Legal Considerations: Board Meetings During COVID-19

By: Jacqueline C. Leifer, Esq., Senior Partner at Feldesman Tucker Leifer Fidell LLP and Britney Hall, Law Clerk, Feldesman Tucker Leifer Fidell LLP

In response to the coronavirus (COVID-19) public health emergency, the National Association of Community Health Centers (NACHC) and Health Resources and Services Administration (HRSA) continue to receive questions regarding good governance practice and governance requirements. In this regard, HRSA continues to post guidance regarding governance requirements in response to frequently asked questions (FAQs) and NACHC is making additional resources regarding governance practices during COVID-19 available to boards.¹

Notably, in its FAQs guidance, HRSA states that “during this public health emergency there may be certain requirements with which a health center cannot demonstrate compliance within the timeframe or specific manner indicated in the Compliance Manual” and suggests it will consider such implications when considering future compliance determinations. Notwithstanding, health center boards should make best efforts to continuously comply with the Health Center Program governance related requirements.

While, understandably, health center boards are focused on the health centers’ role in responding to the COVID-19 emergency, it is important to ensure boards continue to fulfill their governance duties, which includes continuing oversight of the Health Center Program project, such as reviewing the financial status of the health center, reviewing and adopting the annual Health Center Program project budget, adopting policies and procedures, and assessing the quality improvement and assurance of the health center. If the Board has an annual work plan, we recommend that the Board continue to use the work plan in creating the agenda for each month’s Board meeting while also balancing the immediate needs related to COVID-19.

This short blog focuses on some legal considerations related to board meetings during COVID-19.

Legal Considerations Related to Virtual Board Meetings During COVID-19

Given limitations on public gatherings and recommendations regarding social distancing during the current COVID-19 pandemic, virtual meetings are currently recommended for health center boards. The HRSA Health Center Program Compliance Manual (“Compliance Manual”) permits board meetings to be held virtually as long as all board members can hear each other.²

Before conducting board meetings virtually during the COVID-19 emergency, consider the following:

- Do state or local laws regarding nonprofit corporations (or other applicable laws) allow (or prohibit) health center board meetings to be held virtually?
  - If the health center is a public health center, or if state/local law includes private nonprofit health centers under the applicable public meetings requirements, has the state or local government relaxed such requirements during the emergency?
  - For public health centers, is the co-applicant board allowed to meet virtually?

¹ Resources from NACHC can be found at https://www.healthcenterinfo.org/priority-topics/covid-19/ and http://www.nachc.org/coronavirus/.
² HRSA Health Center Program Compliance Manual, Chapter 19, footnote 3 (pg. 73): “Where geography or other circumstances make monthly, in-person participation in board meetings burdensome, monthly meetings may be conducted by telephone or other means of electronic communication where all parties can both listen and speak to all other parties.”
If state or local law is silent as to virtual board meetings, the health center should confirm with its local counsel that virtual meetings would be authorized.

• Do the health center Bylaws permit board meetings to be conducted virtually?
  – Does state or local law require a health center (or other nonprofit corporation) Bylaws authorize virtual board meeting?
    o If so, and the health centers Bylaws are currently silent, consider amending the Bylaws or check whether the state or local government have relaxed such requirements during the national emergency.
    o If state and local laws are silent, the health center should confirm with its local counsel that virtual meetings would be authorized.

• If the health center board proceeds to hold meetings virtually, consider the following:
  – Does each board member have the technology to join and participate in a virtual meeting?
    o If a board member does not have the capacity to participate virtually, the health center may provide appropriate technology (e.g., a cellphone or iPad depending on whether the format is audio or video). If such technology has access to the health center network, be sure to employ appropriate firewalls, etc. to prevent Health Insurance Portability and Accountability Act (HIPAA), privacy, or security violations.

• How should board member meeting packets be relayed to board members?
  – Health centers should send board meeting packets through a secured network (such as Dropbox or Workshare) instead of email.

Reaching Quorum During COVID-19
In order to take action at the virtual meeting and to count the meeting under the HRSA monthly meeting requirement, there must be a quorum present. The Compliance Manual already permits a health center to determine the minimum number of board members needed at the meeting in order to conduct business (a.k.a. a quorum) as long as it is consistent with state or local law.

If a health center board is having difficulty in reaching a quorum for a virtual board meeting, the health center can consider the following:

• Do state or local corporate laws contain minimum quorum requirements?
• Do the health center Bylaws contain a quorum requirement specifying the minimum number of board members required to be present at the meeting in order to conduct business?
  – Consider whether to amend the Bylaws to establish a lesser quorum requirement if allowed under state/local corporate law.
• Might the health center board move the virtual meeting to another time in the day or another day in the same month as the original meeting, which would be more convenient and thereby enable compliance with quorum requirements (while also meeting the requirement to hold at least one meeting per month).

In-Person Board Meeting Considerations During COVID-19
In the coming months as meeting restrictions possibly start to be relaxed, boards may begin to reevaluate how they plan to meet. When this occurs, prior to meeting in-person, the Board should consult with local counsel to determine whether state or local emergency declarations prohibit in-person meetings in the first instance or contain restrictions on such meetings.

---

3 Id. at page 76.
4 Id. at page 77.
**Additional Information and Questions?**

- For additional resources from NACHC related to COVID-19, please visit [https://www.healthcenterinfo.org/priority-topics/covid-19/](https://www.healthcenterinfo.org/priority-topics/covid-19/) and [http://www.nachc.org/coronavirus/](http://www.nachc.org/coronavirus/), or contact [preparedness@nachc.org](mailto:preparedness@nachc.org). Resources include [Tips for Virtual Board Meetings](https://www.healthcenterinfo.org/priority-topics/covid-19/)
- For more information regarding the responsibilities of Boards, please refer to the HRSA Compliance Manual (Chapters 19: Board Authority and 20: Board Composition) and to NACHC’s [Governance Guide for Health Center Boards](https://www.healthcenterinfo.org/priority-topics/covid-19/).
- If you have questions about COVID-19, please visit [https://www.cdc.gov/coronavirus/](https://www.cdc.gov/coronavirus/).
- If you have a general health center governance question, please contact Emily Heard, Director of Health Center Governance at [trainings@nachc.org](mailto:trainings@nachc.org).

*Note: This was originally authored for the NACHC blog week of March 30th, 2020.*

This project is supported by the Health Resources and Services Administration (HRSA) of the U.S. Department of Health and Human Services (HHS) as part of an award totaling $6,375,000 financed with non-governmental sources. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by HRSA, HHS, or the U.S. Government. For more information, please visit [HRSA.gov](https://www.hrsa.gov).