

Guidance for Directors of Nonprofit Organizations

The following is intended to help directors understand their responsibility as stewards for their organizations. Generally, directors are responsible for the overarching governance of the affairs of the organization. This does not mean that directors should manage the day-to-day activities of the organization or supplant the role of the executive director. It means that directors should assign responsibility to the proper officers so that these officers can carry out the daily tasks of running the organization. Directors have fiduciary duties of care, loyalty and obedience to the law. Directors of nonprofit organizations must discharge their duties in good faith, in a manner the director reasonably believes to be in the best interests of the organization, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

To Exercise the Proper Duty of Care:

1. Active Participation. A director must actively participate in the governance of the organization including attending meetings of the board, evaluating management reports, reading minutes, reviewing the performance and compensation of the Executive Director and so on. Persons who do not have the time to participate as required should not agree to be on the board.

2. Committees. Directors may establish committees having the authority of the board and may rely on information, opinions or reports of these committees. Committees operate subject to the direction and control of the board. As a result, directors are still responsible for the committees. Committee work that results in the recommendation to take a formal action requires the board to do so in a full open meeting.

3. Board Actions. A director who is present at a meeting when an action is approved by the entire board is presumed to have agreed to the action. A director that chooses not to attend a meeting with advance notice is presumed to have agreed with the actions taken at the meeting. The board may act upon the affirmative vote of the majority of the members present at a meeting at which a quorum (5 voting members) is present. Presence at board meetings are required to vote on issues coming before the board and proxy voting is not allowed.

4. Minutes of Meetings. Written minutes should be taken at every board and committee meeting. The minutes should accurately reflect board discussions as well as actions taken at meetings.

5. Books and Records. A director should have general knowledge of the books and records of the organization as well as its general operation. The organization's organizational and governing documents, accounting records, and minutes should be made available to directors who wish to inspect them for a proper purpose.

6. Accurate Record Keeping. A director should not only be familiar with the content of the books and records, but should also assure that the organization's records and accounts are

accurate. This may mean the director must take steps to require regular audits by an independent certified public accountant. At the very least, the director should be aware of what the financial records disclose and take appropriate action to make sure there are proper internal controls.

Traditionally, directors have an absolute duty of complete, undivided loyalty to the organization. This means that directors should avoid using their position or the organization's assets in a way which would result in pecuniary or monetary gain for them or for any member of their family. A director should put the good of the organization first and avoid engaging in transactions with the organization from which the director will benefit.

To Exercise the Duty of Loyalty:

1. Conflicts of Interest. Directors should annually review and execute the written conflict of interest policies and disclosures. A conflict of interest is not limited to a pecuniary interest in a matter or transaction related to the operation of the organization. The duty of loyalty generally requires that a director place the interests of the organization over other interests whether personal or professional in the achievement of the mission and purpose of the organization. Each director is responsible for "serving in the public interest of the individual and small businesses seeking health coverage" and "ensuring the operational well-being and fiscal solvency" of the organization.

2. Business Opportunity. Directors of corporations are under a fiduciary obligation not to divert a business opportunity for their personal gain. A director of a nonprofit organization is also subject to this duty. This duty means that a director may not engage in or benefit from a business opportunity that is available to and suitable for the organization unless the organization decides not to engage in the business opportunity and conflict of interest procedures are followed.

Directors have a duty to follow the organization's governing and organizational documents to carry out the organization's mission and to assure that funds are used for lawful purposes. Also, directors must comply with state and federal laws that relate to the organization and the way in which it conducts its business.

To Exercise The Duty of Obedience:

1. State and Federal Statutes. Directors should be familiar with state and federal statutes and laws relating the operation of the organization. However, directors may rely on information supplied by subject matter experts with respect to applicability and compliance issues.

2. Reporting. Directors should take measures to ensure the organization is complying with its obligations under state and federal laws from both an operational perspective and any applicable regulatory perspective. Receiving regular reports and understanding the type and nature of reporting obligations assist directors in meeting the duty of obedience. Directors may

rely on reports and other information provided when acting in good faith based upon the information received with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

3. Governing Documents. Directors should be familiar with their organization’s organizational and governing documents and should follow them. Directors should be sure proper notice is given for meetings, that regular meetings are held, and that the organization’s mission and stated purpose is being accomplished.

4. Outside Help. Where appropriate, directors should obtain the advice and assistance of subject matter experts to provide information and assist directors in meeting their obligations to the organization.

Connect for Health Colorado’s Board of Directors

C4HCO’s Board of Directors, as a governing Board, has ultimate responsibility for oversight and internal and external organizational compliance, oversight and monitoring to foster accountability and transparency in the operation of the marketplace and to increase access, affordability, and choice for individuals and small employers purchasing health insurance in Colorado. C4HCO’s enabling legislation provides that it is created as a nonprofit unincorporated public entity governed by the Board of Directors as an instrumentality of Colorado, except that the debts and liabilities of C4HCO do not constitute the debts and liabilities of the state and neither C4HCO nor the Board is an agency of the state. C4HCO’s enabling legislation further establishes broad authority oversight responsibilities and tasks to its Board, including, but not limited to:

- Responsibility for appointing a Chief Executive Officer/Executive Director;
- Considering operational and organizational structure;
- Receiving and reviewing financial information;
- Review of operating and financial plans;
- Providing annual reporting to government representatives;
- Assessing affordability and the cost of health insurance in relation to quality of care and access for all Coloradoans; and
- Creating and working with advisory groups.

The Board of Directors utilizes various performance measures and benchmarks to evaluate the operation of C4HCO, including:

- On-going and periodic review of metrics reflecting marketplace activity, including:
 - Enrollment information;
 - Consumer/customer account activity;
 - Assistance channel usage;
 - Consumer/customer interface through on-line and telephone communications;
 - Technical performance of information management systems; and

- Conflict resolution and appeals information.
- Leaderships' assessment of qualitative and quantitative risk exposures facing C4HCO across a spectrum of market and operational activities.

C4HCO's Board has established a Committee structure to assist in oversight and monitoring functions. Currently standing Board Committees are listed below. Examples of the individual committee function are provided, but the scope and nature of any one committee's scope of authority is within the discretion of the Board and its direction to the committee. Further, Board committees may be altered or added to as needs require. The Board may create ad hoc groups to provide advice and assist in specialized areas of expertise with such membership, procedures, and responsibilities as are established by the Board. C4HCO Board committees are authored to enter into executive session subject to the requirements of law that apply to the Board as a whole.

- Board Finance Committee – review of financial and audit reports; sustainability approaches; broker and producer remuneration.
- Board Operations Committee – technology and operational issues; verification and validation procedures; conflict resolution and appeals processes.
- Board Policy & Regulations Committee – state and federal policy and regulation issues.
- Board Executive Committee – input to management with respect to management and oversight of a state-based marketplace.

C4HCO's Board established and receives input from advisory and stakeholder groups with regard to the operation of the marketplace. Standing Board Advisory Groups are:

- Health Plan Advisory Group;
- Individual Experience Advisory Group;
- SHOP (employer group) Advisory Group; and
- Outreach and Communications Advisory Group.

One of the intended purposes of the various Advisory Groups is to provide subject matter input which can then be translated into oversight and compliance policies and procedures implemented by C4HCO.