

New York State Department of Health



Report on Implementation of the Report
of the Commission on Health Care
Facilities in the Twenty-First Century

Pursuant to Paragraph 37 of the
Federal-State Health Reform
Partnership Demonstration (No. 11-W-
00234/2)

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EXECUTIVE SUMMARY

For the past three years, the State of New York has been engaged in a historic reconfiguration of its health-care delivery system.

The process began with the enactment of legislation creating the Commission on Health Care Facilities in the 21st Century; it continued through the Commission's critical evaluation of the needs of the health care system, and its issuance of a 231- page report calling for a massive reconfiguration of the health care delivery system; and it culminated in the Department of Health's efforts to implement those recommendations in the dynamic and fluid real-world marketplace in which health care is actually delivered.

The result has been a historic transformation of the New York State health care delivery system. Approximately *one-fourth* of all of the hospitals in the State have been reconfigured; some have closed, others have merged, and still others have eliminated excess beds and redundant services. By the end of 2008, nine hospitals will have been closed and almost 2,800 beds will have been eliminated from the system. Approximately 700 more will have been eliminated by 2011.

Eight nursing homes will have been closed by the end of 2008 and more than 2,300 beds will have been eliminated from the system. Almost 500 more will be taken out of the system by 2011. These beds will be replaced with community-based services, such as adult-day health care services and assisted living residences.

Much of the reform was made possible by the prudent investment of State funds from the Healthcare Efficiency & Affordability Law (HEAL) program and Federal funds made available through the Federal-State Health Reform Partnership (F-SHRP).

The State legislature has calculated that the annual savings to the Medicaid system alone will be \$106 million annually. Equally important, the rationalized delivery system will undoubtedly improve the quality of health care for New York's nearly 20 million citizens.

Accordingly, pursuant to paragraph 37 of the Federal-State Health Reform Partnership Medicaid Section 1115 Demonstration (No. 11-W-00234/2), the New York State Department of Health is pleased to provide this report on the final recommendations of the Commission, and to certify that each of the Commission's recommendations has been acted upon in the manner described below. This report also includes the strategy and timeline for full implementation; duly notes the recommendations that have been completely implemented to-date; and addresses how implementation of the Commission's recommendations will impact the provision of primary and ambulatory care services in affected communities.

Though much of the information in this report is already known to CMS from its quarterly reports and meetings with the Department, the information presented in this report describes the impressive totality of what the federal-state partnership has achieved. Perhaps even more important than the specifics described here, implementation of the Commission's report has helped unleash the significant power of reform.

The Department is already engaged in plans to reform its Certificate of Need process to ensure the highest quality, most efficient supply of health care providers throughout the State. It continues to pursue its vision of a long-term care delivery system focused on supporting our residents in their homes and communities, together with families and friends. It continues to emphasize development of primary care through capital investments and changes in reimbursement methodology as a method of reducing costs while improving outcomes. And it

continues to support these efforts and more through its \$1 billion investment of state funds through the HEAL NY program, along with the \$1.5 billion federal investment under F-SHRP.

The Department looks forward to continuing the federal-state partnership into the future in a manner that ensures that New Yorkers will have a better quality, more efficient and more accessible health care system.

Summary of Implementation

A. The Commission and Its Charge

In April 2005, the New York State legislature declared that it was in the interest of the State to undertake an independent review of health care capacity and resources in the State to ensure that the supply of general hospital and nursing home facilities was best configured to appropriately respond to community needs for quality, affordable and accessible care, with meaningful efficiencies in delivery and financing that promote infrastructure stability.

Accordingly, the legislature established the Commission on Health Care Facilities in the 21st Century as an independent commission charged with examining the supply of general hospital and nursing home facilities, and recommending changes that would result in a more coherent, streamlined health care system in the State of New York.

The Commission consisted of 18 statewide members, and six regional members from each of six regions in the State. It was charged by the legislature to utilize various factors in its deliberations, including:

- the need for capacity in the hospital and nursing home systems in each region of the State;
- the capacity currently existing in such systems in each region of the State;
- the economic impact of right sizing actions on the State, regional and local economies, including the capacity of the health care system to provide employment or training to health care workers affected by such actions;
- the amount of capital debt being carried by general hospitals and nursing homes, and the nature of the bonding and credit enhancement, if any, supporting such

debt, and the financial status of general hospitals and nursing homes, including revenues from Medicare, Medicaid, other government funds, and private third-party payers;

- the availability of alternative sources of funding with regard to the capital debt of affected facilities and a plan for paying or retiring any outstanding bonds in accordance with the contract with bondholders;
- the existence of other health care services in the affected region, including the availability of services for the uninsured and under-insured, and including services provided other than by general hospitals and nursing homes;
- the potential conversion of facilities or current facility capacity for uses other than as inpatient or residential health care facilities;
- the extent to which a facility serves the health care needs of the region, including serving Medicaid recipients, the uninsured, and under-served communities; and
- the potential for improved quality of care and the redirection of resources from supporting excess capacity toward reinvestment into productive health care purposes, and the extent to which the actions recommended by the Commission would result in greater stability and efficiency in the delivery of needed health care services for a community.

In addition to the factors it was charged to consider, the legislation also identified a process for developing recommendations. Regional advisory committees (sometimes called “RACs”) were formed to foster discussions and conduct public hearings so that they could solicit input from local stakeholders. They were then to develop and justify recommendations, estimate

efficiencies, identify timelines, specify necessary investments and issue a report no later than November 15, 2006.

The Commission itself was required to collaborate with the RACs (insofar as practicable) to solicit stakeholder input. In addition, it was required to formally solicit recommendations from health care experts, county health departments, community-based organizations, state and regional health care industry associations, labor unions and other interested parties in each region of the State, and to take that input, and the RAC recommendations, into account during its deliberations.

These processes were designed to enable the Commission to make two types of recommendations. First, the Commission was required to make recommendations relating to facilities to be closed, resized, consolidated, converted, or restructured within each region. These were the Commission's binding recommendations. In addition, the Commission was authorized, but not required, to include in its report recommendations for streamlining regulatory processes, for changes to the hospital and nursing home reimbursement systems, and a summary of the testimony it had received. Recommendations were to be voted upon, with Regional members of the Commission authorized to vote only on those recommendations specific to their region.

These recommendations were then to be transmitted to the Governor and the Legislature on or prior to December 1, 2006. The binding recommendations were to go into effect on January 1, 2007, so long as the Governor timely transmitted them with his approval to the Commissioner of Health and the Legislature, and the Legislature did not reject the recommendations in their entirety by concurrent resolution by December 31, 2006.

The Commissioner of Health was directed to implement the recommendations, with two provisos: the recommendations were to be implemented in a “reasonable, cost-efficient” manner, and the Commissioner was required to “take all steps necessary” to protect patient safety. The Commissioner of Health was granted the authority to “take all steps necessary” to implement the report notwithstanding certain provisions of law relating to the establishment, consolidation, and re-configuration of facilities. The legislation, including the special authority granted to the Commissioner, fully expired June 30, 2008.

B. The Commission’s Analysis and Report

After the legislation was enacted, the Commission began its work. The Commission operated independently of any existing agency or entity, and consisted of a broad-based, nonpartisan panel. Over the course of 18 months, the Commission evaluated each hospital and nursing home in the State to develop its final recommendations.

The RACs provided essential community knowledge and insights into local conditions. They played vital information-gathering roles by fostering discussions with and among local stakeholders. Each of the RACs held extensive meetings with hospital and nursing home leaders and representatives from trade groups, organized labor, patient advocates, insurers, researchers, and public health officials. As required by statute, the RACs each issued advisory reports. (These reports are included as appendices to the final commission report and are available at http://www.nyhealthcarecommission.org/final_report.htm.)

The Commission and RACs also held public hearings across the State to further solicit input from a wide array of interested parties including patients and consumers, providers, payers, labor, elected officials, and the business community. In total, nineteen hearings

were held throughout the regions. The Commission heard from hundreds of witnesses and reviewed thousands of pages of testimony. It employed a full-time staff of eight to assist it in its evaluations and recommendations.

The Commission described its process as one that balanced “science” and “art”. Its deliberations were informed and driven by extensive review of objective data and quantitative analysis. (Much of that data and analysis is available at the Commission’s web site, <http://www.nyhealthcarecommission.org>.) However, its final recommendations were not solely the product of mathematical algorithms; public input, understandings of local market conditions, professional judgment, and factual information were combined to form the basis of the Commission’s work.

In December 2006, the Commission issued its 231-page report. The report included 57 mandatory recommendations, affecting 81 acute care and long-term care facilities. The acute care recommendations address 57 hospitals, or one-quarter of all hospitals in the State. Those recommendations include 48 reconfiguration, affiliation, and conversion recommendations, and 9 facility closures. Collectively, the recommendations targeted reducing inpatient capacity by a range of 3,900 to almost 4,200 beds.

The long-term care recommendations for downsizing or closing nursing homes targeted nursing bed reductions of approximately 3,000. Twice as many nursing homes were targeted for bed reductions as for closures. In addition, the long-term care recommendations contemplated creating more than 1,000 new non-institutional slots.

The Governor approved the recommendations, and forwarded his approval to the Department of Health and the State Legislature. The Legislature did not disapprove the report,

and it became binding as a matter of law. Accordingly, in January 2007, the Department of Health certified to CMS that there was no legislative impediment to implementing the report.

C. Implementation of the Commission Report

The Commissioner of Health was charged by law with implementing the mandatory recommendations of the Commission. Implementing a report that required reconfiguring more than one-fourth of the hospitals in the State and eliminating approximately 3,000 nursing home beds presented a daunting challenge.

1. **The Department Devoted Significant Staff to Implementation**

Soon after the report became effective, on January 31, 2007, the Department provided to each affected facility a notice of the determination, and timeline for implementation.

In order to ensure compliance, the Department established a formal unit within the Office of Health Systems Management to oversee implementation. In addition, numerous other staff were deployed on a full-time, or nearly full-time, basis. Twice-weekly meetings were held with the Department's core monitoring team which included executive level staff, department lawyers, and the Commission implementation monitoring team leader.

Another group that met regularly was the awards committee for the HEAL grants to Berger facilities. Though these HEAL grants were non-competitive, the Department needed to determine funding allocations and evaluate compliance. To accomplish this, the HEAL unit established both technical and financial review teams that made recommendations to the awards committee. The awards committee, comprised of members of the core monitoring team described above, staff from the HEAL unit and staff from the Dormitory Authority of the State of New York, was responsible for developing a distribution strategy for grants to Commission

facilities. In all, 44 awards were made to 60 facilities for a total of up to \$542.8 million in funding.

Several tracking mechanisms were developed to monitor implementation. An Access data base was developed and served as the primary data source and several spreadsheets were developed for tracking various activities such as submitting Certificate of Need (CON) applications, submitting closure plans, surrendering operating certificates, submitting downsizing requests, submitting applications for non-institutional long term care services and other activities unique to each facility's mandate.

