



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

July 2018

Dear Interested Party:

Chapter 57 of the Laws of 2018 gives the Department of Health authority to develop a public need methodology for the approval of Licensed Home Care Services Agencies (LHCSAs). Prior to this, the Public Health and Health Planning Council was restricted to only reviewing the character, competence and standing in the community of the applicant's incorporators, directors, sponsors, stockholders, or operators. The new public need methodology will ensure adequate supply of LHCSAs are available and accessible, while avoiding the proliferation of unneeded agencies.

The purpose of this Request for Information (RFI) is to gather input for the development of the public need methodology for LHCSAs pursuant to Section 9-b of Part B of Chapter 57 of the Laws of 2018. The RFI seeks recommendations for planning area designations, factors to include in the methodology, exceptions to the methodology, and additional requirements or priority considerations to include.

Please send comments and recommendations to ALTCTeam@health.ny.gov no later than **October 12, 2018**.

Sincerely,

Mark L. Kissinger
Special Advisor to the Commissioner of Health
New York State Department of Health
Office of Primary Care and Health Systems
Management

LHCSA Public Need Methodology

Purpose:

The purpose of this Request for Information (RFI) is to gather input for the development of a public need methodology for Licensed Home Care Services Agencies (LHCSAs) pursuant to Section 9-b of Part B of Chapter 57 of the Laws of 2018. The methodology should ensure an adequate supply of LHCSAs are available and accessible, while avoiding the proliferation of unneeded agencies. The methodology will be utilized in at least the evaluation of applications involving establishment of a LHCSA. The question of whether to apply the need methodology to change of ownership applications will be explored. The RFI seeks recommendations for planning area designations, factors to include in the methodology, exceptions to the methodology, and additional requirements or priority considerations to include. Healthcare providers, administrators, associations, and the public are encouraged to submit responses.

Background:

LHCSAs are engaged in providing, directly or through contract arrangement, nursing services, home health aide services, and/or personal care services. They also provide physical, occupational, and respiratory therapies, speech language pathology, audiology, nutritional services, medical social services, as well as medical supplies, equipment and appliances. LHCSAs also provide services that are considered specialty services such as IV infusion services.

Currently, there are approximately 1,100 approved operators with 1,450 licensed sites statewide.

Applications for licensure as a LHCSA are submitted to the Department of Health (Department) and are subject to approval by the Public Health and Health Planning Council (PHHPC). As part of the application process, applications are reviewed to ensure the character, competence, and standing in the community of the applicant's incorporators, directors, sponsors, stockholders, or operators. Applications must be submitted for initial licensure, purchase or mergers, change of stock ownership, or other acquisition or control change.

Prior to the enactment of Chapter 57, LHCSA applications were prohibited from being reviewed based on public need. As a result, the number of LHCSAs operating within New York State has grown drastically with no examination of the actual need for services. Part B of Chapter 57 includes the following provision (**bold** words were added; ~~strikethrough~~ were removed):

§9-b. Subdivisions 4 and 6 of section 3605 of the public health law, subdivision 4 as amended by section 62 of part A of chapter 58 of the laws of 2010, subdivision 6 as added by chapter 959 of the laws of 1984, are amended to read as follows:

4. The public health and health planning council shall 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.

6. Neither [~~public need,~~] tax status nor profit-making status shall be criteria for licensure.

This provision gives the Department the authority to develop a need methodology for the licensure of new LHCSAs. The need methodology will be effective April 1, 2020, as Chapter 57 of the Laws of 2018 also instituted a two-year moratorium on all LHCSA applications effective April 1, 2018.

The new need methodology will be outlined in regulation. Exceptions to the methodology and any other special considerations will be included.

Information Request:

The Department is seeking information from healthcare providers, administrators, associations, and the public. Please review the questionnaire and include your responses and recommendations. Respondents are asked to use the template provided and to submit their response in Microsoft Word.

This RFI is for planning purposes only and should not be interpreted as a solicitation for applications or obligations on the part of the Department. The Department will not pay for the preparation of any information submitted or for the use of that information.

The Department will use the information submitted in response to this RFI at its discretion and will not provide comments to any responder's submission. The information provided will be analyzed and may appear in reports. Respondents are advised that the Department is under no obligation to acknowledge receipt of the information or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential, or sensitive information should be included in your response. The Department reserves the right to use any non-proprietary technical information in any resultant solicitation(s).

Please send responses and recommendations to ALTCteam@health.ny.gov with the subject line "LHCSA Need". Responses are due by **October 12, 2018**. Information in addition to the prescribed questions is welcome. Your time and input are greatly appreciated.

Licensed Home Care Services Agency (LHCSA) Public Need Methodology Questionnaire

1. Please provide your contact information, including the name of your organization (if applicable), name of contact person, phone number, and email address.
2. How should LHCSA planning areas be designated and what factors should be considered? Planning areas often include one county or two or more contiguous counties. Factors to consider when designating planning areas may include, but are not limited to, provider travel patterns including driving time, the availability of public transportation, and the availability of existing service providers.
3. What factors should be included when determining the need for LHCSAs? Factors may include, but are not limited to, population estimates and demographics, including estimates of the potential patients to be served in each county or designated area, disease and disability prevalence, as well as capacity of existing providers. Please be specific in your response (i.e. include specific demographic information or disease prevalence rates to consider, if appropriate).
4. What type of experience should be required of a LHCSA operator?
5. Should quality measures be considered when reviewing LHCSA applications for licensure and/or change of ownership? If yes, what measures should be included?
6. Should the number of LHCSAs be capped in a single county?
7. Should there be exceptions to the need methodology? If so, identify.
8. When would adjustments to the need methodology within a planning area be acceptable?
9. How often should need be recalculated?
10. What additional requirements, if any, should be included for LHCSA applications for initial licensure?
11. What special considerations, if any, should be prioritized when reviewing LHCSA applications for initial licensure? For example, special considerations may be given to applicants that provide training programs for personal care aides and home health aides or those that provide services to special populations.
12. Should initial applications for licensure be limited for service area until the operator demonstrates competency and compliance?
13. Should the provision of specific services be considered as part of a need methodology? (e.g., Medicaid waiver services offered through the Traumatic Brain Injury (TBI) waiver program or the Nursing Home Transition and Diversion (NHTD) waiver program).
14. Should a need methodology consider services to specialty populations such as pediatrics or specialty services such as IV infusion services or flu shot immunizations?

15. Should a need methodology consider or eliminate from its calculation those agencies that are proposing to provide personal care services only and license those organizations discreetly?
16. Should the availability of appropriate staffing for a LHCSA planning region be considered in public need?
17. Should the Department consider whether a LHCSA will service public payment (Medicare/Medicaid) beneficiaries in determining LHCSA need?
18. Should the need methodology regulations cover change of ownership applications?
19. Should the need methodology regulations apply to existing LHCSA operators requesting to expand services into other planning areas (counties and/or regions)?