



JULY 2014

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HEALTH CARE LAW ALERT

Authority of the Department of Health's Executive Compensation Regulations in Question

Supreme Court in Nassau County held in an opinion dated April 8, 2014 that the New York State Department of Health (DOH) lacked authority to promulgate regulations limiting executive compensation. *Agencies for Children's Therapy Servs. v. NYSDOH*, 15763/12 NYLJ 1202650601818 (Sup. Ct. Nassau Cnty. April 8, 2014).

By way of background, DOH's regulations cap the amount that may be paid to executives and for administrative expenses of entities that receive \$500,000 annually in state funds or state-authorized payments. (See 10 NYCRR 1002 *et seq.*) State funds and state-authorized payments include monies received from federal and county portions of Medicaid, but do not extend to reimbursements from Medicare. DOH's regulations were promulgated pursuant to Governor Cuomo's Executive Order 38.

The authority for the regulations was challenged by the Agencies for Children's Therapy Services, Inc. (ACTS), a non-profit company composed of 33 for-profit member agencies providing services under New York's Early Intervention Program for Infants and Toddlers with Disabilities. The Court found that DOH lacked statutory authority to promulgate the regulations, which could not flow from the Executive Order. Specifically, the statutory provisions cited by DOH in support of its authority did not apply to ACTS' for-profit member agencies. Moreover, rather than filling in the details of broad legislation, DOH's regulations adopted an identical cap on executive compensation and administrative expenses previously considered and rejected by the Legislature in the Governor's 2012 Budget Bill. The Court granted ACTS' motion declaring the regulations invalid and unenforceable.

The applicability of this ruling to non-profit agencies such as hospitals is uncertain, as the Court's consideration of the first of four factors was specific to ACTS' for-profit members. However, the decision is currently under appeal to the Second Department, which will hopefully clarify the ruling's impact on non-profit providers. Entities should continue to operate under the assumption that the regulations are valid pending any updates from the Second Department.

If you have any questions or would like more information on the issues discussed in this communication, please contact any of the following Hancock Estabrook attorneys:

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