The Department also conducted hundreds of meetings with affected facilities to educate them and to ensure compliance. Recalcitrant facilities were advised that they were required by law to implement the recommendations. Reasonable interpretations of the Report and alternative methods of implementation were considered and discussed. In some cases, coverage partners met with Department staff regarding the assurance of patient safety. The Commissioner of Health was involved in implementation decisions on essentially a daily basis, and two Deputy Commissioners devoted substantial portions of their time to implementation.

2. The Department Provided Significant Funding to Facilities, Contingent on Their Implementing the Report

In order to ensure effective implementation, the Department made available \$550 million in grant funds to facilities directly affected by the recommendations. Seventy-six facilities applied for grant funds, and awards were made to 60 facilities. Each award is subject to the facility entering a contract with the Department that includes mandatory compliance with the Commission's requirements. Facilities are required to provide monthly and quarterly reports to

the Department to ensure compliance. A list of current awardees and the maximum amounts of their awards are as follows:

Applicant	Grant Award	Applicant	Grant Award
A. Holly Patterson Extended Care Facility	\$14,000,000	Nazareth Nursing Home	\$7,307,109
Albany County NH and Ann Lee Infirmary	\$3,008,841	New York Downtown Hospital	\$6,166,667
Auburn Memorial Hospital	\$274,000	New York Westchester Square Medical Center	\$5,800,000
Bellevue Woman's Medical Center, Inc.	\$22,203,388	Orange Regional Medical Center	\$24,000,000
Bertrand Chaffee Hospital	\$4,500,000	Peninsula Hospital Center / St. John's Episcopal	\$750,000
Beth Israel Medical Center	\$5,000,000	Queens Hospital Center	\$12,000,000
Brookhaven Memorial Hospital (Suffolk Health Network)	\$24,000,000	Sheehan Memorial Hospital	\$4,000,000
Brooks Memorial Hospital	\$3,763,000	Sound Shore Medical Center	\$12,400,000
Brunswick Hospital Center	\$1,900,000	St. Charles Hospital	\$3,000,000
Cabrini Medical Center	\$14,000,000	St. Joseph Hospital of Cheektowaga	\$8,000,000
Cold Spring Hills Center for Nursing and Rehabilitation	\$992,500	St. Vincent's Midtown Hospital	\$17,082,283
Community General Hospital / Van Duyn	\$12,800,000	Stony Brook University Hospital	\$2,850,000
Ellis Hospital / Bellevue	\$5,878,100	SUNY Upstate Medical University, Crouse Hospital	\$5,100,000
Ellis Hospital/St. Clares	\$50,000,000	The Avenue & Dutch Manor Nursing and Rehabilitation Centers	\$1,900,000
Glendale Home	\$3,000,000	The Community Hospital at Dobbs Ferry	\$7,000,000
Kaleida Health - Gates Closure	\$65,000,000	The Kingston Hospital / Benedictine Hosp.	\$47,600,000
Lakeside Nursing Home, Inc.	\$4,900,000	TLC Health Network	\$12,625,000
Lenox Hill Hospital (MEETH)	\$25,100,000	United Helpers Canton Nursing Home, Inc.	\$8,100,000
Lockport Memorial Hospital and Inter-Community Memorial Hospital	\$9,100,000	Valley View Center for Nursing Care & Rehabilitation	\$7,800,000
Long Beach Medical Center	\$11,200,000	Victory Memorial Hospital	\$25,000,000
Mount View Health Facility	\$8,800,000	Westchester Medical Center / Taylor Care Center	\$6,900,000
Nassau University Medical Center	\$23,000,000	Westfield Memorial Hospital, Inc.	\$5,047,461
			\$542,848,349

In addition, the Department made available an additional \$150 million to cover the costs of the coverage partners (health facilities that will see increased patient volume as a result of implementation of a Commission Recommendation) and for “look-alikes” (facilities willing to voluntarily reconfigure services along the lines recommended by the Commission). Eighty-five applications have been submitted, and are currently being reviewed by the Department.

3. The Department Engaged in Unilateral Enforcement Efforts as Appropriate

To the extent possible, the Department attempted to implement the recommendations in cooperation with affected providers. This approach reflected the Department’s recognition that while it might be able to prohibit individual providers from providing certain services, it could not easily require a facility to provide unwanted services, or to provide services in a configuration that was not financially or clinically feasible.

Nevertheless, the Department at all times insisted on reasonable, cost-efficient compliance (consistent with the public health). Accordingly, during the last week of June 2008, the Department unilaterally amended the operating certificates of twenty providers that were not yet in compliance, that had not yet moved significantly towards compliance, or whose compliance required some special actions by the Commissioner.

In cases in which the Commission had recommended that a facility close, the Department amended the operating certificate so that the facility’s authority to operate terminated on a date certain. In cases where the Commission had recommended that a facility downsize, the Department amended the operating certificate so that the facility’s authority to operate the affected beds terminated on a date certain. In cases where the Commission had recommended a merger or other affiliation, the Department amended the operating certificate so that both

facilities' authority to operate terminated on a date certain, with the expectation that the facilities would consummate their merger or other affiliation and obtain an operating certificate for the merged entities rather than face closure.

4. The Department Vigorously Defended Lawsuits

Throughout the implementation period, numerous lawsuits were filed seeking to prevent implementation. In total, more than twenty lawsuits were filed, in various locations and multiple forums throughout the State. They fell generally into three categories: lawsuits challenging the constitutionality of the legislation establishing the Commission; lawsuits challenging a particular recommendation, including the process that led to that recommendation; and bankruptcy proceedings, in which the recommendations significantly affected the bankrupt's estate.

The lawsuits were vigorously defended by the State Attorney General's office, which created a special group of attorneys to defend the cases. In each case in which an injunction was sought, the Department opposed the injunction; in each case in which an injunction was entered, the Department sought the authority to take such actions as were necessary prior to June 30, 2008 to ensure that, when the injunction was lifted, compliance would be assured.

In some cases, lawsuits delayed implementation. As of June 30, 2008, implementation of two of the recommendations had been stayed by federal courts, both involving the closure of a nursing home: Williamsville Suburban, in Erie County, and Andrus-on-Hudson, in Westchester County.

In the case of Williamsville Suburban, the court authorized the Department to issue an amended operating certificate that would close the facility effective December 31, 2008. The amended operating certificate should allow the facility sufficient time to complete the litigation;

if the federal courts prohibit the State from closing the facility, then it may remain open, but if they permit the closure to go forward, the facility will be closed.

In the case of *Andrus-on-Hudson*, despite the Attorney General's best efforts, the Court declined to lift its stay for the purpose of amending the operating certificate. The Department continues to be stayed from taking any action to close the facility, and the statute authorizing implementation has expired and been repealed. Accordingly, as of June 30, 2008, it remained possible that, while the Department had vigorously acted on the recommendation relating to Andrus by, among other things, asking it to comply with an implementation schedule and seeking to lift the stay, the federal court's actions might make it impossible to implement the recommendation.

The Department substantially prevailed in litigation challenging the constitutionality of the legislation establishing the Commission. Two cases helped establish the relevant precedents.

First, in a case entitled *St. Joseph Hospital v. Novello*, the plaintiff hospital challenged the legislation and claimed that it violated their rights to substantive and procedural due process; that it violated the Presentment Clause of the State Constitution and State constitutional principles of separation of powers; the Free Exercise Clause of the Federal and State Constitution; and the federal Contract Clause.

The State Supreme Court dismissed this case, and upheld the constitutionality of the legislation. The Appellate Division, Fourth Department (an intermediate appeals court in Rochester), affirmed that decision. Thereafter the hospital's appeal to the New York Court of

Appeals was dismissed by the Court of Appeals as no substantial constitutional question was directly involved, and plaintiff's motion for leave to appeal to the Court of Appeals was denied.

The Department achieved a similar result in *McKinney v. Commissioner*, a case brought by Bronx residents challenging the Commission's recommendation that Westchester Square Medical Center close. The case raised issues of unlawful delegation and other separation of powers issues. Although the lower court initially granted a temporary restraining order, it later dismissed the complaint. The dismissal was upheld on appeal to the Appellate Division, First Department (the intermediate appeals court in New York City). The plaintiff's appeal to the Court of Appeals was dismissed, and its motion for leave to appeal was denied, concluding this litigation.

In both of these cases, the appeals court dismissed the constitutional claims, and the Court of Appeals declined a further appeal. The effect of these two decisions was to effectively foreclose the pursuit of constitutional claims, at least in State court.

The second type of case, those challenging specific recommendations on factual and procedural grounds, were often more complex. In some cases, the Department implemented the recommendations in a manner that resolved the complaints. For example, numerous lawsuits were filed challenging recommendations that municipal and state-operated facilities join together with not-for-profit corporations, in which the plaintiffs argued that such arrangements would be illegal. As described later in this report, however, the Department determined that the facilities could legally join together in a contract merger, in which the efficiencies contemplated by the report were realized, while the legal barriers were avoided.

In another case, plaintiffs alleged that a simple arithmetic error had caused the Commission to recommend the elimination of 40 beds in Schenectady; the Commission had mistakenly treated filled beds as if they were empty beds. After review, the Department determined that the Commission had in fact made the error, and agreed that it would be a reasonable interpretation of the Commission report to return the needed beds to the community.

In another case, described later in this report, the Achieve Nursing Home challenged a recommendation that it downsize by 40 beds, but the Department ultimately concluded that Achieve could not implement that recommendation without significant risk to public health and safety. Accordingly, the Department agreed to delay implementation in order to protect the public health.

Finally, bankruptcy proceedings complicated implementation of some of the recommendations. For example, in the case of Williamsville Suburban, the bankruptcy significantly complicated implementation, and the court ultimately prevented the State from closing the facility until it had an opportunity to determine the merits of the nursing home's claims.

5. The Department's Significant Efforts Helped Achieve Implementation in a Reasonable, Cost-Efficient Manner

It is nearly impossible to overstate the challenges and complexities involved in so rapid a reconfiguration of the health-care delivery system. More than 20 lawsuits were filed, in bankruptcy court, State Supreme Court, and federal District Court, and in venues from Buffalo to New York City. Forced hospital mergers brought together former competitors, in many cases with a history of fierce personal and institutional rivalries including the merger of Catholic sponsored facilities with non-denominational institutions. Hospital closures required addressing

the needs of former employees, including some very significant pension and retiree health care costs; the needs of current patients and residents, who needed to be admitted to other facilities; the re-routing of patient flow patterns; and ensuring adequate capacity of emergency departments.

