

BACKGROUND

Governance Models

This background paper summarizes a variety of governance models that exist in the US and abroad.

Model 1 – Business Board of Directors

In business, governance is described as a “framework of rules and practices by which a board of directors ensures accountability, fairness, and transparency in a company's relationship with its stakeholders.”

In the non-profit sector, governance provides clear strategic direction; describes the leadership and management system; establishes ethical standards; oversees operations; reviews finances, investments and expenditures; and is conducted by knowledgeable, engaged individuals who possess relevant expertise.

Functions of a Governing Board

- Reviewing and guiding corporate strategy, major action plans, risk management policies and procedures, annual budgets & business plans
- Setting performance objectives
- Monitoring implementation and corporate performance
- Answering major capital expenditures, acquisitions and divestiture
- Selecting, compensating, monitoring CEO and conducting succession planning
- Aligning executive with long term interests of the company
- Ensuring financial accountability
- Oversee disclosures and communication strategy
- Operate independent of management

Model 2 – Federal Governance Board

One example of a federal governance board is the IRS Board of Directors. It has “overall responsibility for governance of the IRS ... accountable to the President and the American People, to provide the expertise and continuity to ensure that the IRS achieves its mission.” The board was intended to provide governance, not management, and was expected to have authority to do all of the following:

1. Review and approve IRS strategic and business plans and goals and measures relative to the plan
2. Review and approve the IRS recommendations regarding major operational and organizational plans (not limited to, modernizing technology; training; outsourcing; reorganizations)
3. Appoint the Commissioner to a five (5) year term and use flexible pay authorities to compensate the Commissioner competitively
4. Approve the appointment, evaluation and compensation of senior executives
5. Review and approve the budget request to the Department; and release the request independently to Congress
6. Review annual financial audits

7. Provide annual reports to President, Congress, and the American Public regarding the above matters.

The IRS governance board, established by Congress in 1998, produced an annual report and budget statement through 2014. Congress appointed members at its formation, but the Senate has not confirmed new members so, as of January 2015, the board suspended operations due to a lack of a quorum.

Model 3 – Quasi Government Structures

The Congressional Research Service (CRS) and GAO discuss several kinds of organizations, including the following:

- *Quasi-Official Agencies.* There is no official definition of this type of agency; they are defined by what they are not. They “are not executive agencies under the definition of Title 5 USC, Section 105 but are required by statute to publish certain information on their programs and activities in the *Federal Register*....” They exist “somewhere between government and the private sector,” thus “permitting considerable autonomy from regular lines of accountability to managerial agencies” and yet can “sometimes be highly political and subject to pressures not dissimilar to that encountered by regular executive agencies.” The Smithsonian Institution and the US Institute of Peace are examples.
- *Government Corporation.* “A federal government corporation is an agency of the federal government, established by Congress to perform a public purpose, which provides a market oriented product or service and is intended to produce revenue that meets or approximates its expenditures.” There are 17 such entities, including AMTRAK, USPS, Tennessee Valley Authority, and the Export-Import Bank.
- *Government Sponsored Enterprise.* There are no established standards for this entity. It is chartered by Congress, has the attributes described in its enabling legislation, and generally have four characteristics: private ownership, implicit federal guarantee of obligations, activities limited by Federal charter, and limited market competition. Examples include Fannie Mae (Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Mortgage Corporation.)
- *Federally Funded Research and Development Centers (FFRDCs).* These entities are government owned but privately operated, not governed by Title 5 or most management laws, although Federal Acquisition Regulations include specific governance requirements for FFRDCs. They are intended to be “expertise-based organizations that impartially oversee the use of federal funds to advance government purposes.” Examples include RAND and MITRE.
- *Agency related nonprofit organizations.* These organizations have a legal relationship with a federal department or agency but a wide range of characteristics. At VA, this includes a network of nonprofit corporations that are used to receive donations in support of research. Other research agencies use them similarly.

CRS notes that “the underlying attraction of the quasi-government organizational option can be traced to the innate desire of organizational leadership ... to seek maximum autonomy in matters of policy and operations.”

GAO notes that these various Congressionally chartered entities have unique legal authority that allow them to solicit and accept private funds, to hire outside of Title 5, and make procurements not subject to the Federal Acquisitions Regulations. They may or may not be subject to federal laws such as copyright law or federal tort law. Most have boards that are intended to provide “valuable expertise” and also may act as a buffer against political officials aligned to the President.

