

## New York State Governor Rescinds Executive Order 38

By Mark Piszko, CPA, CGMA, Partner

Not-for-profit health and welfare service providers recently received good news concerning a controversial state edict that limited how they were allowed to spend funds provided by New York State. NYS Executive Order 38 (EO 38) – which capped executive salaries at \$199,000 for state-funded service providers and limited administrative expenses to 15% of its total annual costs – has been fully rescinded by Governor Kathleen Hochul. EO 38 had been put into effect by former NYS Governor Andrew Cuomo in January 2012.

Certain provisions of Governor Cuomo's original mandate had been already rolled back by an Appeal Court ruling in 2018 in response to numerous lawsuits by service providers. According to the ruling, compensation for covered executives employed by organizations that were funded primarily by state-sourced funds would continue to be limited to no more than \$199,000 per year. Organizations were still able to seek a waiver from the NYS Department of Health to pay more than \$199,000. But the Appeals Court ruling also narrowed EO 38's reach to allow social service providers receiving revenue from sources other than Medicaid or other state funds, such as Medicare, private insurance, or private/public donations, to ignore the salary cap.

The NYS Health Department posted a notice in the New York Register in late June notifying readers that "Executive Order 38, issued on January 18, 2012 pertaining to limits on state-funded administrative costs and executive compensation was discontinued ... Limits on Administrative Expenses and Executive Compensation is no longer necessary." New York State funding and oversight agencies, such as Office for People with Developmental Disabilities (OPWDD), Office of Addiction Services and Supports (OASAS), Office of Children and Family Services (OCFS), Office of Mental Health (OMH) and others followed suit stating that they are no longer enforcing the salary cap because Governor Hochul repealed it.

### Contact Us

If your not-for-profit organization needs assistance understanding the impact of the elimination of Executive Order 38 or with any accounting, auditing, tax or business consulting services, please contact the partner in charge of your account or:

Mark Piszko, CPA, CGMA  
Partner-in-Charge, Not-for-Profit Services  
[mpiszko@pkfod.com](mailto:mpiszko@pkfod.com) | 646.449.6316

Our Firm provides the information in this e-newsletter for general guidance only and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.