

Guidance on LHCSA Contracting Limits

OVERVIEW

The New York State (NYS) Department of Health (DOH) has released new guidance that places a limit on the number of Licensed Home Care Service Agencies (LHCSAs) that a partially-capitated managed long-term care (MLTC) plan may contract with in its network. DOH was required to publish this guidance by provisions in the NYS Fiscal Year 2018-19 Enacted Budget.

The guidance takes into account two factors to establish a plan-specific maximum number of contracted LHCSAs: (1) the plan's service region (Downstate or Rest of State), and (2) the number of plan enrollees in the region. All MLTC plans must come into compliance with these limits by October 1st. The statute does not limit the number of enrollees that a LHCSA may serve.

The Contract Limitation Guidance is available [here](#). A summary of the guidance is provided below.

PROVIDER TO ENROLLEE RATIOS

MLTC plans are now allowed to contract with a maximum number of LHCSAs in each of two operating regions, based on the number of individuals enrolled in the MLTC plan in that region. The two operating regions are defined as follows:

- Downstate (New York City, Nassau, Suffolk, and Westchester counties); and
- Rest of State (ROS).

Effective October 1, 2018, MLTC plans may contract with a maximum number of LHCSAs based on their enrollment as of July 1, 2018, at the following ratios:

- For Downstate: 1 LHCSA for every 75 enrollees (1:75)
- For ROS: 1 LHCSA for every 45 enrollees (1:45)

Effective October 1, 2019, MLTC plans may contract with a maximum number of LHCSAs based on their enrollment as of July 1, 2019 at the following ratios:

- For Downstate: 1 LHCSA for every 100 enrollees (1:100)
- For ROS: 1 LHCSA for every 60 enrollees (1:60)

Limits will continue to be updated annually on each July 1st. Fractional ratios will be rounded down to the nearest whole number. Any contract between an MLTC plan and a LHCSA for providing covered services, including single case agreements, will count towards the maximum number of LHCSAs with which an MLTC plan may contract. MLTC plans under the limit may continue to add LHCSAs to their network at any time, up to the limit.

If an MLTC plan operates in both the Downstate and ROS regions, it must perform separate calculations for each region to determine the maximum number of LHCSA contracts it can operate in each region. If a LHCSA provides services in both the Downstate and ROS regions, their contract with the MLTC plan will be counted towards the maximum number of LHCSAs that the MLTC plan may contract with in each respective region. However, if the LHCSA serves less than 10% of the MLTC plan's total enrollment in both regions combined, the MLTC plan will not be required to count the LHCSA in the region with the smaller percentage.

MLTC PLAN CONTRACTING APPROACH

If an MLTC plan needs to reduce the number of LHCSAs in its network, it should consider its enrollees' health, functional, and specialized needs (i.e., cultural competence, language, and geographic location) and the quality and value of each LHCSA's services. Also, plans should consider each LHCSA's:

- Commitment to value-based payment arrangements;
- Investment in enhanced training programs (beyond the minimum requirements of DOH for home health aides and personal care aides), especially participation in a Workforce Investment Organization;
- Compliance with all wage mandates;
- Successful implementation of a quality assurance program;
- Compliance with DOH and MLTC plan reporting requirements such as statistical reports; and/or
- Willingness to hire aides to ensure continuity of care.

ENROLLEE NOTIFICATION

When an MLTC plan terminates a LHCSA contract, it must send a written notice of termination to all enrollees who were receiving care from that LHCSA within 15 days of the notice of termination to the LHCSA. The notice to enrollees must provide information on available options for staying with their current home care worker, such as:

- Changing to a different LHCSA (i.e., if the current home care worker will move to that LHCSA);
- Enrolling in a different MLTC plan (i.e., if the enrollee's current LHCSA will now contract with a different plan); or,
- If applicable, requesting a three-month exception for continuity of care purposes.

NETWORK ADEQUACY

MLTC plans must continue to comply with statutory network adequacy requirements at all times, as outlined with the MLTC model contract and other applicable authority. This includes the requirement for each plan to have at least two LHCSAs accepting new enrollees in each county within its service area. If the MLTC plan cannot provide covered services to an enrollee through its contract network, it must establish arrangements with out-of-network providers for covered services until those services can be provided within the MLTC plan's network.

