OPTN/UNOS Policy Notice - Rewrite of Bylaws Article II: Board of Directors

Sponsoring Committee: Executive
Policy/Bylaws Affected: Bylaws Article II: Board of Directors, Article III: Nominating Committee, Article IV: Executive Committee, Article VI: Officers, and Article IX: Regions
Public Comment: January 23, 2017 - March 24, 2017
Effective Date: September 1, 2017

Problem Statement

The Executive Committee requested these changes to the OPTN Bylaws to address multiple issues:

- The process for nominating and electing Board members is spread out among different sections of the Bylaws, making it difficult for members of the transplant community to determine how voting Directors (officers, regional councillors, and at-large representatives) are chosen.
- Conflicting language regarding the Board's ability to extend a voting Director's term.
- No established, transparent, and consistent process for filling vacancies on or removing Directors from the Board of Directors, the Executive Committee, and the Nominating Committee.
- Officers can only hold one position at a time. This does not provide for any flexibility in instances where an officer vacancy occurs and there is a need for one individual to fulfill the responsibilities of two officers.
- Missing the requirement that regional or associate councillors reside or be employed in the region they represent throughout the length of their term.

Summary of Changes

The updated Bylaws will achieve the following:

- Clarifies that the maximum number of Board members (42) applies to voting Directors and the OPTN Executive Director and that two HHS representatives are not included in that count.
- Clarifies that the voting Directors approve the final slate of nominees for the national ballot of the Board of Directors with a majority vote of those present at the meeting.
- Clarifies that the Nominating Committee recommends a slate of officers and at-large directors, and that regions elect an associate councillor who subsequently becomes the nominee for regional councillor (except in rare cases of regional or associate councillor vacancies).
- Allows an officer to serve in more than one position for the unexpired term of another officer vacancy.
- States that if a vacancy occurs in the office of the president, the vice president will become the president and serve the unexpired portion of the previous president's term, plus the normal one-year term.
- Adds language to require that the regional councillor and associate councillor reside or be employed in the region they represent throughout the entirety of their term in these roles.
- Clarifies that individual members serving on OPTN/UNOS Committees who are not affiliated with a transplant hospital, OPO, or histocompatibility laboratory have regional voting privileges.
Clarifies the Board’s options for extending a term and the voting threshold required to do so. In the case of a regional councillor vacancy, the Board will have the option to extend the current regional councillor for up to a year, appoint the associate councillor to serve for three years, or fill the vacancy with a new Director to serve for the unexpired portion of the Director’s term.

Makes consistent the voting Directors’ authority to fill vacancies and remove voting Directors, and clarify the voting threshold that applies to each action.

Adds language to clarify how vacancies will be filled on the Executive and Nominating Committees.

What Members Need to Do

OPTN members should familiarize themselves with the changes; members who print copies of the Bylaws should print updated versions.

Affected Policy Language

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

Article II: Board of Directors

2.1 Composition

The Board of Directors must have at least 34 but not more than 42 voting Directors.

The following serve ex-officio and do not have a vote on the Board of Directors:

- The Executive Director
- The U.S. Department of Health and Human Services (HHS) Project Officer for the OPTN Contract and the Director of the Division of Transplantation, or representatives they designate

All voting Directors serve on the Board without compensation.

A. Officers

The OPTN Board of Directors includes the following officers:

1. President
2. Vice president
3. Vice president of patient and donor affairs
4. Treasurer
5. Secretary

Additional officers may include one or more assistant treasurers and assistant secretaries, who are periodically nominated by the president and elected by the Board of Directors.

Officers may only hold one position on the Board at a time, except when an officer is appointed by the Board in an additional officer role to fill a vacancy for the unexpired term of another officer.

Officers must perform their duties according to Article VI: Officers.
B. Regional Councillors

The Board must include regional councillors who are representatives chosen by the voting members and member electors of each of the 11 geographic regions in the United States. The regional councillor serves as the region’s representative on the Board of Directors. If the regional councillor is absent from a Board of Directors meeting, the associate councillor may represent the region in place of the councillor, but the associate councillor does not have a vote. The councillor from each region is responsible, along with the president and the Executive Director, for coordinating regional activities to transact the business of the OPTN.

