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Governor Orders Cap on Executives' Salaries and Administrative Spending at Service Providers Receiving State Funds

Governor Cuomo issued an Executive Order last month that sharply limits the amount of State funding that can be used for administrative costs and executive compensation by State-supported social service providers.

The Order:

- Requires that at least 75% of State-reimbursed costs be spent on direct care or services, not administration, increasing to 85% by 2014.
- Caps reimbursement for salaries at $199,000, subject to an annual adjustment.
- Provides that State contracts can be terminated if the new rules are violated.

Is the Executive Order enforceable?

Presently, it is unsettled whether an Executive Order alone—without accompanying legislation—can serve to make such far-reaching changes. Since the terms of the Executive Order also appear in the Governor's 2012-13 executive budget proposal, approval by the Legislature would eliminate this legal issue. It now appears, however, that the Republicans, who control the State Senate, are planning to introduce a competing proposal.

The Governor's plan would apply to all entities—for-profit and not-for-profit—reimbursed with State financial assistance or receiving State-authorized payments for operating expenses. According to Cuomo, it would affect over 140,000 providers that together comprise a third of the State budget.

How do the spending caps work?

The caps would apply only to State funds. Therefore, agencies that receive both public and private funding could pay their executives more, or spend a greater portion of their budget on administrative expenses. Only expenditure of the State funds themselves would be subject to the new limits. Nonetheless, accounting for that discrete spending may be problematic for providers.

Notably, the salary cap would apply only "to the extent practicable." It is unclear how that provision would be applied, for example, to large hospital CEOs. There are also many unanswered questions regarding the definition of compensation.

The Order requires that regulations be promulgated prior to April 17, 2012. It also requires that State agencies amend agreements with providers to implement the new rules by April 17, 2012.

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What is causing the Governor to act?

The Order is the culmination of six months of intense activity following a *New York Times* article exposing excessive compensation at a Brooklyn-based center for the developmentally disabled. In September, the Governor's Task Force on Not-for-Profit Entities sent a questionnaire to hundreds of not-for-profit organizations throughout the State demanding that they justify their executive compensation. This letter caused widespread alarm within the not-for-profit community because of its tone and questions about whether excessive compensation should be recouped.

A State Senate committee held hearings on the issue on February 6, at which a number of not-for-profit organizations pressed for changes to the caps. Following the hearings Sen. Carl Marcellino announced that he plans to introduce a rival bill providing for greater flexibility.

Stay Tuned for Further News

HSE will continue to monitor the developments. If you would like to discuss the impact of the salary and administrative expenses caps on your organization, or not-for-profit executive compensation more generally, contact your HSE attorney.

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