

Massachusetts Attorney General Announces Increased Scrutiny of Compensation for Directors of Public Charities

April 15, 2011

On April 14, 2011, the Massachusetts Attorney General issued a report outlining two steps that the Attorney General will take to limit – but not explicitly ban – independent director compensation at public charities.

First, beginning in 2012, the Attorney General will require Massachusetts-based public charities that compensate their independent directors to file annual statements explaining the basis and rationale for their practices. These statements, together with the Attorney General's evaluations, will be included in an annual public report to be issued by the Attorney General.

Second, the Attorney General has filed legislation that will require public charities to obtain the Attorney General's approval before compensating their independent (non-employee) directors and officers. According to the report, the Attorney General wants to ensure that public charities base their decisions on a "clear and convincing rationale."

The report is the result of an investigation launched in 2009 into executive and director compensation at Massachusetts nonprofit health insurers. The report expresses concern that compensation of independent directors at public charities raises conflicts of interest, and is antithetical to a charitable mission. The report challenges 12 arguments made by the health insurers attempting to justify their director compensation practices, finding no evidence to support the arguments.

Separately, the Office of the Attorney General noted that its investigation into executive compensation practices at public charities will resume soon. We have previously reported on this investigation.

We are available to assist organizations and their boards in navigating the requirements imposed by the Attorney General's report and any subsequent legislation that may result. In light of these developments, all public charities based in Massachusetts are well-advised to assess the processes and rationale by which decisions about independent director compensation are made.

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