

# DOH ISSUES GUIDANCE REGARDING THE LHCSA MORATORIUM

*Home Care Alert*  
May 14, 2018

On May 10, 2018, the Department of Health released guidance on the Licensed Home Care Services Agency moratorium imposed as part of the 2018-2019 New York State Budget (the “Guidance”). The Guidance contains troubling language concerning transfer of ownership of LHCSAs.

The moratorium, which became effective on April 1, 2018, will continue until March 31, 2020. The Guidance states that the moratorium applies to the processing and approval of all new LHCSA applications, as well as providing additional information on exceptions to the moratorium:

1. Applications 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.
2. Applications seeking approval to transfer/change ownership for an existing LHCSA that has been licensed and operating for a minimum of 5 years for the purposes of consolidating the licenses of two or more LHCSAs and;
3. Applications 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. The Guidance states that DOH presumes that any county with two or more LHCSAs has adequate access, and will require applicants under this exception to produce substantial data-driven proof of lack of access.

With respect to transfers of ownership, the Guidance provides the following examples of QUALIFYING changes in ownership:

1. 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
2. A new corporation (not currently licensed as a LHCSA) purchases two or more existing LHCSAs.

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3. One new license is issued, with the purchased LHCSAs licenses being surrendered and their sites becoming sites of the newly licensed LHCSA.

The Guidance states that the following are examples of NON-QUALIFYING changes in ownership applications:

1. A new proposed operator replaces the current operator of a LHCSA
2. A new controlling entity is established at a level above the current operator. During the moratorium, if the controlling person/entity submits an affidavit attesting they will refrain from exercising control over the LHCSA 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.
3. A partial change in ownership requiring Public Health and Health Planning Council approval. 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.

In the meantime, the DOH has stated that it will be contacting all applicants who have submitted CON changes after April 1 on an individual basis. 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, and are available on the DOH website.

If you have any questions or concerns regarding an application that has been submitted, or are concerned about proposed transactions, please feel free to contact any member of the Hodgson Russ Home Care Team.