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Health Care:

[Legal Services](#)

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[Advisory Bulletins](#)

[Publications & Resources](#)

[Events and Meetings](#)

[Health Care Search](#)

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■ **Advisory Bulletin**

[return to Advi](#)

RHIO Governance Series, Part I: A Road Map for Establishing Your Health Information Organization

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Until organizational, tax and governance models for community or regional based health in organizations (RHIOs) become standardized through practice or government dictate, foun organizations must determine the best form of entity, tax treatment and governance structu fledgling organizations. This advisory is part of a series on organization of RHIOs and addr formation. Future advisories in this series will address tax considerations and governance : While the form of the organization may vary, the process for establishing a RHIO is fairly si and can be divided into the following six phases: (1) Establishing the team; (2) data gather analysis; (3) formulating a work plan; (4) strategic business planning; (5) model identificatio analysis; and (6) addressing other legal issues.

Phase I. Establishing the Team

Forming a RHIO presents an extraordinary opportunity to providers, researchers and other health care to share information for a variety of reasons — e.g., accessing electronic health research, statistical and others — to enhance care and expand knowledge. Identifying the participants is pivotal to the ultimate success of the organization process because their inp the purpose of the RHIO and help inform the initial choice of entity for its formation. Thus, founders should identify other entities or individuals, if any, who are likely to have an intere accessing or participating in the proposed RHIO.

Once these stakeholders are identified, founders must determine how to involve these indi organizations in the formation process. Inviting key stakeholders to participate at this stage build momentum and support for the RHIO and may better ensure that participants' organi are met. However, for founding members to retain specific powers or roles, involving additi stakeholders at this early stage should be carefully managed. Stakeholders might be invite participate in the formulation process by joining the founding team. Alternatively, founders limit stakeholders to a formal, yet advisory role.

Phase II. Data Gathering and Analysis

Whether or not stakeholders are part of the organizing team, their input is essential to the c of the primary goals and purposes of the RHIO. Once the stakeholders in the RHIO have b we recommend conducting a survey to determine their reasons for participating, to identify objectives and goals for the RHIO and to develop a better understanding of the key issues to encourage (or discourage) their future participation and involvement. For sample queries: <http://www.dwt.com/practc/hit/events/InterviewQuestions.pdf>.

Although the issue of governance is distinct from the choice of entity, decisions about the f guide the latter. Thus, participants should also be surveyed about their ideas for managing

controlling the RHIO's activities. Do they have specific decision makers in mind? By name? Should the individuals or groups in control at the outset be different from those in control or becomes operational? How democratic and inclusive should the governing body be? Should participant have an equal voice? Should the responsibility and power granted to the governing body be tied to a financial commitment? Answers to these questions will help determine important principles going forward.

The RHIO founders should consider engaging a team facilitator who is not otherwise part of the project to help drive the process forward. At this stage, an alternative perspective can help the team and identify holes or issues overlooked by those most intimately involved in the process. Analyzing not only the data collected, but identifying missing information too can be vital to future success. If, for example, the data indicate that there are key constituents and potent stakeholders who were not initially considered for the survey, the survey process could be expanded to include them.

Phase III. The Organization Workplan

Taking the next step towards establishing a permanent repository of data, records or other information and ensuring that it is managed, accessed and utilized effectively and appropriately, provides a challenge for every RHIO. Therefore, it is useful to outline a roadmap for this process, established with respective completion target dates, i.e., the workplan. For a sample workplan, please see <http://www.dwt.com/practice/hit/events/GovernanceWorkPlan.pdf>.

Phase IV. Strategic Business Planning

Developing a strategic business plan is a key component of every workplan because the source of funding for the RHIO is the most significant variable in determining the type of entity and how it is governed. If, for example, the RHIO expects to rely on grants for its source of funding, it might be a nonprofit tax exempt organization. Where there will be participation by government or reliance on governmental funding, a public or a quasi-public authority may make more sense. Alternatively, a for-profit enterprise can be structured and governed in a different manner to provide more governance flexibility and better align economic incentives.

Phase V. Model Identification and Analysis

Identifying the appropriate model is another key step in the RHIO's formation. Founders must weigh the costs and benefits of forming as a nonprofit, as a governmental or a quasi-governmental entity or as a for-profit entity. Legal counsel can assist the RHIO in establishing the right format. Here are some essential considerations:

Nonprofit

A nonprofit organization is relatively simple to form. More challenging is persuading the Internal Revenue Service (and the state tax authority) that the organization should be recognized as exempt from federal and state income taxes. The purpose of the RHIO must comport with the requirements for recognition. In general, the RHIO must not be organized for the private gain of any person and its assets must be irrevocably dedicated to its charitable, educational, scientific or other qualifying exempt purpose. Specifying that purpose and applying for recognition will require significant time and effort from all participants. Satisfying the ongoing federal and state filing, reporting and operating requirements applicable to exempt organizations presents a continuing challenge as the RHIO matures.

Public/Quasi-Public

If the RHIO includes a governmental agency, participants may be able to ally under a single organization that operates as a public or quasi-public authority that is recognized as exempt from federal and state income taxes.

taxation. While obtaining such recognition is more straightforward than it would be for a RHIO as a nonprofit, formation will require significantly greater effort. Forming a public entity will require legislative action, which can be time-consuming and obviously subject to political influence that may affect the funding and operations of the RHIO in unintended ways.

For-Profit

Although less typical, a RHIO might also be organized as a for-profit enterprise. Like a nonprofit organization, formation of a taxable for-profit corporation or partnership, limited liability company or similar form of entity can be relatively straightforward. Unlike a nonprofit, a for-profit entity is not exempt from taxation – an important consideration if the RHIO expects to attract seed money from charitable contributions or grants. Nor would it enjoy the same tax benefits or enjoy the same powers as a governmental or quasi-governmental agency.

Phase VI. Other Legal Issues

Whether it forms as a nonprofit, a governmental authority or some other type of entity, the RHIO must establish a format for governing itself. Because the form of entity chosen can limit a RHIO's governance, both the choice of entity and the preferred governance structure must be considered simultaneously. It is advisable to retain legal counsel to translate feedback from the stakeholders and the founders' goals into an appropriate legal structure.

Feedback from the stakeholders' survey may play a key role in shaping who has a voice in governing the RHIO. Participants' responses will also help determine how the RHIO will balance the tension between obtaining consensus and effective and efficient decision-making. Every RHIO must establish processes for electing or appointing a governing body, voting requirements, approval processes necessary for decision-making and the participants' rights and duties. Whereas a more "democratic" nonprofit might be governed by its members, leaving certain key decisions to its governing body, a "democratic" nonprofit could be governed by a governing body with little or no input from its members. There may be less flexibility for establishing a hierarchy of power in a cooperative arrangement involving public bodies and agencies, a for-profit will likely have more flexibility than either a nonprofit or a governmental entity.

Finally, every RHIO must also establish rules or guidelines for accommodating new participants, possibly new kinds of participants, if it intends to grow and is willing to expand its composition. For example, a RHIO might initially be composed of hospitals, but expect or desire to include other health care organizations (e.g., clinics or academic medical centers) in the future. Planning and change will make it easier for the RHIO, if and when the time comes.

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