November, 2019

Certified Home Health Agency Certificate of Need Review

Public Need Methodology

Public Health and Planning Council

Committee Meeting

**Introduction**

Certified Home Health Agencies (CHHAs) provide part-time, intermittent health care and support services to individuals in need of such care. CHHAs may also provide long term nursing and home health aide services. CHHAs are also able to provide or arrange for other services, including physical, occupational and speech therapies, medical supplies and equipment, social work, and nutrition services.

Currently, there are 118 operational CHHAs, with at least one CHHA available in each of New York’s 62 counties. Of the 118 CHHAs, two serve special needs populations and seven serve individuals within the Office of Mental Health (OMH) and Office for People With Developmental Disabilities (OPWDD) systems.

In 2017, the Department of Health initiated the Regulatory Modernization Initiative (RMI), an effort in updating New York’s complex and outdated regulatory structure to better meet the needs of the rapidly changing healthcare system.

Under the RMI, a discussion of Long Term Care Need Methodologies and Innovative Models was held. Stakeholders recommended modernization of the CHHA need methodology.

Public Health Law Sections 3606 and 3606-a set forth requirements for the establishment and construction of CHHAs.

**Background**

In 2012, in response to the Medicaid Redesign Initiative, the Department issued a Request for Applications (RFA) to expand existing CHHAs by either service area or by population. The Department recognized that the landscape of the CHHA environment would be ill-equipped to serve the growing population of individuals in need of home and community-based services because of the project initiatives being undertaken through the Medicaid Redesign Team (MRT).

To facilitate the growth of CHHAs, PHHPC passed an emergency regulation allowing the Department to issue the aforementioned RFA. Applications were prioritized based on the regions where MRT was to be implemented first, which included eight downstate counties.

A total of 137 applications were received statewide of which 94 were received requesting approval to serve the eight downstate counties. For upstate counties, a total of 43 applications were received. A statewide total of 56 applications were approved and subsequently approved by PHHPC. Currently, 31 of the downstate CHHAs and 23 of the upstate CHHAs approved by PHHPC are still operational.

Overall, since 2010, the total number of CHHA’s statewide has decreased.

|  |  |  |  |
| --- | --- | --- | --- |
| Region Name | Number of CHHAs on 7/1/10 | Number of CHHAs on 7/1/15 | Number of CHHAS as of 10/31/19 |
| Capital District RO | 22 | 18 | 14 |
| Central NY RO | 25 | 22 | 17 |
| Metropolitan RO - Long Island | 18 | 22 | 19 |
| Metropolitan RO New Rochelle | 24 | 24 | 21 |
| Metropolitan RO NYC | 30 | 36 | 31 |
| Western RO Buffalo | 11 | 9 | 9 |
| Western RO Rochester | 12 | 7 | 7 |
| **Total** | **142** | **138** | **118** |

The review and revision of the current need methodology comes at a time where there is a greater focus on supporting individuals to age in place. The Department must act to ensure that the needs of all individuals that wish to remain at home are able to be met.

**Establishment**

Under PHL Section 3606, applications for the proposed establishment of a CHHA are to be filed with the Public Health and Health Planning Council (PHHPC) with any forms or information that are deemed pertinent as defined by 10 NYCRR 760.2.

The law allows PHHPC to evaluate and approve applications if it is satisfied of the public need for the existence of the proposed CHHA; the character, competence, and standing in the community of the proposed incorporators, directors, and sponsors; the financial resources of the proposed CHHA and its sources of future revenues; and other matters as it shall deem pertinent.

**Construction**

Under PHL Section 3606-a, no agency will “construct” any CHHA without the prior approval of the Commissioner. Construction is defined as the “addition or deletion of services offered; a change in the agency’s geographic service area; the erection, building, or substantial acquisition or alteration of a physical structure or equipment; or a substantial change in the method of providing services” (PHL Section 3602(12)). Agencies wishing to pursue construction must file an application with the Department with any supporting information that the Department deems pertinent. The Department will forward the application for construction to the PHHPC.

The law allows the Commissioner to take into consideration the availability of facilities or services which currently serve as alternatives or substitutes for the whole or any part of the proposed construction; the need for program changes in view of existing utilization at the time and place and under the circumstances proposed; and the adequacy of financial resources and sources of future revenue.

**CHHA Need Methodology**

Under 10 NYCRR 760.5, the objective for public need is to “ensure that an adequate supply of certified home health agency capacity is available and accessible, while at the same time avoid[ing] the proliferation of unneeded agencies. The application of the methodology is expected to result in reducing the need for institutional acute and long term care by developing and expanding the availability of certified home health agency services which serve as appropriate alternatives to institutional care.”

