

What Does Compliance Mean for Health Center Boards

CHI 2022

Virtual Participants

Chat
(use to talk with peers)



The screenshot displays a virtual meeting interface. On the left, there is a chat window with messages from Brian Long, James Henskel, Laura Wiggins, and Cliff Greenberg. Below the chat is a poll window titled "#1.) What is your biggest business writing challenge? (NO RIGHT ANSWER - OPEN QUESTION)". The poll results are as follows:

Challenge	Percentage
Content	45%
Grammar and/or Typos	20%
Content Structure	16%
Tone	16%
Other	0%

In the center, a video feed shows a man in a dark suit and white shirt. On the right, a presentation slide titled "UDS Reporting: Preparing, Doing, and Utilizing" is displayed, featuring a colorful graphic and the CURIS logo. The bottom of the interface includes a navigation bar with options like "Request Support", "12:09pm Eastern", "Session", "Support", "Profile", "Options", and "Windows".

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

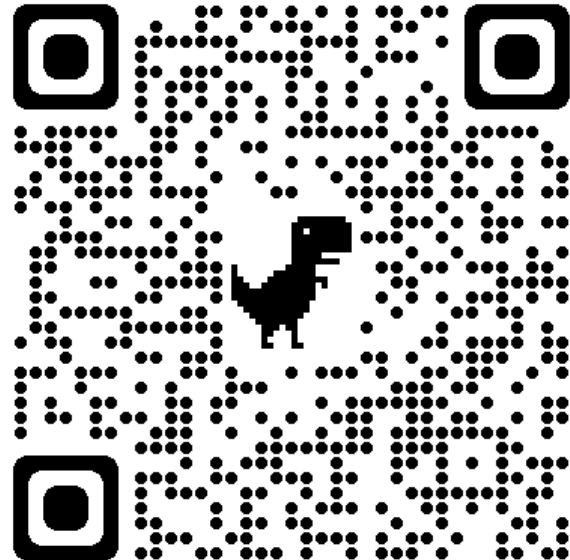
In the Room Participants

WIFI

Network Name: NACHC Conference Password: Allscripts

Option 1: Online

- Scan the QR Code OR go to <https://chi.cnf.io/> click on “CTuD2



or

Option 2: Conference App

- Open the App
- Click on “Sessions”
- Select date (August 30)
- Find CTuD2
- Click on “Feedback/Polling”
- Ask or “up vote” questions

