The 10th National Quality Colloquium

ACOs, Governance and the Quality Mandate in a Changing Delivery System

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Corporate Governance Developments

- The past decade has seen a revolution in corporate governance and in the expectations set for corporate directors.
- Fiduciary duty has come to mean that directors must be active participants in oversight, not mere passive recipients of information.
- A good director must engage in active inquiry and be:
  - Demanding enough to rattle cages when necessary;
  - Knowledgeable enough to set direction;
  - Bold enough to add value through hard questions;
  - Vigorous enough to assure that the organization's plans yield results;
  - And yet, a good director should not lose sight of the difference between oversight and day-to-day management.

Fiduciary Challenges and Opportunities in the Accountable Care Era

- Health care provider organizations and the ACOs they form or participate in face a variety of challenges and opportunities in the accountable care era; as fiduciaries, their board members will need to address the following issues, among others:
  - Fee-for-service payments are likely to decline steadily in the years ahead, challenging financial performance;
  - Additional payment changes will further reduce reimbursement to providers with poor scores on quality measures or who evidence inefficiencies such as above-average readmissions;
  - The shift to various forms of pay-for-performance, bundled payments and global or population-based payments, or other value-based reimbursement methodologies, will require infrastructure investments by providers that may or may not be reimbursed, further threatening financial solvency;

Fiduciary Challenges and Opportunities in the Accountable Care Era (cont.)

- On top of those issues, boards are faced with the fact that the increasing focus on quality measurement and reporting may trigger fraud and abuse enforcement against providers making claims to public and private payers for care that is ultimately deemed substandard;
- Greater quality data reporting and transparency will require board oversight to assure that reporting is accurate; compliance plans will need to be enhanced to address these expanded concerns;
- Provider entity boards and ACO boards will need to review their committee structures related to quality in order to ensure that the board or board committee's charter requires attention to effectiveness, efficiency and patient-centeredness in addition to patient safety;

Fiduciary Challenges and Opportunities in the Accountable Care Era (cont.)

- ACO boards and ACO sponsoring organization boards will need to ensure that appropriate and effective management and clinical personal and protocols are in place to meet CMS, NCQA and other requirements and to achieve the ACO's quality and financial goals;
- Health systems will need to consider which entity – one that currently exists or one to be formed – will serve as the ACO (including how many ACOs it may want to form or work with); and how to coordinate the ACO board or boards with other boards within the system.

MSSP Proposed Rule – Structure and Governance

- Formation of a new entity to serve as the ACO is not required if existing entities can meet all of the applicable requirements set forth in the rule.
- The ACO governing body must include participating ACO providers and suppliers (or representatives) and Medicare beneficiaries (or representatives). At least 75% control of the governing body must be held by ACO participants (providers and suppliers).
- Each ACO participant must have "appropriate proportionate control" over governing body decisionmaking.
- The Pioneer Model includes an additional requirement that the ACO board include a "consumer advocate."

MSSP Proposed Rule – Structure and Governance (cont.)

- These governance representation requirements raise questions of fiduciary duty as to ACO governing boards, since governing board members' duty generally will be to the ACO, not any particular provider or group that they represent.
- Key components of leadership and management that would be required of an ACO are: executive leadership under control of the governing body with a leadership team capable of achieving ACO goals; a senior-level medical director; a clinical integration program to which participating providers are committed; a physician-directed quality assurance and process improvement committee; evidence-based clinical practice guidelines; and information technology that enables the ACO to collect and evaluate data.
- ACOs also must have a fairly comprehensive compliance plan to address how the ACO will comply with applicable legal requirements.

NCQA Guidelines for ACO Governance

- With regard to the governing body, NCQA proposes to score ACOs on the effectiveness of the role, structure and functions of the governing body, including how well the governing body provides leadership, establishes accountability and "provides the structure to align the functions of an ACO."
- The NCQA criteria state that the physician or clinician leader of the ACO "must participate on or advise the board."
- An ACO also, according to NCQA, will need a documented process for annually reviewing the ACO's performance, including its social and structural elements critical to achieving high performance, with the governing body.

NCQA Guidelines for ACO Governance (cont.)

- ACO governing bodies also will need to assure that the following stakeholder groups are involved in its oversight functions:
  - Primary care practitioners and specialists who provide care for ACO's patients;
  - Hospitals or other providers that are part of the legal or contracting structure of the ACO; and
  - Consumers or community representatives
- ACOs and their governing bodies are tasked and will be scored by the NCQA on how well they work with providers, community resources, consumers and payers.

Balancing the Representational Requirements

- ACO boards will need to balance stakeholder representation required by CMS or NCQA with IRS requirements related to community representation as well as with both IRS and good governance recommendations related to the need for a reasonable number of "independent" directors on boards.
- Ultimately, directors should not view their job as to "represent" factions or constituencies in exercising their oversight in accord with the duty of care – they must act in the overall best interest of the organization for which they are a fiduciary.
- This must be understood as different from duty on an advisory board and different from how a provider representative would view a contract negotiation with a payer or another provider.
- ACO sponsoring organization board members and ACO board members will need clarity in their respective mission, vision, and goals as well as an understanding of the differences between the two.

Conclusion

- Governance in the accountable care era will need to be very focused and intentional, and it will be essential for board members to be both educated and proactive
- This will require:
  - Robust recruiting and educating of directors with the right skill sets;
  - Providing the right kind of ongoing information that that does not drown them in unnecessary detail, but is incisive and detailed enough to allow for effective oversight;
  - Having in place board evaluation mechanisms that allow the board to continuously improve in doing its job.

Conclusion (cont.)

- Key Areas of Oversight:
  - Measuring and managing value
  - Maximizing patient and physician stakeholder engagement
  - Enhancing outcomes reporting transparency
  - Strengthening internal pay-for-performance while remaining legally compliant
  - Making board work more intentional

Making Board Work More Intentional

- It will not be easy to attract, engage, and retain superior board members in this new era of high-performance governance. For board members to believe their time and talents are being maximized, new cultures and systems will be needed to govern tomorrow's integrated and accountable care delivery systems. High-performance boards must continuously explore and practice intentional governance that embraces these attributes:
  - Competency-based governance–recruiting and educating diverse and talented board members to achieve a balanced set of skills, attitudes, and experience within the board and its committees, advisory councils, and task forces.

Making Board Work More Intentional (cont.)

- Information for governance decision making that is driven by data from electronic health records; episodes of care cost profiles; and satisfaction scores of patients, physicians, employees, and purchasers. This data should be posted to board portals and/or intranets and made available at all times.
- Meeting calendars that have fewer but smarter meetings with agendas that encourage meaningful conversations with periodic expert speakers, clinicians, middle managers, and industry analysts about strategic challenges and future opportunities, rather than mere reviews of past statistics.
- Patient stories that ground and inform the board's deliberations about the reality of clinical frontline challenges and the continuous call for value from care that is convenient, comfortable, customized, and cost effective.

Making Board Work More Intentional (cont.)

  - Governance processes and structures that are evaluated each year to develop “governance enhancement plans.” Establish at least one action each year that the full board will improve next year, one attribute that each committee will improve upon, and one behavior or action that each board member will commit to enhance in the coming year.

- Accountable care demands accountable governance. Great boards must design critical conversations about governance best practices into their journey toward continuous governance improvement in the accountable care era.

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