

New York State Department of Health

Licensed Home Care Services Agencies (LHCSAs)

County Presumption of “No Need” Report: Effective Date 4/1/20

Section 1: Background

As of April 1, 2020, all licensure applications for Licensed Home Care Services Agencies are subject to new regulations promulgated by the New York State Department of Health (the “Department”).

Section 765-1.16 was added to Subpart 765-1 of Part 765 of 10 NYCRR, and Section 765-1.16(c)(1) states:

There shall be a rebuttable presumption of no need for additional licensed home care service agencies in a planning area if there are 5 or more Licensed Home Care Service Agencies (LHCSA) actively serving patients within the planning area as of April 1, 2020. Beginning in 2021, the commissioner shall have the authority to adjust the target date for determining need for additional LHCSAs in a planning area, in subsequent years.

To identify the planning areas (*i.e.*, counties) with 5 or more LHCSAs actively serving patients, the Department released a *Health Electronic Response Data System* (HERDS) survey on June 22, 2020, through the Health Commerce System (HCS). LHCSAs were required to submit the number of all unduplicated patients served between April 1, 2019 and April 1, 2020 and also, the number of patients on their April 1, 2020 roster in each planning area they are licensed to operate.

For the planning area assessment required by Section 765-1.16, a LHCSA was determined to be actively serving a county when they reported at least 25 unduplicated patients on their April 1, 2020 roster. Where there are 5 or more LHCSAs actively serving 25 or more patients in a county there is a presumption of “no need” for additional LHCSAs. Section 2 below provides a list of counties where there is a presumption of no need for additional LHCSAs.

The LHCSA need methodology provides an exemption for LHCSAs affiliated with an Assisted Living Program (ALP), Program of All-Inclusive Care for the Elderly (PACE), Nurse Family Partnership (NFP), or Continuing Care Retirement Community (CCRC). LHCSAs affiliated with one of these programs or providers were required to denote their affiliation in the survey. Patients or residents in ALP, PACE, NFP or CCRC were not included in the counts; however, patients served outside of these programs or residences by the affiliated LHCSA were counted.

Section 2: List of Counties Presumed to Have “No Need” for Additional LHCSAs

The LHCSA data collected in June of 2020 indicated that there were twenty-four (24) counties with no need for additional LHCSAs: Albany, Bronx, Broome, Chautauqua, Chemung, Dutchess, Erie, Kings, Monroe, Nassau, New York, Niagara, Onondaga, Orange, Queens, Richmond, Rockland, Saratoga, Ulster, and Westchester. The thirty-eight (38) remaining counties had less than five LHCSAs actively serving twenty-five (25) patients).

Recently, the Department released the LHCSA County Patient Survey through HERDS from June 15, 2022 until July 15, 2022. The 2022 survey indicated a decrease in the number of counties with no need as it identified twenty (20) counties reporting 5 or more LHCSAs actively serving 25 or more patients and forty-two (42) counties with a presumed need for more LHCSAs.

Counties with No Need (20)

Albany	Monroe	Richmond
Bronx	Nassau	Rockland
Broome	New York	Saratoga
Chautauqua	Onondaga	Suffolk
Dutchess	Orange	Ulster
Erie	Putnam	Westchester
Kings	Queens	

If an application includes any county where there is a presumption of “no need,” the applicant must submit a rebuttal to the presumption of “no need” for each county listed above in which the LHCSA is seeking approval. All applicants are advised to carefully review the “Frequently Asked Questions” document for additional guidance.

Counties with Presumed Need (42)

Applicants may submit an application for establishment of a LHCSA in the following counties:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chemung	Lewis	Seneca
Chenango	Livingston	St. Lawrence
Clinton	Madison	Steuben
Columbia	Montgomery	Sullivan
Cortland	Niagara	Tioga
Delaware	Oneida	Tompkins
Essex	Ontario	Warren
Franklin	Orleans	Washington
Fulton	Oswego	Wayne
Genesee	Otsego	Wyoming
Greene	Rensselaer	Yates

Note, that the determining factor for identification of the counties with presumed need is not the number of LHCSAs approved to operate in a given county, but whether there are five LHCSAs actively serving 25 or more patients. For example, the 2022 survey indicated instances in which there were 5 or more LHCSAs approved to operate in a county, but the number of unduplicated patients served, was less than 25.