

Hospital Prototype Corporate By-law Overview of Key Changes

Corporate Membership - (Article 2 of the By-law)

- The Prototype Corporate By-law (By-law) provides for a model of Membership where the Directors are the only voting members. This model reflects an increasing trend in hospitals and provides an opportunity to ensure Board stability and quality and places the Board in a position of responsibility for Board recruitment and succession planning.
- The Corresponding Notes to Article 2 set out language for three additional options for membership: 1) Two Classes of Members – Voting and Non-Voting (Advisory); 2) Limited Constituency Model; and 3) Membership Extended to “Related” Organizations.
- The Notes also provide additional commentary and questions for Boards in considering the appropriate model for membership, including:
 - Whether there should be more than one class of Members?
 - Whether there should be any *ex-officio* Members?
 - What are the eligibility criteria to become a Member?
 - Are there any groups or categories that should be ineligible for Membership?
 - What process should be followed to become a Member?
 - What should be the term of the Membership and how should the Membership terminate?
 - What are the voting rights of Members?
 - Where there are non-voting categories of Members, what rights attach to such categories?
- Where a hospital chooses to extend the voting membership beyond the Board, the Notes set out a number of provisions that hospitals should consider, including minimizing the risk that a single-issue or “special interest” group may destabilize a Board through actions such as inappropriately initiating removal of the Directors or block voting at Members meetings.

Board Composition and Recruitment and Role of the Board - (Article 4 of the By-law)

- The By-law contemplates twelve (12) elected Directors, and the Chief Executive Officer, the Chair of the Medical Advisory Committee, the President of the Medical Staff and Vice President of the Medical Staff, as *ex-officio* Directors.
- With regard to the duties and the responsibilities of the Board, the By-law provides that the Board should adopt a statement of Board Roles, Responsibilities and Functions that describe

the role of the Board in its key performance areas, including specific wording regarding the Board's role in quality.

- The By-law states that nominations procedures for the election of Directors should be prescribed by the Board. With respect to qualifications of Directors, the By-law provides that no person shall be qualified for election or appointment if he/she is a current or former employee or member of the Professional Staff (unless the Board determines otherwise), or does not have principal residence or carry on business within the area served by the Corporation as established by the Board from time to time.
- The Corresponding Notes to Article 4 also suggest that a Board may wish to specify that only a percentage of its elected directors come from within the catchment area to allow greater flexibility to recruit a skilled and qualified director from outside the catchment area.
- The Notes provide that the Board should be comprised of individuals who have the necessary skills, competencies, experience and independence to collectively perform the roles and responsibilities of the Board, and that the Board adopt transparent recruitment processes. The Notes contemplate that such a process or policy will be adopted by the Board and set out criteria for hospitals to consider in developing such a process.
- Where a hospital chooses one of the alternative membership models, the Notes suggest that the hospital should include a process for conducting the election of Directors, and sets out two examples of election processes that hospitals may choose to adopt.
- The By-law provides that Directors shall be elected and shall retire in rotation as set out in the By-law, and shall be elected for a term of three (3) years, provided that each such Director shall hold office until the earlier of the date on which their office is vacated or until the end of the meeting when his or her successor is elected or appointed.
- The By-law contemplates a maximum term for Directors of six (6) consecutive years (excluding partial terms). The Notes also provide that service as a Director prior to coming into force of the By-law, and the service of the current Board where the Board is transitioning to new maximum terms, should be included in the calculation of the maximum term. Where a longer term is desired, the Notes suggest that reference should be made to the OHA's *Guide to Good Governance* for the factors to consider in determining the length of office.
- With respect to Board meetings, the requirement for the Board to have at least nine (9) meetings of the Board annually has been removed and replaced with language that provides that the Board shall meet at times and in such places as determined by the Board, the Chair, a Vice Chair or the CEO.
- The By-law provides that a Director, who is in any way, directly or indirectly, interested in a contract or proposed contract, must leave the room during the discussion and vote. The Notes set out rationale for this change and suggest that while not required by the *Corporations Act*,

the inclusion of this language is intended to avoid any appearance of undue influence. The Notes also suggest that the provisions of the By-law with respect to conflict of interest should be supplemented with a Conflict of Interest Policy (as set out in the *Guide to Good Governance*).

- The By-law provides that the Chair of the Board shall be elected annually for one (1) year terms with a maximum of two (2) consecutive years. The term of the Chair may be extended by two-thirds (2/3) resolution of the Board provided that the Chair may service no longer than four (4) years. The Notes set out the rationale for these time frames.

Board Committees - (Article 8 of the By-law)

- The By-law sets out general provisions for the Board to establish Committees from time to time, and to determine the duties of such Committees, without identifying specific Committees that should be established. The Notes suggest that the Board may want to include Committee Terms of Reference as set out in the *Guide to Good Governance*.
- The By-law provides that the Committees of the Board shall be Standing Committees, being those Committees whose duties are normally continuous, and Special Committees, being those Committees appointed for specific duties whose mandate shall expire with the completion of the tasks assigned.
- The By-law provides that the functions, duties, responsibilities and powers of Committees shall be provided in the resolution of the Board by which such Committee is established or in terms of reference adopted by the Board.
- Unless otherwise provided by by-law or by Board resolution, the By-law suggests that the Board shall appoint the members of the Committee, the Chair of the Committee and, if desirable, the Vice Chair.