



Department of Health

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Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

August 17, 2022

DHCBS DAL: 22-14

SUBJECT: Licensed Home Care Services
Application Changes

Dear Administrator:

Effective April 1, 2020, applications for licensure as a Licensed Home Care Services Agency (LHCSA) are subject to review based on new public need and financial feasibility standards, in addition to the existing character and competence review process. Information regarding the new standards and application process are included in this letter and its attachments.

Background

Part B of Chapter 57 of the Laws of 2018 amended Public Health Law (PHL) Section 3605, Subdivision 4 to require that the Public Health and Health Planning Council (PHHPC) “not approve an application for licensure unless it is satisfied as to: (a) the public need for the existence of the licensed home health care service agency at the time and place and under the circumstances proposed; (b) the character, competence and standing in the community of the applicant’s incorporators, directors, sponsors, stockholders, or operators; (c) the financial resources of the proposed licensed home health care service agency and its sources of financial revenues; and (d) such other matters as it shall deem pertinent”.

The Department of Health (Department) amended its regulations to include the requirements set forth by law. The regulations were effective on April 2, 2020 and the adopted regulation package can be found as [Attachment 1](#) to this letter.

Public Need Methodology

The public need methodology applies to all applications for licensure submitted on or after April 1, 2020.

- The public need methodology includes a rebuttable presumption of no need for additional LHCSAs in a county if there are five or more LHCSAs actively serving patients within the county as of April 1, 2020. The target date for the Department to determine need has been adjusted to April 1, 2022 and the counties with need are identified in the attached LHCSA County No Need Report.
- A LHCSA applicant can overcome the presumption of no need based on local factors related to an applicant’s services or planning area, including, but not limited to:

- the demographics and/or health status of the patients 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 LHCSA, but who experience a long waiting time for placement;
 - the number and capacity of currently operating LHCSAs;
 - the quality of services provided by existing agencies;
 - the availability and accessibility of 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,
 - subpopulations requiring specialty services.
- Applications for licensure based on change of ownership for LHCSAs 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 agency's approved counties.
 - LHCSAs affiliated with an Assisted Living Program (ALP), Program of All-Inclusive Care for the Elderly (PACE), Nurse Family Partnership (NFP), or Continuing Care Retirement Community (CCRC) will be exempt from the public need methodology if the agency exclusively serves patients within those programs. The agency will be subject to the need methodology if they apply to serve patients outside of the specific program. Any exemption will be noted on the agency's license.

Financial Feasibility

The standards for the financial feasibility review will require, at a minimum:

- an examination of the sources of available working capital that the proposed licensed home care services agency 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 revenues, including but not limited to operating revenue, will be equal to or greater than projected expenditures over time.

All applications will be reviewed for character and competence using the existing standards and procedures. Also attached to this letter is a revised application for licensure ([Attachment 2](#)), a list of counties and the number of LHCSAs actively serving patients in each county ([Attachment 3](#)), and FAQs ([Attachment 4](#)).

Questions on the new requirements may be sent to homecareapplications@health.ny.gov

Sincerely,

Carol Rodat, Director
Division of Home and Community Based Services

Attachments: [Title 10 NYCRR, Part 765](#)
[Revised application for licensure](#)
[LHCSA County Presumption of No Need Report](#)
[Frequently Asked Questions \(FAQs\): LHCSA Public Need Methodology and Financial Feasibility Review](#)
[Quality Assurance Committee Guidelines](#)

cc: Mark Hennessey
Valerie Deetz