

New York State Enacted Budget Includes New Limits, Mandates for Licensed Home Care Services Agencies

By

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Healthcare

The 2018–2019 New York State Budget seeks to advance the state’s strategic policies of encouraging the merger of existing Licensed Home Care Services Agencies (LHCSAs), reducing the number of new LHCSA providers entering the marketplace, and providing more state control over existing LHCSAs. The state has adopted a freeze on new LHCSAs and a registration requirement, among other provisions.

LHCSA Moratorium

The Budget established a moratorium on the licensing of new LHCSAs for a period of two years, effective April 1, 2018, and ending on March 31, 2020.

The moratorium does not apply to:

1. LHCSA establishment applications that are submitted as part of an Assisted Living Program (ALP) application (the LHCSA applicants must have identical ownership to the ALP applicants);
2. LHCSA applications requesting to transfer or change ownership of an existing LHCSA that has been licensed and operating for at least five years, for the purpose of merging the ownership of at least two LHCSAs; and
3. An application to establish a LHCSA where the applicant demonstrates, to the satisfaction of the Commissioner of the New York State Department of Health (DOH), that it would be appropriate because the proposed LHCSA would address a serious concern, such as a lack of access to home care services in a geographic region or a lack of adequate or appropriate care, language and cultural competence, or special needs services. There is a presumption of adequate access if at least two LHCSAs are in a county.

To comply with the law, no LHCSA application can be accepted for processing unless it meets one of these three exceptions. The DOH’s [revised LHCSA application and instructions](#) include additional information about each exception and the necessary information that an applicant must include to be considered for an exception.

The moratorium applies to all LHCSA applications that are currently under review, but have not received Public Health and Health Planning Council (PHHPC) approval as of April 1, 2018. It does not apply to LHCSA applicants that have received approval, or contingent approval, but are not yet fully operating as a LHCSA.

LHCSA Registration

The Budget also created a new Public Health Law § 3605-b requiring all existing LHCSAs to register with the DOH annually. The annual reporting period begins January 1, 2019.

Any LHCSA provider that does not register with the DOH in the required time period will not

be allowed to operate or provide nursing, home health aide, or personal care services or receive payment for providing such services. The DOH will impose a \$500 per month fine (or part thereof) against LHCSAs that do not submit a complete and accurate registration within the required time period.

If a LHCSA fails to register in the prior year by the deadline of the current year, the LHCSA will be barred from registering unless it pays all unpaid fees owed to the DOH.

More important, the DOH has the authority to revoke a LHCSA's license for failure to register for two annual registration periods, even if such periods are not consecutive. Furthermore, if a LHCSA provider submits late registrations for multiple years, the DOH has the sole discretion to revoke the LHCSA license.

The DOH's public website will list all New York LHCSAs, with an indication of the current registration status of each.

Cost Reporting

The Budget amended Public Health Law § 3612 to authorize the Commissioner of DOH to require LHCSAs to report costs incurred by the LHCSA in providing Medicaid beneficiaries with health care services.

Upon notice from the Commissioner, the LHCSA provider will have 90 days to provide the required report to DOH, and the provider will have an additional 30 days to correct any perceived inaccuracies identified by the DOH. The reports must be certified by the owner, administrator, chief executive officer, or public official responsible for the operation of the LHCSA. An additional 30-day extension may be granted by the DOH upon written request to the DOH's satisfaction that the LHCSA, for reasons beyond its control, cannot submit the report by the due date.

Limitation on Number of Contracted LHCSAs in Partial Capitation Plan Network

The Budget amended Public Health Law § 4403-f(7) to limit, for a two-year period, the total number of LHCSAs with which a managed long-term care (MLTC) partial capitation plan may contract. New paragraph (j) becomes effective October 1, 2018. The number of allowable LHCSAs depends upon the MLTC plan's enrollment and location.

By October 1, 2018, each partial capitation plan will be expected to contract with a maximum number of LHCSAs in accordance with the following ratios:

- For Downstate (defined as New York City, Nassau, Suffolk and Westchester counties), the ratio is one LHCSA per each 75 enrollees
- For the rest of the state, the ratio is one LHCSA per each 45 enrollees

Effective October 1, 2019, each partial capitation plan will be expected to contract with a maximum number of LHCSAs in accordance with the following ratios:

- For Downstate, the ratio is one LHCSA per each 100 enrollees
- For the rest of the state, the ratio is one LHCSA per each 60 enrollees

For an MLTC plan operating throughout the state, the MLTC plan must comply with the appropriate requirements for each region.

The Jackson Lewis Health Law and Transactions practice provides a variety of legal services to LHCSAs, including all the regulatory and transactional aspects of a LHCSA ownership transfer or merger, as well as representing applicants in LHCSA formation.

Please contact a Jackson Lewis attorney to discuss these developments and your specific needs.

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