

As part of the New York State Fiscal Year 2018-2019 budget, a new law was enacted which places 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 will continue until March 31, 2020. The full language of the moratorium can be found in Section 9-e of Part B of Chapter 57 of the Laws of 2018.

The law, however, does provide for some limited exceptions for the processing and approval of certain LHCSA applications during the moratorium period:

- An application seeking licensure of a LHCSA that is submitted with an application for an Assisted Living Program (ALP) authorized pursuant to section 461-a of the Social Services Law.
- An application seeking approval to transfer/change ownership of an existing LHCSA that has been licensed and operating for a minimum of five years for the purposes of consolidating the licenses of two or more LHCSAs and;
- An application seeking licensure of a LHCSA where the applicant demonstrates, to the satisfaction of the Commissioner of Health, that it would be appropriate on the grounds that the application addresses a serious concern such as a lack of access to home care services in a geographic area or lack of appropriate care, language and cultural competence or special needs services.

To comply with the statute, no LHCSA application can be accepted for processing unless it meets one of the statutory exceptions. The LHCSA application and instructions have been updated to include information about each exception and what must be provided by the applicant to be considered for an exception. The LHCSA application and instructions may be found on the Department website at <https://www.health.ny.gov/facilities/cons/>

The following are the requirements for submission for each exception category:

ALP related Exceptions:

- The ALP application must have been submitted to the Department and an application number issued.
- Ownership of the LHCSA must be identical to the ownership of the ALP.
- Approval will be limited to serving the residents of the associated ALP. Therefore, the application may request only the county in which the ALP resides as the county to be served.
- The application must include an attestation acknowledging the that approval will be limited to serving the residents of the associated ALP.

Change of Ownership Related Exceptions:

- Only changes in ownership that consolidate two or more LHCSAs may be accepted during the moratorium. Consolidate means reducing the number of LHCSA license numbers, not a reduction in the number of sites operated under a license number. A LHCSA license number, for this purpose, is the first four digits, before the "L". The application must include all sites of the to-be-acquired agency.
- LHCSAs to be acquired must be currently operational and have been in operation at least five years.
- The application must include an attestation and statistical report data verifying the seller(s) is/are operational and has/have been for a minimum of five years.

- If an existing LHCSA is purchasing one or more LHCSAs, the buyer must also currently be operational per 10 NYCRR Section 765-2.3(g). The application must include an attestation and statistical report data verifying the buyer is currently operational.

Examples of Qualifying Change of Ownership Applications

- An existing LHCSA purchases one or more separately licensed existing LHCSAs. Upon approval, the purchased LHCSAs licenses must be surrendered and their sites become additional sites of the purchasing LHCSA
- A new corporation (not currently licensed as a LHCSA) purchases two or more existing LHCSAs. One new license is issued, with the purchased LHCSAs licenses being surrendered and their sites becoming sites of the newly licensed LHCSA.

Examples of **Non-Qualifying** Changes in Ownership Applications

- A new proposed operator replaces the current operator of a LHCSA
- A new controlling entity is established at a level above the current operator^{*1*}
- A partial change in ownership requiring Public Health and Health Planning Council approval^{*2*}

Serious Concern Exceptions:

There is a *presumption of adequate access if there are two or more LHCSAs already approved in the proposed county*. Approved LHCSAs include those that are operational and those approved but not-yet-operational. If there are two or more LHCSAs in the requested county:

- the applicant must articulate the population to be served for which there is a lack of access to licensed home care services;
- the applicant must submit substantial, data-driven proof of lack of access to the population (demographics, disposition and referral source for targeted patient population, level of care and visits required, payor mix, etc.);
- the applicant must provide satisfactory documentation that no existing LHCSA in the county can provide services to the population;
- if more than one county is requested, the application must include all required material for each county individually;
- the applicant may request to operate in up to five counties, only.

¹ During the moratorium, if the controlling person/entity submits an affidavit attesting they will refrain from exercising control over the LHCSA (see 10 NYCRR Section 765-1.14(a)(2) for required affidavit language) until the moratorium is lifted and an application can be submitted, processed, and approved, then the corporate transaction can proceed. Within 30 days of the moratorium being lifted, the agency must submit an application for PHHPC approval of the controlling person.

² In the case of the death of an owner, partner, stockholder, member, which results in the need for a Change in Ownership application, the LHCSA may continue to operate until the State takes definitive action to revoke the license or the Moratorium is lifted and an application may be submitted.