STATE OF NEW YORK

S. 9180 A. 11382

SENATE - ASSEMBLY

October 19, 2018

IN SENATE -- Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

IN ASSEMBLY -- Introduced by COMMITTEE ON RULES -- (at request of M. of A. Hyndman) -- read once and referred to the Committee on Health

AN ACT to amend the public health law, in relation to a moratorium on new licensed home care service agency approvals; and to amend chapter 57 of the laws of 2018 amending the public health law and other laws relating to limitations on licensed home care service agency contracts and registration of licensed home care services agencies, in relation to the moratorium on the processing and approval of applications seeking licensure of a licensed home care services agency

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The legislature hereby finds and declares that local small business are the very lifeblood and economic building blocks of the empire state. These businesses are important to every community throughout our state: they hire locally, they spend resources locally, they pay state and local taxes and they offer essential services that improve the quality of life of individuals at the local level. Without such local small businesses, our economy would not be able to function in a manner that benefits all our residents and reaches them in a very direct and personal way. A quintessential and leading example of the type of local, small business that provides life-changing services can be found in the form of licensed home care service agencies (LHCSAs). LHCSAs are a vital and essential component of our health care delivery system, interacting with patients on a daily basis, attending to their needs and standing on the very frontline of quality care. Furthermore, LHCSAs are very often small, local businesses started by compassionate social entrepreneurs who saw a need in their community and who have succeeded because of the very personal, trusting, compassionate and nurturing relationship they have with the individuals under their care. Additionally, the range of services provided by LHCSAs, including language and cultural competency, is unique and valuable, to

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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them, to the employees they hire and to our overall community and health care system. The need for home care services for our senior population is rising exponentially and local, small business LHCSAs have rationally grown to meet this demand and provide skillful care for our loved ones. Moreover, LHCSAs often save the state money because they allow individuals to remain at home, instead of moving to institutionalized care. However, puzzlingly, the department of health constantly seems focused on threatening LHCSAs ability to operate, as exemplified by a two year moratorium enacted in 2008 and a series of potentially catastrophic provisions enacted as part of the 2018-19 New York state budget, including: another two year moratorium on new LHCSA approvals; the construction of a limit on the number of LHCSAs with which managed long term care plans (MLTCP) can contract; and authorization of a forward-looking requirement that could be enacted in the future, post the two year moratorium, that will mandate that LHCSA applicants need to demonstrate "public need" and "financial feasibility" to receive approval. In sum, these changes have simply gone too far in terms of overregulating local small businesses that are trying to provide quality of life health services to some of our most needy and vulnerable citizens. The new changes threaten the very social and economic existence of the locally centered LHCSAs that generations of New Yorkers have come to count on, letting them into their homes in times of trial and perseverance. In hindsight, the recently enacted provisions have proven to be overreaching, unwise and onerous, and consequently must be modified.

§ 2. Subparagraphs (i), (ii), (iii), (v) and (x) of paragraph (j) of subdivision 7 of section 4403-f of the public health law, as added by section 9-a of part B of chapter 57 of the laws of 2018, are amended to read as follows:

(i) The commissioner may establish methodologies to limit the number of licensed home care services agencies licensed pursuant to article thirty-six of [~~the public health law~~] **this chapter** with which managed long term care plans may enter into contracts, provided that such limitations are consistent with the specifications set forth in this paragraph. **However, before implementing any such methodological limitations, the department must hold a minimum of six public hearings including at least one in each of the following regions: the city of New York, Long Island, Westchester county, the capital region, central New York and western New York to hear from interested parties that may be affected by any proposed methodologies. The department shall widely publicize such hearings once scheduled, and must send notice of such hearings to all licensed home care services agencies at least two weeks in advance of each hearing. The hearings must be officially transcribed and written testimony and comments must be permitted both in person and via mail and electronic means. The department shall formally take into account the public hearing comments and written testimony before promulgating any final methodologies.**

(ii) Managed long term care plans operating in the city of New York and/or the counties of Nassau, Suffolk, and Westchester may enter into contracts with licensed home care services agencies in such region in a maximum number calculated based upon the following methodology:

(A) As of October first, two thousand [~~eighteen~~] **twenty**, one contract per seventy-five members enrolled in the plan within such region; and

(B) As of October first, two thousand [~~nineteen~~] **twenty-one**, one contract per one hundred members enrolled in the plan within such region.

(iii) Managed long term care plans operating in counties other than those in the city of New York and the counties of Nassau, Suffolk, and Westchester may enter into contracts with licensed home care services agencies in such region in a maximum number calculated based upon the following methodology:

(A) As of October first, two thousand [~~eighteen~~] **twenty**, one contract per forty-five members enrolled in the plan within such region.

(B) As of October first, two thousand [~~nineteen~~] **twenty-one**, one contract per sixty members enrolled in the plan within such region.

