

# Frequently Asked Questions

## Licensed Home Care Services Agencies Application Requirements Effective Date: April 1, 2020

The moratorium on the licensure of Licensed Home Care Services Agencies (LHCSAs) pursuant to Part B of Chapter 57 of the Laws of 2018 expired on March 31, 2020. The following Frequently Asked Questions address the post-moratorium application requirements.

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**A. APPLICATION SUBMISSION/REVIEW**

Q1. How do I submit an application?

A. Applications are submitted electronically through the New York State Electronic Certificate of Need (NYSE-CON) system. Information on NYSE-CON and use of the Health Commerce System (HCS) is found at:  
<https://www.health.ny.gov/facilities/cons/nysecon/>.

Any questions about the application process should be directed to [cons@health.ny.gov](mailto:cons@health.ny.gov). Any technical questions about or issues with the NYSE-CON system should be directed to [nysecon@health.ny.gov](mailto:nysecon@health.ny.gov).

Q2. When will my application be evaluated by the Public Health and Health Planning Council?

A. The Public Health and Health Planning Council (PHHPC) meets bi-monthly, for a total of six (6) meetings per year. When the Department's review of your application is completed and recommendations have been provided for approval/disapproval, the application will be placed on a PHHPC agenda. The Department will communicate with applicants during this process to inform them of any additional information that may be necessary. The Department encourages all applicants to respond promptly to requests for additional information from the Department.

Q3. What is the timeline for licensure and what is the licensure process?

A. Applications are reviewed in the order in which they are acknowledged within the NYSE-CON system. It is difficult to give an exact timeframe for completion as there are many steps in the licensure process. The processing time will be shortened if an applicant submits a properly completed application and is responsive to additional requests for information by the Department.

Once the review of an application is complete, the application will be scheduled on a PHHPC agenda. If the application receives contingent approval from the PHHPC, the applicant must then submit a Policy & Procedures Manual to the appropriate Home Care regional office for review.

After the agency's manual is reviewed and found to be acceptable, the respective Home Care regional office will schedule a pre-opening survey. Upon completion of a successful survey, the Home Care regional office will recommend the agency for licensure and the Bureau of Home Care Licensure and Certification will issue a license to the agency.

Note: In a change-of-ownership application, the applicant (buyer) may choose to adopt the approved Policy & Procedures manual that is currently in use from the existing (seller) agency. Such adoption will expedite the licensure process. Additional agency specific documentation/materials, may be requested.

- Q4. I submitted an application that was not acknowledged during the 2018-2020 moratorium period. Should I resubmit the same application?
- A. No, as the application form has been revised to address statutory and regulatory changes and a new application, on the new forms, must be submitted.
- Q5. My application was accepted during the 2018-2020 LHCSA moratorium period but did not receive approval by the Public Health and Health Planning Council as of March 31, 2020. Do I need to submit a new application?
- A. If your application has a status of “Under Review”, the Department will request information from you to ensure compliance with the new statutory and regulatory requirements, if necessary.
- Q6. I am having difficulty accessing the Health Commerce System (HCS), creating an application and/or uploading the documentation required for my application. How can I get technical help?
- A. Any technical questions regarding NYSE-CON submissions should be directed to the Bureau of Project Management at [nysecon@health.ny.gov](mailto:nysecon@health.ny.gov).
- Q7. How many counties can be requested to be serviced in my application? Do they have to be contiguous (i.e. adjacent)?
- A. All the counties requested must be in one Department of Health region as shown in Section B of the application. New York State is divided into regions as shown on the application. The application provides guidance regarding planning areas and selection of requested counties. There is a limitation of 5 counties for initial licensure that may be requested, with an exception that one of the requested counties may be located in another DOH region, which must be contiguous to one of the other requested counties.
- Q8. Who can I contact about the status of my application?
- A. If your application is not yet acknowledged, please contact the Bureau of Project Management at [cons@health.ny.gov](mailto:cons@health.ny.gov). If your application has been acknowledged, you may direct your questions to [homecareapplications@health.ny.gov](mailto:homecareapplications@health.ny.gov).
- Q9. I really need to speak with someone in the Department, who can I contact?
- A. The email address for the Bureau of Home Care Licensure and Certification is [homecareapplications@health.ny.gov](mailto:homecareapplications@health.ny.gov). Emails are responded to in the order in which they are received.
- Q10. Do the new regulations impact Transfer of Ownership Notices?
- A. Transfer Notices (90/120-day notices) are allowed. However, a transfer that requires a FULL CON application and PHHPC approval is subject to the new regulations.
- Q11. I want to submit an application to serve a specific population group within a county, can this be accomplished?
- A. Yes. It is important to carefully review section 765-1.16(e), as the population must have

