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GOVERNANCE ISSUES IN THE HEALTH CARE NONPROFIT AND CHARITABLE SECTOR - THE SHADOW OF SARBANES-OXLEY

In the wake of the Sarbanes-Oxley Act, many charitable health care organizations have reexamined, or perhaps examined for the first time, the governance practices within their organization. Charitable and nonprofit entities should keep up with the latest developments on this issue, as the current charitable corporate governance landscape could completely change in the coming months and years. Congress continues to send signals that it has more than a passing interest in strengthening its oversight of the nonprofit sector. To that end, Senate Finance Committee Chair Charles Grassley (R-IA) and Ranking Member Max Baucus (D-MT) asked Independent Sector, a nonprofit coalition of charities, foundations and corporate philanthropy programs, to create a panel tasked with making recommendations to Congress with the goal of improving the oversight and governance of the charitable and nonprofit sector.

In response to the request from Senators Grassley and Baucus, the Independent Sector formed the Panel on the Nonprofit Sector in October of 2004 (the "Panel"). Made up of 24 leaders within nonprofit and philanthropic organizations, the Panel presented its interim report to the Senate Finance Committee in March of 2005. One of the key topics in the report is a series of recommendations meant to enhance governance in charitable organizations. The Panel made the following recommendations for every charitable organization with respect to governance:

- Adopt and enforce a conflict of interest policy, tailored to the specific needs of the organization and in compliance with state laws.
- Include individuals with a degree of financial literacy on the board of directors as a best practice, or in accordance with state laws.
- Consider establishing a separate audit committee of the board if the organization has its financial statements independently audited.
- Establish policies to encourage individuals to report actual or suspected violations of organizational policies or illegal practices, and establish policies to protect individuals who do report wrongdoing.
- Encourage the IRS to require that all charitable organizations disclose whether they have a conflict of interest policy on their annual information return.

The full text of the interim report can be found at the Panel's Web site www.nonprofitpanel.org/interim.

These recommendations mirror several of the requirements that the Sarbanes-Oxley legislation imposed on for-profit companies, yet another indication that Sarbanes-Oxley requirements are quickly becoming "best practices" within the charitable and nonprofit sectors, as well as the for-profit sector. Health care entities, which are among the most visible members of the charitable sector, should carefully examine these recommendations and decide whether implementation of some or all of them would be in their best interest.

The Panel's work groups and its expert advisory committee have also prepared a broader list of 11 draft recommendations for the Panel to consider, covering all aspects of the nonprofit sector. The Panel solicited public comments on the recommendations until May 19. The recommendations and public comments will form the basis for the Panel's deliberations as a second report is prepared and delivered to the Senate Finance Committee in June. The following is the list of topics that the recommendations cover:

- Board Compensation.
- Executive Compensation.
- Structure, Size, Composition and Independence of Boards of Directors.
- Travel Expenses.
- Donor-Advised Funds.
- Type III Supporting Organizations.
- Abusive Tax Shelters and Charitable Organizations.
- Periodic Review of 501(c)(3) Status.
- Disclosure of Performance Data by Public Charities.
- Non-Cash Contributions.
- Revisions to Forms 990 and 990-PF.

The full text of the recommendations can be obtained at www.nonprofitpanel.org/junerecs/list.

Some organizations are choosing to implement a number of these recommendations now, instead of waiting for Congress to act. Attorneys in the Health Care and Corporate Departments at Reinhart Boerner Van Deuren s.c. are available to provide practical advice to entities and their boards of directors to ensure that they are well positioned to react to any changes in this developing area of the law.

If you have additional questions regarding this ruling, please contact us.

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