

Trustee Insights

PRACTICAL GOVERNANCE



Is It Time to Refresh Your Bylaws?

Up-to-date bylaws can support oversight and help to confront challenges

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A legally mandated instrument that functions as a high-level rulebook for governance, an organization's bylaws help ensure adherence to its mission and proper stewardship of its assets and resources on behalf of those the organization serves. The bylaws are often a staple of board orientation and should be reviewed periodically as part of the board's oversight responsibilities. However, the question "What constitutes an effective set of bylaws?" is

Board Infrastructure

likely one few boards contemplate.

Some boards view the bylaws as simply a reference document that lawyers tweak when changes in organizational structure or function warrant. However, up-to-date, clearly written and concisely constructed bylaws can deliver much more. At their best, effective bylaws ground the organization in its past, support oversight of current performance to ensure ongoing viability, and enable an organization to nimbly confront challenges that must be addressed to sustain it.

TRUSTEE TALKING POINTS

- An organization's bylaws help ensure proper stewardship of its assets and resources.
- At their best, bylaws ground the organization and support oversight of current performance.
- Effective bylaws also allow the organization to adapt flexibly to changing circumstances.
- The bylaws should be reviewed periodically as part of the board's oversight responsibilities.

General Considerations

Effective bylaws share the following characteristics:

Bylaws should enable rather than constrain. By refraining from including too many parameters and details, a good set of bylaws acts as a guide that allows an organization to adapt flexibly to changing circumstances. For example, rather than specifying a wide range of board committees, the bylaws could identify a small number of standing committees and allow boards to establish and sunset other committees as needed. And rather than spelling out in great detail the different ways in which proper notice of board meetings could be given, the bylaws could state the minimum notice provisions under applicable law and permit the board to ensure that a proper notice process is followed. In this way, the bylaws provide high-level guidance but stay silent on the details, allowing local organizations to conduct their work with some level of flexibility within the bylaws framework.

Flexibility and nimbleness are principles that should guide bylaws construction while ensuring adherence to the organization's mission. However, multi-organization entities, such as complex health systems, often are well served by creating some level of consistency among processes used across subsidiary organizations and boards to reduce wide-ranging variation organization-wide.

Bylaws should eliminate confusion. Effective bylaws should be clear about relative duties and accountabilities. In the case of not-for-profit

health systems, for instance, the bylaws should clearly state the powers and duties that belong to the member (such as a religious order that sponsors the system) and those that belong to the board. The same distinctions should be clear between the shareholders and the board in for-profit organizations. In all cases, the bylaws should clearly state the roles and responsibilities of the CEO and to whom the CEO is accountable. Clearly defining relative duties and accountabilities in the bylaws reduces ambiguity and the friction that can result from it.

Typical Features

While most state statutes do not spell out the entirety of what an organization's bylaws must include, and while bylaws requirements may vary among states, a good set of bylaws typically addresses:

- **The organization's mission and values.**
- **Powers reserved to the member(s) or shareholders and to other organizational entities.** Particularly in complex systems, it is important that reserved powers are consistent across entities within the same organizational tier and that it is clear which actions require prior approval from another entity. For example, the bylaws might state that hospitals cannot borrow more than a certain amount of money, or merge into another entity, or create a significant joint venture with shared ownership of another entity, without the approval of the regional corporation. Similarly, the bylaws might state that a regional corporation cannot do any of these things without approval from the system

corporation. Many organizations support consistency and clarity of accountability for decision making by establishing an authority matrix that specifies the decisions that can be made at various levels of governance and by management.

- **Criteria for board composition,** such as stating that the board should include diverse members with the competencies needed for effective governance of specific organizations or entities. Broadly stating this requirement recognizes, for example, that competencies may be different for governing a health system versus a hospital. Providing a broader framework that stops short of delineating specific competencies for each board allows local entities to consider the competencies most needed on their boards and to modify them as necessary.

- **The protections provided to board members and key employees in the event that they are sued.** These protections should include indemnification of directors and officers against liability, funded in whole or in part by insurance.

Bylaws also typically address the number and frequency of regularly held board meetings. For example, a health system's bylaws may state that the system board will meet four to six times a year in person and by telephone as needed. The bylaws also might specify the purposes for holding board meetings, such as ensuring that the organization's financial resources and other assets are being deployed appropriately and protected, ensuring that decision making is data driven and considers stakeholder input, and ensuring that strategic issues are addressed in ways that protect and

sustain the organization's vitality and ability to meet its mission.

Bylaws Review

In order to ensure that the bylaws remain current and relevant, the board should review them at least every three to four years. It is considered a best practice for the board's Governance Committee to conduct the initial review and bring recommendations about any changes that may be necessary to the full board for approval.

A good set of bylaws should drive creation of policies that describe in detail how governance practices are conducted. While the board's Governance Committee might coordinate an overall review of policies annually, each board committee should be assigned review of those policies most relevant to its areas of oversight. For example, the board's Governance Committee might review policies

TRUSTEE TAKEAWAYS

- A good set of bylaws should drive creation of policies that describe in detail how governance practices are conducted.
- The board should review the bylaws at least every three to four years to make sure they are up to date and relevant.
- The Governance Committee should conduct the initial review and bring recommendations to the full board for approval.
- Boards may benefit from an outside review of their bylaws to provide perspective about current best practice.

related to conflicts of interest and confidentiality of board deliberations, while the Quality Committee might review policies relating to oversight of the organization's

quality and safety plan and results of patient satisfaction surveys.

Some organizations struggle with ensuring that their bylaws remain up to date. They may lack the appetite to tackle bylaws review and revision on a regular basis, or they may lack the resources to ensure their bylaws create the right alignment among organizational entities. When these obstacles occur, health care organizations and their boards may benefit from an outside review of their bylaws to provide perspective about current best practice and how similar organizations are addressing these challenges.

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