



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

Date: August 23, 2018

DAL: DHCBS 18-03

SUBJECT: LHCSA Regulatory Requirements

Dear Administrator:

The purpose of this letter is to remind Licensed Home Care Services Agencies (LHCSAs) of their responsibilities as the Department of Health works to implement provisions of the 2018-2019 New York State budget.

One of the major changes enacted in the budget was Section 9-a of Part B of Chapter 57 of the Laws of 2018 which limits the number of LHCSAs that Managed Long Term Care (MLTC) plans may have in their provider networks. Additional guidance to MLTC plans was issued on August 20, 2018 by the Office of Health Insurance Programs and is available under *MRT 11203: Licensed Home Care Services Agencies (LHSCA) Contract Limitation* at: https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/lhsc_contract_guidance.htm.

In light of this guidance and the other recent changes, LHCSAs are reminded of their obligations under State and federal laws and regulations, including, but not limited to, the following:

State and Federal Anti-Kickback Provisions

Offering, paying, soliciting, or receiving any payment in return for referring a Medicaid recipient to a LHCSA or other Medicaid services provider is strictly prohibited under federal and State bribery and anti-kickback rules. See, e.g., 42 U.S.C. § 1320a-7b(b), N.Y. Social Services Law § 366-f (1) and 18 N.Y.C.R.R. § 515.2(b)(5). A transaction can violate these rules regardless of the form of payment or the structure of the transaction—whether direct, indirect, in cash, or in kind.

The Department recognizes that the recent changes to law are likely to result in consolidation of LHCSAs that have business relationships with MLTC plans. Nevertheless, all transactions must comply with bribery and anti-kickback rules, among other requirements.

LHCSA Regulation and Policy Provisions

LHCSAs have legal obligations under Title 10 of the New York Codes, Rules and Regulations. Operators should refer to the specific regulations listed below prior to taking action to come into compliance with the new law to ensure the protection of patient rights, privacy, and choice and to ensure appropriate care planning.

These regulations include, but are not limited to:

- § 765-2.3 Discontinuation, revocation, suspension, limitation or annulment of a license;
- § 766.1 Patient rights;
- § 766.2 Patient service policies and procedures; and
- § 766.3 Plan of care.

In addition, LHCSA operators who are planning to close an agency or discontinue services or programs that provide medical care and services to individuals in the community are reminded of the requirements included in the Department's *Closure Plan Guidelines for Providers*. The agency's closure plan must be approved by the Department's appropriate Regional Office prior to its implementation. LHCSA operators should contact their Regional Office for the full *Closure Plan Guidelines* document and review it carefully if considering closing or discontinuing services or programs.

LHCSA Moratorium Guidance

The Department advises LHCSAs to review the LHCSA Moratorium Guidance on the Department's website at <https://www.health.ny.gov/facilities/cons/>. The Department is developing Frequently Asked Questions related to the LHCSA Moratorium and will post them to the website when they are available.

As the Department provides additional specific guidance documents and/or implementation materials, we urge all licensed agencies to read them carefully.

Sincerely,

Handwritten signature in blue ink that reads "Daniel B. Sheppard" with "FOR" written below it.

Daniel B. Sheppard
Deputy Commissioner
Office of Primary Care and Health Systems
Management

cc: Mark Kissinger
Mark Hennessey
Rebecca Gray