

HMM
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TO: Administrators / Controllars / Owners

FROM: Joe Martello, CPA
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RE: Compliance with Executive Order 38

Compliance with Executive Order 38

Governor Cuomo enacted Executive Order 38, which intends to limit Administrative Expenses and Executive Compensation for entities and individuals receiving state funds or state authorized payments (including Medicaid reimbursement). Executive Order 38 was enacted by the Department of Health under Title 10, Part 1002.

What is covered: “*Administrative expenses* are those expenses”...”that are incurred in connection with the covered provider’s overall management and necessary overhead that cannot be attributed directly to the provision of program services.” [Title 10, Part 1002.1(a)]

This definition covers many of the expenses reported on Lines 004 and 005 of RHCF Schedule H, but excludes capital expenses (including property rent, mortgage, taxes, assessment, and depreciated expenses).

Also mentioned are covered executives. “*Covered executive* is a compensated director, trustee, managing partner, or officer whose salary and/or benefits, in whole or in part, are administrative expenses, and any key employee whose salary and/or benefits, in whole or in part, are administrative expenses and whose executive compensation during the reporting period exceeded \$199,000. For the purposes of this definition, the terms "director," "trustee," "officer," and "key employee" shall have the same meaning as such terms in the Internal Revenue Service’s instructions accompanying Form 990, Part VII.” [Title 10, Part 1002.1(a)]

For compliance purposes, the compensation used to measure compliance is that that reported on a W-2 or 1099 and is not attributable to program services.

When is this effective: Under Title 10, Part 1002.1(e), the regulations are effective for the annual reporting period commencing after July 1, 2013. For Nursing Facilities filing an RHCF-4 Medicaid Cost Report, this will be the period beginning January 1, 2014.

What do I have to file: Under executive order 38, all covered providers will have to file a disclosure form no later than 180 days after the end of the reporting period, or 180 days after the end of the 2014 cost report year. This form is in addition to the cost reports already required.

How do I get a waiver: Waiver information can be found on the web at: <http://executiveorder38.ny.gov/content/eo-38-waiver-application>

Where do I obtain additional information: The following are resources available to covered providers:

- <http://executiveorder38.ny.gov/>
- Your facility’s legal counsel
- The Nursing Home association(s) of which your facility is a member
- Horan, Martello, Morrone, P.C.