

NEW LAW COULD IMPACT ABILITY OF LHCSAS TO SERVE MEDICAID RECIPIENTS

The recently enacted New York State FY 2021 Budget created a new Public Health Law Section 3605-c which, if implemented, would prohibit Licensed Home Care Service Agencies (LHCSAs) from providing or claiming for services provided to Medicaid recipients without being authorized to do so by contract with the NYS Department of Health (DOH). This restriction would apply to LHCSAs providing such services under the state Medicaid plan, a plan waiver, or through a managed care organization (e.g., managed long term care plan).

A key provision in the new statute is that its provisions shall not apply unless DOH has obtained any necessary federal approvals to receive federal financial participation in the costs of services that would be provided by LHCSAs under the contracts contemplated by the new law.

If implemented, the statute would require DOH to contract with enough LHCSAs to ensure that Medicaid recipients have access to care. DOH would be required to post a request for proposals (RFP) on its website that would include a description of the proposed services to be provided pursuant to contract and the criteria for DOH’s selection of LHCSA contractors. The statute sets forth some of the selection criteria, including but not limited to: demonstrated cultural and language competencies specific to the population of recipients and the available workforce; experience serving individuals with disabilities; demonstrated compliance with all applicable federal and state laws and regulations, including but not limited to labor and employment and anti-discrimination laws, etc.

Prospective contactors would have at least 30 days after DOH posts the RFP on its website to make a submission seeking selection. After contracts are awarded, DOH could terminate a LHCSA’s contract, or suspend or limit a LHCSA’s rights and privileges under a contract, upon 30-days written notice if the Commissioner of Health finds that a LHCSA has failed to comply with the provisions of Section 3605-c or any regulations promulgated under the statute.

Also, if the statute is implemented, authorization received by LHCSAs under Section 3605-c would not substitute for them satisfying licensure requirements or the screening and enrollment process required for participation in the Medicaid program.

The new statute likely evolved from a recommendation made by the Medicaid Redesign Team II (MRT) that would limit the number of LHCSAs authorized to provide services to Medicaid recipients. Under the MRT proposal, DOH would award contracts to LHCSAs based on factors related to quality of services, the ability to deliver administrative efficiencies in operations, and other criteria.

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Currently, there is no clear timeline as to when DOH will issue an RFP. Garfunkel Wild will continue to monitor this situation closely for further developments. However, should you have any questions, please contact the [Garfunkel Wild attorney](mailto:info@garfunkelwild.com) with whom you regularly work, or contact us at info@garfunkelwild.com.

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