C. At-Large Directors

The Board must ensure that At-Large Directors represent the following categories:

- Transplant physicians and surgeons. Approximately 50 percent of the voting Directors will be surgeons or physicians directly involved in organ transplantation or donation.
- Non-physician transplant professionals, including transplant coordinators and individuals representing organ procurement organizations (OPOs) and transplant hospitals.
- Histocompatibility professionals.
- Individuals served by the OPTN, including transplant candidates, recipients, organ donors and their family members. At least 25 percent of the Directors will come from this category. These members should represent the minority and gender diversity of this population.
- Voluntary health organization representatives.
- At least one pediatric specialist.
- Non-transplant professionals, including professionals from law, theology, ethics, health care financing, public health, social and behavioral sciences, and labor and management unrelated to health care.

Directors representing transplant candidates, recipients, donors, and family members are required to certify that they are not employees of, or do not act on behalf of, OPOs, transplant hospitals, voluntary health organizations, transplant coordinators, histocompatibility professionals, or other non-physician transplant professionals. The Board of Directors may, however, waive this requirement for as many as 50 percent of these Directors.

The immediate past president of the OPTN Board of Directors is a member of the Board for a one-year term following the term as president.

2.2 Election

The voting Directors must approve by majority vote of those present a slate of nominees to be included on the national ballot for the annual meeting. All voting Directors are elected by vote of OPTN members with voting privileges and member electors. The OPTN members and member electors vote, either in person or by proxy, at the annual meeting when a quorum is present. Voting Directors may also be elected at any special meeting of the members if the Board of Directors is being expanded, or if a Director must be replaced for any reason.

Each OPTN member and member elector has only one vote for each Director position.
A. Election of Officers

The president and vice president are elected by vote of OPTN members each year. The treasurer is elected in odd-numbered years. The secretary and the Vice President of Patient and Donor Affairs are elected in even-numbered years. For more information, see Article VI: Officers.

B. Election of Regional Councillors

Each OPTN region must elect an associate councillor, according to Article 9.4: Regional Elections. Unless otherwise determined by the nominating region, the associate councillor will subsequently become the region’s nominee for regional councillor. The regional councillor nominee will be included on the national ballot of candidates for the Board of Directors.

C. Election of At-Large Directors

Members with voting privileges and member electors will elect At-Large Directors by majority vote at the annual meeting.

2.3 Terms

All Director terms begin on July 1 following the annual meeting to elect the Board of Directors.

A. Officer Terms

The president and vice-president serve one-year terms. The president and vice-president may not serve consecutive terms, except in the case of a vacancy in the office of president. If the vice president becomes president due to a vacancy, the vice president will be eligible for one succeeding one-year term as president.

The treasurer, secretary, and the vice president of patient and donor affairs serve two-year terms. These officers may serve consecutive terms.

The Board of Directors may not extend the term of an officer.

B. Regional Councillor Terms

Regional councillors serve for a term of two years. Regional councillors must reside or be employed in the region they represent at all times during their term.

Regional councillors cannot serve consecutive terms in the regional councillor role, except when appointed by a majority of voting Directors to serve for up to one year before or after their term as regional councillor to fill a vacancy in their respective region.

C. At-Large Director Terms

At-Large Directors will serve for a term of two years, with exceptions as noted below.

These At-Large Directors serve three-year terms:

- Transplant candidates.
- Transplant recipients.
- Organ donors.
The Board of Directors may extend the term of an At-Large Director for one year, by majority vote of all voting directors present at the meeting. An At-Large Director's term may not be extended more than two consecutive times.

2.4 Vacancies

Except in the case of a vacancy in the office of president, the Board of Directors may fill a vacancy by appointing a Director by majority of all voting Directors for the unexpired portion of the Director’s term.

If there is a vacancy in the office of president, the vice president will become president and will serve in that role for the unexpired portion of the term.

2.5 Removals

The Board may remove a director for any reason with at least two-thirds vote of all Directors at any regular or special meeting of the Board of Directors.