CRS warns that appointed board positions can be viewed as rewards for patronage and may not garner the intended expertise. CRS and GAO also found that these entities have no systematic oversight either at OMB or by Congress. Moreover, because many are exempt from usual budgetary procedures and reporting, there is less transparency into their operations. CRS asks whether taxpayer funds should always require government oversight and management. Note: compared to most examples of quasi-governmental organizations, VHA current appropriation far exceeds all quasi-government entities and dwarfs these organizations in size and scope. (See Table attached below). CRS also asks whether government oversight by Congress helps to protect citizens against arbitrary government action. Congress often exercises a very high level of oversight and intervention on behalf of individual veterans in their interactions with VA.

Model 4 – Medicare Payment Advisory Commission (MedPAC)

MedPAC is a small, nonpartisan federal agency that advises the U.S. Congress on Medicare payments and policy. Its mandate is to analyze methods and approaches to access to care, quality of care, and other issues affecting Medicare and to advise Congress on payments to health plans participating in the Medicare Advantage program and providers in Medicare’s traditional fee-for-service program.

MedPAC staff evaluate published Medicare policies, develop options for consideration by the Commission, then present their work in regular public meetings. MedPAC publishes its recommendations and supporting analyses in two annual reports to the Congress and in other reports periodically mandated by the Congress. In addition, staff prepare analyses of proposed regulations, write issue briefs, and contribute to the preparation of Congressional testimony. They provide technical support as needed to staff of Congressional committees through memoranda and briefings.

MedPAC is not an oversight agency nor does it play the role of an independent audit agency (such as GAO). This means that it does not evaluate the functioning of CMS or play any role in ensuring CMS is accountable to the public. Instead, MedPAC fulfills its Congressional mandate of recommending payment reimbursement rates to Congress. It comments broadly during CMS rulemaking process to provide reasoned, non-partisan input. MedPAC provides technical expertise and leading strategic advice to inform legislative decisions by Congress. Through reports and hearings, MedPAC can catalyze discussions within the health policy community on cutting edge issues that may impact CMS services.

The Comptroller General of the United States is responsible for appointing individuals to serve as MedPAC members. They serve 3-year terms, subject to renewal. The law requires that MedPAC has a mix of individuals with expertise in the financing and delivery of health care services, with broad geographic representation. Members include physicians and other health professionals, employers,

third-party payers, researchers with a variety of health-related expertise, and representatives of consumers and the elderly. There are approximately 17 members with a permanent staff of about 30, including more than 20 professional staff with advanced degrees in public policy, public administration, and health economics. MedPAC receives a Congressional appropriation of about \$13 million per year to conduct its work. It holds about six public meetings and produces numerous written reports each year.

Model 5 - Quadrennial Defense Review (QDR)

The QDR, a legislatively-mandated review of Department of Defense strategy and priorities, sets a long-term course for DOD as it assesses threats and challenges the nation faces. It re-balances DOD's strategies, capabilities, and forces to address today's conflicts and tomorrow's threats on a 20-year planning horizon that is resource-unconstrained.

The QDR is required to "delineate a national defense strategy" to determine the force structure, modernization plans, and infrastructure required to implement that strategy; and to craft an associated budget plan. Its report must address 16 specific points including the results of the review, as well as any items the DOD Secretary deems appropriate. The QDR is prepared by DoD staff.

In conjunction with the QDR, a National Defense Panel is established to provide independent, nonpartisan input to the QDR. The Panel includes ten members from private civilian life who are recognized experts in matters relating to the national security. Members are appointed by the Secretary of Defense and chair and ranking members of relevant house and senate committees. The Panel has the following duties with respect to a quadrennial defense review: Review the ongoing progress of the QDR; review the input and assumptions that form the basis of the QDR; conduct an assessment of the assumptions, strategy, findings, and risks; conduct an independent assessment of a variety of possible force structures; review the resource requirements; and provide Congress and the Secretary of Defense any recommendations it considers appropriate.

Veteran service organizations have suggested that a QDR process for VHA would provide the long term, strategic view and direction that VHA requires to remain on track. Like MedPAC, the QDR does not provide oversight or accountability to the operational decisions made between QDR reports.

