

# Home Care Developments

**Poricanin**  
Practical Counsel. Industry Insight.

## 1.4 Billion in Federal Funding is Coming to NY Home Care, but only 1/3 of LHCSAs Slated to Receive the First Wave of the Funds

As part of President Biden's investment and commitment to home care, New York State is slated to receive in excess of 1.4 billion dollars from the federal government over the course of the next two fiscal years. The funds will be distributed to qualifying providers in two phases. It is anticipated that the first payment, 361 million, will be made sometime between January 1, 2022 and March 31, 2022. The second – and larger - payments are slated for distribution sometime between April 1, 2022 and March 31, 2023.

The New York State Department of Health ("DOH") has developed the eligibility criteria for these funds. The DOH's plan, however, is subject to CMS approval. The DOH *has* submitted its plan to CMS for approval, and CMS is expected to respond by January 3, 2022.

As proposed by the DOH, the top billing 1/3 of LHCSAs (approximately 250 agencies) have been selected for the first wave of funding, based on those agencies' MLTC revenue from 2019. FIs and CHHAs are not eligible for these funds. The State would determine the specific provider award amounts. MLTCs and MAPs would receive the "payment amounts per provider from the State" sometime before March 31, 2022. The plans would then have to pass this money, dollar for dollar, to the providers. There is no ability for plans to retain any portion of these funds.

The funds must be used by the awarded providers in State's FY 22 and FY 23 to "strengthen their workforces and prepare for VBP arrangements with reporting to DOH."

Insofar as the selection of providers, the DOH explained that only LHCSAs with managed care revenue that "meets or exceeds the revenue threshold in their respective regions" would be included in the class of recipients. The threshold was set by the DOH as the "66<sup>th</sup> percentile of providers in each region based on provider revenue, meaning that the 1/3 of providers with the highest managed care revenue in each region would be included in the provider class." The DOH has stated that the approximately 250 LHCSAs that had been selected for these funds account for 93% of the total Medicaid personal care spending in New York. The DOH also stated that each region was uniquely considered.

In describing the plan, and why the State chose to limit the awards to only 1/3 of the providers, the DOH stated that it "intended to send a message to providers." It is not clear what that message is, but it seems that the distribution

of funds to top-billing providers aligns with the State's longstanding mission to consolidate and reduce the number of LHCSAs in New York State.

The list of the approximately 250 providers has **not** been published or shared by the DOH.

---

# ANNOUNCING



## forework™

We are pleased to announce the launch of **FOREWORK**, an independent employment technologies and HR solutions company.

Over the last several years, as I have worked with providers on their employment law compliance and – most challenging of all – wage and hour class actions and audits – I saw a need for competent outsourced HR services and compliant employment technologies. Forework was created as the one-stop end-to-end solution for businesses to handle all of their employment-related needs and provide competent HR support, so that businesses can stay in compliance and minimize their exposure to expensive employment litigation.

To meet business's varying HR needs, Forework offers several different services and plans:

- **The Employment Law Concierge Service** – Subscribers to this service are paired with a dedicated HR expert, the “Employment Concierge,” who will work exclusively with their company to oversee all aspects of their HR. From updating employment policies, hiring for key positions, and writing job descriptions, to handling unemployment insurance claims, conducting workplace manager training, HR audits and overseeing employment compliance, the Concierge serves as the employer's trusted HR partner.
- **Policies, Forms, and Contracts** – Forework's website contains a library of 200+ attorney-approved employment policies, contracts, and forms that businesses may need to stay in compliance and protect their business in employment matters. From live-in policies, to wage parity procedures, and corporate compliance plans, home care providers can easily purchase necessary employment and procedural documents for their agency from Forework's website.
- **Forework OnDemand** – Today's fast-paced work environment requires fast answers and solutions. Forework's OnDemand platform allows employers to book a call with an experienced HR consultant or attorney, right on Forework's website. The employer will receive a call back the same day from Forework to assist the employer with their employment matter.
- **OnSite HR Service** – For businesses that need a temporary HR director or on-site support at their place of business, Forework's OnSite HR service will assign an experienced human resources consultant to work at the client's place of business and handle all personnel matters, including compliance.