To achieve implementation, the Department did not re-evaluate the Commission's conclusions, or attempt to replace the Commission's judgment with its own. Instead, it sought to fulfill its obligation to implement each of the recommendations through the most reasonable and cost-effective methods, in order to achieve the results and goals identified by the Commission. It also took special care to preserve and protect the public health and safety only when the Department determined a safety issue could exist or when updated data made a clear and convincing case that a safety issue existed.

This approach was built into the very structure of the Commission and its Report. It was mandated by the State law that established the Commission, which required that the Commissioner implement the recommendations in a "*reasonable, cost-efficient manner,*" and required the Commissioner to take "*all steps necessary to protect patient safety.*" The Report itself made each recommendation subject to the Commissioner of Health's duty to implement in a reasonable, cost-efficient manner, and his duty to take cognizance of the interests of the health and life of the residents. (Report at 89, ¶22)

This approach was not only required by the enabling legislation and the Commission's report, but was also essential to translating a massive, highly-detailed, paper-bound report, often based on data four years old, into the real time world of hospitals, patients and physicians. By employing this strict but reasonable approach, the Department was able to achieve the goals of

the Commission Report, protect patient safety, and in some cases, significantly improve the prospects for a more efficient, accessible and cost-effective health-care delivery system.

In some cases, for example, the Report contemplated that hospitals would provide a combination of services that were incompatible, illegal or impossible. In other cases, real world events overtook the recommendations with new facts-on-the-ground. Health and safety concerns required staging the implementation of some of the recommendations in order to ensure that necessary services were not eliminated in a manner that endangered the public prior to new services being created.

Some examples of the Department's approach are as follows:

a. Recommendations Affecting State and Municipal Facilities

State and municipal facilities, such as county-operated nursing homes and state-owned hospitals, operate in a different regulatory, governance, and reimbursement environment than do private facilities. The Commission's recommendations, however, sometimes failed to account for these differences, and therefore were not viable exactly as envisioned by the Commission. In these cases, the Department sought to implement the recommendations in a reasonable, cost-efficient manner and in keeping with the ultimate goal of the recommendation.

For example, a recurring recommendation in the Report is that county nursing homes downsize their skilled nursing home beds and replace them with various forms of non-institutional care, such as Adult Day Health Care, and Assisted Living Program (ALP) beds.

However, federal guidelines prohibit the use of SSI payments to reimburse county facilities for the cost of care; for that reason, county-operated ALPs are typically not economically viable. Accordingly, in these cases, the Department reasonably interpreted the

mandate as permitting another provider to operate the ALP to replace the nursing home beds. The long-term care beds were eliminated; the ALP beds replaced them; efficiency and quality were achieved; and the recommendations were implemented in an improved fashion. The result is a financially feasible operation that replaces nursing home beds with ALP beds that operate at half the cost.

Similarly, several recommendations required that state and municipal facilities be joined under a unified governance structure with private facilities (University Hospital-Crouse and Community General-Van Duyn). In the case of private facilities, this type of recommendation was achieved through the use of an “active-parent” relationship, in which a newly created corporate parent was created and empowered to make certain decisions on behalf of the two existing facilities.

However, in the case of state and municipal facilities there were substantial constitutional, legal, policy and local legislative obstacles to empowering a private corporation to exercise a controlling interest over a state and municipal institution, that itself was governed by elected or appointed officials, and whose property was held in trust for the taxpayers.

Thus, the Department determined that actually merging the facilities would have required closing one of them, an outcome not contemplated by the Commission, and one that would have entailed significant costs. Accordingly, in these cases, the Department interpreted the mandate as requiring that the parties enter a contract merger, in which joint planning activities could be carried out by a joint entity. Again, the Department interpreted the recommendation in a manner designed to achieve the Commission’s goals in a reasonable, cost-efficient manner.

b. Recommendations Creating Impossible or Unviable Configurations

In other cases, the Commission made recommendations that created impossible or unviable configurations. Sullivan County, for example, in the Catskill region of New York State, has a documented shortage of nursing home beds, a shortage identified and acknowledged by the Commission. Nevertheless, the Commission recommended taking action against Achieve Rehabilitation, a 140-bed facility, with a history of quality problems.

Because of the nursing home bed shortage, the Commission did not require that Achieve close, but only that it downsize by 40 beds. In the view of the Commission, a downsized facility could devote additional resources to solve or mitigate its quality of care issue.

However, in making the recommendation, the Commission was relying on information that was by then two years old. With the additional passage of time, it had become clear that the quality issues at the facility had been largely resolved. It was also clear that eliminating the 40 beds would make the facility less economically viable and would jeopardize its ability to function effectively. The Department determined that the Commission's intention through this recommendation was not to eliminate capacity but to improve quality; and that implementing the recommendation as proposed would not have accomplished that goal.

Accordingly, the Department implemented the recommendation in a reasonable manner, while preserving resident safety. It revised the nursing home's operating certificate to eliminate the 40 beds, but delayed implementation for five years, so that the facility could explore replacing the nursing home beds with community based services. At the end of the five years, the facility's continued authority to operate the forty beds will be reconsidered, taking into account the continued need for the beds, and the quality of care.

Similarly, the Commission recommended that St. Charles Hospital on Long Island undertake a significant reconfiguration, by eliminating its emergency department, and converting some of its beds to psychiatric and alcohol detoxification beds, contingent upon the approval of the State's Office of Mental Health ("OMH"), and Alcohol and Substance Abuse Services ("OASAS"). However, OASAS and OMH did not approve the conversion; they determined these services should be performed in a full-service hospital and were concerned that the conversion would render the St. Charles facility an Institute of Mental Disease, ineligible under law for federal Medicaid reimbursement. In addition, the recommendation contemplated the continuance of St. Charles obstetric services. Clinicians within the Department determined that it was substantially safer for a hospital providing obstetric services to continue to operate an emergency department. Accordingly, the Department determined that the emergency department could not be safely eliminated. Nevertheless, the Department was determined to implement the recommendation as best it could, and required St. Charles to eliminate 70 beds, although there was a significant argument that the unmet contingency negated the entire recommendation.

In another case, the Commission recommended that Auburn Hospital in Cayuga County downsize by 91 beds and eliminate its obstetrics practice because of quality concerns. However, the Department determined that the obstetrics practice served mostly low income, Medicaid patients, and that eliminating that service would put their safety at risk. Accordingly, while all of the required beds were eliminated, the Department worked with the hospital to bring in new physicians under the supervision of the regional perinatal center and improve the quality of obstetrics care at the hospital.

c. Dangerous Conditions Requiring a Safety Accommodation

In some cases, it was necessary to delay or stagger implementation dates in order to ensure public safety. These cases typically involved the potential closure of an emergency department (and in one case, a nursing home) when coverage partners would not have been able to absorb their capacity. In all cases, the Department sought to complement its safety concerns with actual compliance in order to avoid compromising either.

For example, Westfield Hospital was one of four hospitals that were reconfigured in Cattaraugus and Chautauqua Counties. The recommendation for Westfield required that it close its 32 inpatient beds and reconfigure itself as an outpatient, urgent-care center, with State designation as an Article 28 diagnostic and treatment center, by June 30, 2008. The urgent care center was necessary to ensure that the local, rural residents had adequate access to care.

However, the Department determined it would take up to two years for Westfield to reconfigure in a manner that was clinically and economically viable. Accordingly, the Department approved a plan for Westfield to eliminate all but 4 of its beds by June 30, 2008. All of the beds will be closed by June 30, 2010 and economically viable primary and urgent care will be established at the site in order to protect patient safety.

Like Sullivan County, Tompkins County currently suffers from a shortage of nursing home beds. Nevertheless, the Commission recommended closing the 260-bed Lakeside nursing home both because of quality issues and a perceived absence of need.

However, Department staff found that closing the entire facility and relocating all of its residents might result in a situation of imminent danger. Specifically, there were not enough beds available anywhere near the facility to which residents could be safely transferred. The

Department staff also found that while the facility has struggled in the past with maintaining standards of quality care and services, once key management positions had been filled and stabilized, the surveillance record significantly improved.

Accordingly, the Department will close the existing facility and has agreed that a new operator could operate a smaller, 100-bed nursing home on that site for a period of five years; afterwards the Department will re-determine the need for the facility. In addition, 25 adult day care slots would be authorized as well as an 80 bed assisted living program. The Department will continue to supervise closely the quality of care provided and the need for beds in the community to ensure that resident safety is protected, and excess capacity eliminated.

d. Improving Upon the Recommendations While Ensuring Compliance

In some cases, the Department was able to improve upon the recommendations in the report as new opportunities arose. In rural western New York, Brooks Memorial Hospital, the largest and most sophisticated community hospital in the region, indicated that it would be willing to join together under a common parent with TLC Lake Shore and TLC Tri-County, even though the Commission had not contemplated such a merger. Accordingly, the Department first sought and obtained strict technical compliance with the recommendation, and then layered on top of that recommendation to create an even more integrated, efficient regional network.

In Westchester County, the report recommended that Community Hospital at Dobbs Ferry close in an orderly fashion. The Department determined that after the hospital closed, the site of the closed hospital would make a good location for a “hybrid model” demonstration project proposed by St. John’s Riverside Hospital, a related entity into which the assets of Dobbs Ferry were to be merged.

The Commission recommended that the State and health care industry collaborate to test and develop new “hybrid” delivery models to “advance the achievement of a restructured health care delivery system.” In this case, St. John’s Riverside proposed to implement a hybrid delivery model based upon the recommendation of the Commission to focus services on primary care and disease management of chronic conditions in order to reduce unnecessary and inappropriate hospitalizations.

Accordingly, after Dobbs Ferry closes, St. John’s Riverside will transfer 12 of its beds and operate the hybrid model at the former Dobbs Ferry site as a five-year demonstration project. St. John’s Riverside will collaborate with community providers and be responsible for reporting on designated benchmarks demonstrating improved health outcomes community wide. The Department will re-evaluate the need for the new model at the conclusion of the five-year period.

D. The Department Successfully Achieved a Historic Restructuring of Health Care Facilities Across the State

As a result of these efforts, cities, counties and regions across the State look to the future with a new and reconfigured health care delivery system.

In Schenectady, for example, a city that had suffered from significant excess capacity and duplication of services, two of the three hospital systems (St. Clare’s Hospital and Bellevue Women’s Hospital) were eliminated. The one remaining hospital (Ellis) is implementing plans for a more integrated, comprehensive health care delivery system for the entire city.

Similarly, in Kingston, New York, Kingston Hospital and Benedictine Hospital – one secular, one Catholic – are successfully merging into one, despite the significant barriers surrounding ethical and religious directives that such mergers entail. (Indeed, in order to complete this merger, a separate ambulatory surgery center needed to be built to support

necessary women's health services). Significant savings have already been achieved as back-office operations have been combined and clinical redundancies eliminated.