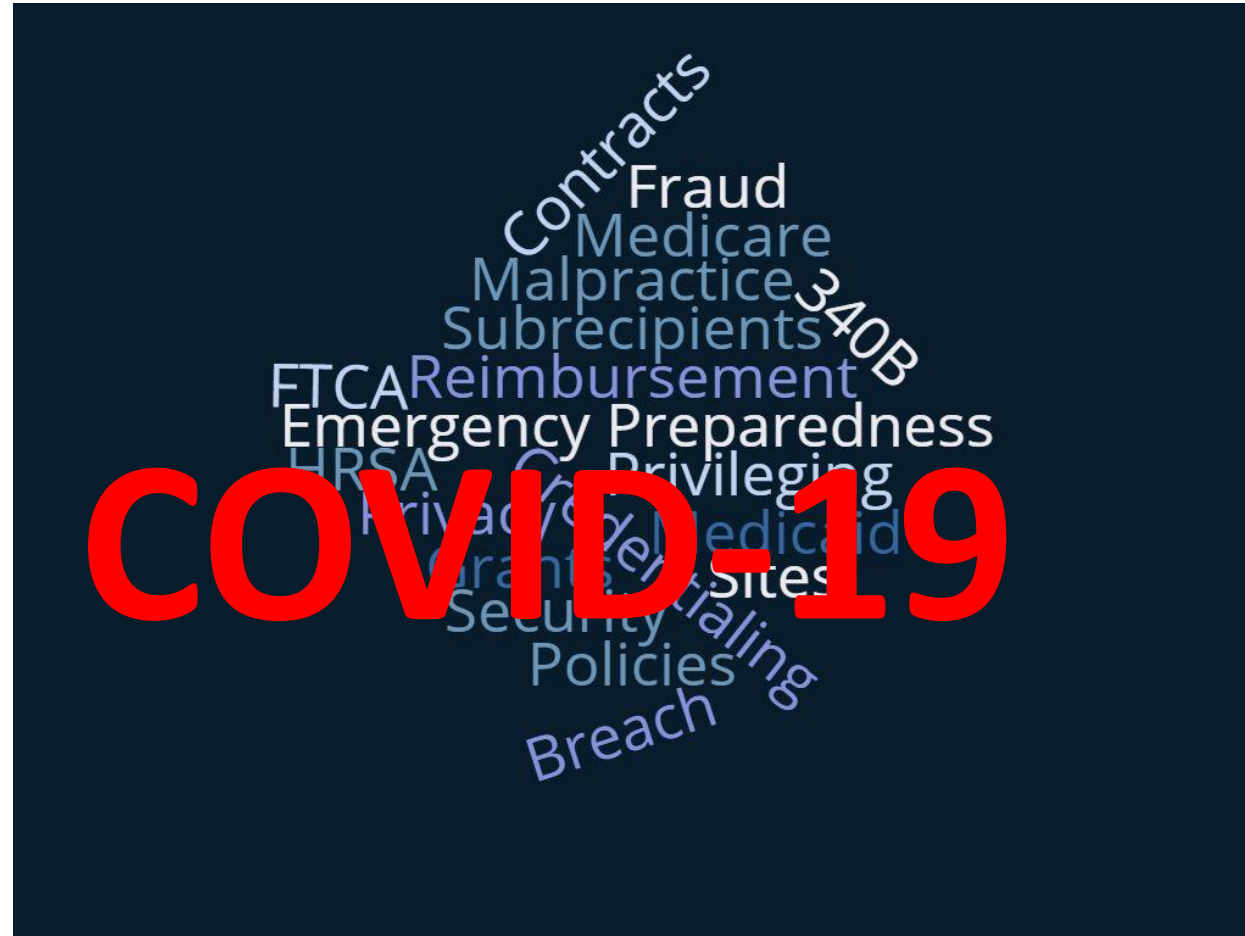
Panelists

- **Jacqueline C. Leifer, Esq.**, Senior Partner, Feldesman Tucker Leifer Fidell LLP
- **Dianne K. Pledgie, Esq.**, Partner, Feldesman Tucker Leifer Fidell LLP
- **Moderator: Emily Heard**, Director, Health Center Governance, NACHC

Objectives

- Understand the role that an effective Corporate Compliance Program plays in protecting the health center.
- Understand compliance requirements for Boards, including those related to the HRSA Health Center Program compliance.
- Consider questions Boards can ask related to oversight of corporate compliance, HRSA Health Center Program compliance, and other key legal risk areas.

Why Compliance Matters



Poll

Does your health center have a Corporate Compliance Program?

1. Yes
2. No
3. Not sure



Live Content Slide

When playing as a slideshow, this slide will display live content

Poll: Does your health center have a corporate compliance program?

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 CFR § 51c.304(d)(3)(v))



Patient Protection and Affordable Care Act **mandated** Compliance Programs as a condition of enrollment in Medicare, Medicaid, and CHIP (pending issuance of regulations applicable to health centers)



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

Corporate Compliance Program Elements



See: 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

Scenario

Mr. Charles has been on the Anytown Health Center (AHC) Board for over 10 years. He owns a medical staffing agency in Anytown and is a top donor to AHC's annual fundraiser.

In March 2022, the Human Resources Director presented to the AHC Board on employee recruitment and retention efforts. The next month, Mr. Charles attended the AHC staff meeting and announced that the Board would like to hear directly from staff on working conditions in the clinic and any concerns about management. Mr. Charles met privately with several staff members.