2.6 Meetings

The OPTN Board of Directors will hold regular meetings at least twice each year at a time and location selected by the Executive Director. The OPTN Board of Directors will hold one of these meetings in the Washington, D.C. metropolitan area, which includes Richmond, VA. The Executive Director or the president may call other regular or special meetings as it considers necessary. The Board may also call a special meeting with at least 25 percent of voting Directors submitting a written request to the Executive Director.

The OPTN Board of Directors must ensure that meetings are open to the public. However, the Board of Directors may hold closed sessions for discussions involving confidential medical peer review matters including OPTN membership approval, credentials, monitoring, or disciplinary matters as defined in the OPTN contract. The Board may also hold closed sessions for discussing matters involving individuals where an open meeting would compromise their privacy.

Representatives from the Federal Government serving on the Board of Directors, or their chosen representatives, will be included in closed sessions of OPTN meetings.

A. Notice of Meetings

Approximately two weeks prior to a regular meeting, the OPTN Contractor must provide the Directors written notice, including information on the date, time, place, and agenda for the meeting. The Executive Director must distribute the Board of Directors meeting agenda to OPTN members at least 10 days before the date of the meeting.

A Director who signs a waiver of notice at any time will be exempt from the requirement of written notice. A Director who attends a meeting is assumed to have had adequate notice of the meeting unless the Director attends only to object that the meeting is not lawfully convened.
B. Quorum

Fifty percent of the voting Directors constitute a quorum for transacting business at any meeting of the Board.

The following Directors do not count toward the quorum requirements specified in these Bylaws:

- Individuals serving on the Board of Directors as representatives of the U.S. Department of Health and Human Service (HHS)
- The OPTN Executive Director

C. Board Actions

When a quorum is achieved, a majority vote of the voting Directors present is required to act at the meeting. There are two exceptions to the majority requirement:

1. When different voting requirements are defined in the Bylaws.
2. When an amendment to the Bylaws requires approval by a majority of all of the voting Directors, not just those present at the meeting.

D. Actions without a Meeting

The Board may take action without a convened meeting if there is unanimous written consent of all voting Directors. In order for actions to be taken without a meeting, all Directors must vote on the action and the vote must be unanimous.

2.7 Conflicts of Interest

It is the OPTN policy that all Directors avoid conflicts of interest and the appearance of conflicts of interest. It is recognized that all Directors are directly or indirectly involved in organ donation, procurement and transplantation, and that the OPTN benefits from their collective expertise and experience in the development and implementation of OPTN policies.

However, issues that involve certain institutions or individuals may involve conflicts of interest. Directors must disclose employment or activities that might provide personal or financial gain related to the outcomes of matters affecting the OPTN and to act as required to avoid a conflict or the appearance of a conflict of interest. Avoiding conflicts of interest or the appearance of conflicts of interest may require that a Director abstain from voting on a matter or leave the room during discussion of the matter after providing relevant information to the Board.

2.8 Relationship of the OPTN Board and the OPTN Contractor’s Board

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

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

2.1 Composition

The Board of Directors must have at least 34 but not more than 42 Directors. Provided that at least one nomination is received from each category, the Directors will represent the following categories:

- Transplant physicians and surgeons. Approximately 50 percent of the Directors will be surgeons or physicians directly involved in organ transplantation or donation.
- Non-physician transplant professionals, including transplant coordinators and individuals representing organ procurement organizations (OPOs) and transplant hospitals.
- Histocompatibility professionals.
- Individuals served by the OPTN, including transplant candidates, recipients, organ donors and their family members. At least 25 percent of the Directors will come from this category. These members should represent the gender and racial diversity of this population.
- Individuals representing voluntary health organizations.
- Pediatric specialists. At least one Director must represent pediatric interests.
- Non-transplant professionals, including professionals from law, theology, ethics, health care financing, public health, social and behavioral sciences, and labor and management unrelated to health care.

Directors representing transplant candidates, recipients, donors, and family members are required to certify that they are not employees of, or do not act on behalf of, OPOs, transplant hospitals, voluntary health organizations, transplant coordinators, histocompatibility professionals, or other non-physician transplant professionals. The Board of Directors may, however, waive this requirement for as many as 50 percent of these Directors.

The immediate past president of the OPTN Board of Directors is automatically a member of the Board.