In rural western New York, two hospitals (Lockport Memorial and Intercommunity at Newfane) received approval for a full-asset merger. A recommendation that five rural facilities reconfigure and join in a loose affiliation has been significantly strengthened when the Department facilitated the creation of a parent-subsidiary relationship involving three of those facilities (TLC Lakeshore, TLC Tri-County, and Brooks Memorial), thus strengthening the health-care delivery system across rural western New York.

On Long Island, three formerly competing hospitals - Peconic Bay Medical Center, Eastern Long Island Hospital, and Southampton Hospital - entered an agreement to integrate under a common parent, entered into an affiliation with University Hospital at Stony Brook, continued joint planning with Brookhaven Memorial Medical Center, and reconfigured their services. The new configuration will allow each to focus on serving their local community without interfering with the others' operations.

Three large cities merit special mention. In New York City, four hospitals, with more than 1,100 associated beds, have closed their doors (Victory Memorial Hospital, Cabrini Medical Center, Manhattan Eye Ear and Throat Hospital and St. Vincent's Midtown Hospital). Two more hospitals (Parkway and Westchester Square) are scheduled to close in the near future. In Buffalo, a comprehensive restructuring of the health care delivery system that will significantly reconfigure each of the three large hospital systems in the city is underway. And in Syracuse, the two large hospital systems (SUNY Upstate and Crouse Hospital) have entered a contract merger that requires joint planning and the sharing of services.

Statewide, as of this writing, 12 health care facilities have been closed and 1,230 hospital beds and 656 nursing home beds eliminated. By 2011, when implementation will be substantially or fully complete, it is expected that 21 facilities will have been closed, and more than 6,200 beds eliminated.

The Commission's recommendations are ordered by regions, corresponding to the Commission's own configuration, which included six regional members from each of six regions. The following overview describes the recommendations and implementation by each region, beginning with New York City and its environs.

1. New York City Region

The recommendations for New York City emphasized hospital closures. In total, six hospitals (Victory Memorial, Parkway, New York Westchester Square, Cabrini Medical Center, St. Vincent's Midtown, and Manhattan Eye Ear and Throat), licensed for almost 1,600 beds, were recommended for closure. Two more (Methodist and Community Hospital of Brooklyn) were to merge and eliminate 100 beds, and another two (Peninsula and St. Johns Episcopal) were to build a new facility subject to financing. North General Hospital was to enter a passive parent arrangement with Mount Sinai designed to enhance the integration. Three more hospitals were to reconfigure, with Queens Hospital adding 40 beds, New York Downtown eliminating 74 beds, and Beth Israel converting 80 detoxification beds to psychiatric beds, contingent on OASAS and OMH approval.

Four of the six hospitals slated for closure, with an associated 1,100 beds, have closed. The other two will soon be closed; Parkway will be closed September 30, 2008, and Westchester Square will be closed December 31, 2008. The Westchester Square closure plan proposes the

sale of the hospital site to NY Presbyterian Hospital to create an extension clinic in order to ensure adequate access to emergency services. The proposal is under consideration as a method of protecting health and safety.

The Department has unilaterally terminated Methodist's and Community Hospital's authority to operate as independent hospitals as of June 30, 2011, and anticipates that the facilities will merge rather than close. The contingency for the consolidation of Peninsula and St. Johns – that they obtain financing – has not been met, and the recommendation therefore has no effect, but the Department will continue to work with them to implement the consolidation. North General has increased its level of affiliation and planning with Mount Sinai, and they are working towards a more complete integration. The Department has approved Queens Hospital's Certificate of Need to add 40 beds. New York Downtown has decertified 74 beds. OMH did not approve the recommendation that Beth Israel convert 80 detoxification beds to psychiatric beds but it did approve the certification of 28 psychiatric beds and a comprehensive psychiatric emergency program and the decertification of 30 detoxification beds. The Department approved Beth Israel's Certificate of Need for the conversion of those 28 beds.

The Commission did not identify excess nursing home capacity in New York City.

2. Long Island Region

The acute care recommendations for the Long Island region were characterized by a focus on reconfiguration. The report recommended that three Long Island hospitals (Eastern Long Island Hospital, Peconic Medical Center and Southampton Hospital) be joined under a unified governance, that each be substantially reconfigured, that they continue joint planning with a fourth hospital (Brookhaven), and develop an affiliation with University Hospital (SUNY)

at Stony Brook. Two other hospitals (St. Charles and J.T. Mather) were, contingent on the approval of OASAS and OMH, to exchange services, with St. Charles also downsizing beds and eliminating its emergency department. Two more (Nassau University Medical Center (“NUMC”) and Long Beach Medical Center) were to downsize by a combined 159 beds; NUMC was also to reconfigure its beds.

The Report also recommended that one nursing home (Brunswick Hospital Center) downsize all of its beds, another (A. Holly Patterson) rebuild a smaller (approximately 300 bed) facility to replace its current 589 beds facility, and a third (Cold Spring Hills Center for Nursing and Rehabilitation) downsize by 90 beds and add services.

The State has approved the joining of the three Long Island hospitals (subject to standard contingencies); the hospitals continue their joint planning with Brookhaven, and have entered affiliation agreements with Stony Brook. The contingency that OMH and OASAS approve the bed transfers between St. Charles and J.T. Mather did not occur, so that recommendation did not go into effect. The State did, however, have St. Charles eliminate 70 of the approximately 77 beds recommended for downsizing in the Report. (It also retained its emergency department, as described above.) One hundred, forty two of the approximately 159 recommended beds at NUMC and Long Beach have been eliminated, with a few beds being retained at Long Beach to ensure financial viability, as intended by the Commission.

The downsizing of Brunswick nursing home is complete, a Certificate of Need for a rebuilt A. Holly Patterson facility has been contingently approved at a capacity of 320 beds (to ensure financial feasibility), and Cold Spring Hills has downsized and service additions are underway.

3. Hudson Valley Region

The Hudson Valley region stretched from Westchester County, just north of New York City, to just south of Albany. Recommendations for the Hudson Valley focused significantly on reconfigurations. Kingston Hospital and Benedictine Hospital in Kingston, New York (a small, upstate city), were to join under a common parent; Sound Shore Hospital and Mount Vernon Hospital, related hospitals in Westchester, were to substantially alter their bed configurations; and Orange Regional Medical Center was, contingent on financing, to close its campuses and rebuild a smaller new facility. Community Hospital in Dobbs Ferry was to close, and Westchester Medical Center, a tertiary and quaternary facility in Westchester, was to undertake a thorough evaluation and strategic planning process. Three nursing homes were to eliminate approximately 340 beds, and the Andrus-on-Hudson facility was to downsize all of its 247 beds. In addition, the existing nursing homes were to add various non-institutional services.

The recommended hospital reconfigurations are all complete or substantially complete. Kingston and Benedictine have entered into a formal agreement to join under a common parent and their Certificate of Need application to formalize that arrangement has been approved (subject to fairly typical contingencies). Sound Shore and Mount Vernon have altered their bed configurations. Orange Regional has obtained financing and begun construction of a brand-new, smaller hospital. Dobbs Ferry is scheduled to close on December 31, 2008, and its site will be taken over for a small demonstration project of the Commission-recommended hybrid model. Westchester Medical Center has completed a significant strategic planning process.

The nursing home downsizings are also substantially complete. Three hundred of the 340 beds have been eliminated. The 40 beds scheduled to be eliminated in Sullivan County are now

scheduled for elimination in 2013; they will not be eliminated if there is continued need for the beds in the county, and to protect the public health. The closure of Andrus-on-Hudson has been stayed by the Federal courts.

4. Central Region

A significant portion of the Commission's recommendation for this region has already been fully implemented, and health care delivery in this region has been significantly reconfigured, with 149 nursing home beds eliminated and two major system consolidations. One more hospital will be closed on June 30, 2009, and 397 more nursing home beds are scheduled to be eliminated. More specifically, for acute care hospitals, the Commission recommended that SUNY Upstate Hospital and Crouse Hospital join under a common parent and be licensed for approximately 500 to 600 beds; that Auburn Hospital eliminate 91 beds and its obstetrics unit; that Arnot Ogden and St. Joseph's Hospital (Chemung County) explore a merger; and that A.L. Lee Hospital close and that ambulatory care be developed in the City of Fulton. It also recommended that Van Duyn Home and Hospital, a county-owned nursing home, join under a common parent with Community General Hospital; and that four other nursing homes eliminate a total of approximately 550 beds (including through the closure of Lakeside Nursing Home, which the Department determined would adversely impact public health and safety, as described above).

Both of the recommended mergers have been completed and approved by the Department as contract mergers, in the format described above. Auburn Hospital has eliminated 92 beds (although it has retained the obstetrics unit in order to protect the public safety, as described above). Arnot Ogden and St. Joseph's Hospital complied with their mandate by engaging, in

good faith, in intensive discussions to explore a merger, in a process supervised by the Department, although that effort was ultimately unsuccessful. The Department has amended the A.L. Lee Hospital's operating certificate to require the facility to close no later than June 30, 2009, thus permitting time for the development of ambulatory services.

To date, 149 nursing home beds have been eliminated from the Central Region; 397 more are scheduled to be eliminated on or before July 1, 2012.

5. Northern Region

The Northern Region recommendation focused on consolidating the Schenectady acute care delivery and updating and reconfiguring long-term care in Albany and Schenectady. Specifically, Bellevue Women's Hospital was to close, and its services transferred to another provider, and Ellis and St. Clare's Hospitals were to join under common governance. Ann Lee Infirmary and Albany County Nursing Home were to merge, downsize by 345 beds, and rebuild. The Avenue and Dutch Manor nursing homes were also to merge and downsize in a rebuilt facility; Glendale Home was to downsize as well. Combined, these three Schenectady nursing homes were to downsize by approximately 200 beds. (The recommendations literally required a 240 bed reduction, but that figure was based upon an arithmetical error.)

The acute care consolidation is complete, and the hospitals have successfully merged into one facility. One of the nursing home mergers is complete, and the other is in process; 415 of the beds have been eliminated, and another 160 beds will be eliminated when the new Glendale Home is built.

6. Western Region

The Commission's recommendations for the Western region were qualitatively different than those in other parts of the state. In Buffalo, the recommendations contemplated not only eliminating excess capacity, but also replacing that capacity with a world-class health delivery system that could compete with the best national and international health-care delivery systems and could serve as an engine of economic growth for the region. In rural western New York, the recommendations contemplated linking together small rural hospitals in a manner that ensured access for local communities, while maintaining economic viability and clinical excellence. Because these recommendations were qualitatively different and restructured the delivery system across an entire city and region, implementing them required the Department to take a qualitatively different approach, while ensuring that each recommendation was implemented in a reasonable, cost-efficient manner that protected patient health and safety.