If an MLTC plan terminates 25% or more of its LHCSA contracts during any time period up to six months, the MLTC plan must submit documentation to DOH that demonstrates its continued capacity to serve enrollees in its service area. Documentation should include the number of enrollees impacted by the LHCSA contract terminations and the MLTC plan's strategy for ensuring that services remain available to enrollees.

SPECIAL SITUATIONS

Multiple Contracts with a Single LHCSA

If an MLTC plan has multiple contracts with a single LHCSA that is licensed to operate at several sites within a county or across several counties, the multiple contracts will be considered a single contract for purposes of determining MLTC plan compliance with the statute. However, if the LHCSA operates in both the Downstate and ROS regions, the LHCSA will be counted as a single contract in both

calculations when determining the MLTC plan's compliance with the LHCSA limit, unless the LHCSA serves less than 10% of the MLTC plan's total enrollment in both regions combined, as indicated above.

Independent Practice Associations (IPAs)

The contracting limitation requirements outlined in this statute apply to all contracts between MLTC plans and LHCSAs, whether those contracts are direct or indirect through an intermediary contracting entity, such as an Independent Practice Association (IPA). For example, if an MLTC plan contracts with an IPA who has a certain number of provider agreements with LHCSAs, the MLTC plan will be considered to have that same number of contracts with LHCSAs in the region, unless it works out an arrangement with the IPA where not all of the IPA's participating providers sign on to provide covered services to the MLTC plan.

EXCEPTIONS

An MLTC plan may request an exception to the statute requirements for the maximum number of allowable LHCSA contracts if they are targeted to specific patient needs, as outlined below. Exception requests must be submitted to DOH Division of Long Term Care at LHCSAExceptions@health.ny.gov. DOH will attempt to review requests for exceptions within 30 calendar days of receipt. A granted exception will be valid for one year, after which MLTC plans must reapply for the exception, if needed.

Continuity of Service

If the MLTC plan terminates a LHCSA contract and an enrollee wishes to retain care delivery from one or more home care workers employed by this LHCSA, the MLTC plan may request to continue contracting with this LHCSA for up to three months. MLTC plans must notify DOH of this three-month contract extension. The three-month extension period will not count towards an MLTC plan's maximum number of contracts. However, after the extension period expires, the contract must be terminated, or it will count towards the limit.

Adequate Access to Services

An MLTC plan may request an exception if they demonstrate that additional contracts are necessary to ensure adequate access to services, including special needs and culturally or linguistically appropriate services, for enrollees in a particular geographic area. The MLTC plan's request for an exemption must:

- Identify the effect or potential effect on the enrollee's care if the exception is not granted;
- Analyze the frequency or occurrence of the service;
- Include a plan to alleviate the issue, including timeline;
- Demonstrate that no other LHCSA in the plan's network can meet the enrollee's needs; and
- Demonstrate that the addition of such LHCSA would result in the MLTC plan exceeding the allowed ratios.

If the exception request relates to culturally or linguistically appropriate services or other specialized services, it must also document:

- The enrollee's desire for a particular aide due to a cultural or linguistic concern;
- An inability to transfer the aide with their client to another LHCSA; and
- Evidence that the enrollee would not be able to be serviced by any LHCSA currently in the plan's network (due to a lack of required competencies and/or specialized services).

When this type of exception is requested, a plan is permitted to enter into an agreement with a LHCSA to provide needed services while the request for exception is pending. If the exception is eventually denied, the MLTC plan should terminate the contract within three months of the denial, or it will be counted towards the limit.

COMPLIANCE

DOH will verify compliance with these limits during each MLTC plan's annual certification process. Beginning in December 2018 and annually on September 30th thereafter, DOH will require each MLTC plan to confirm that it is in compliance with the contracting requirements of the statute and corresponding guidelines based on plan enrollment as of the most recent July 1st date. Compliance may also be evaluated as part of DOH audit and surveillance activities. DOH may also monitor the number of enrollees that are converted to a consumer-directed arrangement.

Questions about the LHCSA contracting ratios and exception process may be submitted to LHCSAExceptions@health.ny.gov.