Multi NPC’s

An NPC Board of Directors may have several reasons for needing to make a strategic decision on the future state of an NPC. Precipitating factors may include:

* When two or more VA medical centers undergo administrative consolidation and each has an affiliated NPC, it may be appropriate for just one NPC to serve the combined VAMC; or
* If an NPC’s expectations of growth and prosperity are not fulfilled making it questionable whether the NPC should even continue to exist; or
* The research program at a local VAMC is not robust enough to support a fully functioning NPC administrative staff.

In such situations, it is incumbent on the boards of directors to determine whether an NPC is sustainable and should carefully evaluate its options.

One option available to NPCs is to merge or consolidate with another NPC thereby becoming a multi-medical center research corporation. Other options are to dissolve or to become dormant. Regardless of whether the decision is to become a multi-NPC or to dissolve or become dormant, the board should obtain advice from a local attorney and an accountant familiar with nonprofits. As state incorporated nonprofit corporations, specific state rules apply.

If the decision is to become a multi-NPC, then the board of directors of both NPCs should consider the different types of mergers and consolidations and choose the option which will best serve all parties involved. Discussion of the various types of consolidations follows as well as suggested steps to take in the event the decision is to pursue dissolution or dormancy of an NPC. The following is offered as a starting point for board consideration and is not intended to be comprehensive guidance. Every NPC will have to examine its own circumstances and develop a customized blueprint. Additionally, expert advice and the involvement of all stakeholders are necessary to ensure a smooth transition.

Types of Mergers and Consolidations

In addition to the requirements provided in part 6. Multi-Medical Center Research Corporation (Multi-NPC) in VHA Handbook 1200.17, the boards of directors of both nonprofits should consider some of the different types of mergers and consolidations prior to becoming a Multi-NPC.

* A merger involves integrating the programmatic and administrative functions of two or more organizations. Mergers occur when one organization becomes part of another organization. [Nonprofit A merges with Nonprofit B. All assets and liabilities of Nonprofit A are transferred to Nonprofit B. Nonprofit B assumes assets and liabilities.]
* An administrative "consolidation" is a restructuring that includes the sharing, exchanging, or contracting of administrative functions to increase the efficiency of one or more of the organizations involved. [Nonprofit A and Nonprofit B come together to form a new Nonprofit C. Assets and Liabilities of both Nonprofits A and B are combined and assigned to Nonprofit C. Nonprofit C must apply to the IRS for tax-exempt status as a new entity.]
* An asset transfer and dissolution occurs when Nonprofit A transfers all of its assets to Nonprofit B. Nonprofit A remains responsible for paying off all liabilities and divesting itself of all obligations. Nonprofit A subsequently goes through the dissolution process.

Due Diligence in the Event of a Merger or Consolidation

When the decision of the board involves merging or consolidating two or more organizations, the boards of directors must approve the transformation as well as the implementation process. The board of any surviving or subsequent organization should conduct a due diligence review of the other organization(s) prior to making a commitment. This requires full disclosure of all assets and liabilities through a thorough review of the other nonprofit’s:

* Financial status including audit reports, tax returns and supporting documentation
* Contracts, leases and agreements including industry sponsored agreements, grants, employment and consulting contracts, etc.
* Financial performance (actual budget vs. projections)
* Minutes from board and committee meetings
* Actual and potential liabilities (i.e., possible disgruntled employees; actual, pending or threatened legal or tax liabilities)
* Compliance with federal and state laws including those regarding human resource management (i.e., FLSA, ERISA, etc.)
* Range of activities and staffing

This due diligence process involves considerable effort, but is necessary to ensure that the parties are aware of all possible liabilities. A nonprofit should also contact its insurance broker to ensure continuing coverage during the transformation process. Extended coverage (known as “tail” coverage) should be obtained to cover liabilities that may come to light as long as three years after the change in status.