

## LIMITATION ON NUMBER OF CONTRACTED LHCSAs IN A PARTIAL CAPITATION PLAN NETWORK

Section 9-a of Part B of Chapter 57 of the Laws of 2018 amends subdivision (7) of Section 4403-f of the New York Public Health Law, adding a new paragraph (j). The law establishes required methodologies, effective October 1, 2018, for determining the maximum number of licensed home care services agencies (LHCSA) with which a managed long term care **partial capitation** plan (“MLTC plan”) may contract. The law adjusts these methodologies effective October 1, 2019.

The statute does not limit the number of enrollees that a LHCSA may serve.

MLTC plans must come into compliance with this statute by October 1, 2018. The methodology used to determine the number of allowable LHCSAs in an MLTC plan’s network is based upon the region in which it operates and on the number of enrollees within such region. The two operating regions are Downstate (defined as New York City, Nassau, Suffolk, and Westchester counties) and Rest of State (ROS).

In developing its approach to limit the number of LHCSAs with which it contracts, the MLTC plan should consider its enrollees’ health, functional, and specialized needs (cultural competence, language, geographic location) and the quality and value of the services provided by such agencies. In addition, MLTC plans should consider<sup>1</sup> each LHCSA’s:

- Commitment to value-based payment (VBP) arrangements;
- Investment in enhanced training programs (beyond the minimum requirements of the New York State Department of Health (DOH) for home health aides and personal care aides) especially participation in a Workforce Investment Organization;
- Compliance with all wage mandates;
- Quality assurance program that has been successfully implemented;
- Compliance with DOH and MLTC plan reporting requirements such as statistical reports; and/or
- Willingness to hire aides to ensure continuity of care.

### **Enrollee Notification**

If the MLTC plan terminates any LHCSA contracts, it must send written notice of termination to all enrollees receiving care from the terminated LHCSA. In general, the notice to enrollees must be sent within fifteen (15) days of the notice of termination to the LHCSA, and must comply with the Model Contract requirements for written materials and 42 C.F.R. § 438.10(d). If notices pursuant to this statute have already been issued to LHCSAs, notice to enrollees must be sent within fifteen (15) days of the date of issuance of this guidance unless notice consistent with the requirements below has already been sent to enrollees.

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<sup>1</sup> It is recognized that some plans may have initiated terminations prior to issuance of this guidance in recognition of this statute’s effective date of October 2018. In such cases, this criteria should be applied going forward.



The notice must inform the enrollee of any available options to stay with their current home care worker. These options may include changing to a different LHCSA if their current home care worker is moving to a new LHCSA; enrolling in a different MLTC plan if their current home care worker is employed with a LHCSA that is contracted with another plan; or, if applicable, requesting a three-month exception for continuity of care purposes as described in the section of this guidance entitled *Exceptions: Continuity of Service*. The notice must include contact information for the New York Medicaid Choice (Phone: 1-888-401-6582; TTY: 1-888-329-1541) to facilitate plan selection for individuals who wish to switch plans to continue receiving services from their current home care worker.

### **Provider to Enrollee Ratios**

#### **Ratios for 2018**

By October 1, 2018, and using its enrollment as of July 1, 2018, each partial capitation plan may contract with a maximum number of LHCSAs in accordance with the following ratios:

- For Downstate: 1 LHCSA per each 75 enrollees (1:75)
- For ROS: 1 LHCSA per each 45 enrollees (1:45)

#### **Ratios for 2019 and beyond**

By October 1, 2019, and using its enrollment as of July 1, 2019, and on each July 1 thereafter, each MLTC plan may contract with a maximum number of LHCSAs in accordance with the following ratios:

- For Downstate, the ratio is 1 LHCSA per each 100 enrollees (1:100)
- For ROS, the ratio is 1 LHCSA per each 60 enrollees (1:60)

Any fractional results must be rounded down to the nearest whole number. All contracts between an MLTC plan and a LHCSA for the purpose of providing covered services as defined in the MLTC Partial Capitation Model Contract, including single case agreements, shall count towards the maximum number of LHCSAs with which an MLTC plan may contract.

If an MLTC plan contracts with less than or equal to the maximum number of LHCSAs on the applicable date, it will not have to take any action. MLTC plans may add LHCSAs to their networks at any time. The Department will verify that an MLTC plan is in compliance at the time of its annual certification described in the compliance section below.