The Project Officer for the OPTN Contract and the Director of the Division of Transplantation (DoT) of the U.S. Department of Health and Human Services (HSS), or a representative they designate, serve ex-officio and do not have a vote on the Board of Directors.

2.2 Election

Directors of the OPTN Board are elected by majority vote of members with voting privileges. The members vote, either in person or by proxy, at the annual meeting when a quorum is present. Directors may also be elected at any special meeting of the members if the Board of Directors is being expanded, or if a Director must be replaced for any reason.

Each voting member has only one vote for each Director position.

The officers will be elected by the voting members, not by the Directors. The treasurer and the vice president of Patient & Donor Affairs are elected in odd-numbered years. The Secretary is elected in even-numbered years. For more information, see Article VI: Officers.
2.3 Terms

Directors will serve for a term of two years, with exceptions as noted below. Terms begin on July 1 following the election of the Board of Directors.

These Directors serve three-year terms:

- Transplant candidates.
- Transplant recipients.
- Organ donors.
- Family members of transplant candidates, recipients or organ donors.
- Representatives of voluntary health organizations.
- Representatives of the general public.

The Board of Directors may vote to extend the term of any of these Directors and regional councillors for one year. A Director's term may not be extended more than two times.

The treasurer, secretary and the vice president of patient and donor affairs serve two-year terms. All other officers serve one-year terms.

2.4 Regional Representatives

There are 11 identified OPTN geographic regions in the United States. For more information about the OPTN regions, see Article IX: Regions of these Bylaws. Each OPTN region elects a councillor and associate councillor through a vote of its members with voting privileges.

A. Regional Councillor

The councillor serves as the region's representative on the Board of Directors. Each region determines the guidelines for electing councillors. The councillor from each region is responsible, along with the president and the Executive Director, for coordinating regional activities to transact the business of the OPTN.

Regional councillors are included on the national ballot of candidates for Board of Directors. Members then elect the regional councillors at the annual meeting to serve for two-year terms that begin July 1 following the election. Councillors cannot serve consecutive terms as councillors, except that councillors may be appointed by the Board of Directors to serve for up to one year before or after their term as councillor to fill a vacancy in their respective region.

Councillors may be removed from the Board of Directors for any reason by majority vote of the region's members, member electors, and individuals with voting privileges. The majority vote must be supported by signed ballots presented to the president or the Board of Directors.

B. Associate Councillor

Each region determines the guidelines for electing associate councillors. The associate councillor represents the region on the Membership and Professional Standards Committee (MPSC). If the
councillor is absent from a Board of Directors meeting, the associate councillor may represent the
region and act in place of the councillor, but the associate councillor does not have a vote.

Associate councillors serve on the MPSC for a two-year term that begins July 1 following the
election. Associate councillors cannot serve consecutive terms as associate councillors.

C. Regional Elections

Regional elections will be completed on or before December 31 of each year, unless otherwise
directed by the Board of Directors or the president. The current councillor, after consultation with
or a vote of the region’s members, will select one of the following regional election processes:

- An election with one slate for councillor and a second slate for associate councillor. The
  subsequent elections will include only a slate for a new associate councillor, with the current
  associate councillor automatically becoming the councillor.
- An election with one slate of nominees for councillor and a second slate for the associate
councillor
- An election with a single slate of nominees for councillor. The person who receives the most
  votes is the councillor and the person who receives the second highest number of votes will
  be associate councillor.

In all these cases, the slate will be composed of nominations submitted by members, member
electors, and individuals with voting privileges.

D. Regional Voting Privileges

Members and member electors with voting privileges who reside in a region will have one vote on
each OPTN regional matter, including the election of councillor and associate councillor.

Others who have regional voting privileges may include:

- Any interested individual who is currently serving on an OPTN Committee and who is not
  employed by or on the medical staff of a transplant hospital, histocompatibility laboratory,
  OPO, medical/scientific or public organization member.
- Representatives of medical/scientific members with principal offices located in a region, as
determined by guidelines developed by the region.

