



LHCSA Public Need Final Rule

On March 4, 2020, DOH published its [final rule](#) implementing a public need methodology for evaluating LHCSA applications. DOH's rule:

- Establishes a rebuttable presumption that no additional LHCSAs are necessary in a county that already has at least five LHCSAs serving it as of April 1, 2020.
- Exempts changes of ownership for LHCSAs actively serving at least 25 patients from a public need review unless the LHCSA seeks to serve patients outside of its existing service area. It will still be subject to a financial feasibility and character-and-competence review.
- Includes factors that DOH will consider when determining if public need exists. These factors include: evidence of the unduplicated number of patients on waiting lists; demographics and/or health status of residents in the service area; the quality of services provided by existing agencies; the number and capacity of currently operating LHCSAs; availability and accessibility of the workforce, and cultural competency of existing agencies.
- Exempts from public need review ALP, PACE, NFP, or CCRC-affiliated agencies that seek to serve patients outside the ALP, NFP, or CCRC programs, or who are not PACE members.
- Requires a financial review that will include:
 - an examination of the sources of available working capital, with a minimum requirement equal to at least two months of estimated operating expenses of the agency;
 - a reasonableness test with respect to the financial capability of the agency or sources for start-up funding; and
 - an examination of the financial feasibility of the agency or projections indicating that the agency's revenues will be equal to or greater than projected expenditures over time.
- In its responses to comments, DOH stated that "established agencies seeking to add or delete services or change their geographic scope of practice will continue to follow current administrative procedures," and that a public need review will not be required.

DOH's rule is scheduled to take effect on April 1, 2020.

DISCLAIMER: The information contained herein is provided by Glaser & Weiner, P.C. for informational purposes only. These materials should not be considered as, or as a substitute for, legal advice and they are not intended to nor do they create an attorney-client relationship. Because the materials included here are general, they may not apply to your individual legal or factual circumstances. This document contains information that may be modified or rendered incorrect by future legislative or judicial developments. You should not take (or refrain from taking) any action based on the information you obtain from this document without first obtaining professional counsel. It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation. © 2020 Glaser & Weiner, P.C. All Rights Reserved.