

Update on New LHCSA Changes

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Today's Agenda

- **History of Evolving LHCSA Landscape**
- **Overview of 2018-19 Budget Provisions Impacting LHCSAs**
 - **5 Topic Areas**
 - **Recent Updates and Guidance**
- **Questions**



History of Evolving LHCSA Landscape

CHHA v. LHCSA

- CHHA Medicare Certified Home Health Agency
 - New York State Public Health Law Article 36 Provider
 - 10 NYCRR 763 – NYS Minimum Standards
 - 42 CFR Part 484 (Includes COPs)
- LHCSA: New York Licensed Home Care Services Agency
 - New York State Public Health Law Article 36 Provider
 - 10 NYCRR Part 766 – NYS Minimum Standards
- Scope of Services Further Defined by Reimbursement
 - CHHA Authorized to Bill Medicaid and Medicare Directly
 - LHCSAs Generally Are Not

- Licensed Home Care Services Agency “LHCSA” is a New York State Creation

PHL 3602(13) - "Licensed home care services agency" means a home care services agency, issued a license pursuant to section three thousand six hundred five of this chapter.

PHL 3605(7) - An agency licensed pursuant to this section shall be authorized to provide nursing services, home health aide services or personal care services.

3605(8) Agencies licensed pursuant to this section but not certified pursuant to section three thousand six hundred eight of this article, shall not be qualified to participate as a **home health agency** under the provisions of title XVIII or XIX of the federal Social Security Act provided, however, *an agency which has a contract with a state agency or its locally designated office or, as specified by the commissioner, with a managed care organization participating in the managed care program established pursuant to section three hundred sixty-four-j of the social services law or with a managed long term care plan established pursuant to section forty-four hundred three-f of this chapter, may receive reimbursement under title XIX of the federal Social Security Act.*

- 2008 “Informal” LHCSA Moratorium Established
- 2010 Expiration of Moratorium on Establishment of LHCSAs

https://www.health.ny.gov/facilities/long_term_care/2010-11-17_lhcsa_moratorium_expired.htm

The Moratorium on Licensed Home Care Services Agencies has Expired

November 17, 2010

Dear Interested Party:

This is to provide notification that the moratorium on licensed home care services agencies (LHCSAs) has expired. The Department is sending a letter to all entities whose applications were received prior to April 1, 2010, or received after April 1, 2010 without the required fee. The letters will provide information on next steps.

Individuals/agencies that do not have an application on file and are interested in applying for a LHCSA may access the LHCSA application form on the Department website at the following address: <http://www.health.ny.gov/forms/doh-1056.pdf>.

The application form may be downloaded from this site and includes instructions on filing the application and submitting the required \$2,000 fee.

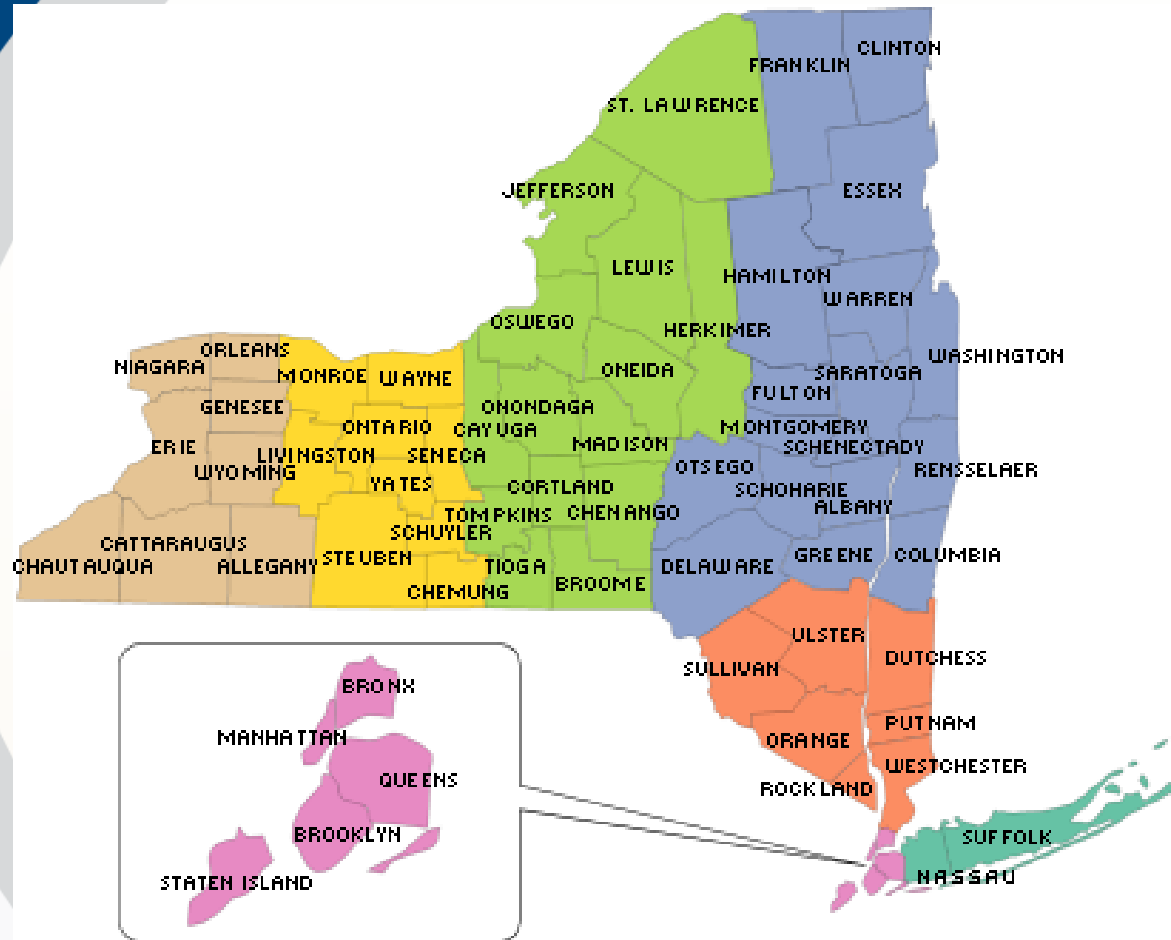
- Applications will be considered received by the Department when the application fee is received. Please note the following priorities for application review.
- LHCSA applications received from counties selling their CHHAs; and
- LHCSA applications associated with new ALPs

