



DOH Issues Proposed LHCSA Public Need Methodology Regulations

The 2018-19 New York State Budget imposed a two-year moratorium on new LHCSAs and directed the New York State Department of Health ([DOH](#)) to develop a public need methodology for evaluating LHCSA applications once the moratorium ended. On November 6, 2019, DOH [published](#) a notice of proposed [rule-making](#) in the *New York State Register* to implement the public need methodology that is scheduled to go into effect on April 1, 2020. There is a 60-day comment period during which agencies and other interested parties can [submit](#) their comments on the proposed rule to DOH.

For existing LHCSAs, the concern has been how the public need methodology could impact change of ownership transactions once the LHCSA moratorium is lifted on March 31, 2020. The proposed rule contains language that states:

- "Applications for licensure based on change of ownership for Licensed Home Care Service Agencies actively serving at least 25 patients will not be subject to public need review and shall be evaluated only on financial feasibility and the character and competence of the proposed operator unless the proposed operator seeks to serve patients outside of the approved planning area."

We plan to make additional inquiries with DOH to understand the impact of this proposed language on different transaction structures and the ability of existing LHCSAs to add service areas and/or services.

For applicants seeking initial licensure, in addition to satisfying DOH as to the character and competency requirements for owners, directors controlling persons, etc., applicants would be required to include data demonstrating the "public need" for the existence of a new LHCSA. They would also be required to submit information related to the financial resources of the proposed LHCSA and its projections of revenues and expenses. This would include:

- An examination of the sources of available working capital that the proposed LHCSA operators have, with a minimum requirement equal to at least two months of estimated operating expenses of the agency;
- That the application passes 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 operating revenues will be equal to or greater than projected expenditures over time.

The determination of whether "public need" exists would be based upon the following factors:

- The designation of each county as a separate planning area.
- The presumption that there is no need for additional LHCSAs in a planning area if there are 5 or more LHCSAs actively serving patients within the planning area as of April 1, 2020.

The proposed regulations indicate that DOH would also consider the following factors:

- The demographics and/or health status of the residents in the planning area or the state, as applicable;
- Documented evidence of the unduplicated number of patients on waiting lists who are appropriate for and desire admission to a licensed home care service agency but who experience a long waiting time for placement and who cannot be served adequately in other settings;
- The number and capacity of currently operating licensed home care services agencies;
- The quality of services provided by existing agencies;
- The availability and accessibility of the workforce;
- Personnel and resources dedicated to adding and training additional members of the workforce including committed resources in an organized training program;
- Cultural competency of existing agencies; and
- Sub-populations requiring specialty services.

In addition, the proposed regulations contain language that an applicant for initial licensure would be approved as meeting public need only if the applicant agrees to serve population groups in the planning area (county) that have difficulty gaining access to appropriate care due to minority status, age, medical history, case complexity, or payment source.

The proposed methodology would not apply to Assisted Living Program (ALP) or Program of All-Inclusive Care for the Elderly (PACE) affiliated licensed home care services agencies unless the agency seeks to serve patients outside the ALP program or who are not PACE members.

Please [contact](#) Michael J. Weiner with any questions regarding the proposed regulations.

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