(v) When calculating the number of additional contracts that a managed long term care plan may enter using the methodologies established pursuant to this paragraph, any fractional result shall be rounded [~~down~~] **up**.

(x) This subparagraph applies where implementation of the limits on contracts with licensed home care service agencies of this paragraph (i) would otherwise require an enrollee's care to be transferred from the enrollee's current licensed home care service agency to another licensed care service agency, and (ii) the enrollee (or the enrollee's authorized representative) wants the enrollee to continue to be cared for by one or more employees of the current licensed home care service agency, and that continuation would otherwise be provided. In such a case: the enrollee's managed long term care plan may contract with the enrollee's current licensed home care service agency for the purpose of continuing the enrollee's care by such employee or employees, and the contract shall not count towards the limits on contracts under this paragraph for a period of [~~three months~~] **one year**.

§ 3. Subdivisions 4 and 6 of section 3605 of the public health law, as amended by section 9-b of part B of chapter 57 of the laws of 2018, are amended to read as follows:

4. The public health and health planning council shall not approve an application for licensure unless it is satisfied as to[~~: (a) the public need for the existence of the licensed home health care service agency at the time and place and under the circumstances proposed; (b)~~] the character, competence and standing in the community of the applicant's incorporators, directors, sponsors, stockholders or operators[~~; (c) the financial resources of the proposed licensed home health care service agency and its sources of financial revenues; and (d) such other matters as it shall deem pertinent~~].

6. Neither **public need,** tax status nor profit-making status shall be criteria for licensure.

§ 4. Section 3605-b of the public health law, as added by section 9-d of part B of chapter 57 of the laws of 2018, is amended to read as follows:

§ 3605-b. Registration of licensed home care services agencies. 1. [~~(a)~~] Notwithstanding any provision of law to the contrary, no licensed home care services agency (LHCSA) licensed pursuant to section thirty-six hundred five of this article shall be operated, provide nursing services, home health aide services, or personal care services, or receive reimbursement from any source for the provision of such services during any period of time on or after January first, two thousand [~~nineteen~~] **twenty**, unless it has registered with the commissioner in a manner prescribed by the department.

[~~(b)~~] **2.** A LHCSA that fails to submit a complete and accurate set of all required registration materials by the deadline established by the commissioner [~~shall~~] **may** be required to pay a fee of [~~five~~] **one** hundred dollars for each **full** month [~~or part thereof~~] that the LHCSA is in default. A LHCSA that failed to register in the prior year by the dead-

line of the current year shall not be permitted to register for the upcoming registration period unless it submits any unpaid late fees.

[~~(c)~~] **3.** The department shall post on its public website a list of all LHCSAs, which shall indicate the current registration status of each LHCSA.

[~~(d)~~] **4.** The department shall institute proceedings to revoke the license of any LHCSA that fails to register for [~~two~~] **three consecutive** annual registration periods[~~, whether or not such periods are consecutive. The department shall have the discretion to pursue revocation of the license of a LHCSA on grounds that it evidences a pattern of late registration over the course of multiple years~~].

§ 5. Section 9-e of part B of chapter 57 of the laws of 2018 amending the public health law and other laws relating to limitations on licensed home care service agency contracts and registration of licensed home care services agencies is amended to read as follows:

§ 9-e. Effective April 1, [~~2018~~] **2020**, the commissioner of health shall place a moratorium on the processing and approval of 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, except for: (a) an application seeking licensure of a licensed home care services agency that is submitted with an application for approval as an assisted living program authorized pursuant to section 461-l of the social services law; (b) an application seeking approval to transfer ownership for an existing licensed home care services agency that has been licensed and operating for a minimum of five years for the purpose of consolidating ownership of two or more licensed home care services agencies; and (c) an application seeking licensure of a home care services agency where the applicant demonstrates to the satisfaction of the commissioner of health that submission of the application to the public health and health planning council for consideration would be appropriate on grounds that the application addresses a serious concern such as a lack of access to home care services in the geographic area or a lack of adequate and appropriate care, language and cultural competence, or special needs services. Such moratorium shall expire on March 31, [~~2020~~] **2022**. In implementing the provisions of this section, the commissioner shall, to the extent practicable, review and, where appropriate, prioritize presentation to the public health and health planning council of complete applications under paragraph (b) of this section where the applicants demonstrate, to the satisfaction of the commissioner, that the proposed change in ownership is consistent with the goals of paragraph (j) of subdivision 7 of section 4403-f of the public health law.

§ 6. This act shall take effect immediately; provided, however, that the amendments to section 4403-f of the public health law made by section two of this act shall not affect the repeal of such section pursuant to chapter 659 of the laws of 1997, as amended, and shall be deemed repealed therewith; provided, further, that section three of this act shall take effect on the same date and in the same manner as section 9-b of part B of chapter 57 of the laws of 2018, takes effect.