1. **Please provide your contact information, including the name of your organization (if applicable), name of contact person, phone number, and email address.**

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The New York State Association of Health Care Providers, Inc. (HCP) appreciates the opportunity to provide input and recommendations for the establishment of a need methodology for licensed home care services agencies (LHCSAs) in New York State pursuant to Section 9 of Part B of Chapter 57 of the Laws of 2018. The vast majority of HCP's membership consists of licensed home care services agencies, and HCP solicited feedback from its membership across the State to provide responses to the questions in this document that include upstate and downstate agencies; large, medium and small agencies; and agencies reflecting both public and private payers. As such, HCP has a unique perspective to offer – not only in responding to the questions in the RFI related to the need methodology – but also in consideration of the increasing market demand for long term care services provided by licensed home care services agencies.

Demand for long term care services is growing, as is New York State's aging population. Consumer preference is to receive long term health care services at home rather than in institutions. The State has made home and community-based services a cornerstone of new health care delivery models. Taken together, there will be an increased market demand and need for services delivered by licensed agencies in the coming years.

In developing a need methodology, great care must be taken to ensure that the delivery of long term care services, as well as access to care, are not compromised through a need methodology process. A need methodology may serve as government restraint on the market by setting standards designed to control the delivery of long term care services rather than allowing a free market to determine what services are needed and what services agencies can develop to meet growing market demand. It is also important to distinguish between the public Medicaid market and the private pay market and not allow pressure to control the Medicaid market dictate what happens in the private market.

Further, due to the complex and diverse nature of long term care services, emerging technologies that will increasingly change the way services will be delivered, New York's rapidly aging population and the resulting financial pressures on both private and public payer types, it is essential that there be a flexible approach to the establishment of a need methodology that will allow for review and adaptations as market conditions continue to evolve.

It is important that industry stakeholders be involved in the development and ongoing review of a need methodology. HCP recommends that a Workgroup be established by the New York State Department of Health (DOH/the Department) comprised of representative stakeholders from various regions of the State, both public and private payer types, and various sized agencies, to review responses to the RFI and to provide additional input for the establishment of a need methodology that will serve the needs of the State and be practical for those agencies that are looking to enter and/or expand in this market sector. This Workgroup could also serve in an advisory capacity on an on-going basis to provide input to the Department as the market continues to evolve in the coming years.

In considering a need methodology, HCP believes that existing LHCSAs should not be subject to this process provided that providers are meeting requirements established by the State for submission of LHCSA Statistical Reports and LHCSA registration, Cost Reports, Surveys, etc. Subjecting existing licensed agencies that are providing services and meeting the needs of the market would place an undue burden on agencies that are already in compliance with State directives and could potentially disrupt access to care and home care services for thousands of New Yorkers receiving these services.

As the trade association that primarily represents the interests of licensed home care services agencies, HCP is prepared to assist the Department in any way possible as the need methodology process moves forward. This includes the Association's active participation in a Workgroup, securing licensed agencies to participate in a Workgroup, providing feedback on the need methodology and any other opportunities to ensure a need methodology meets the needs of the State and is workable for providers.

2. **How should LHCSA planning areas be designated and what factors should be considered? Planning areas often include one county or two or more contiguous counties. Factors to consider when designating planning areas may include, but are not limited to, provider travel patterns including driving time, the availability of public transportation, and the availability of existing service providers.**

   HCP recommends that the Workgroup mentioned above examine factors necessary to determine LHCSA planning areas and make recommendations accordingly. There are significant regional differences to be taken into consideration, as well as socio-economic conditions, urban/rural differences, transportation, emerging technologies that may allow for expanded services, and workforce issues – all of which may or may not change in the coming years. LHCSA planning areas should take these factors into consideration and provide for flexibility in the need methodology to accommodate those changes.

3. **What factors should be included when determining the need for LHCSAs? Factors may include, but are not limited to, population estimates and demographics, including estimates of the potential patients to be served in each county or designated area, disease and disability prevalence, as well as capacity of existing providers. Please be specific in your response (i.e. include specific demographic information or disease prevalence rates to consider, if appropriate).**

   HCP recommends that the Workgroup provide input into specific factors to be considered in determining the need for LHCSAs. As stated previously, HCP believes great care must be taken

to ensure that the delivery of long term care services by LHCSAs, as well as access to care, is not compromised through a need methodology process. It is also important to take into consideration distinct differences between the public payer Medicaid market and the private pay market.

