

Cuomo Issues Executive Order Regarding Limits on Executive Compensation

By [Karen S. Lovitch](#) on January 19th, 2012

Written by Brian Platton

After withdrawing nearly identical proposed legislation one day earlier, on January 18, 2012, New York Governor Andrew Cuomo issued an [Executive Order](#) directing certain New York State agencies, including the Department of Health, to promulgate regulations that limit the compensation of executives of entities that receive state funding or payments from the state. Such regulations must be promulgated within ninety days of the date of the Executive Order.

The Executive Order calls for an overall compensation limit of \$199,999 per executive, but that limit may be adjusted by each agency with the approval of the Director of the Budget, provided that the compensation does not exceed Level I of the Federal government executive compensation guidelines promulgated by the U.S. Office of Personnel Management (“OPM”). Further, the operative sentence calling for a compensation limit is qualified by the phrase “to the extent practicable.”

In addition to limiting executive compensation, the Executive Order mandates that not less than seventy five percent of “State financial assistance or State-authorized payments” to a provider for operating expenses “shall be directed to provide direct care or services rather than support administrative costs.” This percentage will rise by five percent per year, and will rise to no less than eighty five percent no later than April 1, 2015.

The express language of the Executive Order states that the mandated regulations will apply to “providers of services that receive reimbursement for services directly or indirectly from such agency.” At present, it is unclear which entities will fall within the scope of the as yet unwritten regulations. Certain entities that receive direct payment from agencies of the State, such as Medicaid managed care plans, clearly appear to fall within the scope of the language used in the Executive Order; for many other entities, whether or not they will fall within the regulations mandated by the Executive Order remains to be seen.

While the Executive Order will most certainly incite great consternation among New York health care payers and providers, a prudent advisor should counsel potentially covered entities against overreaction. I suggest this for several reasons: first, the Executive Order, and/or the regulations called for by the Executive Order may be challenged, both by individual providers of services and umbrella organizations. Second, the Executive Order contains the intentionally fuzzy “to the extent practicable” language. Third, individual commissioners may seek exceptions, provided that they are within the Federal cap set by OPM. Finally, it is arguable that the limits mandated by the Executive Order only apply to funds originating with the State. That, as well as creative tactics on the part of service providers and their advisors, will most likely blunt the impact of the Executive Order and the regulations promulgated thereunder.