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N.Y. Will Soon Require Many Charities to Justify High CEO Pay

By Ben Gose

New state regulations in New York would force some charities that pay executives more than $199,000 to seek permission from the state to continue offering those salaries.

The state's effort to rein in excessive compensation stopped short of a firm cap on salaries that charity executives had feared nine months ago when Gov. Andrew Cuomo appointed a committee to look into concerns that some charities had used state dollars to pay their executives high salaries.

Nevertheless, some advisers to charities said the new rules would hamper the ability of New York charities to attract top leaders to run their organizations.

"The level of scrutiny that is going to take place with regard to compensation decisions is going to be quite extraordinary going forward," says James Lytle, a lawyer in Albany, N.Y., whose firm helps nonprofit clients navigate regulatory requirements.

"Ultimately, it's going to make it difficult for New York organizations to recruit and retain top talent," Mr. Lytle adds.

The proposed regulations, which are set to take effect in January, would apply to nonprofit and for-profit organizations that receive $500,000 or more in state money and get at least 30 percent of their budgets from the state.

The rules would prohibit organizations from using state funds to pay more than $199,000 of an executive's salary.

The state could penalize nonprofit groups that violate the law by suspending their government contracts and revoking their license to operate in the state.

Charity advocates say the regulations would mostly affect midsize organizations that receive the vast majority of their revenues from the state.

Larger organizations, including nonprofit hospitals that routinely pay executives more than $199,000, are less likely to be significantly affected since they could tap other sources of revenue to pay an executive's salary.

Stricter Than Other States

Other states, including Massachusetts and New Hampshire, have considered steps to rein in compensation of nonprofit executives in recent years. And California State University recently capped the salary increases that incoming campus presidents can receive, amid widespread criticism of high salaries by students in the system.

But no other state has gone as far as New York.

Some charity-watchdog organizations said the New York regulations would make it much more difficult for nonprofit boards to justify a big salary that vastly exceeds what peer organizations are paying.

"This looks to be a serious effort to rein in excessive compensation," said Daniel Borochoff, the head CharityWatch, a nonprofit monitor. "I'm happy that they're making this effort."

A Flexible Cap

The new rules would apply to groups that receive money from 13 state agencies, including the Department of Health and the Office for People with Developmental Disabilities.

Nonprofit groups that pay executives more than $199,000, even with nonstate funds, would still potentially face penalties if they fail to keep the compensation below the top-quartile of salaries paid by comparable organizations, or if the charity's board set the compensation without reviewing salary-survey data.

Charities that fail those requirements can still seek waivers from the state, which would take into account factors such as whether the group would be unable to provide the "same levels of quality" if its executive's salary was lower.

State officials have said they intend to create a database of how much executives at groups with state contracts are paid, which would presumably help the state make decisions on waiver requests.

Advocates for nonprofit organizations, who have worked closely with state officials on the plan, said they had succeeded in pushing provisions that would allow the state to ferret out "bad actors" while still allowing groups to pay competitive salaries.

"We've moved the ball quite a bit," said Jeff Wise, president of the New York State Rehabilitation Association, which has 105 members that provide services to people with developmental disabilities.

Mr. Wise adds, "What started out as a discussion of a hard cap has become much more flexible."

Calls to Governor Cuomo's office were not returned, but members of his staff emphasized at a briefing in May that the rules were designed to nab outliers who were gaming the system.

Governor Cuomo appointed a committee to look into executive compensation with state contractors in August 2011, following reports that the heads of the Young Adult Institute, a disability-services provider, had received nearly $1-million a year in salaries and bonuses that were financed with money the group receives from Medicaid.

State Vulnerability

Some charity advocates said that as the state becomes more heavily involved in compensation decisions, the waiver process may leave it vulnerable to criticism.

For example, the state might decide that the high salaries commanded by some hospital executives are warranted, given the complexity of their operations.

“If someone is getting a $1-million salary and gets a waiver, in essence that salary has become state-approved,” said Doug Sauer, chief executive of the New York Council of Nonprofits, with more than 3,000 members statewide.

“I don’t think the public will view those decisions favorably.” he adds.

The state’s willingness to add flexibility to the regulations won over many charity advocates—and Governor Cuomo included comments from some of them in his news release announcing the rules.

Michael Stoller, executive director of the Human Services Council of New York City, which represents thousands of the city’s nonprofits, was among those quoted in the news release.

In an interview, Mr. Stoller said that tighter rules that allow the state to take action against those who overreach will help the vast majority of groups that are acting responsibly.

“It sounds like 'Kumbaya,’ but we’re on the same side,” Mr. Stoller said.

“When the media comes out with a report about some slimeball, the whole system has to pay for it.”

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Michael L Wyland 1 month ago

One problem I have with NY's approach to executive pay limitations is that there is no reported indexing of the $199,000 "state share" of an executive's salary. $199,000 may keep executive pay competitive today, but what about in coming years? The article talks about the difficulties associated in attracsting and retaining top talent. What about the potential problem of some service providers choosing to change their revenue mix to legally avoid being subject to the pay reviews?

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