

December 7, 2012

Jeremy Creelan
Special counsel for public integrity and ethics reform
Office of Gov. Andrew Cuomo
NYS State Capitol Building
Albany, NY 12224

RE: I.D. No. HLT-22-12-00012-RP: Limits on Executive Compensation and Administrative Expenses in Agency Procurements

Dear Mr. Creelan:

The Alliance for Advancing Nonprofit Health Care is the nation's voice for nonprofit hospitals, nursing homes, post-acute care providers, community health centers, and health plans--all dedicated to serving their communities, not private investors.

It is in that context that we write to urge you to withdraw proposed regulations to limit the executive compensation of nonprofit health care providers and plans, thereby placing State agencies in the position of second-guessing the decisions of hundreds of voluntary boards which are already acting in compliance with federal and existing state laws in how they set their executives' compensation and already subject to public disclosure requirements regarding executive compensation practices.

For decades, New York has led the nation in both what it expects and what it receives from nonprofit health care organizations: Your hospital community benefit reporting law was a national model, your character and competency review process has for decades ensured that patients are put above profits, your health care leaders are national thought leaders in delivery system and payment reform, community collaboration, medical research, and serving vulnerable populations. They have brought prestige to New York and brought millions of non-state dollars into New York.

Aside from their questionable legality, the proposed limits are absolutely counterproductive to maintaining New York's national pre-eminence in the delivery and financing of health care services, not to mention an ill-deserved slap at New York's nationally respected nonprofit health care leadership. If enacted, they will demoralize voluntary, community-based boards of trustees, drive talented leadership to other states and motivate mediocrity – hardly what one expects from the Empire State.

Moreover, at a period in our history where nonprofit health care organizations in New York are already facing tremendous fiscal challenges, the last thing they need are costly, unnecessary and inappropriate regulatory burdens like these.

Nationally, nonprofit providers and plans act as our society's safety net. They are responsible and responsive to the communities and populations they serve, legally and ethically bound to act in the public interest. And they accomplish this in excellence:

- For eight consecutive years, most top-quality health plans in the U.S. are offered by nonprofit organizations, based on rankings released by the National Committee for Quality Assurance (NCQA). Indeed, five of the top 20 Medicare plans nationwide and three of the top 20 Medicaid plans are offered by nonprofit New York plans.
- A study by Harvard School of Public Health researchers, published in the October 2011 issue of Health Affairs, found that the best hospitals nationwide -- defined as offering higher quality at lower cost -- were typically nonprofit institutions located in the Northeast part of the U.S. and treated a higher proportion of Medicare patients than the worst hospitals.
- The Agency for Healthcare Research and Quality's Nursing Home Survey on Patient Safety Culture: 2011 User Comparative Database Report found that nonprofit nursing homes had a higher average percent positive response than for-profit nursing homes on all 12 patient safety culture composites and a higher percentage of respondents who gave their nursing home an overall rating on resident safety of "Excellent" or "Very Good" (66 percent) than for-profit nursing homes (57 percent).

In short, nonprofit health care plans and providers should be honored and applauded, not punished with arbitrary caps on what their leaders and managers are allowed to earn and added, unnecessary and costly regulatory burdens.

Our comments are focused on three key components of the proposed rules:

Question: Do you want to specifically challenge the inclusion of the federal portion of Medicaid payments in the definition of "state funds"?

- **Covered organizations would be prohibited from using state funds or state authorized funds to pay executives in excess of \$199,000, unless granted a waiver by the state agency that regulates the organization and the Division of Budget.**

This limit is patently absurd – especially in a high-cost state like New York and given the enormous operational and legal complexity of covering and delivering health care in New York. It also overlooks the fact that many executives' pay is conditioned in part on achieving targets related to meeting specific community needs, fiscal stewardship, quality performance and increasing philanthropic donations to cover unreimbursed or under-reimbursed services. By setting a low ceiling, the State would effectively prohibit incentive pay tied to mission achievement.

While the proposed waiver process may be a well-intentioned "work around" for that absurdly low ceiling, it effectively abrogates the role of the nonprofit board and creates a huge new task for both the state bureaucracy and nonprofit health care organizations.

- **A covered organization would be prohibited from compensating its executives more than \$199,000 even with non-state funds unless the salary is below the 75th percentile of comparable executives and was properly reviewed and approved by the organization's board of trustees.**

This proposal essentially substitutes the State's arbitrary judgment for the wisdom of voluntary health care boards who are grounded in their communities, donate enormous amounts of their time and talent to their board work *and* are in compliance with existing federal and state laws and rules.

It also inappropriately regulates use of non-state monies, including those raised philanthropically.

More egregiously, it says New York's nonprofit leaders should not be worth more than 75% of what their peers (and perhaps some of their inferiors!) are paid elsewhere in the nation. This is a blatant drive to mediocrity that is unworthy of the State of New York.

- **"State authorized payments" would include all Medicaid payments, including the federal and local shares, and providers that receive state funds or state-authorized funds from managed care organizations would be covered by these regulations.**

We find the proposal to define state funds to include funds that the state does not itself actually supply (federal and local shares) to be illogical, unfair and legally questionable, along with the proposal to subject a limited set of subcontractors (providers) to regulations aimed at one type of contractor receiving state funds (managed care organizations)—much less any alternative proposal that would subject all types of sub-contractors in the state to such regulations.

In conclusion, the Alliance for Advancing Nonprofit Health Care urges New York State to drop its plans to cap nonprofit health care executive compensation. To merge two clichés: Be careful what you ask for, you may get what you pay for.

Sincerely,



Bruce McPherson
President and CEO

cc:

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