

Public Comment Proposal

Proposal to Address the Relationship of the OPTN and OPTN Contractor Boards

OPTN Executive Committee

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Proposal to Address the Relationship of the OPTN and OPTN Contractor Boards

Affected Policies: Bylaw 2.8 Relationship of the OPTN Board and the OPTN Contractor's Board
Sponsoring Committee: Executive
Public Comment: February 28 – March 13, 2024

Purpose

This proposal furthers the collective desire of the OPTN Board of Directors, HRSA, and the transplant community to separate the OPTN Board and the contractor's Board and remove any actual or perceived conflicts of interest between the two boards. This proposal aligns with HRSA's stated objectives in their OPTN Modernization Initiative to "creat[e] an OPTN Board of Directors independent from other OPTN contractors to strengthen accountability and oversight."¹ HRSA took steps to move forward with this goal by releasing a solicitation for OPTN Board Support to "enable HRSA to facilitate the Board of Directors' independence and autonomy, transparency, accountability, and performance monitoring."²

Members of the current OPTN Board also serve on the Board for the current OPTN Contractor. HRSA, in their recent draft request for proposals (RFP) stated, "The performance of the OPTN board support contractor must ensure the board's independence, and as such, the Contractor must not be perceived as having biased judgment; therefore, it is prohibited from competing for all other OPTN contracts."³ In anticipation of new contracts, the existing OPTN Board of Directors seeks to proactively modify their Bylaws to take effect on March 30, 2024, the day after the current OPTN contract ends. Furthermore, codifying this relationship in the Bylaws demonstrates the OPTN's commitment to maintaining a Board that is free from any perceived or actual conflicts of interests, and will ensure future OPTN Boards behave consistently with this principle. Therefore, the Board desires to remove any actual or perceived conflicts by removing the existing Bylaw requirements for the two Boards to have identical membership.

This proposal would remove the requirement in the Bylaws for the OPTN Board of Directors and the OPTN Contractor's Board of Directors to have identical membership. Furthermore, this proposal would prohibit any OPTN Board of Directors member from being an employee of or serving on the Board of Directors of any organization awarded grants, contracts, or cooperative agreements to support the

¹ HRSA, "Organ Procurement and Transplantation Network (OPTN) Modernization Initiative. HRSA Takes Historic New Steps to Transform the Organ Transplant System to Better Serve Patients and Families. February 2024 Updates," available at <https://www.hrsa.gov/optn-modernization>. (Accessed 2/13/2024).

² HRSA, "OPTN Board of Directors Support Solicitation, RFP No. 75R60224R00009," available at <https://sam.gov/opp/e4fb45f6e5d54a84adbccce1602767c52/view>. (Accessed 2/13/2024).

³ Ibid.

OPTN. This prohibition would not apply to the OPTN Executive Director. Currently, the Executive Director is an employee of the OPTN Contractor and serves as an *ex-officio*, non-voting member of the OPTN Board.⁴ The 2024 draft RFP calls for the new contractor to hire and compensate the OPTN Executive Director. While the 2024 draft RFP states, “The Board of Directors of the OPTN shall not be officers or executives of any OPTN contractors,” it is not clear whether a future OPTN Executive Director may be an employee of an OPTN contractor if they do not serve on the OPTN Board. Exempting the OPTN Executive Director in this Bylaw would allow time for HRSA and the transplant community to answer that question.

NOTA/Final Rule Analysis

The OPTN is required by NOTA to have a Board of Directors.⁵ The OPTN Final Rule provides additional detail about the composition and duties of the OPTN Board.⁶ This proposed change is consistent with all relevant requirements in the Final Rule regarding the structure of the OPTN Board.

⁴ OPTN Bylaw 2.1

⁵ 42 USC § 274(b)(1)(B).

⁶ 42 C.F.R. §121.3(a).

Bylaw Language

Proposed new language is underlined (example) and language that is proposed for removal is struck through (~~example~~)

1 **2.8 Relationship of the OPTN Board and the OPTN Contractors's Board**

2 With the exception of the OPTN Executive Director, no member of the OPTN Board of Directors can be
3 an employee of, or serve on the Board of Directors of, any organization awarded grants, contracts, or
4 cooperative agreements to support the OPTN.

5
6 ~~When the OPTN contract requires it, the OPTN Board of Directors will be elected in parallel with and~~
7 ~~using the same procedures as the OPTN Contractor's Board of Directors, resulting in identical~~
8 ~~memberships. This enables the OPTN Contractor to perform tasks required by the OPTN contract under~~
9 ~~the authority of the OPTN Board of Directors.~~

10 ~~The Board of Directors will convene as the OPTN Board to conduct OPTN business and the OPTN~~
11 ~~Contractor Board to conduct OPTN Contractor business. Activities of the Board of Directors, while acting~~
12 ~~as the OPTN Board, will be limited only to activities and business of the OPTN. To accomplish this,~~
13 ~~separate agendas or sections within a combined agenda will identify if an item is OPTN business or OPTN~~
14 ~~Contractor business. Consistent with this process, OPTN Committees are appointed in parallel with~~
15 ~~OPTN Contractor Committees and operate under these same procedures.~~

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