*Projection of Need*

Under Title 10 NYCRR 760.5, applications for establishment and construction are each subject to the same need methodology.

Each county is designated as its own planning area. Requests may be made to the Commissioner to designate two contiguous counties as one planning area providing that the following information is provided:

* provider travel patterns including driving time and availability of public transportation;
* the availability of existing certified home health agency case capacity; and
* other factors identified by the health systems agencies.

10 NYCRR 760.5 mandates that CHHA need estimates be calculated at least every three years, using the most recent and available data. The factors used to develop the need methodology include normative use rates and local and demographic factors within the planning area.

Normative use rates are calculated based on the number of reported nursing and therapy cases. A case is defined as an admission or readmission to a CHHA during a given calendar year. The Department adjusts the number of reported cases and removes those that reflect nursing assessments for eligibility purposes and any inconsistencies or errors. If data is not available, the Department is to calculate the normative use rate based on the ratio of reported nursing visits for each agency and will divide the reported visits by the statewide mean of the visit to case ratio minus one standard deviation to calculate the adjusted number of cases.

The statewide normative use rate shall be calculated using the lower of the reported cases or adjusted cases and will be calculated for each county based on twelve age/sex cohorts.

Cases for each cohort are reported as a use rate in cases per 1,000 and are ranked from lowest to highest alongside all cohorts for each county. Any outliers are removed, and the top 10 highest use rates are averaged for each of the 12 cohorts. These averages represent the statewide normative use rates for each cohort and are used to determine need. The normative use rates are applied to the New York State Department of Commerce population estimates and are projected for five years to estimate need.

If adjustments to the methodology are needed, a proposal may be submitted to the Commissioner and/or the PHHPC and may be declined in whole or in part due to factors that include, but are not limited to: consistency with regulations set forth in 10 NYCRR 709.1; proposed adjustments consider the number of hospital patients designated as alternative care located within the planning area; and proposed adjustments consider special populations located within the planning area that require CHHA services.

Unmet need is calculated by applying the normative use rate to the New York State Department of Commerce labor estimates and projecting five years into the future. Adjustments are made to projected need estimates in concert with the case capacity of approved CHHAs in all planning areas.

Projected case capacity is estimated for CHHAs that have reported their case data for at least two years or is calculated based on average annual case growth for all CHHAs located within the planning area, whichever is lower.

CHHAs that were not open for one year or were not operational during the most recent reporting year have a projected case capacity of the adjusted cases reported for the most recent reportable year or the standard agency case capacity for the population density category, whichever is higher.

The standard agency case capacity is determined based on the population density category of the planning area. Population density categories are determined by the average adjusted cases for all CHHAs that have reported cases for at least the last two years in the population density category and will be reduced by one standard deviation.

If an agency’s case capacity would increase the standard case capacity by more than 15 percent, that agency’s case capacity is excluded from the mean calculation of standard case capacity. Excluded CHHAs are considered outliers and are limited to one agency at the lower and upper ranges of the adjusted cases.

CHHAs that have reported cases in more than one population density category have their cases counted in the density category that has the plurality of cases.

Population density categories are as follows:

* areas with a population density no greater than 200 persons per square mile;
* areas with a population density greater than 200 but no greater than 800 persons per square mile;
* areas with a population density greater than 800 but no greater than 5,000 persons per square mile; or
* areas that a population density greater than 5,000 persons per square mile.

Proposals may be submitted to PHHPC recommending a reduction in need for a planning area within its jurisdiction. PHHPC may reject the proposal in whole or in part based on documentation indicating that one or more approved agencies within its planning area will not attain or retain the projected rates for such areas.

The sum of the projected case capacities for a planning area is the estimate of projected met need for CHHA capacity for a planning area.

PHHPC and the Commissioner retain discretion in the approval of additional CHHAs outside of the above-mentioned need methodology.

*Establishment/Construction*

Applications requesting establishment of a new CHHA are not to be granted if the establishment of a new CHHA will exceed the unmet need as determined by the standard agency case capacity for the planning area’s population density category.

Applications for the establishment of a CHHA that are determined to not exceed the unmet need will be granted authority to establish, granted they are able to demonstrate a sufficient and efficiently operated agency.

Applicants are considered for approval to serve more than one planning area if remaining unmet needs exist. Agencies may be approved to serve more than one planning area without being required to meet standard agency case capacity for each planning area, should the total proposed case capacity among all planning areas be no less than the standard agency case capacity for the planning area with the greatest population density.

