

Service Provision

Compliance Program

Certification

Risk Management

Health and Safety

# Overview of RESPONSIBILITIES

Board Performance

for Board Members of Non-Profit Agencies

Fiscal Issues

Financial Management

Information and Communication

Staff Relations

Risk Assessment



Protection

Monitoring

Relationships

Control Environment

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This loss control brochure is offered with the hope that readers will benefit from it and take adequate steps to avoid conditions that may result in loss. It does not intend to be a complete discussion of the subject, nor do we guarantee that compliance with its suggestions will assure the absolute safety of persons and property.





### Areas of Board leadership and involvement:

- Board members must keep themselves informed and educated on the services provided by their agencies and the status of certification.
- Although boards seem to closely monitor the fiscal status of the agencies they oversee (at least as indicated in board minutes), they also need to pay the same attention to service delivery. Boards of directors in general should have more of a presence at agency service delivery sites. Members should be updated periodically on the status of service provision, certification and other operational aspects of the agency. It would also be worthwhile for board members to occasionally visit service delivery sites, unannounced, as well as, announced.
- Board members need to be well informed of their legal responsibility for the agency and the current service delivery philosophy in the broad sense. Boards should educate themselves about these issues at least in a general way, and very specifically be aware of their legal responsibilities.
- Boards should educate themselves about the state regulations on "Reportable Incidents, Serious Reportable Incidents, and Abuse," as well as requirements that apply to all boards of directors so that they can respond accordingly.
- Boards should enlighten themselves, at least in a general way, about regulatory expectations of service delivery. This does not mean that they should know the specifics of each regulation, but should rather be aware of their existence and general content.
- Boards should develop written agency policies and procedures relative to evaluating the quality and scope of the agency's services, the goals and objectives of such services and an evaluation plan by which the agency itself assesses the quality of services it delivers.



## Glossary of Terms

### **Primary Insurance**

The insurance policy or coverage that applies first in the loss situation.

### **Tort**

A legal wrong, other than breach of contract, which is civil, rather than criminal in nature. Two major categories of torts are negligence and intentional torts.

### **Volunteer**

A person who performs a service of his or her own free will without compensation.

### **Wanton**

Heedless, malicious; extreme recklessness in regard to rights of others.

## Quality of Care

### **Service Provision**

- Conduct announced and unannounced site visits to service delivery sites.
- Review reports from the executive director.
- Participate in selected agency functions.
- Review the results of consumer feedback mechanisms.
- Participate in committees related to service delivery and consumer protection.

### **Certification**

- Review reports from the executive director and ensure correction of all identified deficiencies.
- Review reports from external review bodies.

### **Protection**

- Review incident trend reports.
- At least one board member should participate on the agency incident review committee/quality assurance and enhancement committee.

### **Health and Safety**

- Ensure provision of adequate protection of each person's health, safety, comfort, and well-being.

### **Board Performance Areas - QA/I**

- Receive regular reports from the executive director and managers of all reviews done by external review bodies.
- Ensure that there is a satisfactory incident review and management process in place for all types of programs and services delivered by the agency, and that the board has been informed of all major incidents.
- Develop and/or participate in standing committees to address specific areas of board responsibility, concern or interest and have such committees address issues in a responsible and effective manner.

## Financial Management

### Fiscal Issues

- Review and approve annual budget.
- Monitor agency's financial status.
- Review audit information and plans of correction for all audit findings and recommendations.
- Develop procedures for dealing with fiscal irregularities and problems.
- Object to transactions that seem improper.

### Board Performance Areas - Fiscal

- Development of a fiscal management policy that provides for board oversight and approval of an annual budget, procedures for fund raising, procedures for annual monitoring of the agency's fiscal status, annual outside fiscal audits by recognized CPA firms to be closely scrutinized by the board (especially recommendations in the management letter), and procedures for timely dealing with any fiscal irregularities and problems.

## Human Resource Management

### Relationship to Executive Director

Establish employment contracts with annual performance programs.

- Evaluate director's performance annually.
- Establish salary and fringe benefits.
- Boards should themselves recruit new members and not rely on executive directors to suggest new board members.

### Staff Relations

- Staff members must implement policies adopted by the board.
- Boards should review issues through reports from the executive director.
- Boards should participate in employee recognition events and work life enhancement efforts.
- Boards should review exit interviews.

