

Frequently Asked Questions Pertaining to the LHCSA Moratorium (2018 – 2020)

- Q1. The 2018 budget bill requires The New York State Department of Health (Department) to place moratorium on the “processing and approval of applications seeking licensure” of a LHCSA under PHL § 3605. But the budget bill said nothing about transfers/changes in the ownership in a LHCSA, which are governed by PHL § 3611-a. So how can the moratorium apply to transfers?
- A. PHL §3611-a requires certain transfers to be approved by the Public Health and Health Planning Council (PHHPC) in accordance with PHL §3605(4). Section 9-e of Part B of Chapter 57 of the Laws of 2018 requires applications for licensure pursuant to PHL §3605, that have not yet received PHHPC approval or contingent approval, be subject to the moratorium. Therefore, a transfer pursuant to PHL §3611-a that requires PHHPC approval is subject to the moratorium.
- Q2. The prohibition against an ALP-affiliated LHCSA serving individuals outside the ALP is not clear in the law. Why would the Department want to prohibit an ALP from continuing to provide home care services to an individual being discharged from the ALP to home, who still needs home care services? As currently construed, the moratorium appears to require discharge from the ALP LHCSA and transfer to another home care provider in such a case. Is that reading correct?
- A. Yes, this is correct. Any approvals of ALP-affiliated LHCSA applications will be limited to serving only the ALP residents. The requirement for the limitation is that the moratorium exception does not extend to services beyond the ALP. It should be noted that this limitation does not extend to previously approved or operational ALP-affiliated LHCSAs, only to approvals granted under the moratorium exception.
- Q3. If the application is a change in ownership of an ALP-related LHCSA, and the LHCSA is already licensed to serve residents in the community outside the ALP, can they continue to serve the community after the change in ownership?
- A. No, to apply for the change in ownership under the “ALP exception”, the new operator will be limited to serving only the ALP residents.
- Q4. Does the exception for ALP-related LHCSAs apply only to applications submitted prior to April 1, 2018?
- A. No, the ALP-related exception applies to newly submitted LHCSA applications for which the Department has received and acknowledged a corresponding ALP application.
- Q5. How do I obtain a refund of the full amount of money spent preparing the application that was returned, including attorney and consulting fees?
- A. DOH is only authorized to refund the application fee, not associated business expenses.
- Q6. We spoke earlier this year and it was confirmed that once my new company was able to send you all of the required information that you would review our request to add counties onto our existing license. I realize that the new NYS Budget set forth a restriction on issuing NEW home care licenses but this is slightly different in that it isn't a new license but a license expansion.
- A. There have been no changes to the Administrative application process for adding sites/services/counties.

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- Q7. Please confirm there is no impact on transactions that do not require PHHPC approval.
- A. There is no impact on processes that do not require an application for licensure that necessitates PHHPC approval.
- Q8. Can a change in business type application be submitted during the moratorium?
- A. A change in business entity type is a change in ownership and thus is subject to the moratorium.
- Q9. Are transfers of ownership interest that do not require a Full Review application part of the moratorium? If a courtesy notice or a transfer notice is required for a transfer and an application is not required, is this still permissible?
- A. Transfer Notices (aka 90/120-day notices) are not subject to the moratorium and can be submitted in the normal fashion. Please review the Transfer of Ownership Interest guidance document for whether a specific transfer requires a transfer notice or an application for licensure (aka full review application):
https://www.health.ny.gov/facilities/cons/more_information/docs/transfer_of_ownership_interest_guidance.doc
- Q10. A LHCSA is owned by two shareholders and one shareholder wants to sell her shares to the other shareholder, resulting one sole shareholder. Does the footnote regarding controlling persons apply to this scenario?
- A. The footnote in the Guidance document is not applicable to the described transfer. However, if the stockholder to receive the shares has already been approved by PHHPC then a transfer notice (aka 90/120-day notice) may be submitted for the transaction. Please review the Transfer of Ownership Interest guidance document for whether a specific transfer requires a transfer notice or a full review application:
https://www.health.ny.gov/facilities/cons/more_information/docs/transfer_of_ownership_interest_guidance.doc
- Q11. The new law requires LHCSA to "register" with DOH. How does the registration process work, and when will it be implemented?
- A. The Department is still developing the registration process and will be issuing guidance and instructions prior to the implementation date of January 1, 2019.
- Q12. It is my intention to revise my application under the "Serious Concerns" exception. How do we find data to document the lack of access?
- A. All applicants who had their applications returned may submit a new application using the new application form and submitting supporting material to qualify for an exception to the moratorium. It is the applicant's responsibility to gather and present evidence supporting the requested exception.