Model 6 – UK National Health Service

An act of Parliament in 2012 changed the organizational structure of the National Health Service (NHS). The NHS has a broader purview than VHA making the two systems not directly comparable. The new NHS governance structure oversees health care, public health and social services delivered at all levels of government in the UK. The NHS has the following governance structures:

- *NHS England* includes a board. That board is "arm's length" to government with the aim to improve health outcomes and deliver high quality care by: 1) providing leadership for improving outcomes and driving up quality, 2) overseeing the clinical commissioning groups, 3) allocating resources to local commissions, and 4) running the direct national services of the NHS. There are four regional authorities and 27 local teams. NHS England continues to directly operate primary care services across the country
- *Clinical Commissioning Groups (CCG)* are at the local level, led by clinicians, and control about 2/3 of the national health care budget. The CCG are intended to be responsive to the local health needs. They arrange local service delivery except for primary care and specialized health care services, which remain under direct control of NHS England.
- *Healthwatch* are independent consumer champion boards for health and social services. They exist at both the local and national levels.

Table II – Comparable Size of Organizations under Different Governance Models

Type	Example	Federal Funding	Employees
Quasi-Official Agency	Smithsonian Institution	\$810 M	6,500
Government Corporation	AMTRAK	~ \$400 M	< 20,000
Government Corporation	USPS	None	486,822
Government Sponsored Enterprise	Freddie Mac	None	5,000
FFRDC	RAND	\$195.5 M	1,800
Government Agency – Oversight Board	IRS	>\$7.3 Billion	~90,000
Government Agency	VHA	>\$ 63 Billion	>280,000

A potential governance recommendation:

Establish a board of directors to provide VHA overall governance, set long-term strategy, and direct and oversee the transformation process.

Background

The *Independent Assessment Report* showed links among several of VHA's problems and the limitations of its governance model:

- An inability to develop fundamental policy (e.g. of aligning supply and demand)
- Short-term, focused decision making
- Lack of effective, comprehensive oversight and strategic direction.

(pp. 25-27.) Other studies also have called for fundamental changes in VHA governance. One said, "VHA provides excellence in care in spite of its operations/governance structure, not because of it."

The *Independent Assessment Report* calls for a new governance model to address these challenges, stating, "establishing a governance board to develop fundamental policy, define the strategic direction, insulate VHA leadership from direct political intervention, and ensure accountability for the achievement of established performance measures." (p. 23)

The governance challenges facing VHA somewhat parallel those the Internal Revenue Service faced 2 decades ago. Similar to the IRS, at VHA, only two officials, the under secretary and the principal deputy under secretary for health, are responsible for the enterprise (a \$63 billion budget about nine times that of IRS). While parallels exist between the problems IRS encountered in 1997 and those facing VHA in 2016, striking differences in mission and challenges may make adopting a similar a governance model to the one IRS adopted almost two decades ago seem ill-advised. Adding to the strain on VHA, leadership priorities and strategic direction are unclear; leaders are consumed by crisis, which creates a reactive, rather than proactive environment; and the leadership vision lacks continuity.

The VA secretary and deputy secretary may exercise oversight of VHA and try to impose accountability, but the business of health care delivery, operating within the federal sector, is complex and challenging. The Secretary often lacks independent information and metrics on VHA performance; the oversight, risk management, and compliance functions of VHA report to the USH or to lower officials in VHA.

While the VA's inspector general (IG), government accountability office (GAO), OMB, and Congress provide independent oversight of VHA, their oversight is not always comprehensive and often occurs after issues arise, rarely exploring overall VHA governance and operations.

Findings

VHA needs transformation that will be complex and take years to implement. To succeed, VHA needs strong leadership and a governance framework that can assure effective development and execution of transformation plans over time. Under the current governance structure, leadership's focus has been operational, an approach that does not support sustained focus on strategic direction.

VHA's current governance structure has not shown the needed or sustained focus on transformational change. While MyVA is certainly a step toward providing needed transformation, there is nothing in law, regulation, or otherwise that would ensure sustaining the transformation, or the continuation of the process being developed in that arena. Establishing a well-designed governance model to sustain transformation provides an opportunity to improve governance and achieve objectives both the executive branch and Congress share.

The following are key functions a governance model should carry out:

- Oversee, direct, and make critical decisions regarding the transformation process.
- Provide long-term, strategic direction and establish priorities, milestones, and timelines.
- Review and approve major operational, business, and organizational plans.
- Set VHA performance objectives.
- Review and make decisions regarding VHA's budget request, and independently assess and report to Congress on the adequacy of VHA budgets.