If you have any questions regarding this, please send an e-mail to: homecare@health.state.ny.us

Sincerely,
Mary Ann Anglin
Director
Division of Home and Community Based Services
Office of Long Term Care

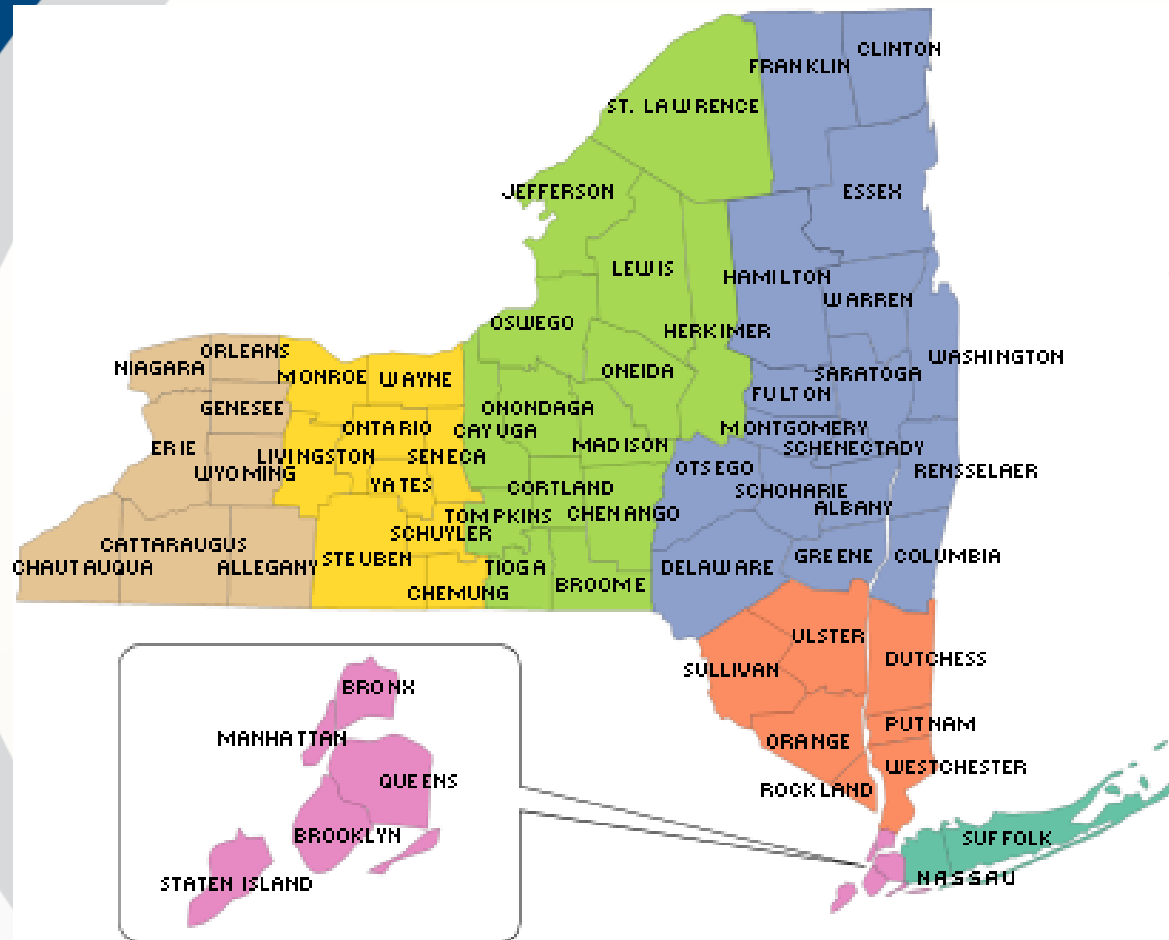
**HINMAN
STRAUB** PC.
ATTORNEYS AT LAW

2012: NYS Approved LHCSAs by Region



| | |
|------------------|------------|
| Capital District | 63 |
| Central New York | 96 |
| Western | 45 |
| | 63 |
| Metropolitan | 132 |
| | 387 |
| | 134 |
| TOTAL | 920 |

2018: NYS Approved LHCSAs



TOTAL
1400

April 12, 2018 PHHPC Meeting, DOH indicated:

- There are 1400 LHCSAs that are licensed in the state
- Another 377 “in the pipeline” prior to PHHPC
- +480 LHCSAs (52% growth in 6 years)

Historical Licensure of LHCSAs

PHL Section 3605(4) and (6) (Effective until April 1, 2020)

(4) The public health and health planning council shall not approve an application for licensure unless it is satisfied as to: (a) the character and competence and standing in the community of the applicant's incorporators, directors, sponsors, stockholders or operators.

(6) Neither public need, tax status nor profit making status shall be criteria for licensure.

***Prior to statutory changes in 2018-19 Budget, DOH only permitted to consider character and competence in review of proposals.**

- **No Public Need Review**
- **No Financial Feasibility Review**

Policy Response to Growth

- LHCSA Growth: 2012 to Present – +480 LHCSAs (52% increase in 6 years)
- PHHPC Focus/Concern
 - **DOH Response**
 - 2016 DOH Offsite Surveillance Project
 - 2016 New LHCSA Policy and Procedure Review Process
- https://www.health.ny.gov/facilities/home_care/guidance_docs_for_lhcs_applicants.htm
- Unexpected Increase in MLTC Enrollment
 - Policy Response
 - FI Authorization Application Requirement
 - 2018-19 Budget Attempts to Address Concerns



Overview of 2018-19 Budget Provisions Impacting LHCSAs

2018-19 NYS Budget Changes Impacting LHCSAs

- 1. MLTC Provisions**
- 2. LHCSA Moratorium**
- 3. Required Development of Public Need and Financial Review for LHCSAs**