In Buffalo, the linchpin of the plan was the integration of two of the three major hospital systems, the Kaleida Health System, and the Erie County Medical Center (ECMC). Once these systems had been consolidated, they were directed to create centers of excellence, including a new heart-vascular center. They were also required to consolidate, both by eliminating two hospitals from the Kaleida system, and by eliminating redundancies in the merged entities. (One of the closed hospitals, DeGraff, was to convert to a nursing home, and the other, Millard Fillmore – Gates Circle, was to transfer its nursing home patients to DeGraff.) St. Joseph's hospital, from the Catholic Health System, was required to close as well.

These recommendations could not be implemented reasonably and efficiently, and in a manner that protected patient safety, without a comprehensive transition strategy. In total, the recommendations called for eliminating emergency departments that received 60,000 patient

visits a year in a city that already faced frequent diversions. While these visits will ultimately be accommodated by the restructured system in Buffalo, the system must first improve its existing primary care infrastructure and expand services in coverage partners.

Similarly, eliminating services that currently exist within the current Kaleida system before establishing centers of excellence to replace them in the new system would throw the market into turmoil, and put the community at risk of losing the very resources needed to create the centers of excellence.

Implementation was complicated for a time by the challenges posed by the Kaleida and ECMC systems. These systems were initially unable to agree on the membership of a board for the newly created parent that would meet the Commission's recommendation, and the Commissioner of Health was compelled to alter the board's membership to enable compliance. Thereafter, despite significant efforts, they were unable to reach agreement on the terms of integration.

The Department submitted proposed legislation to help facilitate the integration; both ECMC and Erie County filed lawsuits seeking to enjoin various activities relating to implementation. With one week left before the compliance deadline, approximately five separate bills had been drafted by various parties, three lawsuits had been filed, and there were two very different draft proposed agreements. Finally, on June 30, 2008, literally the last day before the legislation expired, the parties announced a historic agreement for the integration of the two facilities. Under the agreement, the parties will operate at the direction of a new corporate parent for an interim period, after which they will engage in a full-asset merger.

Accordingly, the Department determined that the following schedule should apply. Construction would begin immediately at the Buffalo General campus of Kaleida and would be designed to create centers of excellence. Construction would be sufficiently complete by June 30, 2009, to allow for the closure of Millard Fillmore – Gates Circle.

At the same time, the Department would review grant applications for expanded primary care services in Buffalo (through a HEAL 6 grant), and for coverage partners for facilities affected by the recommendations (HEAL 7). Those grants may make it possible to close St. Joseph's Hospital and DeGraff Hospital in a manner that protects patient safety.

St. Joseph's Hospital lies to the extreme east of Buffalo hospitals, and serves a significant population of senior citizens who, absent the hospital, would be required to travel a significantly greater distance to receive emergency care. In order to implement the recommendation that it close, the Department has terminated St. Joseph's operating certificate effective March 31, 2009; on that day the hospital will close and all beds associated with that hospital will be eliminated.

In order to protect patient safety, the Department will authorize Sisters of Charity to operate an emergency room and up to 123 beds at the former St. Joseph site, to be transferred from the Sisters of Charity Hospital operating certificate. That authority will terminate June 30, 2011 unless the Department determines the need to extend that date to protect patient safety. Similarly, the Department has terminated DeGraff Hospital's authority to operate a hospital, effective June 30, 2011.

At the conclusion of this process, the Buffalo health-care delivery system will have been safely transformed. Three hospitals will have closed; two major systems will have integrated; and more than 500 beds will have been eliminated.

This timeline has had some impact on the recommendations for nursing homes as well, since Millard Fillmore – Gates Circle and DeGraff were to consolidate their nursing homes upon the closure of the hospitals. Nursing home capacity in Buffalo is in a somewhat precarious state; recently, the Department found it necessary to appoint Kaleida Health as a receiver of Grace Manor, a 167 bed nursing home serving central Buffalo that was in danger of closing. Deaconess Nursing Home, also a Kaleida facility, is in less than excellent condition, and the Department believes the facility should be upgraded. Additionally, it is not clear that additional nursing home beds are needed in southern Niagara County. The Department will continue to review the status of nursing homes in Buffalo and Niagara County to ensure that the recommendations are implemented in a reasonable, cost-efficient manner that protects patient health and safety.

In rural western New York, the Department has been highly successful in implementing the Commission’s recommendations. Two hospitals (Lockport and Intercommunity) will have merged; and, TLC Lakeshore, TLC Tri-County and Brooks Hospital will have become integrated through a common, active parent, empowered to make decisions affecting the location of health care services.

E. Primary Care Development

Much of the groundwork for primary care and ambulatory services statewide was established with the Primary Care Initiative (PCI), funded as part of the Health Care Reform Act of 1996 (HCRA) and the Community Health Care Conversion Demonstration Project (CHCCDP), part of the 1115 waiver for mandatory Medicaid managed care. In 2001, \$28

million in PCI funding was awarded to 67 providers to improve access to and utilization of quality, affordable and timely primary care services for underserved populations.

CHCCDP provided \$1.25 billion over five cycles to hospitals to support necessary changes to their operations to transition to a managed care environment. To make this transition, New York needed to invest in expanding access to primary care services and reducing reliance on emergency rooms for non-urgent care. CHCCDP was successful in increasing access to primary care services by funding conversions of inpatient space to primary care capacity, adding staff to provide primary care services, and supporting collaborations between hospitals and community based organizations for the provision of primary care services. The outcome of this expansion was the addition of more than 3.6 million primary care visits, more than 1,100 full time equivalent staff, and the addition of almost 1,600 primary care exam rooms along with more than 738,000 square feet of additional primary care space. Building on these accomplishments, the Commission mandates removed more than 3,400 inpatient beds from the system, and expanded availability of primary and ambulatory services in place of much of the inpatient capacity.

Additional funding through the HEAL grants will support these primary care expansions, especially the funding provided under HEAL 6. In 2008, the Department issued a Request for Grant Applications (RGA) for HEAL 6. This RGA is to provide up to \$100 million for the purpose of (1) developing new primary care capacity to increase access to care by under-served populations, and (2) enhancing the quality and effectiveness of existing primary care services, through improved efficiency, broadened scope of services, better targeting of services to identified health problems in the community, and improved quality of care. The \$100 million in

grant funding was made available for such activities as renovating facilities, expanding hours, expanding services, transitioning from emergency departments to urgent care centers, shared services, quality improvements and information systems. Proposed activities are to be based on the concept of patient-centered care, aimed at better primary care (including prevention and health promotion) at the point of delivery. A total of 196 applications have been submitted, and are currently being reviewed by the Department.

DETAILED COMPLIANCE SCHEDULE

NEW YORK CITY REGION ACUTE CARE RECOMMENDATIONS

Recommendation 1

Facilities New York Methodist Hospital (Kings County)
New York Community Hospital of Brooklyn (Kings County)

Recommended Action

It is recommended that New York Methodist Hospital and New York Community Hospital of Brooklyn merge into a single entity with two separate campuses. It is further recommended that Methodist downsize by 60 to 510 beds, and that NY Community Hospital downsize by 40 beds to 90 beds and add ambulatory services.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008, the Department revoked the operating certificates of these two facilities, effective June 30, 2011. The hospitals are required to submit a plan no later than September 30, 2008, outlining a timeline and procedure for establishing the newly merged entity prior to that date.

Analysis by the Department has determined that these facilities have emerged as significant coverage partners for the closing Victory Memorial Hospital. The analysis showed that the facilities were operating for some periods at more than 100% capacity; thus the excess capacity identified by the Commission no longer existed. Accordingly, in order to protect patient safety, the Department determined these beds could not be eliminated at this time. However, the facilities are required to submit a report of occupancy levels no later than June 30, 2009, at which time the need for these beds will be reassessed.

Full implementation of this recommendation will be complete upon the merger of these facilities on or before June 30, 2011.

The addition of ambulatory services at New York Community Hospital of Brooklyn will result in the increased use of such services. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Recommendation 2

Facility Victory Memorial Hospital (Kings County)

Recommended Action

It is recommended that Victory Memorial Hospital close in an orderly fashion. Following this planned closure, it is further recommended that the site be converted under new sponsorship to a diagnostic and treatment center and/or as a facility offering a continuum of long term care services that would be compatible with the remaining Victory Nursing Home.

Actions/Steps Taken Toward Compliance

This facility's inpatient services have closed. The physical facility is being sold through a bankruptcy proceeding. The site is being converted under the sponsorship of Downstate Medical Center to an extension clinic, which has received emergency approval from the Department pending the submission of a Certificate of Need. A nursing home operator is prepared to assume operation of the nursing home. As of June 30, 2008, a plan was being prepared for approval of this transaction by the bankruptcy court, which was expected to approve it.

Implementation of this recommendation is substantially complete. Full implementation will be complete upon approval of the bankruptcy court and of the Downstate Certificate of Need application.

A HEAL grant of up to \$25 million has been awarded to support closure costs.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Recommendation 3

Facilities Peninsula Hospital Center (Queens County)
 St. John's Episcopal Hospital South Shore (Queens County)

Recommended Action

It is recommended that Peninsula Hospital Center downsize by approximately 99 beds to approximately 173 beds and that St. John's Episcopal Hospital downsize by approximately 81 beds to approximately 251 beds. Contingent upon financing, it is recommended that Peninsula Hospital Center and St. John's Episcopal Hospital merge and rebuild a single facility with approximately 400 inpatient beds, and provide comprehensive emergency, inpatient, psychiatric and ambulatory services.

Actions/Steps Taken Toward Compliance

Peninsula Hospital Center has downsized by 99 beds to 173 beds and St. John's Episcopal Hospital has downsized by 75 beds to 257 beds. The operating certificates for these facilities have been amended to reflect the downsized capacity. The Department met with the facilities on numerous occasions to help facilitate the building of a new facility. By letter dated June 12, 2008, the facilities advised the Department that the financing contingency had not been met, and the requirement that they build a new facility did not become effective. Both facilities have committed to continue working to reach this Commission goal.

Implementation of this recommendation is complete, and no further steps are required for compliance. The Department will continue to work with the facilities to help them merge and rebuild a single facility, if financing becomes available.

A HEAL grant of up to \$750,000 has been awarded to support costs associated with the feasibility study.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Recommendation 4

Facility Queens Hospital Center (Queens County)

Recommended Action

It is recommended that Queens Hospital Center add approximately 40 medical/surgical beds.

Actions/Steps Taken Toward Compliance

The Department has approved a Certificate of Need application for the addition of 40 medical/surgical beds at this facility. Construction has been approved contingent upon acceptable architectural plans and other routine contingencies.

A HEAL grant of up to \$12 million has been awarded to support renovations to add the beds.

Implementation of this recommendation will be complete upon the completion of construction.

Recommendation 5

Facility Parkway Hospital (Queens County)

Recommended Action

It is recommended that Parkway Hospital close in an orderly fashion.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008, the Department revoked this facility's operating certificate, effective September 30, 2008.

