

February 12, 2024
HCP Memo 2024-1

**MEMO IN SUPPORT
A9204 (PAULIN)**

**Relates to certain requirements for waivers issued
under the hospital-home care-physician collaboration program.**

Introduction:

The New York State Association of Health Care Providers, Inc. (HCP) supports this bill, which would streamline the delivery of core public health services in the home setting and uphold the current Certificate of Need process for New York's health care system.

Discussion:

Section 2805-X of the Public Health Law establishes a framework supporting voluntary initiatives to enhance patient care access and management. Although intended to foster innovative collaboration among hospitals, physicians, and home care agencies including Licensed Home Care Services Agencies (LHCSA), the current language allows these collaborations to sidestep New York's Certificate of Need (CON) process.

The CON process regulates the establishment, construction, renovation, and major medical equipment acquisitions of health care facilities including hospitals, nursing homes, home care agencies (including LHCSAs), diagnostic and treatment centers, and hospices. Designed to ensure the delivery of high-quality health care services aligned with community needs, the CON process serves crucial objectives. Certainly, Section 2805-X was never intended to be a loophole for avoiding the CON process, yet that is a consequence of its language. In its unamended state, this law denies existing facilities and agencies due process, deprives health care consumers of services aligned with community needs, exacerbates health care disparities, and compounds the issues related to social determinants of health that the CON process was designed to mitigate.

Effective April 1, 2020, applications for licensure as a LHCSA underwent a comprehensive review process and revision resulting in new CON criteria outlined as follows:

Public Need Methodology:

- A presumption of no need for additional LHCSAs in a county if there are five or more actively serving LHCSAs as of April 1, 2020, with the target date for need determination adjusted to April 1, 2022.
- LHCSA applicants may refute this presumption by presenting local factors justifying the need for their services, such as patient demographics, waiting lists, agency capacity, service quality, workforce availability, and cultural competency.

The New York State Association of Health Care Providers, Inc. (HCP) is a statewide trade association representing the full spectrum of home and community-based care providers through information, advocacy, and education. HCP represents licensed home care services agencies, certified home health agencies, fiscal intermediaries, and related health organizations. Through a strong network of regional chapters and an active State office in Albany, HCP is a primary authority of the home health care industry.

- Change of ownership applications for LHCSAs serving at least 25 patients are exempt from public need review unless they seek to expand beyond approved counties.
- LHCSAs affiliated with specific programs (e.g., Assisted Living Program, PACE) are exempt from public need review if they exclusively serve patients within those programs.

Financial Feasibility:

- Examination of available working capital, with a minimum requirement equivalent to at least two months of estimated operating expenses.
- Evaluation of the application's financial capability and feasibility, ensuring projected revenues exceed expenditures over time.

These standards aim to enhance the regulatory framework governing LHCSA licensure, ensuring alignment with community needs, financial viability, and the provision of quality care. Additionally, public notifications and opportunities for input are indispensable elements in assessing the necessity and suitability of any application claiming to address an unmet or emerging need. By sidestepping the CON process, public input will no longer be considered. The broad interpretation of the law carries significant implications for the New York's citizens and health care community, as well as for New York State's regulatory framework.

Conclusion

PHL §2805-X must not become a means to circumvent the CON process, deny existing facilities and agencies due process, or withhold from consumers essential health care services that are in line with community needs. For these compelling reasons and others, HCP fervently supports the immediate amendment of Section 2805-X as outlined in this legislation.

About HCP:

Through advocacy, information, and education, HCP influences the future of the home care industry and leads it in adapting, evolving, and thriving in an ever-changing health care environment. We contribute to setting the standards for quality, cost-effective care, and firmly believe that patients do better at home