“difficulty gaining access” to appropriate care. Section 765-16(d) contains factors to be considered when evaluating need. It is the responsibility of the applicant to submit data-driven evidence.

Q12. I am applying to serve a specific population group(s). Can my application include a request for multiple counties?

A. Yes, but evidence-based data must be submitted for each county where there is a presumption of no need.

Q13. I need to submit Schedule 2D compliance reports for out-of-state affiliated health facilities, when do I submit these reports?

A. Applicants must obtain the compliance reports directly from other states prior to submission of the NYSE-CON application. The NYSE-CON application must include the 2D compliance reports at the time of submission. See the Schedule 2D instructions for additional information.

**B. APPLICATION FEE**

Q1. How much does it cost to submit an application for LHCSA licensure, change of ownership or expansion of a restricted license?

A. An application fee in the amount of \$2,000 is required for application submission pursuant to Sections 3605(13) and 361-a (3) of the Public Health Law. A check made payable to the New York State Department of Health must be received at the address below within 30 days of application submission. **The NYSE-CON-generated Submission Number must be referenced on the face of the check.**

Bureau of Project Management  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 1842  
Albany, NY 12237

**Application fees are not refundable once the application has been acknowledged.**

Q2. My application was not accepted/acknowledged by the Department. How do I obtain a refund of the full amount of money spent preparing the application, including attorney and consulting fees?

A. The Department of Health is only authorized to refund the application fee for applications found unacceptable prior to being acknowledged, not associated business fees or expenses.

Q3. My application was disapproved by the Public Health and Health Planning Council. Will my application fee be returned?

A. No. Once the Department has acknowledged and acted upon an application, the fee will not be returned.

## C. PUBLIC NEED METHODOLOGY

- Q1. What is the 'Determination of Need'?
- A. The new regulation states that if there are 5 or more LHCSAs actively serving patients in a county, there is a presumption that no additional LHCSAs are needed in that county. In determining need, Assisted Living Program (ALP), Program for All-Inclusive Care for the Elderly (PACE), Nurse Family Partnership (NFP) or Continuing Care Retirement Community (CCRC) residents or program participants were not counted in the patient census. The LHCSA County Presumption of No Need Report provides additional information as well as guidance to an applicant seeking licensure.
- Q2. What if the LHCSA County Presumption of No Need Report shows more than five (5) LHCSAs are actively serving patients in the county in which I am seeking licensure and my application is subject to public need as stated in 765-1.16(c)(1)?
- A. The determination is that there is no public need for additional LHCSAs in that county. An application may still be submitted; however, it must contain a rebuttal and present data-driven evidence.
- Q3. How does the Department define 'actively serving' as referenced in Section 765-1.16(c)(1)?
- A. Actively serving means an agency has a plan of care in place for the patient and is providing services to the patient in their home.
- Q4. How many patients must a LHCSA be serving to be considered as 'actively serving' in a county?
- A. 25 patients
- Q5. What information needs to be included in a rebuttal to 765-1.16(c)(1)?
- A. Section 765-1.16(d) contains factors to be considered when determining public need. It is the responsibility of the applicant to include documented evidence in their application.
- Q6. What if my application requires a rebuttal to address public need in 765-1.16(c)(1) but a rebuttal was not included?
- A. Your application may not be accepted by the Department.
- Q7. I included a rebuttal with my application, but the Department determined there is no public need in accordance with 765-1.16(c)(1) and disapproved my application. Do I get my application fee returned? Can I submit additional information?
- A. Once the Department accepts and evaluates an application, the application fee will not be refunded, even in instances where the application is recommended for disapproval.