- 4. Registration of LHCSAs**
- 5. LHCSA Cost Reports**



Topic #1

MLTC Provisions

MLTC Provisions

- **Restricts the Number of LHCSA Contracts MLTC Plans May Hold (Effective 10/1/18)**
 - MLTC Plans Operating in NYC and/or counties of Nassau, Suffolk and Westchester:
 - As of 10/1/18: one contract per 75 members enrolled in the plan within such region
 - As of 10/1/19: one contract per 100 members enrolled in the plan within such region
 - MLTC plans operating in counties other than those areas:
 - As of 10/1/18: one contract per 45 members enrolled in the plan within such region
 - As of 10/1/19: one contract per 60 members enrolled in the plan within such region

MLTC Provisions (cont'd)

- **Restricts the Number of LHCSA Contracts MLTC Plans May Hold (Effective 10/1/18)**
 - Notwithstanding stated limits, MLTCs may not enter into fewer than the number of contracts with LHCSAs as is necessary for **network adequacy**.
 - In instances where limits on contracts may result in the enrollee's care being transferred from one LHCSA to another, and in the event the enrollee wants to continue to be cared for by the same worker(s), the MLTC plan may contract with the enrollee's current LHCSA for the purpose of continuing the enrollee's care by that worker(s). These contracts shall not count towards the limits mentioned above for a period of three months.
 - Commissioner may increase number of contracts on a county-by-county basis if it determines that the increase is necessary to ensure adequate access
 - Provides that any licensed agency that ceases operation as a result of the limitations must conform to all applicable requirements including demonstrating continuity of care for individuals (Closure Plan Requirements)

❖ **Impact/Goal: Consolidation in LHCSA Market**

MLTC Provisions – Update

- **DOH issues Guidance on Limitation on Number of Contracted LHCSAs in a Partial Capitation Plan Network**

https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/docs/lhsca_contract_guidance.pdf