2.5 Meetings

Regular meetings of the Board of Directors are held at least twice each calendar year at a location
selected by the Executive Director. One of these meetings is held in the Washington, D.C. metropolitan
area, which includes Richmond, VA. The Board may call other regular or special meetings as it considers
necessary. Meetings of Directors may be held in person or by any communication method that enables all
Directors to both listen and speak to one another throughout the meeting.

OPTN Board meetings are open to the public. However, the Board of Directors will hold closed sessions
for discussions involving confidential medical peer review matters including OPTN membership approval,
credentials, monitoring, or disciplinary matters as defined in the OPTN contract. Matters involving
individuals where an open meeting would clearly compromise their privacy will also be reviewed in closed
sessions. Representatives from the Federal Government serving on the Board of Directors, or their
chosen representatives, are included in closed sessions of OPTN meetings.

A. Notice of Meetings

Written notice of any regular or special meeting of the Board of Directors must include the date,
time and place of the meeting. The notice must be provided to each Director at the address
provided to the Executive Director not more than 60 days or fewer than 10 days before the date
of the meeting. The Executive Director must also distribute the agenda for each Board of
Directors meeting at least 10 days before the meeting, to allow input from the members.

A Director who signs a waiver of notice at any time will be exempt from the requirement of written
notice. A Director who attends a meeting is assumed to have had adequate notice of the meeting
unless the Director attends only to object that the meeting is not lawfully convened.

B. Quorum

Fifty percent of the Directors eligible to vote constitute a quorum for transacting business at any
meeting of the Board.

C. Board Actions

When a quorum is achieved, a majority vote of the Directors present is required to act at the
meeting. There are two exceptions to the majority requirement:

1. When different voting requirements are defined in the Bylaws.
2. When an amendment to the Bylaws requires approval by a majority of all of the Directors, not
   just those present at the meeting.

D. Actions without a Meeting

The Board may take action without a convened meeting if there is unanimous written consent of
all Directors. In order for actions to be taken without a meeting, all Directors must vote on the
action and the vote must be unanimous.

2.6 Committees

The Permanent Standing Committees of the OPTN are defined in Article VII: Permanent Standing
Committees of these Bylaws. The Board may periodically establish and then dissolve ad hoc committees
for specific purposes, finite functions, or limited periods of time.

2.7 Conflicts of Interest

It is the OPTN policy that all Directors avoid conflicts of interest and the appearance of conflicts of
interest. It is recognized that all Directors are directly or indirectly involved in organ donation, procurement
and transplantation, and that the OPTN benefits from their collective expertise and experience in the
development and implementation of OPTN policies.

However, issues that involve certain institutions or individuals may involve conflicts of interest. Directors
must disclose employment or activities that might provide personal or financial gain related to the
390 outcomes of matters affecting the OPTN and to act as required to avoid a conflict or the appearance of a
391 conflict of interest. Avoiding conflicts of interest or the appearance of conflicts of interest may require that
392 a Director abstain from voting on a matter or leave the room during discussion of the matter after
393 providing relevant information to the Board.
394
395 2.8—Removal from the Board
396 A Director may be removed from office for any reason, but only by the voting members and member
electors at a meeting convened specifically to remove the Director. For more information about meetings of
members, see Article I: Membership of these Bylaws.
399
400 2.9—Relationship of the OPTN Board and the OPTN Contractor’s Board
401 When the OPTN contract requires it, the OPTN Board of Directors will be elected in parallel with and
using the same procedures as the OPTN Contractor’s Board of Directors, resulting in identical
memberships. This enables the OPTN Contractor to perform tasks required by the OPTN contract under
the authority of the OPTN Board of Directors.
404
405 The Board of Directors will convene as the OPTN Board to conduct OPTN business and the OPTN
Contractor Board to conduct OPTN Contractor business. Activities of the Board of Directors, while acting
as the OPTN Board, will be limited only to activities and business of the OPTN. To accomplish this,
separate agendas or sections within a combined agenda will identify if an item is OPTN business or
OPTN Contractor business. Consistent with this process, OPTN Committees are appointed in parallel
with OPTN Contractor Committees and operate under these same procedures.
411
412 Article III: Nominating Committee
413 The Nominating Committee will recommend candidates for election as officers and Directors. The Board
of Directors will consider the recommendations of the Nominating Committee and may make changes
before attaching its final list of nominees to the notice of the annual meeting, or any special meeting
called to elect officers and Directors.
417
418 3.1 Composition
419 The Nominating Committee is appointed by the president and will have no more than 12 voting members.
With the exception of the past president directly preceding the immediate past president, the Nominating
Committee will be selected from voting Directors.
422
423 The Nominating Committee will include:
425
426 • The president
427 • The Immediate Past president
428 • The past president directly preceding the Immediate Past president
429 • The vice president
430 • The vice president of patient and donor affairs
431 • One histocompatibility laboratory representative
432 • One OPO representative
433 • One transplant coordinator representative
OPTN/UNOS Policy Notice