In June 2022, Mr. Charles reported to the AHC Board that several staff members told him the Human Resources Director is ineffective and discriminated against staff members. The CEO of AHC defended the Human Resources Director. Mr. Charles made a motion to terminate the Human Resources Director. What should the AHC Board do?

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Poll: Given the scenario, what should the AHC Board do?

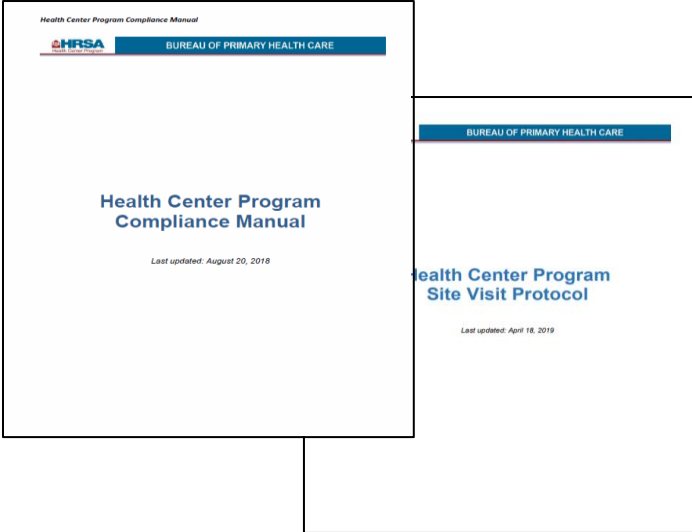
Corporate Compliance

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 Services and Resource Administration (HRSA) Health Center Program Compliance



Health Center Program Compliance Recommendations

Pre-OSV

- Be aware of Board's 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.



Live Content Slide

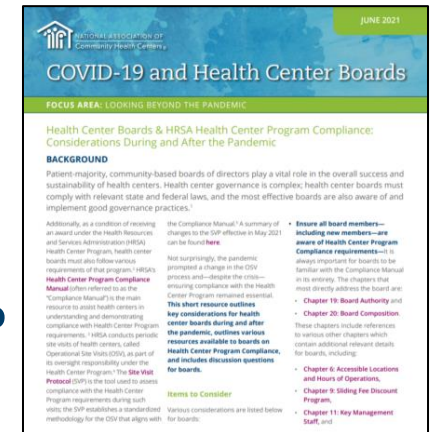
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Poll: Please share any practices that have worked well for your board related to HRSA Health Center Program Compliance.

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 been 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?



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

Scenario

Anytown Health Center (AHC), like health centers across the country, responded quickly to the COVID-19 pandemic. The changes are listed below. For HRSA compliance purposes, which of these changes require Board-approval?

1. Hours at two sites expanded to accommodate demand for COVID testing and vaccination
2. The state requested that AHC make COVID test results available to the Department of Health through the health information exchange in order to track COVID hotspots
3. Two new sites opened; one was closed
4. Telehealth visits increased 50% in the past year
5. AHC employees are required to be up-to-date on their COVID vaccines or receive an exemption under federal or state law

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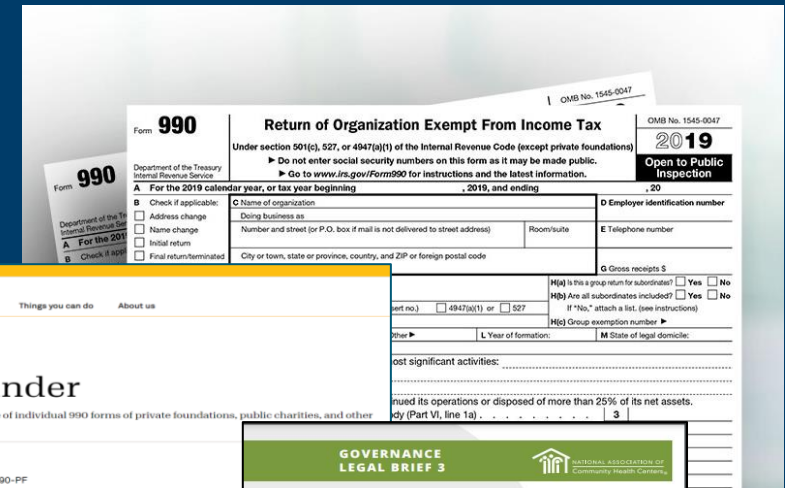
Poll: Anytown Health Center (AHC), like health centers across the country, responded quickly to the COVID-19 pandemic. The changes are listed below. For HRSA compliance purposes, which of these changes require Board-approval?