If an MLTC plan operates in both the Downstate and ROS regions, it must perform separate calculations for each region to determine the maximum number of LHCSAs that it may contract with in each region. If the MLTC plan contracts with a LHCSA that operates in both regions, that contract is counted against the maximum number of LHCSAs that the MLTC plan may contract with for each respective region. If the percentage of a MLTC plan's enrollment serviced by a particular LHCSA in one region is less than 10% of the



total plan enrollment serviced by that LHCSA in both regions combined, the MLTC plan will not be required to count the LHCSA in the region with the smaller percentage.

### **Network Adequacy**

Notwithstanding the results of applying the above ratios, the statute requires that MLTC plans maintain network adequacy at all times in compliance with the model contract, 42 C.F.R. § 438.68, and any other applicable authority. Thus, at no time may an MLTC plan have less than two (2) LHCSAs accepting new enrollees in each county within the MLTC plan's service area. If an MLTC plan is unable to provide covered services to an enrollee through its contracted network, the MLTC plan must make arrangements with out-of-network providers to furnish the covered services until such time as the MLTC plan can provide them within the network.

If an MLTC plan terminates twenty-five percent (25%) or more of its LHCSA contracts during any period of six (6) or fewer months, the MLTC plan shall promptly submit documentation to DOH to demonstrate its continued capacity to serve the enrollees in its service area, pursuant to 42 C.F.R. § 438.207. Such documentation shall include information about the number of MLTC enrollees impacted by the reduction in LHCSA contracts and the MLTC's plan for ensuring that services will remain available to its enrollees.

**Example #1:** MLTC Plan A has 7,500 enrollees in its Downstate counties. The ratio applicable to Downstate for October 1, 2018 is 1 LHCSA per 75 enrollees. Plan A will perform the following calculation:

$$7,500 \div 75 = 100$$

Thus, as of October 1, 2018, MLTC Plan A may contract with up to 100 LHCSAs to service its Downstate enrollees.

**Example #2:** MLTC Plan A also has 4,500 enrollees in its ROS counties. The ratio applicable to ROS for October 1, 2018 is 1 LHCSA per 45 enrollees. Plan A will perform the following calculation:

$$4,500 \div 45 = 100$$

Thus, as of October 1, 2018, MLTC Plan A may contract with up to 100 LHCSAs to service its ROS enrollees.



**Example #3:** On July 1, 2018, MLTC Plan B has 5,438 enrollees in the Downstate region. Plan B contracts with 90 LHCSAs in the Downstate region. To determine whether it is compliant with this statute on October 1, 2018, Plan B will perform the following calculation:

$$5,438 \div 75 = 72.51$$

Because any fractional result must be rounded down to the nearest whole number, Plan B may have 72 LHCSAs in its contracted network on October 1, 2018. MLTC Plan B will have to reduce the contracted LHCSAs in its network from 90 to 72 by October 1, 2018 to comply with the statute.

### **Special Situations**

#### **Single LHCSA with multiple site contracts with the same MLTC**

Many MLTC plans have multiple contracts with a single LHCSA that is licensed to operate at several sites within a county or counties. For purposes of determining compliance with the statute, a LHCSA operator that is licensed to operate at several sites within a county or counties will be considered to have a single contract, even if the MLTC plan holds separate contracts with such LHCSA operator for each licensed site. Similarly, a LHCSA operator that is licensed to operate in several counties is counted as one contract, even if the MLTC plan holds separate contracts with such LHCSA operator for each county. However, if the LHCSA operates in both the Downstate and ROS regions, the LHCSA will be counted as a single contract in both calculations to determine the maximum number of contracts in the Downstate region and the ROS region.

**Example #4:** MLTC Plan C has four contracts with LHCSA Operator 1234 for four licensed sites (one for each site). All four sites are located in the Downstate region. For purposes of compliance, the four contracts with LHCSA Operator 1234 will be counted as single contract for the purpose of determining the maximum number of LHCSAs with which Plan C may contract in the Downstate region.

**Example #5:** MLTC Plan D has four contracts with LHCSA Operator 5678 for four licensed sites (one for each site). Two sites are in the Downstate region, and two sites are in the ROS region. For purposes of compliance, the two contracts for the Downstate sites will count as one contract for the purposes of determining the maximum number of LHCSAs with which Plan C may contract in the Downstate region. Likewise, the two contracts for the ROS sites will count as one contract for the purposes of determining the maximum number of LHCSAs with which Plan D may contract in the ROS region.

#### **Independent Practice Associations**

This statute applies to contracts between MLTC plans and LHCSAs, and applies whether those contracts are direct or indirect through an intermediary contracting entity such as an Independent Practice Association (IPA).