Implementation of this recommendation should be complete on September 30, 2008, when the facility closes. Additional steps will include development of an acceptable plan of closure, due to the Department July 24, 2008, to ensure the health and safety of patients. Certain proceedings related to this facility are still in the bankruptcy court, but the Department does not anticipate that the bankruptcy court will interfere with the orderly closure of the facility.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Recommendation 6

Facility New York Westchester Square Medical Center (Bronx County)

Recommended Action

It is recommended that New York Westchester Square Medical Center close in an orderly fashion.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008, the Department revoked the facility's operating certificate, effective December 31, 2008. The facility will close and its beds will be eliminated on that date. The facility is in bankruptcy and is submitting a revised closure plan which may include a proposal to sell the property to another hospital, which would then propose to open an emergency department and transfer its acute care beds to the site.

The Department will evaluate the proposal when received to determine if this configuration is necessary to protect patient health and safety and if it is economically viable.

A HEAL grant of \$5.8 million has been awarded to support closure costs.

Implementation of this recommendation should be complete on December 31, 2008, when the facility closes. Additional steps will include development of an acceptable plan of closure to ensure the health and safety of patients. This facility is in bankruptcy, but the Department does not anticipate that the bankruptcy court will interfere with the orderly closure of the facility.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

Recommendation 7

Facility Cabrini Medical Center (New York County)

Recommended Action

It is recommended that Cabrini Medical Center close in an orderly fashion.

Actions/Steps Taken Toward Compliance

This facility closed inpatient services on February 29, 2008 and its emergency department on March 12, 2008.

A HEAL grant of up to \$14 million was awarded to support closure costs.

Implementation is complete and no further steps are necessary to obtain full compliance.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

Recommendation 8

Facility Beth Israel Medical Center - Petrie Campus (New York County)

Recommended Action

It is recommended that Beth Israel–Petrie Campus convert approximately 80 detoxification beds to approximately 80 psychiatric beds, provided that the Commissioner of Mental Health and the Commissioner of Alcoholism and Substance Abuse Services approve such changes.

Actions/Steps Taken Toward Compliance

The Office of Mental Health did not approve this recommendation but it did approve the certification

of 28 psychiatric beds and a comprehensive psychiatric emergency program and the decertification of 30 detoxification beds. On June 30, 2008, the Department approved a certificate of need for the conversion of those 28 beds.

A HEAL grant of up to \$5 million has been awarded to support the conversion.

Implementation of this recommendation will be complete upon the completion of construction.

Recommendation 9

Facility North General Hospital (New York County)

Recommended Action

It is recommended that North General Hospital enter into a passive parent corporate relationship with Mount Sinai Medical Center.

Actions/Steps Taken Toward Compliance

Mt. Sinai and North General have a close working relationship on clinical issues and are now actively planning for the future structure of services in the North General area. Their discussions are being actively supervised by the Department and the end result could be a final relationship beyond a passive parent relationship.

Implementation of this recommendation is complete and the Department will work toward implementing the integration in the immediate future.

Recommendation 10

Facilities St. Vincent's Midtown Hospital (New York County)
St. Vincent's Manhattan (New York County)

Recommended Action

It is recommended that St. Vincent's Midtown Hospital close in an orderly fashion. It is further recommended that approximately 12 psychiatric beds currently operated by St. Vincent's Midtown Hospital be added by St. Vincent Catholic Medical Center system (SVCMC) and operated by St. Vincent's Manhattan, provided that the Commissioner of Mental Health approves such additions. Should St. Vincent's Manhattan deem that to be impracticable, it is recommended that such 12 psychiatric beds instead be added elsewhere in New York County by another sponsor, provided that the Commissioner of Mental Health approves such additions. It is further recommended that ambulatory care services currently provided by St. Vincent's Midtown Hospital be maintained or developed in this neighborhood by SVCMC or another sponsor.

Actions/Steps Taken Toward Compliance

St. Vincent's Midtown Hospital has closed. In addition, 12 psychiatric beds previously operated by St. Vincent's Midtown Hospital were added by St. Vincent Catholic Medical Center system (SVCMC) and operated by St. Vincent's Manhattan. St. Vincent's Midtown Hospital did not maintain ambulatory care services in this neighborhood and the Department is evaluating proposals to develop ambulatory and primary care services under other sponsors including HEAL 6 applicants.

A HEAL grant of up to \$17.1 million has been awarded to support the closure costs.

Implementation of this recommendation is complete as it relates to this facility.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Recommendation 11

Facility New York Downtown Hospital (New York County)

Recommended Action

It is recommended that New York Downtown Hospital decertify approximately 70 medical surgical and 4 pediatric beds, reducing its licensed capacity from 254 to 180. It is further recommended that New York Downtown Hospital discontinue its inpatient pediatric services and that these services be added to other facilities. It is further recommended that New York Downtown Hospital reorganize its outpatient clinics under new sponsorship.

Actions/Steps Taken Toward Compliance

New York Downtown Hospital has decertified 70 medical surgical and 4 pediatric beds, reducing its licensed capacity from 254 to 180. It has discontinued its inpatient pediatric services, and these services have been added to other facilities. New York Downtown Hospital has reorganized its outpatient clinics under new sponsorship. This facility received a HEAL grant of \$6.2 million for downsizing and reorganizing clinics.

Implementation of this recommendation is complete and no further steps are required.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Recommendation 12

Facility Manhattan Eye Ear and Throat Hospital (New York County)

Recommended Action

It is recommended that Manhattan Eye Ear and Throat Hospital downsize all 150 beds.

Actions/Steps Taken Toward Compliance

This facility downsized all 150 beds and completed a full asset merger with Lenox Hill Hospital.

A HEAL grant of up to \$25.1 million has been awarded to support the reconfiguration.

Implementation of this recommendation is complete and no further steps are required.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

NEW YORK CITY REGION LONG-TERM CARE RECOMMENDATIONS

Recommendation 1

Facility Split Rock Rehabilitation and Health Care Center (Bronx County)

Recommended Action

It is recommended that Split Rock Rehabilitation and Health Care Center close, downsize or convert, contingent on the determination of the Commissioner of Health, after a comprehensive review of the facility in light of the Commission's analytic framework, that such closure, downsizing or conversion would be consistent with the mandate and other recommendations of the Commission.

Actions/Steps Taken Toward Compliance

The Health Department conducted a comprehensive study in accordance with the requirements of this recommendation and determined that closure, downsizing, or conversion would not be consistent with the mandate and other recommendations of the Commission.

Implementation of this recommendation is complete and no further steps are necessary for compliance.

LONG ISLAND REGION ACUTE CARE RECOMMENDATIONS

Recommendation 1

Facilities Eastern Long Island Hospital (Suffolk County)
 Southampton Hospital (Suffolk County)
 Peconic Medical Center (Suffolk County)
 Brookhaven Memorial Medical Center (Suffolk County)
 University Hospital at Stony Brook (Suffolk County)

Recommended Action

It is recommended that Eastern Long Island Hospital, Peconic Medical Center, and Southampton Hospital be joined in a single unified governance structure with full authority to develop a strategic plan which restructures the hospitals to ensure access to services, rationalize bed capacity, minimize duplication of services, create management efficiencies and develop an integrated health care delivery system for the North and South Forks, Riverhead and the communities immediately to the west. It is further recommended that the Commissioner refrain from either approving any applications that have been or will be filed by any of the facilities or providing any other consent requested by any of the facilities, prior to the execution by the facilities of a binding agreement to join under a single unified governance structure, except where such approval or consent is necessary to protect the life, health, safety and welfare of facility patients, residents or staff.

It is recommended that these hospitals develop an affiliation with University Hospital at Stony Brook in order to gain access to tertiary care services and the other benefits inherent in relationship with an academic medical center.

It is recommended that Brookhaven Memorial Hospital continue joint planning with the three East End hospitals, and explore becoming part of the new entity.

It is further recommended that the hospitals implement the following bed and service reconfigurations:

Southampton Hospital, currently certified for 168 beds, should downsize its certified bed capacity to 125, to be comprised of 103 medical/surgical, 3 pediatric, and 19 obstetrics, for a reduction of 37 medical surgical and 6 pediatric beds.

Brookhaven Memorial Hospital, currently certified for 321 beds, should increase its certified bed capacity to 326, to be comprised of 262 medical/surgical, 14 obstetrics, 10 pediatric, and 40 psychiatry,

for a reduction of 10 obstetrics and 5 pediatric beds, and an addition of 20 psychiatry beds.

Eastern Long Island Hospital, currently certified for 80 beds, should expand its certified bed capacity to 85, to be comprised of 37 medical surgical, 5 alcohol detoxification, 23 psychiatry, and 20 alcohol rehabilitation, for an addition of 5 psychiatry beds.

Peconic Bay Medical Center, currently certified for 154 beds, should downsize its certified bed capacity to 140 beds, comprised of 114 medical/surgical, 8 obstetrics, and 18 physical medicine rehabilitation beds, for a reduction of 32 medical surgical beds, and a transfer of 18 certified physical medicine rehabilitation beds from University Hospital at Stony Brook.

University Hospital should downsize 18 certified, but not available physical medicine rehabilitation beds. These 18 beds should be added to Peconic Bay Medical Center.

Actions/Steps Taken Toward Compliance

Eastern Long Island Hospital, Peconic Medical Center, and Southampton Hospital have entered into a binding agreement to be joined in a single unified governance structure with full authority to develop a strategic plan which restructures the hospitals to ensure access to services, rationalize bed capacity, minimize duplication of services, create management efficiencies and develop an integrated health care delivery system for the North and South Forks, Riverhead and the communities immediately to the west. The Public Health Council has approved a Certificate of Need to effect the integration.

Two of the three hospitals have entered an affiliation agreement with University Hospital at Stony Brook. The third hospital, Southampton, has terminated its affiliation agreement with New York Presbyterian hospital and has agreed to and signed an affiliation agreement with Stony Brook but is awaiting signature by Stony Brook.

Brookhaven Memorial Hospital has continued joint planning with the three East End hospitals, and is exploring becoming part of the new entity.

Southampton Hospital has downsized its certified bed capacity to 125, comprised of 103 medical/surgical, 3 pediatric, and 19 obstetrics, for a reduction of 37 medical surgical and 6 pediatric beds.

Brookhaven Memorial Hospital increased its certified bed capacity to 326, comprised of 262 medical/surgical, 14 obstetrics, 10 pediatric, and 40 psychiatry, for a reduction of 10 obstetrics and 5 pediatric beds, and an addition of 20 psychiatry beds.

Eastern Long Island Hospital expanded its certified bed capacity to 85, comprised of 37 medical surgical, 5 alcohol detoxification, 23 psychiatry, and 20 alcohol rehabilitation, for an addition of 5 psychiatry beds.