- **DOH Guidance Provides Clarifications and Guidance Pertaining to:**
 - Enrollee Notification
 - Provider to Enrollee Ratios
 - Network Adequacy
 - Special Situations
 - Exceptions
 - Compliance

DOH Guidance on LHCSA Cap

- Statute does not limit the number of enrollees that a LHCSA may serve
- MLTC plans must come into compliance with statute by **October 1, 2018**
- Methodology used to determine number of allowable LHCSAs in an MLTC plan's network is based upon the region in which it operates and on the number of enrollees within such region
 - **Downstate Region** (NYC, Nassau, Suffolk and Westchester Counties)
 - **Rest of State** (ROS)
- Provides factors MLTC Plan should consider when evaluating/limiting number of LHCSA contracts
 - Commitment to VBP Arrangements
 - Investment in Enhanced Training Programs
 - Compliance with all Wage Mandates
 - Successful Quality Assurance Program
 - Compliance with DOH and MLTC Plan Reporting Requirements
 - Willingness to Hire Aides to Ensure Continuity of Care

DOH Guidance on LHCSA Cap

- **Enrollee Notification**
 - If MLTC Plan terminates any LHCSA contracts, must send written notice to all enrollees receiving care from the terminated LHCSA.
 - In general, notice must be sent within 15 days of the notice of termination to the LHCSA.
 - Notice must:
 - Inform enrollee of any available options to stay with their current home care worker.
 - May include changing to a different LHCSA if their current home care worker is moving to a new LHCSA;
 - Enrolling in a different MLTC plan if their current home care worker is employed with a LHCSA that is contracted with another plan; or
 - Requesting a 3 month extension for continuity of care.
 - Notice must include contact information for the New York Medicaid Choice to facilitate plan selection for individuals who wish to switch plans to continue receiving services from their current home care worker.

DOH Guidance on LHCSA Cap

- **Provider to Enrollee Ratios**

Ratios for 2018

By October 1, 2018, and using its enrollment as of July 1, 2018, each partial capitation plan may contract with a maximum number of LHCSAs in accordance with the following ratios:

- For Downstate: 1 LHCSA per each 75 enrollees (1:75)
- For ROS: 1 LHCSA per each 45 enrollees (1:45)

Ratios for 2019 and beyond

By October 1, 2019, and using its enrollment as of July 1, 2019, and on each July 1 thereafter, each MLTC plan may contract with a maximum number of LHCSAs in accordance with the following ratios:

- For Downstate, the ratio is 1 LHCSA per each 100 enrollees (1:100)
- For ROS, the ratio is 1 LHCSA per each 60 enrollees (1:60)

DOH Guidance on LHCSA Cap

- **Provider to Enrollee Ratios**

Additional Details:

- Fractional results rounded down to nearest whole number
- If MLTC contracts with less than or equal to max number of LHCSAs on applicable date, no action needed.
- MLTC plans may add LHCSAs to their networks at any time.
- DOH will verify that an MLTC plan is in compliance at the time of its annual certification.
- All contracts between MLTC plan and LHCSA for purpose of providing covered services, including single case agreements, count towards the maximum number of LHCSAs.
- If MLTC plan operates in both Downstate and ROS regions, it must perform separate calculations for each region to determine the max number of LHCSAs that it may contract with in each region.
- If MLTC plan contracts with a LHCSA that operates in both regions, that contract is counted against the max number of LHCSAs that the MLTC plan may contract with for each respective region.
- If the percentage of a MLTC plan's enrollment serviced by a particular LHCSA in one region is less than 10% of the total plan enrollment serviced by that LHCSA in both regions combined, the MLTC plan will not be required to count the LHCSA in the region with the smaller percentage.

DOH Guidance on LHCSA Cap

- **Network Adequacy**

Notwithstanding the applicable ratios, MLTC plans are required to maintain network adequacy at all times.

Thus, at no time may an MLTC plan have less than two (2) LHCSAs accepting new enrollees in each county within the MLTC plan's service area. If an MLTC plan is unable to provide covered services to an enrollee through its contracted network, the MLTC plan must make arrangements with out-of-network providers to furnish the covered services until such time as the MLTC plan can provide them within the network.

If an MLTC plan terminates twenty-five percent (25%) or more of its LHCSA contracts during any period of 6 or fewer months, the MLTC plan shall promptly submit documentation to DOH to demonstrate its continued capacity to serve the enrollees in its service area. Such documentation shall include information about the number of MLTC enrollees impacted by the reduction in LHCSA contracts and the MLTC's plan for ensuring that services will remain available to its enrollees.