## Glossary of Terms

### Gross Negligence

A higher degree of negligence; for example when one acts in a reckless, wanton or malicious manner, unconcerned about the consequences. A degree of carelessness greater than negligence but not rising to the level of deliberate wrongdoing.

### Hold Harmless (Indemnification Clause)

A contractual agreement where by one party agrees to pay the cost of claims against another (assumes the liability of another, thus releasing the other party from responsibility.)

### Immunity

Freedom from legal liability or responsibility for wrongs committed.

### Intentional Torts

A category of deliberate wrongdoing that includes actions such as assault, battery, false imprisonment, slander and defamation of character.

### Liability

Responsibility for wrongs committed.

### Malice

An improper motivation that implies evil intent, which may be inferred from the intentional commission of a wrongful act.

### Negligence

Unintentional failure to exercise the care that a prudent or reasonable person usually exercises.

### Non-Exempt

Not included from or released from a rule or organization.

### Plaintiff

The alleged injured party who complains or sues.

## Glossary of Terms

While an attempt has been made to use non-legal, standard English throughout this publication, some technical terms had to be used. When used in this publication, these terms have the following meaning.

### **Charitable Organization**

An organization organized and operated exclusively for benevolent, educational, philanthropic, humane, patriotic, or religious purposes; an organization exempt from taxation under the Internal Revenue Code.

### **De Facto**

In fact; actual; in reality.

### **Defendant**

The one who the plaintiff claims should pay the expenses caused by the injury.

### **Exclusion**

In an insurance policy, that section which deletes or defines what is not covered.

### **Exempt**

Freedom from or released from an obligation.

### **Fair Labor Standards Act**

Federal statute regulating employees' wages and hours. In general, FLSA applies to non-supervisory employees in public and private settings. All employees covered by the FLSA must be paid a fair wage for all hours worked in accordance with applicable Federal labor law.

### **Fiduciary**

A person obligated to act in the best interest of another; a person or entity designated to hold something, usually money, in the trust of another, including acting for another's benefit in such matters.

## Board Performance Areas - Program

- Establishment and revision, as appropriate, of a plan of organization that clearly specifies lines of accountability, the nature and extent of professional responsibility, and the relationship between the executive director and the board of directors. There must be some evidence of ongoing and effective communication between the board and the executive director.
- Development of an agency mission and vision statement that relate agency services (at least to the service system purposes) to the consumer valued outcomes of individuality, inclusion, independence and productivity. Operating principles and other program goals should be consistent with the agency's mission statement and corporate purposes.
- Establishment of clear and understandable performance criteria for the executive director, seeing to it that he/she is regularly and objectively reviewed against such criteria as well as given both positive and negative feedback as to areas of performance and needed improvement in accordance with a signed written employment contract.



## Reimbursement, Compliance and Limited Fiscal Review

### What Board Members, Officers & Executive Directors need to know...

This section provides information in relation to strategies and procedures on how to **"bulletproof"** your agency from non-compliance with Medicaid Regulations. The key element in protecting your agency is in the implementation of the COSO and SOX principles of internal control, reporting and monitoring. In addition, it is important to develop a corporate compliance review program.

Under Sarbanes-Oxley ("SOX") the board of directors and executive management are required to base their assessment on a suitable, recognized control framework. In the United States, the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") published "Internal Control-Integrated Framework," which is used in virtually all cases and is the standard of best practices.

Internal Control is a process, affected by the board of directors, executive management and other personnel, designed to provide reasonable assurance regarding the achievement of the following objectives: effectiveness and efficiency of operations, the reliability of financial reporting, including the CFR and compliance with applicable laws and regulations. The best-laid plans can often be circumvented. Therefore, monitoring becomes essential, hence internal audit procedures.

## Case Studies

### Case Study 1

Mr. Jones is filing a wrongful termination suit against his employer. He was terminated for insubordination and general lack of Job performance. It is also discovered that Mr. Jones had previously verbally abused a client. An arbitration hearing has been scheduled to decide reinstatement of his employment and any back pay that may be owed. Although this case appears to be valued at \$50,000, wrongful termination on claims have been known to exceed \$500,000.

### Case Study 2

Sunny files a charge against his employer, alleging that he was injured by a consumer of the agency, necessitating treatment at a hospital with subsequent follow up treatment. Although a Workers' Compensation claim was filed, Sunny contends that he received calls demanding that he return to work. He has been photographed and visited by Workers' Compensation reps, who have denied reimbursement for transportation and out-of-pocket expenses. Now, Sunny, a Black American alleges that White Americans, who have been similarly injured have not been subject to the same treatment he has been. He is now charging his employer with discrimination based on race, disability and national origin.