Peconic Bay Medical Center downsized its certified bed capacity to 140 beds, comprised of 114

medical/surgical, 8 obstetrics, and 18 physical medicine rehabilitation beds, for a reduction of 32 medical surgical beds. It also added 18 certified physical medicine rehabilitation beds.

A HEAL grant of up to \$24 million was awarded the Suffolk Health Network to support costs associated with each hospital's reconfiguration projects.

Implementation of this recommendation is substantially complete.

Recommendation 2

Facility University Hospital at Stony Brook (Suffolk County)

Recommended Action

It is recommended that University Hospital at Stony Brook be given the operational and governance freedom to enter into meaningful partnerships with other hospitals so as to create a health care delivery system that will better serve the needs of the region.

Actions/Steps Taken Toward Compliance

This facility retained a consultant to assist it in partnering with area hospitals. The consultant was required to:

- Define a set of best practices for physician and hospital affiliation models that are mutually supportive that could be applied to hospitals and physician practices in Suffolk County and Nassau County.
- Apply market-specific information to these best practices to recommend which are most feasible for SBUMC from a market and financial standpoint. This would include evaluating the start-up and the ongoing administrative costs of such affiliations.
- Identify roadblocks (i.e. regulatory issues) and recommend how to proceed to deal with these issues.
- Lead retreats with the appropriate SBUMC and non-SBUMC stakeholders to work out the final strategic/models.
- Provide necessary templates and support to legal staff as they develop the language for the agreements.
- Recommend an approach for disclosing these strategies and to broker/negotiate the terms of appropriate agreements with the hospitals and community physicians.

A HEAL grant of up to \$2.85 million was awarded to support consultant costs.

Implementation of this recommendation is ongoing by its nature. The Department will work with the facility to ensure it continues to pursue meaningful partnerships to improve the quality of healthcare in the region.

Recommendation 3

Facilities St. Charles Hospital (Suffolk County)
 J.T. Mather Memorial Hospital (Suffolk County)

Recommended Action

It is recommended that St. Charles Hospital downsize 77 medical/surgical beds, convert the remaining 37 medical/surgical beds to psychiatric and alcohol detoxification beds, provided that the Commissioner of Mental Health and the Commissioner of Alcoholism and Substance Abuse Services approve such conversions, and discontinue its . It is further recommended that J.T. Mather Memorial Hospital convert all 37 of its psychiatric and alcohol detoxification beds to medical/surgical beds, provided that the Commissioner of Mental Health and the Commissioner of Alcoholism and Substance Abuse Services approve such conversions. It is further recommended that the Commissioner refrain from either approving any applications that have been or will be filed by either facility or providing any other consent requested by either facility, prior to the implementation of the foregoing service reconfiguration, except where such approval or consent is necessary to protect the life, health, safety and welfare of facility patients, residents or staff.

Actions/Steps Taken Toward Compliance

St. Charles Hospital downsized 70 beds. St. Charles did not convert the remaining 37 medical/surgical beds to psychiatric and alcohol detoxification beds because the Commissioner of Mental Health and the Commissioner of Alcoholism and Substance Abuse Services did not approve such conversions. In order to protect patient safety, St. Charles retained its emergency department.

J.T. Mather Memorial Hospital did not convert any of its psychiatric and alcohol detoxification beds to medical/surgical beds because the Commissioner of Mental Health and the Commissioner of Alcoholism and Substance Abuse Services did not approve such conversions.

A HEAL grant of up to \$3 million was awarded to St. Charles to assist in implementing this recommendation.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

Implementation of this recommendation is complete and no additional action is necessary.

Recommendation 4

Facility Nassau University Medical Center (Nassau County)

Recommended Action

It is recommended that Nassau University Medical Center downsize its certified capacity of 631 to 530 certified beds, to be comprised of 173 medical/surgical, 26 pediatric, 30 obstetrics, 25 physical medicine rehabilitation, 120 psychiatry, 13 child psychiatry, 20 alcohol detoxification, 30 substance abuse rehabilitation, 10 burn care, 33 intensive care, 6 pediatric intensive care, 28 NICU, and 16 prison health beds. This represents a downsizing of 133 medical/surgical, 20 pediatric, 6 obstetrics, 5 physical medicine/rehabilitation, and 10 NICU beds, together with an addition of 30 psychiatry, 13 child psychiatry, and 30 substance abuse rehabilitation beds, provided that the Commissioner of Mental Health and the Commissioner of Alcoholism and Substance Abuse Services approve such additions.

Actions/Steps Taken Toward Compliance

Nassau University Medical Center has downsized its certified capacity of 631 to 530 certified beds.

A HEAL grant of up to \$23 million for debt retirement and construction has been awarded.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

Implementation of this facility is complete and no additional action is necessary.

Recommendation 5

Facility Long Beach Medical Center (Nassau County)

Recommended Action

It is recommended that Long Beach Medical Center downsize its bed capacity to approximately 145 beds. Contingent upon New York State’s development of new reimbursement options and alternative institutional models, Long Beach should reconfigure as a smaller facility focused on emergency and ambulatory care services with a more limited number of inpatient beds and linkages to a more comprehensive partners.

Actions/Steps Taken Toward Compliance

This facility has decertified 41 beds, bringing the count to 162. The facility made a compelling case to reduce fewer beds so that it could continue to qualify for threshold funding. The recommendation made clear that this facility needed to maintain viability in order to provide baseline hospital services to the community. The Department determined that this was a reasonable, cost-efficient means of implementation since the facility could not eliminate any more beds and maintain financial feasibility.

A HEAL award of up to \$11.2 million was granted.

Implementation of this recommendation is complete and no additional action is necessary.

LONG ISLAND REGION LONG-TERM CARE RECOMMENDATIONS

Recommendation 1

Facility A. Holly Patterson Extended Care Facility (Nassau County)

Recommended Action

It is recommended that A. Holly Patterson Extended Care Facility (AHP) downsize by approximately 589 RHCF beds to approximately 300 RHCF beds, and transfer its sub-acute services to the empty floors of the Nassau University Medical Center (NUMC), provided that such sub-acute services continue to be operated by AHP. It is further recommended that AHP rebuild a smaller facility on its existing campus, and add a 150-bed ALP and possibly other non-institutional services.

Actions/Steps Taken Toward Compliance

The facility has decertified 300 beds, and submitted a Certificate of Need application to construct a new 320 bed facility; the Department has amended the facility's operating certificate to reduce capacity to 320 beds effective February 15, 2011. Because a county-operated ALP would not be financially feasible, the ALP will be administered by a newly established non-profit entity.

A HEAL grant of up to \$14 million was awarded.

Implementation of this recommendation will be complete upon the completion of construction and no additional steps will be required thereafter.

Recommendation 2

Facility Cold Spring Hills Center for Nursing and Rehabilitation (Nassau County)

Recommended Action

It is recommended that Cold Spring Hills Center for Nursing and Rehabilitation downsize by approximately 90 RHCF beds (one building) to approximately 582 RHCF beds, and add a 24 bed Ventilator unit, an evening session for the ADHCP, and a 12-station hemo-dialysis center on the existing campus.

Actions/Steps Taken Toward Compliance

This facility has downsized by 90 RHCF beds (one building) to 582 RHCF beds, and has begun construction to add a 24 bed Ventilator unit and an evening session for the ADHCP. The facility has identified a provider for the 12-station hemo-dialysis center to be opened on the existing campus. A Certificate of Need is expected from this hemo-dialysis provider in August 2008.

A HEAL grant of up to \$992,500 was awarded to support this recommendation.

Implementation of this recommendation is substantially complete. Upon completion of construction and approval of the proposed dialysis unit, no further actions will be necessary.

Recommendation 3

Facility Brunswick Hospital Center, Inc. (Suffolk County)

Recommended Action

It is recommended that Brunswick Hospital Center, Inc. downsize all 94 RHCF beds and close as an Article 28 long term care facility. It is further recommended that a 50-bed ALP and possibly other non-institutional services be added somewhere in Suffolk County by another sponsor, pending completion of an RFP process.

Actions/Steps Taken Toward Compliance

This facility surrendered its operating certificate in June 2007. A HEAL 4 award of up to \$1.9 million was awarded. The Department of Health awarded the ALP to another provider in the county through an RFP process.

Implementation of this recommendation is complete.

HUDSON VALLEY REGION ACUTE CARE RECOMMENDATIONS

Recommendation 1

Facilities Kingston Hospital (Ulster County)
 Benedictine Hospital (Ulster County)

Recommended Action

It is recommended that Kingston and Benedictine Hospitals be joined under a single unified governance structure, provided that Kingston Hospital continues to provide access to the reproductive services currently offered at such hospital at a location proximate to Kingston Hospital. It is recommended that the joined facility be licensed for approximately 250 to 300 inpatient beds. It is further recommended that the Commissioner refrain from either approving any applications that have been or will be filed by either facility or providing any other consent requested by either facility, prior to the execution by the facilities of a binding agreement to join under a single unified governance structure, except where such approval or consent is necessary to protect the life, health, safety and welfare of facility patients, residents or staff. If Kingston and Benedictine Hospitals fail to execute such an agreement by December 31, 2007, it is recommended that the Commissioner of Health close one of the facilities and expand the other to accommodate the patient volume of the closed facility.

Actions/Steps Taken Toward Compliance

These two facilities have entered into a binding master agreement to join together under Health Alliance, which will serve as the hospitals' single unified governance structure, responsible for strategic planning, service allocations, joint contracting, Certificate of Need applications and other aspects of operations.

Kingston Hospital has created the Foxhall Ambulatory Surgery Center to provide access to reproductive services at location proximate to Kingston Hospital. By letter dated June 24, 2008, the Department issued revised operating certificates to the facilities, reducing the number of licensed beds between them to 300 effective December 31, 2009.

The hospitals' Certificate of Need applications to create the active parent and ambulatory surgery center have been approved by the Public Health Council. The Department has awarded up to \$47.6 million HEAL grant for debt relief and to help fund the consolidation of services for these hospitals, which includes a separate \$4.1 million award for the construction of Foxhall Ambulatory Surgery Center.

Integration of these facilities has begun as they have consolidated back-office operation and eliminated redundant services. Full integration of these facilities, one Catholic and one secular, will be implemented upon the completion of Foxhall Ambulatory Surgery Center, moving reproductive services out of Kingston Hospital, thus allowing Benedictine to fully integrate with Kingston Hospital under Canon Law.

Implementation of this recommendation is substantially complete, and will be fully complete upon the construction of Foxhall Ambulatory Surgery Center. Pursuant to the Certificate of Need approval, certain other typical contingencies must also be satisfied; none is likely to interfere with implementation.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

Recommendation 2

Facilities Sound Shore Medical Center (Westchester County)
 Mt. Vernon Hospital (Westchester County)

Recommended Action

It is recommended that Mt. Vernon Hospital downsize approximately 32 medical/surgical beds, and convert approximately 20 additional medical/surgical beds into a 20 bed transitional care unit. It is further recommended that Mt. Vernon Hospital convert approximately 24 additional medical/surgical beds into a 24 bed mentally impaired chemical abusers (MICA) unit, provided that the Commissioner of Mental Health and the Commissioner of Alcoholism and Substance Abuse Services approve such conversions. It is recommended that Sound Shore Medical Center decertify approximately 9 pediatrics and 60 medical/surgical beds, and convert additional medical/surgical and obstetrics beds into 5 additional Level III NICU beds and 5 detoxification beds.

