§ 3605-c. Authorization to enroll and provide medical assistance. 1. A licensed home care services agency (LHCSA) shall not enroll as a provider in the medical assistance program operated pursuant to title eleven of article five of the social services law or provide or claim for services pursuant thereto, whether provided under the state plan, a waiver thereto or through a managed care organization, without being authorized to do so by contract with the department entered into pursuant to this section. Authorization under this section shall not substitute for or duplicate the requirements of licensure under this article or the screening and enrollment process required for participation in the medical assistance program.

2. Notwithstanding any inconsistent provision of section one hundred sixty-three of the state finance law, or sections one hundred forty-two and one hundred forty-three of the economic development law, the commissioner shall enter into a sufficient number of contracts with LHCSAs to ensure medical assistance recipients have access to care and services, provided, however, that:

(a) the department shall post on its website for a period of no less than thirty days:

(i) a description of the proposed services to be provided pursuant to the contract or contracts;

(ii) the criteria for selection of LHCSA contractors, including but not limited to: licensure under this article, the ability to appropriately serve medical assistance recipients as determined by the commissioner, a geographic distribution of LHCSAs to ensure access statewide including in rural and underserved areas, demonstrated cultural and language competencies specific to the population of recipients and those of the available workforce, ability to provide timely assistance to recipients, experience serving individuals with disabilities, efficient and economic administration of LHCSA services, and demonstrated compliance with all applicable federal and state laws and regulations including, but not limited to, past compliance with labor law and existing wage and labor standards, and compliance with equal employment opportunity requirements and anti-discrimination laws;

(iii) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such

information is first posted on the website; and

(iv) the manner by which a prospective contractor may submit a proposal for selection, which may include submission by electronic means;

(b) the commissioner shall review in a timely fashion all reasonable and responsive submissions that are received from prospective contractors;

(c) the commissioner shall select such contractors that, in the commissioner's discretion, are best suited to efficiently and economically administer medical assistance services;

(d) all decisions made and approaches taken pursuant to this section shall be documented in a procurement record as defined in section one hundred sixty-three of the state finance law;

(e) the commissioner may institute a continuous recruitment process provided that the information required under paragraph (a) of this subdivision remains on the department's website for the entire duration of the recruitment process, until such date as the commissioner may determine upon no less than ten days notice being posted on the website; and

(f) the commissioner may reoffer contracts under the same terms of this subdivision, if determined necessary by the commissioner, on a statewide or regional basis.

3. (a) The department may terminate a LHCSA's contract under this section or suspend or limit the LHCSA's rights and privileges under the contract upon thirty day's written notice to the LHCSA if the commissioner finds that the LHCSA has failed to comply with the provisions of this section or any regulations promulgated hereunder. The written notice shall include:

(i) a description of the conduct and the issues related thereto that have been identified as failure of compliance; and

(ii) the time frame of the conduct that fails compliance.

(b) Notwithstanding paragraph (a) of this subdivision, upon determining that a medical assistance recipient's health or safety would be imminently endangered by the continued operation or actions of the LHCSA, the commissioner may terminate the LHCSA's contract or suspend or limit the LHCSA's rights and privileges under the contract immediately

upon written notice.

(c) All orders or determinations under this subdivision shall be subject to review as provided in article seventy-eight of the civil practice law and rules.

(d) Any procedural rights or privileges afforded pursuant to this subdivision shall apply only to actions taken under this subdivision with respect to compliance with the terms of the contract. Actions taken under this subdivision shall not constitute and shall not be construed to constitute an action with respect to a LHCSA's licensure or enrollment in the medical assistance program, which the department may undertake separately or in conjunction with an action pursuant to this subdivision.

4. The provisions of this section shall not apply unless any and all necessary approvals under federal law and regulation have been obtained to receive federal financial participation in the costs of services that would be provided by LHCSAs in accordance with the terms of contracts entered into pursuant to this section.