

NYS BUDGET CHANGES ESTABLISH MEDICAID LONG TERM CARE PROVIDER MORATORIUM AND LHCSA CONTRACTING PROCESS THEREBY REDUCING ACCESS TO LONG TERM CARE PROVIDERS AND SERVICES

Hodgson Russ Home Care Alert
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On April 3, 2020, Governor Cuomo signed the FY 2021 Executive Budget (“Budget”). The Budget changes include a moratorium on new Managed Long Term Care (MLTC) plans and impose new contract requirements for Licensed Home Care Service Agencies (LHCSAs) to become enrolled providers under Medicaid. These changes will reduce the number of home care providers available to provide long-term care services through a MLTC plan, and decrease the number of individuals who will be served under a plan.

New York State’s MLTC programs provide vital health care coverage to the elderly and disabled through home care providers such as Licensed Home Care Agencies (LHCSA) and Certified Home Health Agencies (CHHA). These home care providers deliver essential home care services including personal care services that deter institutionalization and allow individuals to remain in the community. The new contract requirements for LHCSAs suggest that every LHCSA—new and existing—will be required to submit an offer in response to the Department’s formal Request For Proposal (RFP) contracting process in order to provide home care services under the Medicaid program.

The Budget poses significant challenges to the future growth of managed long-term care plans and providers in an effort to stem further Medicaid spending. The major changes to the Public Health Law affecting the MLTC and LHCSA providers are as follows:

- Effective April 1, 2020 through March 31, 2022, the Commissioner enacted a moratorium on the processing and approval of applications for a certificate of authority to operate as a MLTC program;
- The Moratorium also affects any applications that seek authority to expand an existing MLTC plan’s service area or scope of eligible enrollee populations;

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- The Moratorium will not affect applications that address service delivery gaps such as, “a lack of adequate access to managed long term care plans in a geographic area or a lack of adequate and appropriate care, language and cultural competence, or special needs services;”
- The Moratorium will not be applicable to applications seeking to operate under the Program of All Inclusive Care for the Elderly (PACE) model;
- For the duration of the moratorium, the MLTC plans will also be subject to enrollment caps. The specific percentage of each plans’ enrollment caps is based on numerous factors including individuals’ access to health and long term care services under the plan, quality of care scores, and historical plan disenrollment;
- The enrollment caps will not affect the PACE program;
- A new section 3605-c was added to the Public Health Law to prohibit a LHCSA from enrolling as a Medicaid provider without initially entering into a contract with the Department of Health (DOH);
- Under this provision, the DOH will propose a public process through a Request for Proposals (RFP) for selection of LHCSA contractors. The RFP will be due within 30 days of its posting on the DOH website;
- The RFP will establish criteria for the selection of LHCSAs. These criteria can include a number of factors including, but not limited to, lack of affiliation with any entity certified under Article 44 of the Public Health, such as MLTCs, or other home care providers; demonstrated cultural or linguistic competence; experience serving individuals with disabilities; and demonstrated compliance with all Federal and State Laws; and
- The selection criteria may also give preference to prospective contractors that operate as non-for-profit organizations.

Contact Us

DOH has not released the application to be used in the LHCSA RFP contracting process. Our attorneys are monitoring the situation and release of the application. If you would like assistance in preparing the application, or have any questions about this alert, please contact Peter Godfrey (716.848.1246) or Roopa Chakkappan (716.848.1258).

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