



1. Part 513.5 of Title 14 NYCRR is amended to read as follows:

SUB-PART 513

Limits on Administrative Expenses and Executive Compensation

Statutory authority: Mental Hygiene Law §§7.09, 31.04, 7.15, 31.05, 41.03, 41.15, 41.44, 43.02;
Non-For-Profit Corporation Law §508

§ 513.5 Limits on executive compensation.

(a) Limits on executive compensation.

Except if a covered provider has obtained a waiver pursuant to section 513.6 of this Part, a covered provider as defined in this regulation shall not use State funds or State-authorized payments for executive compensation given directly or indirectly to a covered executive in an amount greater than \$199,000 per annum, provided, however, that the office shall review this figure annually to determine whether adjustment is necessary based on appropriate factors and subject to the approval of the Director of the Division of the Budget. Commencing on July 1, 2013, the limits on executive compensation pursuant to this Part shall be effective and applicable to each covered provider on the first day of each covered provider's respective covered reporting period.

[(b) Except if a covered provider has obtained a waiver pursuant to section 513.6 of this Part, where a covered provider's executive compensation given to a covered executive is greater than \$199,000 per annum (including not only State funds and State-authorized payments but also any other sources of funding), and either:

(1) greater than the 75th percentile of that compensation provided to comparable executives in other providers of the same size and within the same program service sector and the same or comparable geographic area as established by a compensation survey identified, provided, or recognized by the office and the Director of the Division of the Budget; or

(2) was not reviewed and approved by the covered provider's board of directors or equivalent governing body (if such a board or body exists) including at least two independent directors or voting members (or, where a duly authorized compensation committee including at least two independent directors or voting members conducted such review on behalf of the full board, such actions were not reviewed and ratified by such board), or such review did not include an assessment of appropriate comparability data;

then such covered provider shall be subject to the penalties set forth in section 513.8 of this Part. To determine whether a covered provider may be subject to penalties, such provider shall provide, upon request by the office or its designee, contemporaneous documentation in a form and level of detail sufficient to allow such determination to be made.]

[c](b) Program services rendered by covered executives.

The limit on executive compensation pursuant to this section shall not be applied to limit reimbursement with State funds or State-authorized payments for reasonable compensation paid to a covered executive for program services, including but not limited to supervisory services performed to facilitate the covered provider's program services, rendered by the executive outside of his or her managerial or policy-making duties. Documentation of such program services rendered shall be used by the covered provider to determine that percentage, if any, of the covered executive's compensation that is attributable to program services, and that compensation shall not be considered in the calculation of his or her executive compensation. Such documentation shall be maintained and provided to the office or its designee upon request. Clinical and program personnel in a hospital or other entity providing program services, including chairs of departments, heads of service, chief medical officers, directors of nursing, or similar types of personnel fulfilling administrative functions that are nevertheless directly attributable to and comprise program services shall not be considered covered executives for purposes of limiting the use of State funds or State-authorized payments to compensate them.

[d](c) Covered providers with multiple sources of State funds or State-authorized payments.

If a covered provider receives State funds or State-authorized payments from multiple sources, the provider's compliance with the limits on executive compensation in subdivision (a) of this section shall be determined based upon the total amount of such funding received and the reimbursements received from all sources of State funds or State-authorized payments. As set forth in section 513.7 of this Part, the covered provider shall report all of such State funds and State-authorized payments in the form specified by the office or its designee.

[e](d) Subcontractors and agents of covered providers.

The limits on executive compensation in subdivision[s (a) and (b)] of this section and the reporting requirements in section 513.7 of this Part shall apply to subcontractors and agents of covered providers if and to the extent that such a subcontractor or agent has received State funds or State-authorized payments from the covered provider to provide program or administrative services during the reporting period and would otherwise meet the definition of a covered provider but for the fact that it has received State funds or State-authorized payments from the covered provider rather than directly from a governmental agency. A covered provider shall incorporate into its agreements with such a subcontractor or agent the terms of these regulations by reference to require and facilitate compliance. Upon request, covered providers shall promptly report to the funding or authorizing agency the identity of such subcontractors and agents, along with any other information requested by that agency or by the office or its designee. A covered provider shall not be held responsible for a subcontractor's or agent's failure to comply with these regulations.

[f](e) Covered providers receiving State funds or State-authorized payments from a county or local government or entity contracting on its behalf.

The office or its designee, rather than the county or local unit of government or an entity contracting on behalf of such government, shall be responsible for obtaining the necessary reporting from and compliance by such covered providers, and shall issue guidance to affected county and local governments to set forth the procedures by which the office or its designee shall do so.

[g](f) Other limits on executive compensation.

If the contract, grant, or other agreement is subject to more stringent limits on executive compensation, whether through law or contract, such limits shall control and shall not be affected by the less stringent limits imposed by these regulations. However, the definition and interpretation of terms in this Part shall not be affected or limited by the definition or interpretation of terms in other regulations or agreements.

[h](g) A covered provider's contract or other agreement with a covered executive agreed to prior to July 1, 2012, shall not be subject to the limits in this section during the term of the contract, except that:

- (1) covered providers must apply for a waiver for any contracts or agreements with covered executives for executive compensation that exceeds or otherwise fails to comply with these regulations if such contracts or agreements extend beyond April 1, 2015; and
- (2) renewals of such contracts or agreements after the completion of their term must comply with these regulations.