DOH Guidance on LHCSA Cap

- **Special Situations**

Single LHCSA with multiple site contracts with the same MLTC

Many MLTC plans have multiple contracts with a single LHCSA that is licensed to operate at several sites within a county or counties. For purposes of determining compliance with the statute, a LHCSA operator that is licensed to operate at several sites within a county or counties will be considered to have a single contract, even if the MLTC plan holds separate contracts with such LHCSA operator for each licensed site.

A LHCSA operator that is licensed to operate in several counties is counted as one contract, even if the MLTC plan holds separate contracts with such LHCSA operator for each county. However, if the LHCSA operates in both the Downstate and ROS regions, the LHCSA will be counted as a single contract in both calculations to determine the maximum number of contracts in the Downstate region and the ROS region.

DOH Guidance on LHCSA Cap

- **Special Situations (cont'd)**

Single LHCSA with multiple site contracts with the same MLTC

Example #4: MLTC Plan C has four contracts with LHCSA Operator 1234 for four licensed sites (one for each site). All four sites are located in the Downstate region. For purposes of compliance, the four contracts with LHCSA Operator 1234 will be counted as single contract for the purpose of determining the maximum number of LHCSAs with which Plan C may contract in the Downstate region.

Example #5: MLTC Plan D has four contracts with LHCSA Operator 5678 for four licensed sites (one for each site). Two sites are in the Downstate region, and two sites are in the ROS region. For purposes of compliance, the two contracts for the Downstate sites will count as one contract for the purposes of determining the maximum number of LHCSAs with which Plan C may contract in the Downstate region. Likewise, the two contracts for the ROS sites will count as one contract for the purposes of determining the maximum number of LHCSAs with which Plan D may contract in the ROS region.

Independent Practice Associations

This statute applies to contracts between MLTC plans and LHCSAs, and applies whether those contracts are direct or indirect through an intermediary contracting entity such as an Independent Practice Association (IPA).

DOH Guidance on LHCSA Cap

- **Exceptions**

- Continuity of Service

The new law adds a provision to support continuity of care between an enrollee and his or her home care worker(s). If an MLTC plan terminates a participating provider agreement with a LHCSA to meet the limitation on contracts established by the new law, and the termination of that agreement will require an enrollee's care to be transferred from the enrollee's current LHCSA to another LHCSA, and the enrollee wishes to be cared for by one or more home care workers employed by the current LHCSA, the MLTC plan may continue contracting with the current LHCSA for the purpose of continuing that enrollee's care by those home care workers for up to three months.

MLTC plans must notify DOH at LHCSAExceptions@health.ny.gov of the three-month extension of the LHCSA agreement. **Such continued agreement shall not count towards the maximum number of contracts during the three-month period. After the three-month period expires, the contract shall count towards the maximum number of contracts.**

DOH Guidance on LHCSA Cap

- **Exceptions (cont'd)**

- *Adequate Access to Services*

- An MLTC plan may request an exception to the maximum number of allowable contracts by demonstrating, to DOH's satisfaction, that additional contracts are needed to ensure adequate access to services in a geographic area.

- Adequate access to services includes special needs services and services that are culturally or linguistically appropriate.

- A request for an exception must:

- Identify the effect or potential effect on the enrollee's care if the exception is not granted;
 - Analyze the frequency or occurrence of the service; and
 - Include a plan to alleviate the issue, including timeline.
 - Demonstrate that no other LHCSA in the plan's network can meet the enrollee's needs.
 - Demonstrate that the addition of such LHCSA would result in the MLTC plan exceeding the allowed ratios.

- Where an MLTC plan's request for an exception involves access to culturally or linguistically appropriate services and/or specialized services, the request must also document, to DOH's satisfaction:

- - The enrollee desires to stay with, or be serviced by, an aide due to a cultural or linguistic concern;
 - An inability to transfer the aide with their client to another LHCSA; and
 - Such enrollee would not be able to be serviced by a LHCSA that is currently in its network and that has such cultural and/or linguistic competency and/or provides specialized services.

DOH Guidance on LHCSA Cap

- **Exceptions (cont'd)**

Adequate Access to Services (cont'd)

A request for an exception must be submitted to the New York State Department of Health, Division of Long Term Care at LHCSAExceptions@health.ny.gov. DOH will endeavor to review requests for exceptions within thirty (30) calendar days of receipt.

When an exception is requested for an enrollee who does not have adequate access to services, the MLTC plan is permitted to enter into an agreement with an additional LHCSA to provide such services while the request for exception is pending. In the event the request for exception is denied by DOH, DOH shall state the reason for such denial and the MLTC plan will be required to count such agreement in the maximum number of LHCSAs with which the plan may contract. **MLTC plans shall be afforded no less than three (3) months from the denial of the exception request to transition members to a new agency before counting the LHCSA towards the maximum number.**

Exceptions to the maximum number of allowable contracts to ensure adequate access to services, as described above, and that are granted by DOH are **good for one year**. **After one year, the plan must re-apply** for a continued exception by submitting a new request to LHCSAExceptions@health.ny.gov. Requests not denied by DOH within thirty (30) days of receipt shall be deemed granted for one year.

