**GOVERNANCE:**

**Establishing Governance Perimeters to Avoid Potential Conflicts of Interests and Other Legal Hazards**

Dawn Crowell Murphy

Pillsbury Winthrop Shaw Pittman LLP

December 4, 2019

* **Legal dangers from being “controlled”**
  + Conflicts of interests
  + Antitrust
  + Agency liability
* **Achieving autonomy – separate incorporation vs. unincorporated program**
  + Requirement for “administrative independence” in essential certification decisions
  + Separate incorporation – provides legal protection, demonstrates independence
  + Unincorporated program – need “functional autonomy”
* **What constitutes “undue influence” by a parent board?**
  + Inappropriate pressure to adjust certification standards or other aspects of certification
  + Evidenced by controlling the certification board – appointing a majority
  + Program veto or financial authority
* **Effectively working together with a parent board or related organization** 
  + Clear governing documents
  + Sharing resources
  + Written agreements, distinction of roles and responsibilities
  + Onboarding and continued communication