Marks Paneth & Shron LLP
Certified Public Accountants & Consultants
IT ALL ADDS UP.®

MP&S NONPROFIT ALERT: NEW REGULATIONS SET LIMITS ON ADMINISTRATIVE EXPENSES AND EXECUTIVE COMPENSATION FOR NONPROFITS

New York State Governor Andrew M. Cuomo's Executive Order #38 (EO #38), which sets limits on administrative expenses and executive compensation for covered provider entities, went into effect on July 1, 2013. EO # 38 is applicable to entities regulated by any of 13 specified State agencies. The regulations of this EO are applicable to entities that a) receive more than $500,000 of state support each year and b) receive at least 30% of their annual funding from the State. A summary of the key features of EO #38 follow.

Limits on Administrative Expenses: The administrative expenses of an entity subject to the order, paid with State funds or State-authorized payments, cannot exceed 25% in 2013, 20% in 2014 and 15% in 2015 and each year thereafter. The administrative expenses percentage is calculated as a percentage of total operating expenses.

Limits on Executive Compensation: An entity that is subject to EO #38 shall not use State funds or State-authorized payments for executive compensation in amounts greater than $199,000 per annum. However, the executive compensation can be greater than $199,000 if a) the entity obtained a waiver from the State, b) paid from other sources, c) a part of the compensation is for direct services and

1. The executive compensation (no matter how funded) is not greater than the 75th percentile of that compensation provided to comparable executives in other providers as established by a compensation survey identified, provided or recognized by the State.

2. The executive compensation is reviewed and approved by the entity's board of directors or a compensation committee on behalf of the board, with at least two independent voting members. The board or committee has to assess appropriate comparability data in its decision making.

Waivers: The State may grant a waiver to the limits on executive compensation and reimbursement for administrative expenses if an entity can demonstrate good cause supporting such a waiver. Generally, a decision on a waiver application shall be provided no later than 60 calendar days after submission of the application. The waiver application must be filed no later than 180 days after the last day of the reporting period. A reporting period shall mean, at the entity's option, the calendar year or, where applicable the fiscal year used by the entity. However, when an entity is required to file a cost report with the State, the reporting period shall mean the reporting period applicable to the cost report.

Reporting: An entity subject to this order is required to submit a disclosure form with the State no later than 180 calendar days following the reporting period. An entity's failure to submit a disclosure form may result in the termination or nonrenewal of a contract for State funds or State authorized payments.

Penalties: Noncompliance with the limits on executive compensation and reimbursement for administrative expenses may result in sanctions that may include suspension or revocation of an entity's license to operate programs, redirection of State funds, suspension, modification or termination of contracts, etc. In order to cure noncompliance and avoid sanctions, the entity can implement a corrective action plan approved by the State. The entity has an opportunity for appeal against the sanctions.

EO #38 Website: We encourage you to visit the website that New York State has developed to provide assistance with compliance regarding EO #38 and the related regulations. This website offers information for providers receiving State funds and State-authorized payments and allows providers the opportunity to apply for a waiver from the limitations of the order and accompanying regulations. A preliminary guidance that includes background information and instructions on the recommended processes for determining covered provider status, calculating administrative expenses and executive compensation, and filing a

waiver application is available on the website. Four worksheets designed to assist individuals/entities are also posted on the website.

These are just some of the highlights relating to EO #38, If you have questions or wish to discuss further, please contact one of our firm's nonprofit or HR specialists. Marks Paneth & Shron LLP (MP&S) can review your policies and procedures and facilitate compliance with the new law.

MP&S NONPROFIT AND GOVERNMENT SERVICES

The dedicated professionals in our firm's Nonprofit and Government Services Group can help answer questions about EO #38 and facilitate compliance with the order.

Michael L. McNee
Partner-in-Charge
P: 212.503.8954
mmcnee@markspaneth.com

Hope Goldstein
Partner
P: 212.503.6351
hgoldstein@markspaneth.com

Joseph J. Kanjamala
Partner
P: 212.503.8952
jkanjamala@markspaneth.com

Warren Ruppel
Partner
P: 212.503.6391
wruppel@markspaneth.com

Anthony J. Tempesta
Partner
P: 914.909.3415
ttempesta@markspaneth.com

Howard Becker
Director
P: 212.710.1732
hbecker@markspaneth.com

Robert Lyons
Director
P: 212.710.1736
rlyons@markspaneth.com

MP&S HUMAN RESOURCES CONSULTING AND BUSINESS ADVISORY SERVICES

Under the leadership of Eric A. Marks, MP&S offers a team of experienced HR consultants who can help keep your nonprofit running smoothly and in compliance with the ever-increasing list of federal and state employment laws and regulations. Specifically in regard to EO #38, they can provide guidance on executive compensation.

Eric A. Marks
Principal-in-Charge
P: 914.909.3402
emarks@markspaneth.com