Hot Topics

- CEO Compensation
- Exclusion, Debarment and Suspension Screening
- Political Activity
- Public Statements
- Cybersecurity

*See Hot Topics: Appendix for more info



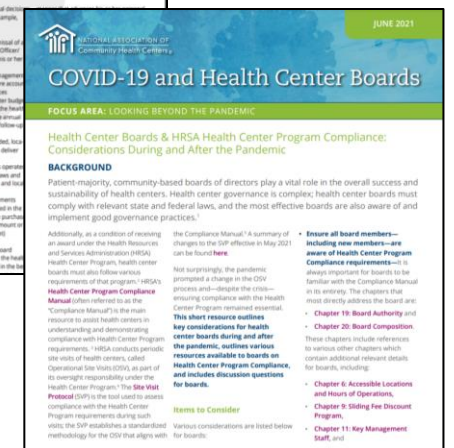
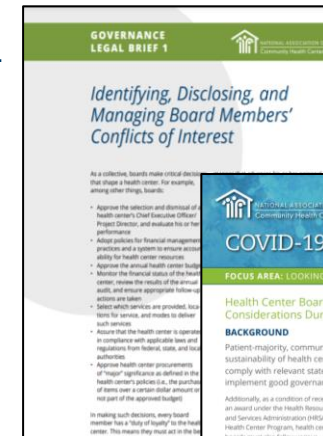
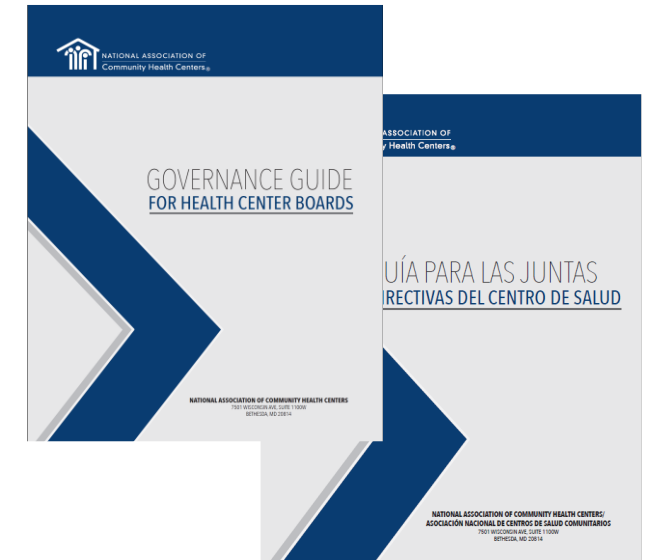


NACHC Resources

NACHC has a variety of resources to support boards related to 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](#)
- [Legal Lessons Learned from the Pandemic for Health Center Boards](#)
- [The Board's Role in Evaluating and Implementing Corporate Consolidation Strategies](#)
- [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

- **Virtual Participants** will receive the evaluation by email after the session
- **In-person Participants: NACHC Mobile App**
 - Open the App
 - Click on “Sessions”
 - Select August 30
 - Find CTuD2
 - Click on “External Survey”

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HOT TOPICS: APPENDIX

CEO Compensation

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 CFR 51c.304(d)(3)(ii)