There are providers that choose to participate in the Medicaid program and the State is concerned about controlling penetration in that program. However, many providers do not wish to be part of the Medicaid system and there should be an opportunity for those agencies to meet market needs. It is particularly important for there to be community providers that run quality programs that serve local communities. Without this ability, there is a greater risk of increased development of an underground home care market and the delivery of locally-based and other services by entities that bypass the licensed agency process altogether.

One approach that may be considered is a two-track need methodology for licensure based on payer. One non-public payer (private pay) licensure for business owners that identify a market need and choose to enter the market to serve the community. The Workgroup could provide input into the methodology that could include things such as a review of agency financing, character competence, and leadership experience in health care. The other methodology would be for Public Payer/Private Pay licensure, which is required for providers that contract with public payers (Medicaid, Medicare, waiver programs, etc.). The Workgroup could provide input into a formula based on numerous factors including population density – urban, suburban and rural – and other needs, such as the number of Medicare/Medicaid cases, etc.

HCP emphasizes that existing LHCSAs should not be subject to a new need methodology, provided that the agencies are compliant with State LHCSA Statistical Report and LHCSA registration, Cost Reports and DOH Surveys and related plans of correction.

4. What type of experience should be required of a LHCSA operator?

The experience of applicants planning to enter the market can be extremely diverse, and it is therefore difficult to develop a consistent, accurate assessment process that would be applicable for all applicants. An assessment can also vary depending upon who is doing the evaluation. This is particularly true if the evaluations were to be done by the entire PHHPC, or by individual PHHPC members, where the experience of the Committee members may or may not include familiarity with home care.

HCP recommends the Workgroup provide input into this process. HCP believes the experience requirement for a new LHCSA should be based on experience running a business, health care experience and a strong leadership team that includes a clinician, which is essential in the development of appropriate policies and procedures. While new LHCSA applicants should have experience in health care, they would not necessarily have experience in home care, and therefore would not have quality measures or other home care-related measures that could accurately be assessed. The application process is often lengthy and can take several months, so securing all staff in advance is unrealistic in terms of evaluating staff as part of the application process. However, applicants should have a plan to hire appropriate operations staff as well as

clinical staff that meet DOH standards for clinical requirements as part of the application process.

5. **Should quality measures be considered when reviewing LHCSA applications for licensure and/or change of ownership? If yes, what measures should be included?**

   Clearly quality measures are important and should be given consideration in a LHCSA application, but they should not be an absolute determining factor in a LHCSA application. Unlike other health care sectors, there are no established standard State or Federal quality measures by which to evaluate LHCSAs, and therefore requiring new applicants to provide proof of quality standards is problematic. Further, new entrants to the LHCSA market would not necessarily have quality measures to provide that are specifically and directly related to the types of services the new LHCSA would provide.

   For changes in ownership for LHCSAs already in the market, the LHCSA should demonstrate compliance with all DOH reporting requirements and DOH Surveys and successful implementation of plans of correction, if applicable. If the provider is able to share any quality measures attributed to their agency as part of relationships with managed care organizations, other tracking and reporting that they have done themselves, they should be encouraged to provide that information in the application process.

6. **Should the number of LHCSAs be capped in a single county?**

   No. LHCSAs applications should be granted based upon need.

7. **Should there be exceptions to the need methodology? If so, identify.**

   As stated previously, existing LHCSAs that are compliant with all State reports and other requirements should not be subject to meeting a new need methodology.

   For new LHCSAs, HCP does not support exceptions to the process. HCP believes that creating exceptions can create confusion and too many options that require monitoring and enforcement by the State that could be unworkable.

   HCP recommends a needs methodology based on a formula as outlined in question three above, which should be based on input from the Workgroup and dynamic enough to adjust to changes in the base numbers on an annual basis. HCP believes that there is no need to develop exceptions for specialty programs, services or waivers because these programs are all licensed, and if there is a need, other providers can fill the need.

   An exception process also leads to more agencies established through an exception, rather than the following a need methodology, because that process is often more expedient. Issues can then arise with that new entity operating within their exception, such as what has occurred with special needs CHHAs.

8. **When would adjustments to the need methodology within a planning area be acceptable?**

   HCP recommends that the need methodology be reviewed periodically and relatively frequently (e.g. every three years) to determine whether any changes need to be made based on significant changes in demographics, technology advances, or other market/health care changes. HCP also recommends that input from the industry Workgroup/advisory group be included in the review process. Unless there was a dramatic change in a particular planning area, there would be no need for a separate adjustment to the need methodology.