Previous reports have proposed establishing VHA as a quasigovernmental entity. A 1994 legislative directive called for an independent examination of the feasibility and advisability of establishing an alternative government structure to provide for health care services for veterans. A two-decade old report identified a new service-delivery strategy¹ for veterans' health delivery, comprising the following proposed elements:

- Concentrate on serving the special health care needs of veterans;
- Increase the use of contracting for general medical services;
- Build capacity in managing the continuum of care;
- Shift services from an inpatient to an outpatient mode; and

¹ The strategy was premised in part on the view that VHA would be operating in a resource-constrained environment and lacked the resources it would need to invest in making significant changes. Klemm Analysis Group, Inc., *Feasibility Study: Transforming the Veterans Health Administration into a Government Corporation*, (July 1996).

- Create opportunities for each VISN to create a tailored service delivery strategy.

The report authors also envisioned specific enabling legislation to include a wide range of reforms, such as changing appropriation law to create multiyear/no-year appropriations; reforming procurement and contracting practices; reforming human resources management practices for increased flexibility in, e.g., hiring and firing, compensation, leave; and allowing VHA to become part of HMO networks and open HMO enrollment to veterans.

The report also identified advantages to making VHA a government corporation, to include greater: political independence; capacity to focus on strategic as well as short-term goals; results orientation; flexibility; and capacity to replicate and develop best practices. It cited an upgraded staff competence and expertise at senior levels as another good result.

The case set forth in the 1996 report for converting VHA into a government corporation apparently did not persuade Congress that that change was feasible and advisable. Moreover, all of the objectives above were met by reforms within existing government structures and processes set in place by Under Secretary Ken Kizer.

Nearly 20 years later, a report analyzing the causes of delayed care at the Phoenix VA Medical Center and VHA facilities in general in 2014 offered recommendations relating to governance, specifically, calling for VHA, yet again, to evaluate and consider developing legislative proposals to make VHA into a government corporation, with an oversight entity that functions as a VHA board of directors, and establishing a minimum length of tenure for the VA secretary and deputy secretary of at least 5 years.

The question is whether it is necessary to create a government corporation to achieve more professionalized governance. There is no template for such an entity, so there is wide variation in their structure and organization.

As the Congressional Research Service (CRS) advised, "A government corporation is a government agency that is established by Congress to provide a market-oriented public service and to produce revenues that meet or approximate its expenditures." A principal intention behind assigning this status and title has been to provide insulation from central management oversight agencies and the application of general management laws.

Creating a federal government corporation is generally intended to achieve a particular national goal more efficiently, especially one that involves market transactions. When a government corporation has its own sources of funding, Congress's power is lessened. But Congress can still exercise leverage. On the positive side it can remove restrictions on the corporation's activities, and on the negative side it can add new restrictions, subject the corporation to regulation, or abolishing it entirely. When the corporation wholly or principally relies on appropriations, however, Congress retains the power of the purse, and the means of exercising it on matters large and small, and through formal and informal means.

If a principal or secondary objective is to free VHA of otherwise applicable federal laws to permit it to operate with greater efficiency, Congress would have to specify such exemptions in law, and could do so without restructuring VHA as a corporation.

Unlike entities such as AMTRAK or the Postal Service, which have substantial revenue-generating operations, VHA is almost wholly reliant on federal appropriations. Congress has not adopted proposals to allow VHA to generate revenue. Although testing ideas that might raise new revenues is possible, there is no concrete evidence that warrants recommending a governance structure generally established to carry out business-type programs.

The Phoenix root-cause-analysis paper indicates that Congress should consider creating a board of directors' type oversight board and that such a board, providing institutional knowledge, could set the strategy for the organization, define priorities, provide operational oversight, and review budget requests. The Independent Assessment Report also called for a governance board to develop policy, define strategy, insulate VHA leadership from politics, and ensure accountability for achieving performance measures.

Conclusions

Given VHA's scope and magnitude, transforming the organization will take years and will require new governance that can provide strategic focus and direct change as it undertakes successful and sustained transformation of VHA. Ensuring strategic direction, decision-making, and oversight of VHA operations and its transformation, independent of department leadership, are core needs of a new governance model.

