

# Puget Sound BUSINESS JOURNAL

JULY 24-30, 2009

## *Hospital boards growing role*

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PUGET SOUND BUSINESS JOURNAL

**T**he core mission of a hospital is to provide quality care to its patients. Quality care, however, is not always easy either to measure. Hospital boards have traditionally relied upon medical staff and administration to provide the information necessary for the board to exercise its oversight.

This is logical, given that board members are often community representatives who may know little about health care delivery. Despite this reality, change may be on the horizon. Recent developments suggest that hospital boards may increasingly be asked to play a greater role in the oversight of quality.

Over the past few years, the government has brought several cases against hospitals and individual managers either for failures of quality of care or for not adequately monitoring the quality or necessity of the care provided. Individual board members have not been held liable in these cases but the rhetoric of the enforcement authorities suggests that the government may be looking for the right case.

The Medicaid Inspector General for New York recently released a work plan indicating that if a board of directors knows, or should know, that its or-

ganization is delivering substandard care and fails to act, then the institution may be liable for "quality of care fraud" and its board members, individually, may be liable for breaching their fiduciary duties.

The rise of pay-for-performance programs and financial implications of so-called "never events" are two examples of quality metrics being used to determine hospital reimbursement.

"Never events" are mistakes that should never happen, such as operating on the wrong body part or leaving a foreign object inside a patient during surgery. The federal government and many private payors no longer pay hospitals for the services associated with never events.

Pay-for-performance programs are premised on the principle that those providers who deliver better care should be paid more and those whose outcomes are not up to standard should be penalized. The government has started implementing selected pay-for-performance measures and the health care reform legislation pending in Congress would expand the application of these concepts.

### LEGAL CHECKUP



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So where does all this leave the hospital board? Current demands for improved quality of care by federal and state governments, consumers, insurance underwriters, payors and other constituents will lead to increased regulatory scrutiny and changes in reimbursement based on quality metrics.

Hospital boards should consider whether any of the following measures might be useful:

- Development of quality of care protocols and implementation of mechanisms for evaluating compliance with the protocols;

- Assessment of the processes for credentialing and privileging of providers in the institution to determine their efficacy;

- Development of accurate quality and safety information reports in a dashboard or other understandable format.

The role of the hospital board and the responsibility of individual directors will not change overnight. Industry trends suggest, however, that boards should be moving toward playing a more active role.

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