   Identifying a more dynamic process would also be advantageous for the Department. Need methodologies in other sectors have not been regularly updated, for example with the CHHA need methodology, and that has led to challenges in being able to assess need and other market driven issues as changes have occurred. A dynamic process would ensure that changing market needs and demands are met.

9. **How often should need be recalculated?**

   HCP recommends a periodic review, as set forth in question eight.

10. **What additional requirements, if any, should be included for LHCSA applications for initial licensure?**

    None other than those set forth in question three.

11. **What special considerations, if any, should be prioritized when reviewing LHCSA applications for initial licensure? For example, special considerations may be given to applicants that provide training programs for personal care aides and home health aides or those that provide services to special populations.**

    Developing a consistent methodology to determine prioritization of special considerations is problematic due to myriad factors, including regional variances, demographics, population density in rural and urban areas, and availability of alternative health care services. HCP recommends that this issue be taken up by the Workgroup to determine the feasibility and practicality of special considerations.

12. **Should initial applications for licensure be limited for service area until the operator demonstrates competency and compliance?**

    No. If a LHCSA obtains a license for a service area, it should be permitted to operate per its license provided the LHCSA is compliant with annual Statistical Report, Cost Reports, LHCSA registration as well as with NYS Department of Health Surveys and successful implementation of plans of correction, if appropriate.

13. Should the provision of specific services be considered as part of a need methodology? (i.e., Medicaid waiver services offer through the Traumatic Brain Injury (TBI) waiver program or the Nursing Home Transition and Diversion (NHTD) waiver program).

No. If a new LHCSA is seeking to provide specific services, it should demonstrate that there is a need for these services as part of their application based on the Department's need criteria for public payer program providers. Existing LHCSAs seeking to expand services should not be subject to a need methodology review because they are already approved to deliver services. If they have identified a need, they should not be prohibited from delivering those services.

14. Should a need methodology consider services to specialty populations such as pediatrics or specialty services such as IV infusion services or flu shot immunizations?

No. If a new LHCSA is seeking to provide services to specialty populations, it can demonstrate that there is a need for these services in their service area, but it should not be part of a need methodology or exceptions process. Creating specific populations to service, or requiring need to be demonstrated for specialty populations, creates a need to establish a need methodology for each population that is presented, which would be entirely unwieldy and unnecessary. LHCSAs should apply for the specific services that they would like to be included on their license and deliver them to the populations needing such services.

Similar to HCP's answer in question 13, existing LHCSAs seeking to expand services to specialty populations should not be subject to a need methodology review because they are already approved to deliver services.

15. Should a need methodology consider or eliminate from its calculation those agencies that are proposing to provide personal care services only and license those organizations discreetly?

No.

16. Should the availability of appropriate staffing for a LHCSA planning region be considered in public need?

No. Workforce concerns vary by region and are impossible to predict. Until there is a better understanding of workforce data and how to address future workforce needs, future applications should not be measured by their approach to workforce. Input on an on-going basis from the industry Workgroup/advisory group would be helpful in examining workforce needs.

17. Should the Department consider whether a LHCSA will service public payment (Medicare/Medicaid) beneficiaries in determining LHCSA need?

No. Priority in processing or selecting applicants should not be given to applicants seeking to serve public payment beneficiaries over private payment beneficiaries. There should be an equal opportunity for providers that wish to enter the private market to do so as per HCP's answer to question three.

18. Should the need methodology regulations cover change of ownership applications?

No. There should be no requirement to apply the need methodology to changes of ownership applications. In fact, the process for changes of ownership and/or corporate structure should be streamlined and expedited. The Workgroup should provide input into the development of an expedited process that could consider leadership abilities, compliance with State Cost Reports, Statistical Reports, and DOH Surveys and plans of correction, and participation in programs such as value-based purchasing DSRIP, etc.

19. Should the need methodology regulations apply to existing LHCSA operators requesting to expand services into other planning areas (counties and/or regions)?

No. The new need methodology should not apply to existing LHCSAs requesting to expand services beyond their current service area. There should be a streamlined process for this type of expansion of services that considers a demonstrated need for services in that area, collaborative initiatives with other providers or participation in VBP or DSRIP initiatives. The Workgroup should provide input into this process.