Applications for initial licensure are approved as meeting public need if the applicant agrees to

serve the entire planning area except for under special circumstances which include:

* geographic barriers and/or travel time that may impede service delivery to the entire planning area;
* proposals in which an applicant will serve underserved populations that only include a portion of the planning area;
* agreement to serve general hospital patients designated as alternate care status and would benefit from CHHA services;
* agreement to serve populations located within the planning area that have difficulty accessing CHHA services;
* agrees that a minimum of two percent of the services provided within the agency’s fiscal year will be classified as charity care; and
* demonstrates an ability to maintain a minimum case capacity to less than the standard agency case capacity for the planning area and population density category.

Applications will be prioritized if the applicant demonstrates that they will serve general hospital and residential health care facilities located within the planning area, will provide charity care to at least two percent of their cases, and will provide services in addition to nursing that include: social work, occupational therapy, physical therapy, speech/language pathology, and nutrition services.

*Special Populations*

Applicants proposing to serve individuals enrolled in programs or facilities licensed by the Office of Mental Health or the Office for People With Developmental Disabilities, must provide the number of eligible individuals residing in the planning area that are eligible for or whom would benefit from services provided by the CHHA. The type of services to be provided, the length of time in which the services will be provided, and why existing CHHA services in the planning areas cannot meet these individuals’ needs are to be included in the submitted application.

Case capacity to serve special populations are not included in estimated need projections.

Applicants that propose to establish a special pilot program home health agency must demonstrate how the provision of services in the planning area will improve continuity of care, access to services, cost effectiveness, and efficiency. The applicant must identify the special population that it seeks to serve. If approved, the applicant must agree to submit an annual report to the Commissioner and to PHHPC, with its program objectives, including, but not be limited to, efforts to reach its approved case capacity, enhancing quality assurance and access to services, and improving cost effectiveness and efficiency.

The Commissioner is granted the authority to:

* limit the case capacity and service area of a special pilot program home health agency; and
* approve no more than 10 special pilot program home health agencies.

CHHAs designated as special needs pilot home health agencies are exempt from the requirements related to annual case capacity and the requirement to serve an entire planning area. Special pilot home health aide agencies are not permitted to have a case capacity that exceeds 10 percent of the entire CHHAs planning area’s projected need.

Projected need estimates in concert with approved adjustments are determined as estimating the public need for CHHA services in the designated planning areas. Public need is determined to be met when the projected case capacity of approved CHHAs meets the estimated need for the planning area.

**Options for Discussion**

Based on the current public health law, the Department recommends the repeal and replacement of 10 NYCRR 760.5, which currently sets forth the requirements for demonstrating CHHA need. The following options are put forth for consideration in the development of a new need methodology. All options assume continued consideration of character and competence and financial feasibility for applicants.

1. There will be a presumption of **no** need if there is a choice of at least five CHHAs in a county. If an entity would like to establish a new CHHA in a county where there are five CHHAs or more, they must file an application and be able to demonstrate to the Department an unmet need that can be accommodated by the approval of the establishment of the proposed agency. Factors that the Department would look for in the application may include, but are not limited to, patient choice, cultural competence, and length of time to travel from one site to another. If there are four or less CHHAs in a county, there will be a presumption of need.
2. Develop a specific population-based formula based on the number of Medicare enrollees and the existing caseload of each CHHA in the planning area. The formula would begin with the assumption of a choice of at least two certified home health agencies in each county. The formula would use Medicare enrollee projections combined with population data to project a number of potential CHHA recipients. This would then be compared to the current CHHA patient counts to identify the projected total unmet need.
3. Issue an RFP based on updated factors and allow all entities, both current and new, to compete for planning areas. This would be based on the 2012 experience but updated for current needs and policy objectives.

Additional ideas and issues for consideration include:

* Eliminate the requirement for public need review in its entirety, allowing the market to completely drive the need for additional CHHAs. This option may require a change to the public health law.
* Eliminate the special needs category of licensure and grandfather all current special needs agencies by designating them as general purpose CHHAs.
* Simplify the review for character and competence.

**Conclusion**

With the CHHA need methodology ill-suited to address current trends in New York’s home care landscape and an increased preference for individuals to age in place, the Department needs to update the CHHA establishment process. Repealing the requirements for demonstrating need in 10 NYCRR 760.5 in favor of one, or a combination, of the options included above will modernize the current regulations.