A governance board, or a board of directors, would facilitate the goal of transforming VHA. A board structure, with appropriate reporting systems and capabilities in place, could carry out the governance functions identified as critical. This governance model does not change or diminish Congress' role. Instead, a board, which would report periodically to congressional committees, provides a level of close oversight and health care expertise that would complement the work of the Congress.

Navigating transformation of one of the largest agencies in the federal government requires not only extraordinary leadership, but steady, sustained, long-range-focused governance. A board structured to provide continuity of membership is vital. It is also important to re-examine the tenure of the under secretary for health and the process for selecting candidates for that position.²

In recent years, under secretaries have served for relatively short periods, leaving office with a change in administration or sooner. This pattern has deprived VHA of sustained leadership and has likely contributed to a focus on the short-term. VHA history shows a connection between

² Current law, at 38 U.S. Code sec. 305, provides that the Under Secretary is appointed by the President with the advice and consent of the Senate. When a vacancy in that position occurs or is anticipated, the Secretary is to convene a commission (the composition of which is set forth in the statute) which is to recommend at least three individuals to the Secretary, who is to forward those names, with any comments the Secretary considers appropriate, to the President.

longer tenure and transformative accomplishment. As testimony to the Commission from four under secretaries would indicate, brevity of tenure tends to limit leaders' strategic horizon and create a pattern of leadership discontinuity.

VHA, Congress, and the president would be better served by an under secretary of health who holds a 5-year term of office for the position with an opportunity for a 5-year reappointment with the approval of the board of directors. Given the expertise and level of experience members of a board of directors would have, when the office of the under secretary for health is vacant, the board should have the authority to recommend to the president an individual for appointment. This would replace the framework in current law that requires the establishment of a new commission convened solely to carry out the task of recommending candidates to the president.

A change in governance alone will not bring about successful transformation; thus, this recommendation is interdependent with other Commission recommendations. For example, a board will require data, and data systems, to carry out its responsibilities. Establishing appropriate systems is key to empowering a board to drive and sustain transformation.

Enabling Requirements

The design of a VHA board of directors must be tailored to the unique needs of VHA. Such a governing body should have appropriate expertise and experience to provide needed strategic guidance, provide continuity of leadership, and possess authority to exercise the powers needed to realize and sustain a VHA transformation. Suggested components include:

- Congress should provide for the establishment of an 11-member board of directors that is accountable to the president, responsible for overall VHA governance, and has decision-making authority to direct the transformation process and set long-term strategy. The board should be structured based on the following key elements:
 - Voting Members: Two members each will be appointed by the president, the majority leader of the senate, speaker of the house, and the minority leaders of the senate and house. In addition, the secretary of veterans affairs will serve on the board as a voting member.
 - Qualifications: Members should be selected to achieve collectively broad experience, expertise, and leadership, including experience in senior management of a large, private, integrated health care system; clinical expertise; extensive experience with federal government health care systems; extensive experience with (though not current employment in) VHA; expertise in medical facility construction and leasing, and/or government contracting; expertise in health care budgeting and finance; expertise in health equity and disparities; and veterans' representation.
 - Terms: Staggered terms of up to 7-years, with the board members electing a chair and vice-chair from among the membership for 3-year terms.

- Personnel Matters: Compensation should be sufficient to attract senior recognized leaders and experts; members might serve full- or part-time, and the time commitment of the chairperson, at least, would be substantial.
- Funding: Congress would provide a specific budget for the operation of the board as a separate account within the VA's appropriations.
- Relationship to Under Secretary for Health: The board would provide the president its recommendation of an individual to serve as under secretary for health; the president would appoint an under secretary to a 5-year term; the board would be empowered to reappoint the under secretary to a second 5-year term.
- Staff: The chairperson would determine the size and compensation of the permanent staff of the board, to include an executive director responsible for board operations and a chief of staff. The director of the proposed transformation office within VHA would report to the chairperson through the Under Secretary for Health.
- Powers: The board would have the power to do the following:
 - direct and exercise decision-making authority regarding the transformation process
 - establish priorities, milestones, and timelines for the transition process
 - review and approve major new initiatives; major operational and organizational plans; strategic and business plans; and goals and metrics relative to established priorities
 - review, approve, and/or amend VHA's budget request, and independently to assess and comment on pertinent elements of the President's budget, as deemed appropriate
- Reporting: The board shall report annually to the President and Congress on VHA's progress toward transformation, and after year-5, shall report biannually.

Implementation

Legislative Changes will be required.