TO: Memo Distribution List

FROM: Hinman Straub P.C.

RE: Summary of Executive Order 38 Updated Guidance

DATE: July 3, 2014

NATURE OF THIS INFORMATION: This is general information you might find helpful or informative.

DATE FOR RESPONSE OR IMPLEMENTATION: None – this is for your information.

HINMAN STRAUB CONTACT PEOPLE: Sean Doolan, Kelly Ryan and Janet Silver

THE FOLLOWING INFORMATION IS FOR YOUR FILING OR ELECTRONIC RECORDS:
Category: Suggested Key Word(s):

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On July 1, the Governor’s office launched an updated website dedicated to Executive Order 38 (“E.O. 38”). Executive Order 38 and its implementing regulations limit executive compensation and administrative expenses for certain entities that receive substantial state funding. Please see our previous memos for a detailed explanation of E.O. 38.

The updated E.O. 38 website and associated guidance does not contain any significant substantive changes or updates to previous guidance; with one key exception. Due to legal proceedings, E.O. 38 will not be implemented in Nassau County at this time.

**E.O. 38 in Nassau County**

The implications for covered providers who offer services in Nassau County may be confusing. The relevant portion of the legal notice suspending E.O. 38 in Nassau County reads as follows:

“Based upon the April 8, 2014 decision in Agencies for Children's Therapy Nassau County Services, Inc. v. New York State Department of Health, et al. ("ACTS"), covered providers conducting business in Nassau County need not file Executive Order 38 disclosures. For purposes of this notice, “conducting business” means having a place of business within Nassau County, providing program services or administrative services involving the use or receipt of State funds or State-authorized payments within Nassau County, or otherwise conducting business within Nassau County in relation to which executive compensation is paid.”

Covered Providers located in Nassau County and/or those who provide the majority of their program services in Nassau County would not need to file disclosure forms. It is less clear how this suspension will affect statewide or regional providers. Analysis for such providers should likely be done on a case-by-case basis to assess compliance needs until further clarification is provided.

**Forms, Guidance and Training Materials**

The updated website now contains a guided, fillable form for determining Covered Provider status, as opposed to the static worksheet that was previously provided. Entities that receive state dollars should complete the form in order to maintain a record of covered provider status, or lack thereof. The website now provides step-by-step directions for the form as well as a tutorial presentation.

Similarly, the E.O. 38 disclosure form that all covered providers are required to submit is now available in an online, guided format, along with instructions and a tutorial. Covered providers will need a “Grants Gateway” account to complete this form; the process to do so is easily accessible from the disclosure form. The disclosure form must be submitted 180 days after the end of the covered reporting period – December 27, 2014 for providers with the earliest covered reporting period of July 1, 2013-June 30, 2014.

The guidance document first issued in June of 2013 (See our memo dated July 16, 2013) has also been updated. However, the few updates are clarifying as opposed to substantive, and significant issues from the previous version have not all been addressed. Most notably, both the June 2013
and July 2014 guidance indicate that, in the context of executive compensation limitations, the limitations only apply to the top ten covered executives. The regulations, however, do not include such a limitation. We continue to recommend compliance with the language of the regulations as opposed to inconsistent language in the guidance.