CEO Compensation

- 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

CEO Compensation

- 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.*

CEO Compensation

- Total Compensation includes incentive compensation. Incentives:
 - Must promote the tax-exempt purposes of the organization
 - Should be “capped” at a fixed amount to ensure that the overall compensation paid is “reasonable”
 - Must consider other laws, *e.g.*, Stark Law (physician incentives)

CEO Compensation

- Federal Grant Rules (45 CFR 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 \$203,700)

Debarment, Suspension and Exclusion Screening

- 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 debarred 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

Political Activity: Lobbying

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

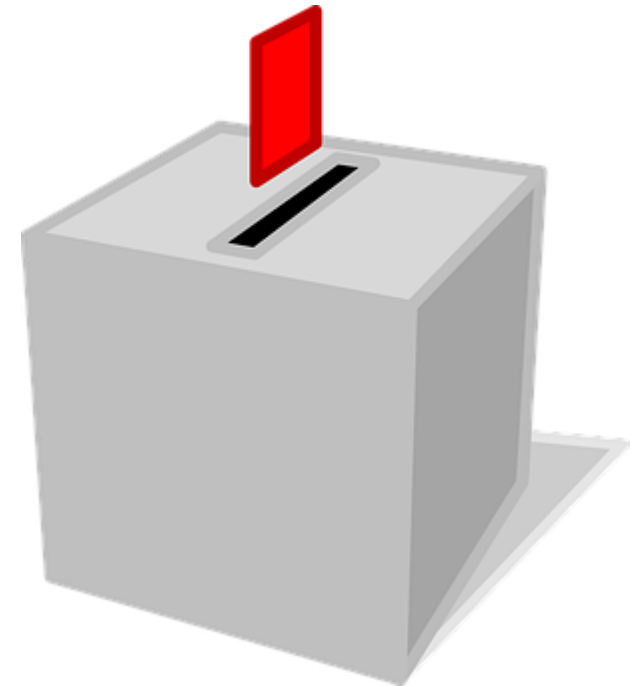
Allowable	Unallowable
<ul style="list-style-type: none">• Health centers can lobby, within certain limits<ul style="list-style-type: none">• Substantial part test• Section 501(h) election (IRS Form 5768)	<ul style="list-style-type: none">• Federal grant funds may not be used to support the costs of lobbying activities (45 CFR 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 Activity: Campaigning

- 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

Political Activity: 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.



Public Statements

- History of issuing public statements:
 - Does the health center regularly issue such statements?
 - Is this the first statement the health center is issuing? Will it start issuing statements more regularly? Why or why not?
- Consider the audience: Patients, staff members, community members, donors, etc.
- Consider the internal approval process:
 - Approval requirements: CEO, Executive Committee of the Board, Senior Management, Communications Director, Legal Counsel?
 - Balance approval requirements against need for timely issuance
- Anticipate follow-up:
 - Designate contact individual for media inquiries and follow-up questions
 - Develop procedure related to social media responses

Cybersecurity

- Oversight:
 - Determine whether the full Board will receive regular reports or a Board committee (Compliance, Risk Management, Audit, etc.) will receive regular reports with periodic reports to the full Board
 - Consider adding Board members with background/experience in cybersecurity
- Understand how your health center identifies cybersecurity risk and how it responds
 - Ask how cybersecurity risk is assessed: External or internal assessment? Frequency? Scope?
 - Ask how cybersecurity risk is mitigated: Is there a risk management plan? Will it be tracked and reported through the Compliance Program? What resources are needed – new hardware, additional monitoring, increased cybersecurity insurance coverage?
- Ensure your health center has a process for responding to cyber incidents
 - Does the health center have a security incident response plan?
 - When will incidents be reported to the Board, staff, patients, the Office for Civil Rights, etc.?
- Allocate appropriate resources to mitigate cybersecurity risks, including additional staffing, external reviews, technology upgrades, etc.