## An Example of the Risk Management Alternatives

An example of pure risk exposure may help clarify how these alternatives can be used.

A charitable organization may keep cash in a petty cash drawer in its office. In such a case, the financial asset is exposed to numerous loss exposures, including loss by fire, misappropriation by employees or theft by a burglar. The organization can use any of the five risk management alternatives it deems best to handle this exposure:

1. The organization could decide that the risk of loss is greater than the benefit of the petty cash readily available and end the practice of keeping the money on hand. This is the use of Risk Avoidance.
2. The organization could decide that the loss of this money would not cause any financial discomfort and decide to do nothing. In other words, it accepts or retains the risk.
3. Organization officials could transfer the risk to another party by amending their insurance policy to include protection of this asset in the event of fire, employee fraud or criminal activity. The risk now is transferred to the insurance company.
4. The organization could decide that it only needs to maintain \$25 in petty cash. While the exposure still exists, it is much lower now.
5. Further, the organization could decide to place the money in a locked fire-proof safe.

## Key Elements of Internal Control

### Control Environment

Sets the tone from the top, the foundation principles for all operations and for directors and its key committees. (Audit Committee provides discipline and structure, as it flows from the oversight of the board, compliance committee, etc.).

It defines the integrity, ethical values and standards of competency of staff. It is the management philosophy and operating style. It is the example provided by the board of directors.

### Risk Assessment

First we need to define an objective, for example, filing an accurate and timely budget/cost report. Once we have identified the objective, then we analyze the risks relevant to meeting that objective. The Risk Analysis is the basis upon which determinations are made on how risks are managed and mitigated.

### Control Activities

These are the policies and procedures that help ensure that the board of directors and executive management's directives are carried out. It helps ensure that all necessary actions are taken to minimize and address the risks to the achievement of the agency's objectives. These include activities such as approvals, authorizations, verifications, reconciliations, reviews of operating performance, security of assets and segregation of duties.

### Information and Communication

Captures and communicates pertinent information that makes it possible to run and control the operations of the agency. It produces reports containing operational, financial and compliance information as it deals with information necessary to make informed business decisions and provide accurate external reporting, Financial Statements, Annual Report of Operations, IRS and Charities filings, and the Budget.

## Monitoring

Assesses the quality of the internal control system's performance over time as it occurs in the natural course of business. It includes regular board of directors and executive management's supervisory activities and reviews the results of the internal audit activities.

## Corporate Compliance Program

Developing a Corporate Compliance Program for an agency is based in part on public information, rules and regulations, which are then tailored to the specific facts and circumstances that exist at each individual agency. While these general guidelines are substantial they can only serve as a starting point for a true corporate compliance program. A corporate compliance program has less to do with paperwork and more to do with an attitude or an environment to be created or enhanced at an agency.

So in that spirit this document serves as only a starting point for the customization of your agency's own unique corporate compliance program. Through this baseline document we can set forth our general views on the value and fundamental principles of compliance programs and the specific elements that agencies should consider when developing and implementing effective compliance programs.

## The board's position enables it to protect a nonprofit against potential risks by:

- Establishing long-term goals and short-term objectives for the nonprofit's program initiatives, board and staff;
- Measuring performance against established goals and objectives;
- Approving an action plan to meet the organization's goals and objectives, and delegating responsibility for plan implementation to the nonprofit's chief executive;
- Monitoring the plan's implementation;
- Ensuring the availability and proper use of funds to support administrative and program activities through active participation in fundraising programs and the development and monitoring of financial management and fundraising policies; and
- Directing necessary changes in focus and monitoring the impact of these changes.

The board of a nonprofit can contribute significantly to managing risk by paying close attention to the areas most likely to result in losses. Suggested practices are outlined below:

1. Careful selection of the Chief Executive Officer.
2. Oversight of employment practices.
3. Oversight of financial management and fundraising policies.
4. Assessment and understanding of Directors' and Officers' (D&O) coverage.
5. Adoption of good procedures, regularly followed and periodically reviewed.