- Q8. How will I know if my rebuttal has been approved by the Department?
- A. Applicants will receive correspondence via NYSE-CON when their application is scheduled on a PHHPC agenda. The agenda will be posted at [https://www.health.ny.gov/facilities/public\\_health\\_and\\_health\\_planning\\_council/](https://www.health.ny.gov/facilities/public_health_and_health_planning_council/) prior to the commencement of each PHHPC meeting. Additional correspondence will be sent via NYSE-CON once your application has received contingent approval or disapproval from the PHHPC.
- Q9. My application is subject to public need, as required by 765-1.16(c)(1), and I'm seeking licensure in multiple counties, does only one county need to contain less than five (5) LHCSAs actively serving patients in order to obtain approval in all the counties I requested?
- A. No. You will need to provide a rebuttal for each county where there is a presumption of no need.
- Q10. How will the Department determine whether there is public need in a county after 2020?
- A. Beginning in 2021, the target date for determining need for additional LHCSAs will be determined by the Department. An updated [LHCSA County Presumption of No Need Report](https://www.health.ny.gov/facilities/cons/) will be available and posted at <https://www.health.ny.gov/facilities/cons/>.
- Q11. Is there a public need requirement for the following programs?
- Assisted Living Program (ALP)
  - Program for All-Inclusive Care for the Elderly (PACE)
  - Nurse Family Partnership (NFP)
  - Continuing Care Retirement Community (CCRC)
- A. No, unless the applicant seeks, within the application, to serve patients outside of the ALP, NFP or CCRC program or those who are not PACE members. If an applicant seeks approval to serve patients outside of one of these programs, a rebuttal may be required per 765-1.16(c)(1). Please review this document for application instructions and submission information related to the [LHCSA County Presumption of No Need Report](#).

**D. FINANCIAL FEASIBILITY & FINANCIAL REVIEW**

- Q1. I see that the regulation now requires financial feasibility and a financial review. What is required?
- A. 765-1.2(b)(3) specifies the standards of the financial review by the Department. The application provides specific guidance regarding the documents that must be submitted with your application.
- Q2. I submitted an application without including the required financial documents, what happens to my application?
- A. Your application may not be accepted by the Department.

- Q3. How much working capital do I need to have to pass the financial review?  
A. The amount of working capital must be greater than the project expenses during the first two months of operation. The expenses must be reasonable and will be evaluated by the Department.
- Q4. My application was disapproved based on financial feasibility. Do I get my application fee returned? Can I submit additional information?  
A. As the Department accepted and evaluated your application, the application fee will not be refunded.
- Q5. Is a loan or grant considered working capital?  
A. A loan or grant will only be considered working capital if the award was made prior to or at the time of application and supportive documentation is submitted. Prospective funding sources will not be considered.
- Q6. Who determines the amount of working capital associated with my application?  
A. A Certified Public Accountant (CPA) will need to assist you in this process. Please refer to the application for the information that must be submitted.
- Q7. Who pays for the expenses to use the services of a CPA?  
A. The applicant is responsible for all costs associated with the development and submission of an application including the services of a CPA.

#### **E. CHANGE OF OWNERSHIP**

- Q1. During the moratorium, a new controlling entity was established at a level above the current operator. An affidavit was submitted to the Department stating that the new controlling entity will refrain from exercising control over the LHCSA. What do I need to do?  
A. The agency must submit an application for approval of the controlling entity no later than 30 days after the release of the new application. The affidavit originally submitted to the Department must be included in your application.
- Q2. Does the Department allow a change in operator or ownership of an existing agency or agencies?  
A. Yes. The existing licensed agency or agencies must be actively serving at least one patient and be in compliance with the LHCSA Registration requirement detailed in Public Health Law Section 3605-b.
- Q3. What are the requirements to change the operator or ownership of a LHCSA?  
A. Carefully review Public Health Law Article 36 as the type of transfer or proposed change determines the requirements. The new regulation exempts certain ownership changes from the public need review as stated in 765-1.16(c)(2).

