

Practical Guidance on Regulations to Implement

Executive Order #38



The information provided herein is meant as practical guidance, not legal advice. HSC encourages our members to engage with State contract managers, in-house and pro-bono counsel, and Board of Directors to ensure compliance with the Executive Order #38 Regulations.

Covered Provider Status

- If an organization deems itself to be a covered provider due to the amount and percentage of State funds it receives, it does not need to fill out the “Covered Provider Determination Worksheet.” This worksheet is helpful if an organization needs to calculate funding because it is unsure if it meets the thresholds of receiving \$500,000 a year in State funds and State-authorized payments, AND that funding makes up thirty percent of its in-state revenue (Page 3).
- The “reporting period” is determined by a State agency cost report. For an organization that only has one contract with a State agency, that contract cost report will determine the “applicable period.” Organizations with multiple contracts across agencies may use the cost report of its choosing (Page 14).

Administrative Overhead Calculation

- To determine administrative overhead expenses, organizations should use the definitions that appear in the regulations. State agencies often issue guidance on how certain expenses should be categorized – either as program or administrative – and providers should continue to follow agency guidance on those definitions (Page 5).
- Certain organizations have federally approved indirect rates that are used in some State contracts. Organizations that have a federally approved rate that is higher than fifteen percent, and are allowed to use that rate on a State contract, may redefine costs appropriately (using the definitions provided in the regulations) to continue to use the federally approved rate.

Waivers

- An organization can apply for a waiver at any point during the reporting period, up to 180 days after the reporting period ends. However, an organization must apply for a waiver before or concurrently with its EO #38 Disclosure Form, which is also due 180 days after the reporting period ends (Page 7 & 8).

Executive Compensation

- Not just the salary of the head of an organization is subject to these regulations. Directors, managing partners, and key employees including Chief Operating Officers, development officers, and fiscal officers whose overall compensation exceeds \$199,000 may be subject to these regulations as well. Note that if a portion of a key employee’s job - including the executive director - includes direct program work, the percentage of salary dedicated to program work can be carved out of the overall executive compensation (Page 6).
- Compensation surveys do not necessarily need to meet all seventeen factors outlined in the regulations for purposes of waiver and/or the disclosure form to determine the 75th percentile. To ensure a thorough compensation survey, an organization should ensure as many factors as possible are used (Page 42 & 43).