

THE WAIT IS OVER: NEW YORK STATE DEPARTMENT OF HEALTH RELEASES THE LICENSED HOME CARE SERVICES AGENCY LICENSURE APPLICATION

Hodgson Russ Home Care Alert
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As part of the New York State Fiscal Year 2018-2019 budget, a new law was enacted which placed a two-year moratorium on the processing and approval of applications seeking the licensure of Licensed Home Care Services Agencies (LHCSAs). This moratorium became effective on April 1, 2018, and continued until March 31, 2020. On August 17, 2022, the DOH issued the new [LHCSA Licensure Application](#) and [FAQs](#) with [DHCBS DAL: 22-14](#) detailing new standards and instructions regarding the application process for LHCSA licensure.

Effective April 1, 2020, all applications for initial licensure will be reviewed based on the public's need for additional LHCSA services and the financial viability of the applicant, in addition to the existing character and competency review process. However, a public need determination will not be required for certain change of ownership applications.

The Public Need Methodology

The public need methodology determines whether there is a sufficient need for LHCSA services from residents of the county in which the applicant intends to operate.

If there are five or more existing LHCSAs actively serving patients within the same county as an applicant, the applicant faces a rebuttable presumption that there is no need for more LHCSAs in that county. The DOH has identified 42 counties with presumed need and 20 counties with no need for additional LHCSAs in its County Presumption of "No Need" [Report](#). An applicant can overcome this presumption by showing the necessity of its services based on a non-exhaustive list of local factors. Factors considered by the DOH include:

- 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

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- 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 new members of the workforce including committed resources in an organized training program;
 - cultural competency of existing agencies; and,
 - subpopulations requiring specialty services.

This public need standard does not apply to all applicants.

If an application for licensure is made by an existing LHCSA based on a change of ownership, and the applicant actively serves at least 25 patients, the applicant will not be subject to the public need review. This exemption applies unless the applicant proposes to serve patients outside of the county in which it is approved to operate.

LHCSAs affiliated with any of the following programs are also exempt from the public need review if the LHCSA exclusively serves patients within the program it is affiliated with:

- Assisted Living Program
- Program of All-Inclusive Care for the Elderly
- Nurse Family Partnership
- Continuing Care Retirement Community

Financial Feasibility Standards

The financial feasibility standards determine an applicant's financial viability based on current and projected finances.

At a minimum, an applicant must meet the following three standards:

1. an examination of the sources of available working capital that the proposed LHCSA operators have, with a minimum requirement equal to at least two months of estimated operating expenses of the agency;
2. that the application passes a reasonableness test with respect to the financial capability of the agency or sources for start-up funding; and
3. 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.

Contact Us

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If you have any questions about the new LHCSA licensure standards or application process, please contact [David Stark](#) (716.848.1369) or [Roopa Chakkappan](#) (716.848.1258).