## Board of Directors' Role in Managing Risk

The primary responsibility of a nonprofit board of directors is to guide the organization in accomplishing its mission. In fulfilling this obligation, the board has a legal duty to use the organization's assets prudently. The assets of a nonprofit vary, but generally fall within one or all of the following categories: people, property, income, and goodwill. The board's oversight role empowers it to exercise tremendous influence in ensuring that the organization protects and uses its core assets solely to further the goals of the organization.

To discharge its important responsibility for insuring the health of a nonprofit, an effective board provides leadership and direction for an agency's overall risk management program. The board should pay close attention to the risks inherent in its governance activities.

When the board takes the lead in protecting the organization's assets, it supports the organization's operation. A successful organization helps to ensure the agency's positive impact on the community for many years to come. The principal risk management goals for most nonprofits are:

- Protecting clients, staff, volunteers, and the public from harm.
- Conserving the agency's assets for its community-serving mission.
- Ensuring that resources are available to compensate individuals harmed by the organization's activities.

## Components of an Effective Compliance Program

This starting point for the customization of your agency's own unique corporate compliance program provides guidance and contains key elements fundamental to an effective compliance program. Key components that provide a solid basis upon which an agency can create a voluntary compliance program include:

- Internal monitoring and auditing
- Written standard procedures
- Designation of a compliance officer or contact
- Appropriate training and education
- Appropriate responses to detected offenses followed by corrective actions.
- Open lines of communication; and
- The enforcement of disciplinary standards through well-publicized guidelines.

To borrow the elements of Winston Churchill's self-proclaimed finest speech, which consisted of only six words, "Internal Controls, Internal Controls, Internal Controls," we cannot over-emphasize the importance of the managerial control function.

### Fiscal Tips

- Make sure the billing department is not on auto-pilot.
- Conduct internal billing audits.
- Provide staff training on falsely reporting services.
- Keep all Medicaid documentation for at least seven years (or longer depending on state regulations).
- Assess your internal audit process.

## Sarbanes-Oxley and Corporate Compliance

### "The Seven Steps"

Whistle blower policy	1. Established compliance standards and procedures - Should be industry specific - Should be proactive/not reactive
Document retention policy	
Other suggested actions...	2. Oversight - High-level personnel - Written compliance plan
Regular financial statements in accordance with GAAP	3. Personnel issues - Background checks - Personnel evaluations
Conflict of Interest policy (annually signed by board members)	4. Communication - Code of conduct - Sarbanes-Oxley requirements - Training and education
Timely filings of 990s (minimize requests for extensions)	5. Achieving compliance - Auditing and monitoring - System to report violations - Whistle blower/non-retaliation
Audit committee (composed of at least three volunteers-one of whom is a "financial expert")	6. Discipline - Defined disciplinary system - Evenhandedness of discipline - Consequences of failure to report
Financial statements reviewed by the board and audit committee at least quarterly	7. Reporting violations and self-improvement - Can investigate/must report - Learn from "near misses," - Modify program
Audit committee to review complaints, allegations, on going investigations, and report results to board.	

## Risk Management

Risk management is a systemic approach to minimizing loss potential, driven by the organization's mission, with a strategic focus that is intended to ensure quality outcomes. Risk is the chance of personal or financial loss. All entities - from large profit-making organizations to small charitable organizations and individual volunteers - are exposed to risk and must therefore make risk management decisions.

The goal of risk management is to forecast and then to take steps to alleviate the effects of potential losses. These steps include:

1. Identification of exposure areas;
2. Evaluation of the impact of potential loss to the agency;
3. Selection of the appropriate alternatives to deal with potential exposures;
4. Implementation of the program; and
5. Monitor results and change within the agency.

The organization should establish a risk management committee that includes at least one board member and should have a written policy and plan. The plan should rely on a systemic approach to minimizing loss potential, and should be driven by the organization's vision, with a strategic focus that is intended to ensure Quality Outcomes.

Risk management alternatives include the following:

- Risk Avoidance - situations that involve a high chance of loss combined with a high-anticipated cost.
- Risk Acceptance - also referred to as retention, used where the cost of transferring the risk is higher than the potential cost of the risk itself.
- Risk Transfer - generally includes the purchase of insurance. While risk transfer is the cornerstone of the risk management program, it is almost always used in combination with other alternatives.
- Risk Reduction - a program designed to minimize the magnitude of a loss (e.g., installation of hand rails or implementing a driver-training program).
- Risk Prevention - a program that removes circumstances that can cause losses.

*Note: Risk Retention and Risk Prevention are typically safety functions.*