DOH Guidance on LHCSA Cap

- **Compliance**
 - Beginning 12/18 and annually on 9/30 thereafter, DOH will require each MLTC plan to certify that it is in compliance with the applicable standards of the new law and these guidelines.
 - Annual certifications will be based on each MLTC plan's enrollment on the most recent first of July 7/1
 - Compliance may also be addressed in DOH audit and surveillance activities
 - *DOH may also monitor the amount of enrollees that are converted to a consumer-directed arrangement.
- **Look for Upcoming FAQ/Webinar**
- **Questions?**
 - LHCSAExceptions@health.ny.gov



Topic #2

LHCSA Moratorium

LHCSA Moratorium

- Effective **April 1, 2018 (Expires March 31, 2020)**

- Moratorium on the:

“ . . . processing and approval of applications seeking licensure of a licensed home care services agency pursuant to 3605 of the public health law that have not received establishment approval by the public health and health planning council, except for:

(a) An application seeking licensure of a licensed home care services agency that is submitted with an application for approval as an assisted living program . . .

(b) An application seeking approval to transfer ownership for an existing licensed home care services that has been licensed and operating for a minimum of five years for the purpose of consolidating ownership of two or more licensed home care services agencies; and

LHCSA Moratorium (cont'd)

(c) An application seeking licensure of a home care services agency where the applicant demonstrates . . . that the application addresses a serious concern such as lack of access to home care services in the geographic area or a lack of adequate and appropriate care, language and cultural competence, or special needs services.

- During the Moratorium, LHCSA applications that fall within “exception b” related to “*consolidating ownership of two or more licensed home care services agencies*” and that are consistent with the goals of the MLTC LHCSA cap, shall be given priority in DOH/PHHPC review.

DOH Guidance

- New Page on DOH Website
<https://www.health.ny.gov/facilities/cons>
 - LHCSA Moratorium (2018-2020) Guidance (handout)
 - ***New LHCSA Moratorium FAQs**
 - New General Instructions for LHCSA Applications
 - New Licensure Application
- Questions?
 - Email: homecareliccert@health.ny.gov

LHCSA Moratorium (2018-2020) Guidance

- Sets forth requirements for submission of each exception category:
 - ALP Related Exceptions
 - Change of Ownership Related Exceptions
 - Serious Concern Exceptions

LHCSA Moratorium (2018-2020) Guidance

ALP Related Exceptions:

- The ALP application must have been submitted to DOH and an application number issued
- Ownership of the LHCSA must be identical to ownership of the ALP
- Approval will be limited to serving the residents of the associated ALP. Therefore the application may request only the county in which the ALP resides as the county to be served.
- The application must include an attestation acknowledging that the approval will be limited to serving the residents of the associated ALP.

LHCSA Moratorium FAQs

*New ALP FAQs:

- Approvals of ALP-affiliated LHCSA applications will be limited to serving only the ALP residents. The moratorium exception does not extend to services beyond the ALP. This limitation does not extend to previously approved/operational ALP-affiliated LHCSAs, only to approvals granted under the moratorium exception (FAQ #2)
- In order for a LHCSA to apply for the change in ownership under the “ALP exception,” the new operator will be limited to serving only ALP residents (FAQ #3)
- The ALP related exception applies to newly submitted LHCSA applications for which DOH has received and acknowledged a corresponding ALP application (FAQs #4 and #26)

LHCSA Moratorium (2018-2020) Guidance

Change of Ownership Related Exceptions

- Only changes in ownership that consolidate two or more LHCSAs may be accepted during the moratorium. Consolidate means reducing the number of LHCSA license numbers, not a reduction in the number of sites operated under a license number. A LHCSA license number, for this purpose, is the first four digits, before the “L”. The application must include all sites of the to-be-acquired agency.
- LHCSAs to be acquired must be currently operational and have been in operation at least 5 years.
- The application must include an attestation and statistical report verifying the seller(s) is/are operational and has/have been for a minimum of 5 years.

LHCSA Moratorium (2018-2020) Guidance

Change of Ownership Related Exceptions (cont'd)

- If an existing LHCSA is purchasing one or more LHCSAs, the buyer must also be operational per 10 NYCRR Section 765-2.3(g). The application must include an attestation and statistical report data verifying the buyer is currently operational.

