

**CLIENT ALERT: February 8, 2010**

**ATTORNEY GENERAL'S INITIATIVE  
REGARDING  
EXECUTIVE COMPENSATION  
AT HEALTH CARE PROVIDERS AND INSURERS**

As illustrated by recent publicity on the compensation of presidents and chief executive officers of non-profit organizations, executive compensation of non-profit entities has come under increased scrutiny, from donors as well as from the IRS and the Massachusetts Attorney General's office. At a recent lunch at the Boston Bar Association, David G. Spackman, Chief of the Nonprofit Organizations/Public Charities Division (the "Division") in the Office of the Attorney General, spoke about the Division's new executive compensation initiative for charitable health care providers. This initiative will focus on three major areas:

1. **Transparency** – Mr. Spackman said that executive compensation information was often difficult to find and compare across entities, and that it was often not available until months after the board's approval of compensation decisions. As a result, he said the Division would seek to expedite the availability, and expand the depth and scope, of compensation information from some of the larger charitable health care providers and insurers in Massachusetts. He indicated that individual entities' information would be kept confidential, while forming the basis of a report from the Division available to the public. The Division may also consider revising the Form PC, in order to collect this type of compensation information on a more routine basis.
2. **Trends** – While it is commonly held that executive compensation has increased significantly over the past decade, Mr. Spackman mentioned that the Division had not compared the increase in executive compensation to other trends. As a result, the Division will seek to track trends in compensation, and compare those trends to trends in other areas, such as labor costs and premium increases.
3. **Process for Determining Compensation** – Mr. Spackman indicated that he believed boards relied too heavily on consultant reports of market comparables when determining compensation. In addition to the data on compensation amounts, the Division may request information on the board's process for determining executive compensation, such as how the consultants are hired, to whom the consultants report, and whether the board considered factors other than market comparables. The Division is also interested in understanding how boards determine whether their organization's management team should receive average, above-average or below-average compensation within the range presented by the consultants.

The goal of this initiative is to encourage the boards of non-profit health care providers to be more proactive in negotiating executive compensation. Mr. Spackman discussed several of these themes in his memo from September 2, 2009, a link to which is attached below. While focused on hospitals and HMOs, the Division's initiative may reach other large non-profit health care providers and insurers. If you have any questions or would like additional information, please contact Bob Griffin at [rgriffin@kb-law.com](mailto:rgriffin@kb-law.com) or 617-482-7211.

Links:

- [http://www.mass.gov/Cago/docs/nonprofit/bcbs\\_memo\\_090209.pdf](http://www.mass.gov/Cago/docs/nonprofit/bcbs_memo_090209.pdf)