fraud/page/file/937501/download>
- *Practical Guidance for Health Care Governing Boards on Compliance Oversight, OIG (2015)*
Available at: <https://oig.hhs.gov/compliance/compliance-guidance/docs/Practical-Guidance-for-Health-Care-Boards-on-Compliance-Oversight.pdf>
- *The Health Care Director's Compliance Duties: A Continued Focus of Attention and Enforcement, OIG (2011)*
Available at: <https://oig.hhs.gov/compliance/compliance-guidance/docs>

HRSA Health Center Program Compliance

- [HRSA's website](#) which includes the HRSA Health Center Program Compliance Manual in [English](#) and [Spanish](#), and the [Site Visit Protocol](#), along with additional resources. The [FAQ](#) maintained by HRSA also includes helpful information including a consolidated list of policies a board must approve to ensure compliance.
- The Health Center Association of Nebraska has a [six-part online video training series](#) in English focused on Health Center Program Compliance and good practices

Please complete the Evaluation

- **In-person Participants: NACHC Mobile App**
 - Open the App
 - Click on “Sessions”
 - Select 8/22/2021
 - Find “CSB1 - Legal Considerations for Health Center Boards”
 - Click on “External Survey”

Virtual or In-person Participants: Online

- Click on Evaluations and Certificates
- Find each session and “Take Evaluation”
 - CSB1 - Legal Considerations for Health Center Boards

The screenshot displays the NACHC website interface. At the top, there is a navigation bar with 'Upcoming Events', 'My Account', 'Cart', 'Contact Us', and 'Log Out'. Below this is a search bar with 'Enter search term', 'Filter by Date', and 'Filter by Track'. A sidebar on the left contains links: '2019 Community Health Institute Summary', 'Watch Archives', 'Handouts', 'Evaluations and Certificates', and 'Technical Support'. The main content area shows a list of sessions. The first session is 'PCAGS - PCA and HCCN General Session (Invitation Only; Special Registration Required)' on Friday, August 16, 2019. The second session is 'CBC1 - NACHC Board Member Boot Camp: Setting the Scene and Legal Responsibilities' on Saturday, August 17, 2019. Each session has a 'Take Evaluation' button. A 'Preferred Timezone' dropdown is set to 'Eastern'. The page shows 'Displaying 1 - 10 of 17' items.

APPENDIX

Internal Revenue Service (IRS)

Compensating Health Center Employees and Contractors

Internal Revenue Code

- In general, health centers and other tax-exempt organizations may pay reasonable compensation for services provided
 - Reasonable compensation is determined by what comparable organizations pay to similarly qualified and experienced persons for comparable services, *e.g.*, salary comparability studies
 - All compensation received must be considered, *e.g.*, fringe benefits, life insurance, auto allowance, *etc.*

Internal Revenue Code

- Intermediate Sanctions (IRC Section 4958; 26 C.F.R. § 53.4958)
 - Section 4958 imposes a penalty tax on a disqualified person, *e.g.*, Board member, CEO, CFO, who engages in an excess benefit transaction with an organization exempt under IRC § 501(c)(3) or (4)
 - An excess benefit transaction is one in which the value of the benefit provided to the disqualified person exceeds the value of the consideration received by the organization

Internal Revenue Code

- Incentive Compensation
 - Total compensation (including incentives) must be reasonable
 - Incentives must promote the tax-exempt purposes of the organization
 - Incentives should be “capped” at a fixed amount to insure that the overall compensation paid is “reasonable”
 - Other laws, *e.g.*, Stark Law for physician incentive compensation, must be considered

Section 330 Regulatory Responsibility

Health center regulations require health center Boards to establish:

... personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices ...

42 C.F.R. 51c.304(d)(3)(ii)

Federal Cost Principles/Limitations

- Federal Grant Rules (45 C.F.R. Part 75, Subpart E) apply to federal grant funds received by a health center, *e.g.*, Section 330 funds, but does not apply to other revenue
 - Compensation is broadly defined to include salary and benefits
 - Compensation is an allowable cost to the extent that total compensation paid is *reasonable* for services rendered
- HHS appropriations rider caps level of employee salaries that can be charged to a HHS grant (currently \$197,300)

Pandemic-Related Adjustments to Bylaws and Policies

Pandemic-Related Considerations

- The board must be advised continuously about relevant federal, state, and local laws and regulations and applicable guidance
- Ensure the health center is continuously operating in accordance with its Bylaws, including any process for amendments, and consider Bylaw amendments that give the board flexibility in case of crisis.
- Evaluate whether any health center policies should be modified during the state of emergency, and again after the state of emergency is lifted.

Political Activity

Allowable vs. Unallowable Lobbying Activity

Lobbying is defined as a communication (written or oral) that is an attempt to influence (for or against) specific legislation

Allowable	Unallowable
<ul style="list-style-type: none">• Health centers can lobby, within certain limits<ul style="list-style-type: none">– Substantial part test– Section 501(h) election (IRS Form 5768)	<ul style="list-style-type: none">• Federal grant funds may not be used to support the costs of lobbying activities (45 C.F.R. 75.450), BUT Federal cost principles do not apply to non-grant revenue<ul style="list-style-type: none">– Expenditure of non-grant funds must further the objectives of the federally-funded health center project• State and private funds may have restrictions on lobbying activities

Political Campaign Activities

- Health centers **may not** intervene in any election for public office or attempt to influence the outcome of any federal, state, or local election
- Referendum, initiative, or similar ballot measure is treated as “lobbying” for tax purposes
- Federal grant funds **may not** be used to support the costs of political campaign activities
- Board members are free to support or to oppose candidates and to engage in the political process as individuals, **PROVIDED THAT** they do not act on behalf of the health center
- IRS Rev. Rul. 2007-41 (June 18, 2007)
See: www.irs.gov

Compliance Recommendations

- Recommendations to health center Boards to ensure compliance with lobbying and political campaign activity rules:
 - Establish a policy regarding who may and may not speak on behalf of the center
 - Specifically authorize any health center lobbying activity (as appropriate)
 - Ensure that there are internal controls to track costs of, and sources of payment for, lobbying activities

Voter Registration

- Permissible so long as conducted in an *entirely nonpartisan fashion*
 - Do not target areas/populations expected to favor one candidate/party
 - No candidate electioneering activity
- If a third party approaches your organization proposing to engage in voter registration activities within your facility, demand that the third party agree, in writing, to the above representations.