Q4. Section 765-1.16(c)(2) states “actively serving at least 25 patients”, what does this mean?

A. A LHCSA undergoing a change of ownership must be actively serving at least 25 patients in order to be exempt from the public need review. “Actively serving,” means an agency has a plan of care in place for the patient and is providing services to the patient in their home. The LHCSA does not need to serve 25 patients in each county for which they are currently approved to operate. Upon application, the agency being acquired will be required to report the number of patients it actively serves in each county in which it operates to determine if the application is exempt from public need review.

Q5. What happens if my application proposes to consolidate/merge the ownership of multiple LHCSAs and one or more LHCSAs being acquired is not actively serving at least 25 patients?

A. Each LHCSA not actively serving a minimum of 25 patients will be evaluated under the public need methodology. You will need to provide a rebuttal for each currently approved county where there is a presumption of no need. A change of ownership will be considered for approval when at least one county meets the public need requirement or the LHCSA is already approved to operate in a county that does not require a rebuttal.

Q6. What is the licensure process for change of ownership applications that propose a new legal entity to operate the agency?

A LHCSA license is not transferrable. A change of ownership to a new operator for one or more LHCSAs requires an application to be submitted to the Department and the PHHPC for approval.

After the PHHPC approves a change of ownership application, you will need to comply with the licensure requirements established by the Department. Once PHHPC approval/contingent approval is obtained, a letter will be sent in NYSE-CON to provide instruction on how to proceed.

The change of ownership to a new operator will result in a new license with a new license number being issued by the Department. The license(s) subject to the change-of-ownership indicated in your application will be required to be surrendered at the time a new license(s) is issued.

## **F. OTHER REGULATORY REQUIREMENTS**

Q1. The regulation speaks about affiliated agencies in 765-1.16(c)(3), what does this mean?

- A. Affiliated and common ownership means that the ownership of the legal entities which operate the agencies must be identical. For example, the ownership of an ALP must be identical to the ownership of the LHCSA associated with the ALP.

Note: An applicant approved to provide services to a program under 765-1.16(c)(3) will be issued a restricted license. An application must be submitted in NYSE-CON for approval when a LHCSA requests to provide services beyond the scope of the restriction.

- Q2. Can an existing LHCSA add or delete a service or county or add an additional site without seeking PHHPC approval?
- A. Changes may be made to an existing license in accordance with the Department's Procedure for Licensed Home Care Services Agency (LHCSA) Administrative Licensure. These requests are made directly to the Department of Health Regional Office and approved administratively. Inquiries should be emailed to: [homecareapplications@health.ny.gov](mailto:homecareapplications@health.ny.gov).
- Q3. I submitted an application for one of the programs below but did not include a request to serve patients outside of the program, how do I obtain approval to do this now that the application has been submitted?
- Assisted Living Program (ALP)
  - Program for All-Inclusive Care for the Elderly (PACE)
  - Nurse Family Partnership (NFP)
  - Continuing Care Retirement Community (CCRC)
- A. A request to serve patients outside of one of the programs listed above requires Public Need review and an application. Such a request must be contained in the NYSE-CON application for approval. If there is a presumption of no need for additional LHCSAs in the counties being requested, the application must include data driven evidence to document a special need for services in that county.
- Q4. We would like to change the legal entity of our agency. What will this require?
- A. Pursuant to Article 36 of Public Health Law, a change in legal entity is considered a formal change of ownership and will require submission of a full certificate of need application and will also be subject to a need and financial review. Once the Department makes a recommendation, the Public Health and Health Planning Council will consider the CON application.