Examples of Qualifying Change of Ownership Applications

- An existing LHCSA purchases one or more separately licensed existing LHCSAs. Upon approval, the purchased LHCSA licenses must be surrendered and their sites become additional sites of the purchasing LHCSA.
- A new corporation (not currently licensed as a LHCSA) purchases two or more existing LHCSA. One new license is issued, with the purchased LHCSAs' licenses being surrendered and their sites becoming new sites of the newly licensed LHCSAs.

LHCSA Moratorium (2018-2020) Guidance

Change of Ownership Related Exceptions (cont'd)

Examples of Non-Qualifying Changes in Ownership Applications

- A new proposed operator replaces the current operator of a LHCSA
- A new controlling entity is established at a level above the current operator
- A partial change in ownership requiring PHHPC Approval

Note:

- During the moratorium, if the controlling person/entity submits an affidavit attesting that they will refrain from exercising control over the LHCSA until the moratorium is lifted and application can be submitted, processed, and approved, **then the corporate transaction can proceed. Within 30 days of the moratorium being lifted, the agency must submit an application for PHHPC approval of the controlling person.**
- In the case of the death of an owner, partner, stockholder, member, which results in the need for a change of ownership application, the LHCSA may continue to operate until the State takes definitive action to revoke the license or the Moratorium is lifted an an application may be submitted.

LHCSA Moratorium FAQs

*New Change of Ownership/Control FAQs:

- PHL § 3611-a requires certain transfers to be approved by the Public Health and Health Planning Council (PHHPC) in accordance with PHL § 3605(4). Section 9-e of Part B of Chapter 57 of the Laws of 2018 requires applications for licensure pursuant to PHL § 3605, that have not yet received PHHPC approval or contingent approval, be subject to the moratorium. Therefore, a transfer pursuant to PHL § 3611-a that requires PHHPC approval is subject to the moratorium. (FAQs #1, 27, 31)
- A change in business entity type is a change in ownership and thus is subject to the moratorium. (FAQ #8)
- Transfer Notices (aka 90/120-day notices) are not subject to the moratorium and can be submitted in the normal fashion. Please review the Transfer of Ownership Interest guidance document for whether a specific transfer requires a transfer notice or an application for licensure (aka full review application):
https://www.health.ny.gov/facilities/cons/more_information/docs/transfer_of_ownership_interest_guidance.doc (FAQ #9)
- LHCSA “Buyer” has submitted an application to be approved as the purchaser of an existing LHCSA “Seller” that has been in operation for more than 5 years. Buyer has previously identified, and is actively looking to acquire, another LHCSA (the “Second LHCSA”) which has also been in operation for more than 5 years. Do both LHCSAs have to be in the same counties? **Answer: No.** (FAQ #17)

LHCSA Moratorium FAQs

***New Change of Ownership/Control FAQs (cont'd):**

- One application should be submitted to purchase and consolidate multiple LHCSAs. The application must include the required documentation to demonstrate the LHCSA is operating as detailed in the application and instructions, and should explain clearly how the proposal is a consolidation of LHCSAs (FAQ #19)
- Upon the purchase/acquisition and consolidation of LHCSAs, the combined sites, counties and services will be added to the surviving LHCSA license, unless otherwise requested within the application. Some services such as training programs and Medicaid Waivers services are not listed on a LHCSA license. These services require specific criteria to be met by the new operator prior to being approved to provide the services and will not be considered as part of the change of ownership application (FAQ #15)

LHCSA Moratorium (2018-2020) Guidance

Serious Concern Exceptions

There is a presumption of adequate access if there are 2 or more LHCSAs already approved in the proposed county. Approved LHCSAs include those that are operational and those approved by not-yet-operational. If there are two or more LHCSAs in the requested county:

- The applicant must articulate the population to be served for which there is a lack of access to the licensed home care services;
- The applicant must submit substantial, data-driven proof of lack of access to the population (demographics, disposition and referral source for targeted patient population, level of care and visits required, payor mix, etc.);
- The applicant must provide satisfactory documentation that no existing LHCSA in the county can provide services to the population;

LHCSA Moratorium (2018-2020) Guidance

Serious Concern Exceptions (cont'd)

- If more than one county is requested, the application must include all required material for each county individually;
- The applicant may request to operate in up to five counties only.
- FAQ #12 – All applicants who had their applications returned may submit a new application using the new application form and submitting supporting material to qualify for an exception to the moratorium. It is applicant's responsibility to gather and present evidence supporting the requested exception.
- FAQ #23, all counties in NYS have at least two approved LHCSAs. As noted in the Guidance document under "Serious Concerns Exceptions", there is a presumption of adequate access if there are two or more LHCSAs already approved in the proposed county. The applicant must articulate the population to be served for which there is a lack of access, submit substantial, data-driven proof of lack of access to the population and that no existing LHCSA in the county can provide services to the population.