**Example #6:** MLTC Plan E contracts with an IPA for services solely in the Downstate region. The IPA holds “downstream” IPA participating provider agreements with 100 LHCSAs. The MLTC plan will be considered to have contracts with 100 LHCSAs in the Downstate region, unless it works out an arrangement with the IPA where less than all IPA participating providers sign on to provide covered services to the MLTC plan.

### **Exceptions**

An MLTC plan may request an exception targeted to specific patient needs. These include, as set forth below, continuity of service with a particular LHCSA or aide, to avoid disruption of service where geographic hardship exists or the region is otherwise hard to serve, or for the purpose of ensuring cultural or linguistic competencies.

### **Continuity of Service**

The new law adds a provision to support continuity of care between an enrollee and his or her home care worker(s). If an MLTC plan terminates a participating provider agreement with a LHCSA to meet the limitation on contracts established by the new law, and the termination of that agreement will require an enrollee’s care to be transferred from the enrollee’s current LHCSA to another LHCSA, and the enrollee wishes to be cared for by one or more home care workers employed by the current LHCSA, the MLTC plan may continue contracting with the current LHCSA for the purpose of continuing that enrollee’s care by those home care workers for up to three months. MLTC plans must notify DOH at [LHCSAExceptions@health.ny.gov](mailto:LHCSAExceptions@health.ny.gov) of the three-month extension of the LHCSA agreement. Such continued agreement shall not count towards the maximum number of contracts during the three-month period. After the three-month period expires, the contract shall count towards the maximum number of contracts.

### **Adequate Access to Services**

An MLTC plan may request an exception to the maximum number of allowable contracts by demonstrating, to DOH’s satisfaction, that additional contracts are needed to ensure adequate access to services in a geographic area. Adequate access to services includes special needs services and services that are culturally or linguistically appropriate. Cultural and linguistic competency is the ability of organizations and practitioners to recognize an individual’s cultural beliefs, values, attitudes, traditions, language practices and health practices and apply this knowledge to influence positive health outcomes.

A request for an exception must:

- Identify the effect or potential effect on the enrollee’s care if the exception is not granted;
- Analyze the frequency or occurrence of the service; and
- Include a plan to alleviate the issue, including timeline.
- Demonstrate that no other LHCSA in the plan’s network can meet the enrollee’s needs.
- Demonstrate that the addition of such LHCSA would result in the MLTC plan exceeding the allowed ratios.



Where an MLTC plan's request for an exception involves access to culturally or linguistically appropriate services and/or specialized services, the request must also document, to DOH's satisfaction:

- The enrollee desires to stay with, or be serviced by, an aide due to a cultural or linguistic concern;
- An inability to transfer the aide with their client to another LHCSA; and
- Such enrollee would not be able to be serviced by a LHCSA that is currently in its network and that has such cultural and/or linguistic competency and/or provides specialized services.

### Requesting an Exception

A request for an exception must be submitted to the New York State Department of Health, Division of Long Term Care at [LHCSAExceptions@health.ny.gov](mailto:LHCSAExceptions@health.ny.gov). DOH will endeavor to review requests for exceptions within thirty (30) calendar days of receipt.

When an exception is requested for an enrollee who does not have adequate access to services, the MLTC plan is permitted to enter into an agreement with an additional LHCSA to provide such services while the request for exception is pending. In the event the request for exception is denied by DOH, DOH shall state the reason for such denial and the MLTC plan will be required to count such agreement in the maximum number of LHCSAs with which the plan may contract. MLTC plans shall be afforded no less than three (3) months from the denial of the exception request to transition members to a new agency before counting the LHCSA towards the maximum number.

Exceptions to the maximum number of allowable contracts to ensure adequate access to services, as described above, and that are granted by DOH are good for one year. After one year, the plan must re-apply for a continued exception by submitting a new request to [LHCSAExceptions@health.ny.gov](mailto:LHCSAExceptions@health.ny.gov). Requests not denied by DOH within thirty (30) days of receipt shall be deemed granted for one year.

### Compliance

Beginning in December 2018 and annually on September 30 thereafter, DOH will require each MLTC plan to certify that it is in compliance with the applicable standards of the new law and these guidelines. These annual certifications will be based on each MLTC plan's enrollment on the most recent first of July (7/1). The certification will be on a DOH-approved form.

Compliance with this statute may also be included in Department of Health audit and surveillance activities. DOH may also monitor the amount of enrollees that are converted to a consumer-directed arrangement. Any questions about the LHCSA contracting ratios, and how the exception process works, should be directed to [LHCSAExceptions@health.ny.gov](mailto:LHCSAExceptions@health.ny.gov).