

**Limits on Administrative Expenses and Executive Compensation
Amendments to 14 NYCRR Part 645
ADOPTED REGULATIONS
Effective Date: Upon Adoption**

- **Existing subdivision 645.3(a) and (b) are amended accordingly.**

(a) Limits on executive compensation.

Except if a covered provider has obtained a waiver pursuant to section 64(5.4 of this Part, a covered provider as defined in this Part shall not use State funds or State-authorized payments for executive compensation given directly or indirectly to a covered executive in an amount greater than \$199,000 per annum, provided, however, that the office shall review this figure annually to determine whether adjustment is necessary based on appropriate factors and subject to the approval of the Director of the Division of the Budget. Commencing on July 1, 2013, the limits on executive compensation pursuant to this Part shall be effective and applicable to each covered provider on the first day of each covered provider's respective covered reporting period.

[(b) Except if a covered provider has obtained a waiver pursuant to section 645.4 of this Part, where a covered provider's executive compensation given to a covered executive is greater than \$199,000 per annum (including not only State funds and State-authorized payments but also any other sources of funding), and either:

- (1) greater than the 75th percentile of that compensation provided to comparable executives in other providers of the same size and within the same program service sector and the same or comparable geographic area as established by a compensation survey identified, provided, or recognized by the office and the Director of the Division of the Budget; or
- (2) was not reviewed and approved by the covered provider's board of directors or equivalent governing body (if such a board or body exists) including at least two independent directors or voting members (or, where a duly authorized compensation committee including at least two independent directors or voting members conducted such review on behalf of the full board, such actions were not reviewed and ratified

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by such board), or such review did not include an assessment of appropriate comparability data;

then such] Violations of this subdivision shall subject the covered provider [shall be subject] to the penalties set forth in section 645.6 of this Part. To determine whether a covered provider may be subject to penalties, such provider shall provide, upon request by OPWDD or its designee, contemporaneous documentation in a form and level of detail sufficient to allow such determination to be made.

- **Reserve subdivision (b) of 14 NYCRR § 645.3.**
- **Subdivision 645.3 (e) is amended to read as follows:**

(e) Subcontractors and agents of covered providers.

The [limits] limit on executive compensation in [subdivisions] subdivision (a) [and (b)] of this section and the reporting requirements in section 645.5 of this Part shall apply to subcontractors and agents of covered providers if and to the extent that such a subcontractor or agent has received State funds or State-authorized payments from the covered provider to provide program or administrative services during the reporting period and would otherwise meet the definition of a covered provider but for the fact that it has received State funds or State-authorized payments from the covered provider rather than directly from a governmental agency. A covered provider shall incorporate into its agreement with such a subcontractor or agent the terms of these regulations by reference to require and facilitate compliance. Upon request, covered providers shall promptly report to the funding or authorizing agency the identity of such subcontractors and agents, along with any other information requested by that agency or by OPWDD or its designee. A covered provider shall not be held responsible for a subcontractor's or agent's failure to comply with these regulations.

- **Subdivision 645.4 (a) is amended to read as follows:**

(a) Waivers for Limit on Executive Compensation. OPWDD or its designee and the Director of the Division of the Budget may grant a waiver to the [limits] limit on executive compensation in section 645.3 of this Part for executive compensation for one or more covered executives, or for one or more positions, during the reporting period and, where appropriate, for a longer period upon a showing of good cause. To be considered, an application for such a waiver must comply with this subsection in its entirety.

- **Section 645.4(a)(2)(ii) is amended to read as follows:**

(ii) the extent to which the covered provider would be unable to provide the program services reimbursed with State funds or State-authorized payments at the same levels of quality and availability without obtaining reimbursement for executive compensation given to a covered executive in excess of the [limits] limit in section 645.3 of this Part;

- **Section 645.4 (a) (3) is amended to read as follows:**

(3) A waiver to the [limits] limit set forth in section 645.3 of this Part shall be granted only where a covered provider has demonstrated good cause supporting such a waiver, and has provided any documentation requested by OPWDD or its designee or the Director of the Division of the Budget to support such a waiver. Unless additional information has been requested but not received from the covered provider, a decision on a timely submitted waiver application shall be provided no later than 60 calendar days after submission of the application.

- **Section 645.4 (a) (5) is amended to read as follows:**

(5) Unless already publicly disclosed, information provided by a covered provider to OPWDD in connection with a waiver application regarding the [limits] limit on executive compensation shall not be subject to public disclosure under the State's Freedom of Information Law.

Note: New material is underlined and deleted material is in [brackets].