



Compensation Insight

Top Ten Activities for the Board Compensation Committees of Nonprofit Hospitals and Health Systems in 2006

Review of recent developments leads us to recommend the following activities be completed in 2006:

1. **Review the executive compensation governance process.** Most importantly, ensure compliance with the requirements for the Rebuttable Presumption of Reasonableness, particularly related to approval body members with conflicts of interest. Review relevant executive compensation regulatory matters and best corporate governance practices. Identify areas within your organization that may require improvement.
2. **Understand all elements of the executive compensation program.** Ensure that all compensation components are fully disclosed to the Committee, including maximum cost of each compensation element. This is especially important for potentially high cost items like SERPs, deferred compensation, split dollar life insurance, loans, severance arrangements, tax gross-ups and maximum incentive awards.
3. **Provide enhanced disclosure to the full Board regarding executive compensation program design and decisions,** including the value and substance of programs provided to key executives. Regulatory agencies

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increasingly express the view that executive compensation cannot solely be the purview of a Board Committee. All Board members should have an understanding of the full content and value of the program.

4. **Address potential “image” issues related to executive compensation.** There is likely to be considerable media and regulatory focus on perceived “excessive benefits” that do not fully support a healthcare organization’s not-for-profit mission and charitable purpose. Review special or highly visible components (i.e., split dollar life insurance, loans, housing allowances, club memberships, first class travel, spouse travel and meetings at resort locations), and understand the associated risks (i.e., public and regulatory scrutiny, tax compliance).
5. **Prepare comprehensive executive compensation program documentation.** The IRS has announced that it will continue its “soft contact” examination program, which likely will target hundreds of nonprofits in 2006. These contacts typically request Compensation Committee minutes and consultant reports, and may request policies and procedures related to conflicts of interest and expense reimbursement.
6. **Review tax compliance issues.** Areas of focus include appropriate income reporting of the personal value of cell phone usage and computer usage, personal/use of employer-provided automobile, tax gross-ups and spouse/personal travel. In addition, ensure timely and accurate Form 990 reporting, given an increased IRS focus on these responses. If any excess benefit is found to exist, address and/or unwind the transaction promptly.
7. **Review the Government Accountability Office information request sent to selected health systems on executive compensation issues.** Ask your fellow Committee members if the organization would be comfortable if its answers regarding corporate governance, the rationale for executive compensation decision-making and overall regulatory compliance were published.
8. **Focus on the independence of consultants and executives in the executive compensation decision-making process.** Ensure consultants/advisers do not have conflicts and executives do not have an undue influence over the process and resulting recommendations.

9. **Examine the compensation-related responses on the revised Form 990 for 2005** (completed in 2006) and include footnotes and attachments as necessary to help explain “big ticket” items and place them in context.

spokesperson(s) (not the CEO or other key executives) should be identified and prepared for this role.

10. **Prepare for and proactively respond to media questions regarding executive compensation.** Prepare comprehensive public relations and communication strategies. Develop appropriate supporting materials (e.g., talking points, community benefit outcomes, description of oversight process, relevant Form 990 responses from peer organizations). A designated

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Since 1992, SullivanCotter's innovative yet practical compensation solutions have created tremendous value for the healthcare organizations it serves. In this capacity, SullivanCotter specializes in the development and implementation of strategic compensation and reward programs for its healthcare clients.

As a leader in healthcare executive, physician and employee compensation consulting, SullivanCotter has served many of the nation's leading and largest health systems, academic medical centers and community healthcare organizations, and has developed some of the top healthcare compensation surveys in the United States.

SullivanCotter strives to help our healthcare clients develop and implement creative, comprehensive and compliant compensation programs that bridge the needs of organizational stakeholders.

SullivanCotter has offices in Atlanta, Chicago, Dallas, Detroit, New York City, Parsippany, San Francisco and Westport.

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With an over 50-year history of serving the healthcare industry, McDermott Will & Emery has one of the United States' largest and most prestigious health law departments.

The American Lawyer rated the health law practice No. 1 in the United States in its most recent rankings. *Chambers USA: America's Leading Lawyers For Business, 2005 Client's Guide* ranked the health law practice in the top tier of all such practices nationwide.

McDermott Will & Emery provides advice on all aspects of executive compensation, including benefits, tax, securities, labor and litigation issues. Members of the Executive Compensation Group include former IRS officials who participated in many of the rulings and regulations impacting the executive compensation area and attorneys who have leadership positions within the bar.

McDermott Will & Emery's health lawyers are resident in the firm's Boston, Chicago, Los Angeles, Miami, New York City and Washington, D.C. offices.

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