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- Q13. Our application was submitted prior to April 1, 2018 and was in the latter stages of obtaining approval, and therefore we don't feel we are subject to the moratorium.
- A. Section 9-e of Part B of Chapter 57 of the Laws of 2018 included the moratorium which prohibits the processing and approval of applications for licensure of Licensed Home Care Services Agencies, which had not already received Public Health and Health Planning Council approval as of April 1, 2018. The Department has no discretion on this matter.
- Q14. Confirm that an existing LHCSA can still add a branch office, new services and/or new counties.
- A. There have been no changes to the Administrative application process for adding sites/services/counties.
- Q15. Upon the purchase/acquisition and consolidation of LHCSAs are the combined sites, counties and services added to the surviving LHCSA license?
- A. Yes, unless otherwise requested within the application. Please note that some services such as training programs and Medicaid Waivers services are not listed on a LHCSA license. These services require specific criteria to be met by the new operator prior to being approved to provide the services and will not be considered as part of the change of ownership application.
- Q16. Are there any changes to the process to receive approval of a management agreement?
- A. There are no changes to the process for submission and approval of management agreements.
- Q17. LHCSA "Buyer" has submitted an application to be approved as the purchaser of an existing LHCSA "Seller" that has been in operation for more than 5 years. Buyer has previously identified, and is actively looking to acquire, another LHCSA (the "Second LHCSA") which has also been in operation for more than 5 years. Do both LHCSAs have to be in the same counties?
- A. No, they do not have to be in the same counties.
- Q18. Currently my home care license is not active, meaning no clients and no employees. I have a buyer who wants the license. Does the moratorium mean that I cannot sell the license?
- A. Per Section 765-2.3(g) of Title 10 of the New York Codes, Rules and Regulations, a Licensed Home Care Services Agency is required to surrender their license to the New York State Department of Health when it ceases providing home care services. As such, since the agency is inactive, it cannot be sold or transferred.
- Q19. The application and instructions are not clear as to whether a new buyer (not a currently licensed LHCSA) has to submit one application referencing both sellers' information and applicable charts and documents, or if the expectation is that two separate applications must be submitted, one for each of the two LHCSAs that are being acquired. Please advise.
- A. One application should be submitted to purchase and consolidate multiple LHCSAs. The application must include the required documentation to demonstrate the LHCSA is operating as detailed in the application and instructions, and should explain clearly how the proposal is a consolidation of LHCSAs.

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Q20. If a buyer had a pending application that was returned due to the moratorium, can the Schedule 2Ds which were already returned in connection with that application be used for a newly submitted application?

A. No, Submission of new Schedule 2Ds (out-of-state health care facility/agency review forms) is required for any new application submission.

Q21. Does the moratorium affect agencies who have gone through the PHHPC if they are not yet operational?

A. Only applications that have not yet received Public Health and Health Planning Council approval or contingent approval are subject to the moratorium.

Q22. Can you please advise about whether the moratorium on LHCSAs affects the department's policy of allowing an existing LHCSA to add one contiguous county to its service area?

A. There have been no changes to the Administrative application process for adding sites/services/counties. The moratorium only applies to applications that are processed and approved by the Public Health and Health Planning Council.

Q23. Are there counties in New York State that have a need for a home care agency?

A. Currently, all counties in NYS have at least two approved LHCSAs. As noted in the Guidance document under "Serious Concerns Exceptions", there is a presumption of adequate access if there are two or more LHCSAs already approved in the proposed county. The applicant must articulate the population to be served for which there is a lack of access, submit substantial, data-driven proof of lack of access to the population and that no existing LHCSA in the county can provide services to the population.