- One patient representative
- One public representative (including organ donors and recipients, family members, or voluntary health organization representatives)
- Two additional Nominating Committee members will be selected from any of the following voting Directors:
  - Regional councillors
  - A thoracic heart transplant representative
  - A minority transplant representative
  - Medical/scientific Organization members
  - At-large Representatives

The following serve ex-officio and do not have a vote on the Nominating Committee:
- The Executive Director
- The U.S. Department of Health and Human Services (HHS) Project Officer for the OPTN Contract and the Director of the Division of Transplantation, or representatives they designate

3.2 Vacancies

With the exception of vacancies in officer positions, the OPTN President will appoint Directors to fill vacancies on the Nominating Committee. If the vacancy is an officer position, the newly elected officer will be automatically designated as a Nominating Committee member.

3.23 Conflicts of Interest

Nominating Committee members must avoid conflicts of interest and the appearance of conflicts of interest. The Nominating Committee will be held to the same standard as the Board of Directors and will deal with potential conflicts of interest according to Article 2.7: Conflicts of Interest of these Bylaws.

Article IV: Executive Committee

4.2 Composition

The Executive Committee is composed of no more than 12 individuals selected from the Board of Directors so that the Executive Committee is made up of:

- Approximately 50 percent transplant surgeons and transplant physicians directly involved in transplantation.
- At least 25 percent transplant candidates, recipients, donors and their family members.
- At least one member of the general public.

The Executive Committee includes the following Directors:

1. The president, who serves as the Chair of the Executive Committee
2. The Immediate Past president
3. The Vice-president
4. The Vice-president of Patient and Donor Affairs
5. The Secretary
6. The treasurer
7. The Minority Transplant Professional Representative

Five other members of the Executive Committee are selected so that there is at least one member from each of the following four categories:

1. OPO Representatives
2. Transplant Coordinator Representatives
3. Histocompatibility laboratory Representatives
4. Public Representatives (including organ donors and recipients, family members or voluntary health organizations)

The following serve *ex-officio* and do not have a vote on the Executive Committee:

- The Executive Director
- The U.S. Department of Health and Human Services (HHS) Project Officer for the OPTN Contract and the Director of the Division of Transplantation, or a representative they designate

4.5 **Removals and Vacancies**

With the exception of officers, the Board of Directors may remove a Director from the Executive Committee for any reason with a majority vote of Directors present at a meeting. The Board may only remove an officer from the Executive Committee by removing the officer from the Board as outlined in 2.5 Removals.

If a vacancy occurs, the voting Directors may fill a vacancy on the Executive Committee for the unexpired portion of a term. If the vacancy is an officer position, the newly elected officer will be automatically designated as an Executive Committee member for the unexpired portion of the term. If the vacancy is within the remaining five Executive Committee members, the replacement will be determined by the process outlined in Article 4.3: Selection.

4.6 **Conflicts of Interest**

Executive Committee members will avoid conflicts of interest and the appearance of conflicts of interest. The Executive Committee will be held to the same standard as the Board of Directors and will deal with potential conflicts of interest according to Article 2.7 Conflicts of Interest of these Bylaws.

**Article VI: Officers**

The officers of the OPTN are the:

1. President
2. Vice president
3. Vice president of patient and donor affairs
4. Treasurer
5. Secretary
Officers are elected at the annual meeting of members and begin their terms on July 1. Officers serve on the Board without compensation, and may only hold one position on the Board at a time.