

# NYS DOH ISSUES IMPORTANT GUIDANCE REGARDING LHCSA LIMITS

*Home Care Alert*  
August 24, 2018

The New York State Department of Health issued two guidance documents related to the new LHCSA limits. The first guidance documented, dated August 20, 2018, provides:

1. The methodology used to determine the number of available LHCSAs in a MLTC plan's network is based on the region in which the MLTC operates and on the number of enrollees in that region. The 2 regions are Downstate (defined as NYC, Nassau, Suffolk, and Westchester counties) and the Rest of the State ("ROS").
2. When selecting the LHCSAs with which it will contract, MLTCs should consider the LHCSA's commitment to value-based payment arrangements, investment in enhanced training programs, compliance with all wage mandates, quality assurance program implementation, compliance with statistical reporting requirements and willingness to hire aides to ensure continuity of care.
3. MLTCs must notify patients of LHCSAs whose contracts have been terminated about options for preserving their current home care aide. These options include having the aide move to a new LHCSA.
4. When determining how many LHCSA contracts a MLTC may have, all contracts will be considered, including single case agreements.
5. MLTC plans may add LHCSAs to their networks at any time.
6. The DOH will determine MLTCs' compliance with the LHCSA limits at the time of the MLTC's annual certification.
7. The LHCSA limits apply to a contract between an agency and a MLTC, irrespective of whether that contract is direct or indirect. Thus, all LHCSA members of an Independent Practice Association (IPA) count when determining the number of contracts with a single MLTC.
8. A LHCSA operator that is licensed to operate at several sites within a county or counties will be considered to have a single contract, even if the MLTC plan holds separate contracts with such LHCSA operator for each licensed site.

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9. Beginning in December 2018 and annually on September 30 thereafter, the DOH will require each MLTC to certify that it is in compliance with the LHCSA limits law.

Separately, in a Dear Administrator letter dated August 23, 2018, the Department addressed recent attempts by LHCSAs to establish referral and patient-exchange networks where LHCSAs agree to “exchange” patients in order to build up their census with specific MLTCs. In this regard, the Department states: “Offering, paying, soliciting, or receiving any payment in return for referring a Medicaid recipient to a LHCSA or other Medicaid services provider is strictly prohibited under federal and State bribery and anti-kickback rules... A transaction can violate these rules regardless of the form of payment or the structure of the transaction – whether direct, indirect, in cash, or in kind.”

The Dear Administrator letter noted that the Department would be issuing FAQs related to the LHCSA Moratorium.

If you have any questions regarding these legal developments, please contact any one of our Home Care Group attorneys.