

# CEO Evaluation/Compensation

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October 4, 2018

## Health Center Compliance Manual: Chapter 19 Requirements Regarding: Evaluation of the CEO

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- The health center's board minutes and other relevant documents confirm that the board exercises, without restriction, the following authorities and functions:

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- Approving the selection, evaluation and, if necessary, the dismissal or termination of the Project Director/CEO from the Health Center Program project.
- HRSA recognizes that health centers have discretion with respect to how often the Project Director/CEO performance is evaluated.

# SITE VISIT PROTOCOL

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- The Site Visit Protocol requires reviewers to review the health center's articles of incorporation, bylaws, and other relevant documents to confirm that such document(s) outline the required authorities of the Board, including the responsibility for approving the selection (and termination or dismissal, as appropriate) of the health center's Project Director/CEO.

# SITE VISIT PROTOCOL, CONT'D

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- In addition, the reviewers will evaluate the health center board minutes and other relevant documents (including the most recent CEO evaluation documentation, position description, and employment agreement) to confirm that the board exercises, without restriction, the following authorities and functions:

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- Approving the selection, evaluation and if necessary, the dismissal or termination of the Project Director/CEO from the health center project.

# KEY ELEMENTS OF THE CEO EVALUATION

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1. Start with the CEO Job Description and Employment Contract (which should be consistent)
2. Create Evaluation Form
3. Identify core expectations
  - Communication with the Board and management team;
  - Putting into operation the Board policies;
  - Management of personnel and systems;
  - Allocation of resources and operation within available resources;
  - Identification and resolution of problems;
  - Interaction with the community and providers and payers in the marketplace;
  - Responding to opportunities;
  - Planning for future events
  - Carrying out Board-established long-term goals and operating agreements; and

# KEY ELEMENTS OF THE CEO EVALUATION, CONTINUED

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## 3. Identify core expectations, continued:

- Leading the health center management team in:
  - Working closely with the Board, community members and other providers and payers in the marketplace to provide leadership in shaping the health center's strategy;
  - Assessing progress and providing critical information to the Board for revising the health center's strategic direction; and
  - Directing the health center staff's development of the annual operating plan.

# CEO COMPENSATION

## SECTION 330 REGULATORY RESPONSIBILITY

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Health center regulations require Health Center boards to establish:

*... personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices ...*

42 CFR 51c.304(d)(3)(ii)

# INTERNAL REVENUE CODE

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- In general, health centers and other tax-exempt organizations may pay reasonable compensation for services provided
  - Reasonable compensation is determined by what comparable organizations pay to similarly qualified and experienced persons for comparable services, *e.g.*, salary comparability studies
  - All compensation received must be considered, *e.g.*, fringe benefits, life insurance, auto allowance, *etc.*



# INTERNAL REVENUE CODE

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- Intermediate Sanctions (IRC Section 4958; 26 CFR § 53.4958)
  - Section 4958 imposes a penalty tax on a disqualified person, *e.g.*, Board member, CEO, CFO, who engages in an excess benefit transaction with an organization exempt under IRC § 501(c)(3) or (4)
  - An excess benefit transaction is one in which the value of the benefit provided to the disqualified person exceeds the value of the consideration received by the organization

# INTERNAL REVENUE CODE

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- Intermediate Sanctions
  - Organization managers, *e.g.*, Board members, CEO, CFO, and persons with those duties, are liable for a 10% tax if they knowingly approve an excess benefit transaction
  - “First Bite” Rule
    - Section 4958 does not apply to the initial compensation agreement with a person who later becomes a disqualified person, as long as compensation is a fixed amount in the initial contract

# INTERNAL REVENUE CODE

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- Avoiding Section 4958 Penalty Tax
  - There is a rebuttable presumption that a compensation arrangement is reasonable if:
    - The compensation arrangement was approved by the Board (or a committee of the Board) composed *entirely* of individuals who do not have a conflict of interest with respect to the transaction
    - The Board obtained and relied upon appropriate data in determining compensation comparability
    - The Board adequately documented the basis of its compensation decision
    - An organization manager can rely on a reasoned, *written* opinion of legal counsel (after full disclosure of the facts) that a transaction is not an excess benefit transaction

# INTERNAL REVENUE CODE

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- Incentive Compensation
  - Total compensation (including incentives) must be reasonable
  - Incentives must promote the tax-exempt purposes of the organization
  - Incentives should be “capped” at a fixed amount to insure that the overall compensation paid is “reasonable”
  - Other laws, *e.g.*, Stark Law for physician incentive compensation, must be considered

# FEDERAL COST PRINCIPLES/LIMITATIONS

- Federal Grant Rules (45 C.F.R. Part 75, Subpart E) apply to federal grant funds received by a health center, *e.g.*, Section 330 funds, but does not apply to other revenue
  - Compensation is broadly defined to include salary and benefits
  - Compensation is an allowable cost to the extent that total compensation paid is *reasonable* for services rendered
- HHS appropriations rider caps level of employee salaries that can be charged to a HHS grant – applies only to salary portion of compensation package

# QUESTIONS?

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