

## **An Increasing Number of States Consider Steps to Limit Pay for Nonprofit Leaders**

*By Ben Gose*

While pay increases for executives at most large charities have been tempered by the weak economy, an increasing number of states are considering laws that seek to place limits on compensation for nonprofit leaders.

New York Gov. Andrew Cuomo's executive order, issued in May, limits some charities from using state funds to pay salaries of more than \$199,000. The action attracted widespread attention, but some less-noticed efforts have also been under way elsewhere. Among them:

New Jersey issued regulations in 2010 to limit salaries for executives at social-service charities to no more than \$141,000 if they are paid exclusively with state funds.

A Florida Senate committee approved a measure this year to cap executive salaries at slightly less than \$130,000 a year if a charity received more than two-thirds of its budget from the state. The bill was never taken up by the full Senate.

In Massachusetts, state Sen. Mark Montigny says he plans to reintroduce legislation that would limit pay for charity executives. The proposal, which Mr. Montigny has promoted in various forms for the past six years, would limit executive pay to \$500,000 (though it will include a waiver process for those that choose to pay more).

New Hampshire's attorney general has criticized high salaries earned by hospital executives and has meetings on tap for later this year to encourage a new approach to compensation.

An Illinois state legislator says he plans to introduce a measure this fall that would make it easier to spot high salaries paid to leaders of charities who earn most of their income from for-profit subsidiaries.

The efforts come at a time when many states are facing steep financial challenges, and some states, such as New Jersey, have pushed for the changes primarily as a way to save money. But in other states, the efforts have also followed controversies over big paydays for charity executives.

Governor Cuomo introduced his cap after a *New York Times* report highlighted a charity for the developmentally disabled that was paying each of its two top executives nearly \$1-million a year.

Michael Delaney, the New Hampshire attorney general, began his inquiry into the compensation of hospital executives after a proposed hospital merger drew his attention to the \$1.36-million pay package awarded to the top executive of one of the hospitals.

Senator Montigny's efforts have been prompted by reports that Blue Cross Blue Shield of Massachusetts, a nonprofit health insurer, paid its outgoing chief executive \$16.4-million in retirement benefits in 2006 and last year said it would pay \$11.3-million in severance to another departing chief executive.

Mr. Montigny says powerful nonprofits in Boston, including big universities and hospitals, have successfully lobbied against his bill in years past. He acknowledges that a cap is "extreme"—executives at the very best large organizations, he believes, may be worth more than \$500,000. But he says he'll continue to push the pay limits until leaders of large nonprofits in Massachusetts sit down with him to hammer out a "reasonable compromise."

"The good guys are going to lose if this issue isn't dealt with," Mr. Montigny says. "Across the country there's a very angry public, and the backlash is not against the politicians, it's against the charities because the press has spotlighted so many abuses."

### **Hiring Is Tougher**

Charities in New York are already starting to sweat Governor Cuomo's executive order. The new rules are scheduled to take effect in January, and the 13 state agencies implementing them may issue final regulations as early as this month.

Michael J. Cooney, a lawyer in Rochester, N.Y., who represents nonprofit groups, says he has received calls from several charity clients who say they're having trouble recruiting out-of-state job candidates. The job seekers mistakenly believe they can't make more than \$199,000 in New York.

James Lytle, a lawyer in Albany, N.Y., says one of his clients, a large child-welfare group, recently merged with a similar-size charity, and the board wanted to award a raise to the president of the combined, larger operation. But the board ultimately left the salary alone.

"They felt like the existence of these regulations would have attracted more scrutiny than they were prepared to endure," Mr. Lytle says.

Critics of the state efforts to cap or restrain pay say such efforts can lead to unintended consequences. "It has the effect of stimulating creative ways to circumvent the limits, and those creative methods can lead organizations astray," says Marcus Owens, a lawyer who formerly headed the IRS division that deals with nonprofits.

Mr. Owens says some charities may refuse to play ball under the new rules—potentially forcing New York and other states to choose less-accomplished charities to carry out essential functions like caring for the disabled or the aged.

### **Limiting Board Authority**

Michael Cusick, president of the Florida Coalition for Children, says state salary caps subvert the authority of volunteer boards, whose main duties include hiring an executive.

Sen. Ronda Storms, who introduced the Florida bill that would have capped compensation at some nonprofits, has criticized the salaries paid by community-based care groups the state hires to provide foster care and other services for youths. At least one of the organizations pays its top executive a salary of more than \$300,000.

Ms. Storms is leaving the Senate to pursue another elected office, but Mr. Cusick says he wouldn't be surprised to see someone else introduce a similar bill again next year. Mr. Cusick would prefer to see the state limit the percentage of its funds that can be used to pay a charity's administrative costs.

"Picking one statewide salary is too restrictive," he says.

State legislators and regulators in Illinois began to examine compensation for charity executives after an article in the *Chicago Tribune* in August detailed how some social-service charities are earning most of their income through salaries paid by for-profit subsidiaries.

State Rep. Greg Harris says he will introduce legislation this fall that would require greater transparency about salaries at for-profit companies that are closely related to charities that rely heavily on state funds.

"If we're funding organizations to the tune of tens of millions of dollars per year with state money, those groups have an obligation to disclose who is being paid what," he says.

While state efforts to cap pay tend to be the most controversial, the caps typically aren't as punitive as they may initially seem. In both New Jersey and New York, charities affected by the caps will still be able to use other sources of funds, including private support, to pay higher salaries. In New Jersey, for example, charities that choose to pay more than \$141,000 can list the sources of nonstate money they are using to pay the extra salary and avoid any penalties.

Nicole Brossoie, a spokeswoman for the New Jersey Department of Human Services, says that in the two years the new rules have been in effect, the department has not encountered any violations of the policy.

New Hampshire's attorney general, Michael Delaney, has also been critical of what he views as excessive salaries, but he has focused on disseminating information about executive pay to put pressure on hospital boards to re-evaluate their pay practices, rather than pursuing legal or regulatory action.

A new study commissioned by Mr. Delaney's office found that chief executives at New Hampshire's 23 nonprofit hospitals received pay increases of roughly 18 percent from 2006 to 2009, more than three times as much as the 4.8 percent average increase for all private-sector employees in the state. The study found no link between pay and the amount of charity care that the hospitals provide.

Anthony Blenkinsop, the state's top charity regulator, says he is meeting with hospital executives and their lobbying group, the New Hampshire Hospital Association, to encourage new pay policies that would tie compensation more closely to goals related to quality and charitable mission.

“We’re process-oriented at this point,” he says. “We’re not contemplating legislation that would cap salaries.”