Q24. I am interested in starting a non-medical homecare agency and would like to know: When will the moratorium expire? Are you accepting applications for when it does expire? Will there be any changes to the categories of home healthcare?

A. Per Section 9-e of Part B of Chapter 57 of the Laws of 2018, the moratorium will expire on March 31, 2020. Once the moratorium expires, applications will be accepted pursuant to the statutes and regulations in effect at that time. It is unknown, but not anticipated, that there will be any changes to categories of home health care.

Q25. When the moratorium expires, will you be accepting applications for new home healthcare agencies looking to provide PCA non- skilled services?

A. Once the moratorium expires, applications will be accepted pursuant to the statutes and regulations in effect at that time.

Q26. Why do I need to supply the ALP application number with my ALP-related LHCSA application?

A. Unless the ALP application has already been submitted, the LHCSA application does not, at the time of submission, meet the moratorium exception.

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- Q27. The statute does not address the establishment of a new controlling entity of a LHCSA or the replacement of an operator; yet the Guidance prohibits these actions during the moratorium. As long as the LHCSA seeking an ownership change is currently licensed and operational, and no new LHCSA is being established, the moratorium should not come into play.
- A. Per Section 9-e of Part B of Chapter 57 of the Laws of 2018, the moratorium is imposed on “applications seeking licensure of a licensed home care services agency pursuant to section 3605 of the public health law that have not received establishment approval or contingent establishment approval by the public health and health planning council”, with three exceptions. Therefore, any proposal that requires an application for licensure pursuant to PHL §3605 is subject to the moratorium, other than those applications that qualify for an exception as denoted in Section 9-e of Part B of chapter 57 of the Laws of 2018. Please see the LHCSA Moratorium Guidance for additional information about the exceptions.
https://www.health.ny.gov/facilities/cons/docs/lhcsa_moratorium_guidance.pdf
- Q28. According to the Guidance, an entity with extensive resources, expertise, and experience in the home care services industry cannot acquire a small LHCSA that has been operated for many years. We don’t believe the moratorium was intended to apply to this sort of transaction.
- A. As described, assuming the to-be-acquired LHCSA has been operational for at least five years, if the acquiring entity is a licensed and operational LHCSA and will be consolidating the to-be acquired LHCSA under its license, the proposal would meet the Change in Ownership exception.
- Q29. An entity seeking to acquire an existing, licensed LHCSA would need approval from the Department, but such a transaction would not require the acquiring entity to seek licensure to operate a new LHCSA. Therefore, it is not subject to the moratorium.
- A. An entity seeking to acquire an existing, licensed LHCSA must submit an application for licensure pursuant to PHL §3605 for processing and approval by the Public Health and Health Planning Council and is thus subject to the moratorium.
- Q30. According to the Guidance, a transaction in which “[a] new controlling entity is established at a level above the current operator” would be a Non-Qualifying Change in Ownership Application. An entity that acquires an existing, licensed LHCSA and creates a new controlling entity above the level of the current operator to operate the transferred LHCSA would not require an application “seeking licensure” of a new LHCSA, but would simply require Department approval of the transfer.
- A. An entity seeking to be established as a controlling entity above the current operator must submit an application for licensure pursuant to PHL §3605 for processing and approval by the Public Health and Health Planning Council and is thus subject to the moratorium.

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- Q31. The moratorium applies only to NEW licenses, so why does the Guidance restrict applications that don't result in a new or additional LHCSAs?
- A. Per Section 9-e of Part B of Chapter 57 of the Laws of 2018, the moratorium is imposed on “applications seeking licensure of a licensed home care services agency pursuant to section 3605 of the public health law that have not received establishment approval or contingent approval by the public health and health planning council”, with three exceptions. Therefore, any proposal that requires an application for licensure pursuant to PHL §3605 is subject to the moratorium, other than those applications that qualify for an exception as denoted in Section 9-e of Part B of chapter 57 of the Laws of 2018. Please see the LHCSA Moratorium Guidance for additional information about the exceptions.
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