

Costs to Regulated Parties:
 There are no costs imposed on regulated parties by these regulations because the amendments provide reimbursement for health care services provided via telehealth.

Costs to the Administering Agencies, the State, and Local Governments:
 Costs to administering agencies and the State associated with these amendments will be covered by existing State budget appropriations and anticipated federal financial participation. There are no costs imposed on local governments by these regulations because the amendments provide reimbursement for health care services provided via telehealth.

Local Government Mandates:
 The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:
 The proposed regulations impose minimal paperwork requirements on regulated parties to claim Medicaid reimbursement for telehealth services provided to Medicaid enrollees.

Duplication:
 There are no other State or Federal requirements that duplicate, overlap, or conflict with the statute and the proposed regulations.

Alternatives:
 The Department considered the option of not promulgating these emergency regulations, which would create an abrupt halt to certain telehealth flexibilities authorized during the public health emergency and which have proven vital to Medicaid members. In consultation with the Office of Mental Health and Office of Addiction Services and Supports, the Department determined that providing continuity of care to Medicaid enrollees during the transition is a public health priority and as such, decided to move forward with these emergency regulations.

Federal Standards:
 There are no minimum Federal standards regarding this subject.

Compliance Schedule:
 These amendments shall be effective on filing with the Secretary of State.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose any new reporting, record keeping or other compliance requirements on small businesses or local governments.

Cure Period:
 Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on rural areas, and it does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

NOTICE OF ADOPTION

Limits on Executive Compensation

I.D. No. HLT-36-19-00006-A

Filing No. 1046

Filing Date: 2021-09-22

Effective Date: 2021-10-13

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 1002.3 of Title 10 NYCRR.

Statutory authority: Social Services Law, section 363-a(2); Public Health Law, sections 201(1)(o), (p), 206(3) and (6)

Subject: Limits on Executive Compensation.

Purpose: Removes “Soft Cap” prohibition on covered executive salaries.

Text or summary was published in the September 4, 2019 issue of the Register, I.D. No. HLT-36-19-00006-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2026, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Health (Department) received comments from Agencies for Children’s Therapy Services (ACTS) and The Continuing Care Leadership Coalition (CCLC). The comments and the Department’s responses are summarized below.

Comment: A comment was received stating that the \$199,000 executive compensation threshold is antiquated and should be updated to reflect new duties executives have been required to take on as well as inflation. The commenter suggested that the executive compensation cap be at a minimum constituent with the Bureau of Labor Statistics data on inflation.

Response: The regulations establish a \$199,000 maximum for the use of State funds or State-authorized payments for executive compensation given directly or indirectly to a covered executive. However, this amount does not limit the amount of compensation paid to such executives from other sources of income outside of State funds or State-authorized payments. In addition, the regulations provide for an annual review to be conducted by the Department to determine whether adjustment is necessary based on appropriate factors and subject to the approval of the Director of the Division of Budget. As such, no changes were made to the proposed regulation as a result of this comment.

Comment: A comment was received asking that the Department recognize that not-for-profit entities engage in a similar process as set forth in the proposed regulation to comply with Internal Revenue Service requirements related to executive compensation. The commenter suggested that the Department consider further aligning State reporting and Federal reporting for such entities, to reduce the paperwork burden for not-for-profit entities.

Response: The proposed regulation is necessary to comply with the Court of Appeal’s decision in *LeadingAge, et al. v. Shah, et al.*, 32 N.Y.3d 249 (2018), which invalidated section 1002.3(b) of the existing regulation. The proposed rulemaking only seeks to remove this provision of the regulation and no additional amendments are being made at this time. The Department will take this comment under consideration for any future rulemaking. No changes were made to the proposed regulation as a result of this comment.

Comment: A comment was received suggesting that the Department update the materials on the State’s EO #38 website, as the existing materials appeared to be dated and confusing to understand.

Response: The Department will take this comment under consideration; however, no changes are necessary to the regulation as a result of this comment.

Comment: A comment was received in support of the regulatory amendments.

Response: No changes to the proposed regulation are necessary as a result of this comment.

NOTICE OF EXPIRATION

The following notices have expired and cannot be reconsidered unless the Department of Health publishes a new notice of proposed rule making in the *NYS Register*.

Hospital Medical Staff - Limited Permit Holders

I.D. No.	Proposed	Expiration Date
HLT-47-19-00008-P	November 20, 2019	September 22, 2021

Women, Infants and Children (WIC) Program

I.D. No.	Proposed	Expiration Date
HLT-51-19-00001-P	December 18, 2019	September 22, 2021

Medicaid Managed Care State Fair Hearings and External Appeals Processes and Standards

I.D. No.	Proposed	Expiration Date
HLT-27-20-00006-P	July 8, 2020	September 22, 2021