- **Work Law Subscription Service** – With everchanging employment laws, the Work Law Subscription monitors the law for employers and alerts them of key legal changes impacting their business, issues updated policies and procedures to subscribing employers, and provides 1 hour of HR counseling each month.
- **Employment Project Experts** – For businesses that wish to outsource some HR functions, the Employment Project Service allows the business to hire a Forework HR expert on a project-basis. For example, clients can retain a Forework expert to oversee the full employee disability and leave process, from workers' compensation to FMLA/PFL. The Forework expert would work directly with the employer's employees who are requesting leave, monitor all leave, and report to management as needed.
- **Payroll and Tax Processing** *\*\*Coming Soon\*\** - Custom designed to meet the current and future challenges of home care wage and hour laws, Forework's payroll technology will provide employers peace of mind that their employees are being paid properly. Designed by a wage and hour attorney, Forework's payroll technology was built by compliance.

To inquire or subscribe to any of these services, please visit [www.forework.com](http://www.forework.com) or call 1-83-forework.

---

## Statistical Report FAQs Released

The DOH has released a FAQ document on the HCS pertaining to the annual statistical report. The FAQs address some of the commonly asked questions that LHCSA/FI "combination" entities may have in completing the report, newly operating LHCSA issues, administrator roles, and questions about specific forms. Providers should ensure that the designated representative of their agency is accessing the HCS and reviewing these questions as part of the reporting process. As a reminder, the statistical report must be filed by December 31, 2021. Monetary penalties begin to accumulate thereafter.

## Assemblymember Gottfried is Retiring

Assemblymember Gottfried, Chair of the Assembly Health Committee and New York's longest-serving lawmaker, announced on Monday that he will be retiring at the end of 2022. He will not seek re-election. This means that the upcoming budget season, which is slated to kick off with the State of the State address on January 5, 2022, is going to be his last budget season. Providers are familiar with Assemblymember Gottfried, as he has been a champion and promoter of home care and fiscal intermediary services for decades. While it remains to be seen, Gottfried may seek to make a final push for his longtime causes, such as a single-payor healthcare system for New York, and an increase in the base wage for home care workers. With every seat in the New York Legislature up for re-election, the 2022 budget season promises to be an exciting one.

---

## LHCSA RFO Unlikely to be Issued Until 2022

The Department of Health has recently indicated that it will not be issuing the LHCSA RFO until 2022, and also until after the CDPAP RFO has been finalized. The Department's representatives have stated that they will seek to learn from the CDPAP RFO process and incorporate any valuable insights into their roll-out of the LHCSA RFO. And while the desire of the DOH to consolidate the home care marketplace and reduce the number of LHCSAs remains strong, efforts from providers and their advocacy groups continue. We expect to see a strong push in the Legislature for the repeal of the LHCSA RFO.

---

## US Supreme Court Declines to Review Religious Exemption Question

In an order issued on December 13, the United States Supreme Court declined to accept an appeal of the Second Circuit's decision, which had refused to enforce the religious exemption to the COVID-19 vaccination mandate. As our readers will recall, several weeks ago, the Second Circuit had declined to issue an injunction that would have expressly directed covered healthcare providers to consider and grant religious exemptions to eligible healthcare workers. As a result of that Second Circuit decision, and upon urging by various stakeholders, the Department of Health issued guidance allowing all healthcare workers who had been previously received religious exemptions to become vaccinated by November 22 in order to keep their employment. In the meantime, the opponents of the vaccine mandate had filed an appeal of the Second Circuit's decision to the Supreme Court. In yesterday's order, the Supreme Court declined to take up the issue for review.

The underlying lawsuits regarding the religious exemption question, as created by the Department's regulation, will continue in New York courts, and may even make their way to the United States Supreme Court at some point in time. For the time being, however, covered healthcare providers must ensure that any patient-facing, or even potentially patient-facing, healthcare staff are vaccinated or that they receive a medical exemption.

If you have any questions about the definition of covered employees, please do not hesitate to reach out.



[Visit our Website](#)

**STAY IN TOUCH**  
[emina@poricaninlaw.com](mailto:emina@poricaninlaw.com)  
315.269.1125  
518.676.0192



# Poricanin

Practical Counsel. Industry Insight.

Your copy should address 3 key questions: Who am I writing for? (Audience) Why should they care? (Benefit) What do I want them to do here? (Call-to-Action)

Create a great offer by adding words like "free" "personalized" "complimentary" or "customized." A sense of urgency often helps readers take an action, so think about inserting phrases like "for a limited time only" or "only 7 remaining"!

Poricanin | 90 State Street, Suite 700, Albany, NY 12207

[Unsubscribe emina@poricaninlaw.com](mailto:emina@poricaninlaw.com)

[Update Profile](#) | [About Constant Contact](#)

Sent by [emina@poricaninlaw.com](mailto:emina@poricaninlaw.com) in collaboration  
with



Try email marketing for free today!