LHCSA Moratorium FAQs

- **Administrative Actions Not Impacted by Moratorium**
 - There have been no changes to the Administrative application process for adding sites/services/counties (FAQ #6, 14, 22)
 - **Transfer Notices (aka 90/120-day notices) are not subject to the moratorium** and can be submitted in the normal fashion. Please review the Transfer of Ownership Interest guidance document for whether a specific transfer requires a transfer notice or an application for licensure (aka full review application):
https://www.health.ny.gov/facilities/cons/more_information/docs/transfer_of_ownership_interest_guidance.doc (FAQ #9)
 - There are no changes to the process for submission and approval of management agreements (FAQ #16)

Revised LHCSA Application

- The revised LHCSA application and instructions are now available at DOH website:
 - <https://www.health.ny.gov/facilities/cons>
 - [LHCSA Instructions during Moratorium](#) (PDF)
 - [LHCSA Application during Moratorium](#) (PDF)



Topic #3
**Required Development of Public
Need and Financial Review for
LHCSAs**

2018-19 NYS Budget Requires:

Effective April 1, 2020

PHL 3605(4) - PHHPC shall not approve an application for licensure unless it is satisfied as to:

- a) **Public need for the existence of the LHCSA at the time and place and under the circumstances proposed;**
- b) The character, competence and standing in community of the applicant's incorporators, directors, sponsors, stockholders or operators;
- c) **The financial resources of the proposed LHCSA and its sources of financial revenue; and**
- d) **Such other matters at it shall deem pertinent.**

- **DOH Developing LHCSA Public Need Methodology**

- July 20, 2018, DOH Issued Request for Information to gather input for development of public need methodology. Seeks recommendations for planning area designations, factors to include in methodology, and additional requirements or priority considerations to include.
- Send comments and recommendations to ALTCteam@health.ny.gov no later than **October 12, 2018**.

<https://www.health.ny.gov/funding/rfi/lhcsa/index.htm>



Topic #4

Registration of LHCSAs

Registration of LHCSAs

- **Effective January 1, 2019**, no LHCSA shall be operated unless it is registered with the commissioner in a manner described by the Department
- Failure to register by January 1, 2019 will result in LHCSA requirement to pay a fee of **\$500 for each month or part thereof** that the LHCSA is in default.

Registration of LHCSAs

- A LHCSA that fails to register in the prior year by the deadline shall not be permitted to register for upcoming registration period unless it submits any unpaid late fees.
- DOH shall post on its public website a list of all LHCSAs which shall indicate the current registration status of each LHCSA

Registration of LHCSAs

- DOH shall institute proceedings to revoke the license of any LHCSA that fails to register for two annual registration periods, whether or not such periods are consecutive.
- DOH shall have discretion to pursue revocation of the license of a LHCSA on grounds that it evidences a pattern of late registration over the course of multiple years.
- Bottom Line: **MAKE SURE YOU REGISTER**

Registration of LHCSAs - Update

- **August 16, 2018 DAL – 2017 LHCSA Statistical Report**

LHCSA Registration Process

- LHCSA registration for the period beginning January 1, 2019 can only be accomplished through completion of 2017 LHCSA Statistical Report. It has been amended to include the necessary registration information and will be used to register LHCSAs on an annual basis
- LHCSA Statistical Report now available for downloading
- **The 2017 report must be submitted to DOH via the HCS by November 16, 2018**

ALP LHCSAs

- All ALP LHCSAs must submit the 2017 ALP LHCSA Statistical Report
- An ALP LHCSA serving patients in the community must also fill out and submit all sections of the 2017 LHCSA Statistical Report
- However, an ALP LHCSA that does not serve patients in the community must only complete and submit designated portions of the 2017 LHCSA Statistical Report.

Send any questions, comments, and concerns to HCStatRpts@health.ny.gov



Topic #5 LHCSA Cost Reports

LHCSA Cost Reports

- 2018-19 NYS Budget requires LHCSAs, health homes, and Fiscal Intermediaries (FIs) to submit cost reports.
- DOH is required to establish the frequency and format of cost reports and to provide a minimum of 90-day notice prior to submission.
- Operators will have 30-days to correct any inaccurate or incomplete reports.
- All reports must be certified by the operator.

Outlook and Opportunities

- **FI Applications – Ongoing Review**
- **Increased Value of Existing LHCSAs**
- **Impact of Consolidation - Negotiating Leverage**
- **Ongoing Development of Guidance**
- **Potentially More Focus on Surveillance of Existing LHCSAs**

Next Steps

- **Importance of LHCSA Registration by November 16, 2018**
- **Stay Tuned for Additional DOH Guidance**
- **Submit questions to:**
homecareliccert@health.ny.gov
LHCSAExceptions@health.ny.gov
HCStatRpts@health.ny.gov

Questions?

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