Actions/Steps Taken Toward Compliance

Mt. Vernon Hospital has downsized 32 medical/surgical beds, and converted 20 additional medical/surgical beds into a 20 bed transitional care unit. Mt. Vernon Hospital has converted an additional 24 medical/surgical beds into a 24 bed mentally impaired chemical abusers (MICA) unit. Sound Shore Medical Center has decertified 9 pediatric and 60 medical/surgical beds and converted additional medical/surgical and obstetrics beds into 5 additional detoxification beds. Conversion of 5 additional beds into Level III NICU beds has been deferred until the hospital finalizes the development of its plan to rehabilitate its existing NICU.

The Department has awarded up to \$12.4 million in HEAL grants to the facilities to assist compliance. The Sound Shore facility is under severe financial stress, and building the 5 bed Level III NICU was determined by the Department to be highly cost-inefficient as a stand alone project but

could be completed as part of a more comprehensive project.

Implementation of this recommendation will be complete when construction of the transitional care unit is done.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

Recommendation 3

Facility Orange Regional Medical Center (Orange County)

Recommended Action

Contingent upon financing, it is recommended that Orange Regional Medical Center close its existing campuses and consolidate its operations at a new, smaller replacement facility that is downsized by approximately 100 beds to approximately 350 beds.

Actions/Steps Taken Toward Compliance

The Department has approved the hospital’s application to close two facilities and construct a new 374 bed facility. Construction of the 374 bed facility began in March 2008 (ahead of schedule) with project completion expected in 2011. The Department awarded HEAL grants of up to \$49 million to support construction.

Implementation of this recommendation will be complete with the construction of the new facility.

The Department will continue to monitor this project through the construction process as well as the transfer process from two existing facilities into one new facility.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services.

Recommendation 4

Facility Community Hospital at Dobbs Ferry (Westchester County)

Recommended Action

It is recommended that Community Hospital at Dobbs Ferry close in an orderly fashion.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008 the Department amended the Community Hospital at Dobbs Ferry operating certificate to expire on December 31, 2008. On that date, Community Hospital at Dobbs Ferry will close as an acute care hospital.

A HEAL grant of up to \$7 million was awarded to support closure costs.

St. Johns Riverside Hospital, which is Community Hospital's passive parent, has proposed to utilize the location of the former Dobbs Ferry Hospital to create a hybrid model facility. The Commission recommended that the State or industry collaborate to test and develop new "hybrid models" which would maintain characteristics of a traditional hospital while eliminating redundant features.

The hybrid delivery model is intended to improve patient outcomes by focusing on preventable hospitalizations, and emphasizing primary and ambulatory services.

Implementation of this recommendation will be complete on December 31, 2008. No further Department action is necessary to complete implementation.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Recommendation 5

Facility Westchester Medical Center (Westchester County)

Recommended Action

It is recommended that Westchester Medical Center evaluate the clinical and financial viability of reestablishing the Fareri Children's Hospital as an independent entity and determine the impact of such change on access to and quality of care in the Hudson Valley region as well as the impact on both the Medical Center and the Children's Hospital. It is further recommended that Westchester Medical Center conduct a strategic planning process to evaluate its clinical service mix and identify opportunities for reconfiguration that is non-duplicative of services in community hospitals.

Actions/Steps Taken Toward Compliance

The facility conducted the evaluation and strategic planning process required by this recommendation. Implementation is complete, no further steps are required.

A joint HEAL grant with Taylor Care Center of up to \$6.9 million was awarded to support costs associated with study.

HUDSON VALLEY REGION LONG-TERM CARE RECOMMENDATIONS

Recommendation 1

Facility The Valley View Center for Nursing Care and Rehab (Orange County)

Recommended Action

It is recommended that Valley View Center for Nursing Care and Rehab downsize by approximately 160 RHCf beds to approximately 360 RHCf beds and add an 80-bed ALP, a 30 slot ADHCP and possibly other non-institutional services in the vacated building. In the remaining buildings, it is recommended that the facility convert 50 RHCf beds to a 20-bed ventilator-dependent unit and a 30-bed behavioral step-down unit.

Actions/Steps Taken Toward Compliance

The Valley View Center has downsized by 160 RHCf beds to 360 RHCf beds; and has added a 30 slot ADHCP. The Department has approved its application to convert 50 RHCf beds to a 20 bed ventilator dependent unit. It is creating a 30 bed behavioral step-down unit. Given it is a county operated facility, the Department determined that is was not reasonable or cost efficient for them to build an ALP. On June 30, 2008, the Department released an RFA to ensure sufficient ALP capacity in Orange County.

A HEAL grant of up to \$7.8 million was awarded to support costs associated with the facility's reconfiguration.

Recommendation 2

Facility Andrus-on-Hudson (Westchester)

Recommended Action

It is recommended that Andrus-on-Hudson downsize all 247 RHCf beds and add 140 ALP beds and possibly other non-institutional services.

Actions/Steps Taken Toward Compliance

On June 30, 2008, U.S. District Court Judge Stein extended the temporary restraining order previously issued by U. S. District Judge Brieant, which enjoined the Department from implementing the Commission's recommendation concerning Andrus, over the State's objections and applications for relief. Judge Stein denied the Department's request that the temporary

restraining order be modified to allow the Department to issue a revised operating certificate prior to the expiration of its powers as of June 30, 2008, with the revised operating certificate immediately being stayed. The Department is currently reviewing its legal options.

Recommendation 3

Facility Taylor Care Center (Westchester County)

Recommended Action

It is recommended that Taylor Care Center downsize by approximately 140 RHCF beds to approximately 181 RHCF beds.

Actions/Steps Taken Toward Compliance

Taylor Care Center has downsized by 140 RHCF beds to 181 RHCF beds.

Implementation of this recommendation is complete and no further action is necessary.

A joint HEAL grant with Westchester Medical Center of up to \$6.9 million was awarded to support costs associated with downsizing.

Recommendation 4

Facility Achieve Rehabilitation (Sullivan County)

Recommended Action

It is recommended that Achieve Rehabilitation downsize by approximately 40 RHCF beds to approximately 100 RHCF beds.

Actions/Steps Taken Toward Compliance

The Department has determined that eliminating these beds immediately would make the facility financially unviable and it would be forced to close. Immediate closure of the facility would be inconsistent with the recommendation and would endanger patient safety.

Accordingly, the Department has revised the facility's operating certificate to downsize by forty beds effective June 30, 2013. At that time, the facility's continued authority to operate the forty beds will be reconsidered, taking into account the continued need for the beds, and the quality of care.

Recommendation 5

Facility Sky View Rehabilitation and Health Care Center (Westchester)

Recommended Action

It is recommended that Sky View Rehabilitation and Health Care Center close, downsize or convert, contingent on the determination of the Commissioner of Health, after a comprehensive review of the facility in light of the Commission's analytic framework, that such closure, downsizing or conversion would be consistent with the mandate and other recommendations of the Commission.

Actions/Steps Taken Toward Compliance

The Health Department conducted a comprehensive study in accordance with the requirements of this recommendation and determined that closure, downsizing, or conversion would not be consistent with the mandate and other recommendations of the Commission.

Implementation of this recommendation is complete and no further steps are necessary for compliance.

NORTHERN REGION ACUTE CARE RECOMMENDATIONS

Recommendation 1

Facility Bellevue Woman’s Hospital (Schenectady County)

Recommended Action

It is recommended that Bellevue Woman’s Hospital close in an orderly fashion. It is further recommended that Bellevue Woman’s Hospital’s maternity, neonatal, eating disorders, and mobile outpatient education and screening services be added to another hospital in Schenectady County.

Actions/Steps Taken Toward Compliance

Bellevue Woman’s Hospital has closed. Bellevue Woman’s Hospital’s maternity, neonatal, eating disorders, and mobile outpatient education and screening services have been added to Ellis Hospital in Schenectady County, which is currently operating those services at the former Bellevue site. Ellis intends to further consolidate services within the city of Schenectady.

A HEAL grant of up to \$22.2 million was awarded to Bellevue Hospital. An additional HEAL award of up to \$5.9 million was made to Ellis Hospital to support the transition on the Bellevue campus.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

Implementation of this recommendation is complete and no further actions are necessary for full compliance.

Recommendation 2

Facilities St. Clare’s Hospital (Schenectady County)
Ellis Hospital (Schenectady County)

Recommended Action

It is recommended that St. Clare’s Hospital and Ellis Hospital be joined under a single unified governance structure with full authority to restructure the hospitals, rationalize bed and clinical capacity, minimize duplication of services and capital investment, and develop an integrated health

care delivery system. It is further recommended that the resulting entity downsize from 568 beds to between 300 and 400 beds, representing a downsizing of between 168 and 268 beds. It is further recommended that the Commissioner refrain from either approving any applications that have been or will be filed by either facility or providing any other consent requested by either facility, prior to the execution by the facilities of a binding agreement to join under a single unified governance structure, except where such approval or consent is necessary to protect the life, health, safety and welfare of facility patients, residents or staff. If St. Clare's and Ellis Hospitals fail to execute such an agreement by December 31, 2007, it is recommended that the Commissioner of Health close one of the facilities and expand the other to accommodate the patient volume of the closed facility.

Actions/Steps Taken Toward Compliance

St. Clare's Hospital has closed and Ellis Hospital has assumed operations at the former St. Clare's site. There have been 168 beds eliminated, and Ellis Hospital is operating 400 beds at those two campuses. (It is also operating 55 beds at the Bellevue campus that were added to it as required by the previous recommendation).

A joint HEAL grant of up to \$50 million has been awarded to support the transition.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Implementation of this recommendation is complete and no further actions are necessary for full compliance.

NORTHERN REGION LONG-TERM CARE RECOMMENDATIONS

Recommendation 1

Facilities Ann Lee Infirmary (Albany County)
 Albany County Home (Albany County)

Recommended Action

It is recommended that Ann Lee Infirmary and Albany County Home merge, downsize by at least 345 RHCF beds, rebuild a unified facility, and simultaneously add or contractually provide financial support for non-institutional services.

Actions/Steps Taken Toward Compliance

Together the facilities have eliminated the recommended 345 beds: Ann Lee Infirmary has closed, surrendering its 175 bed operating certificate; Albany County has downsized 170 beds, resulting in a 250 bed operating certificate. Both facilities froze admissions in early 2007. To facilitate the closure of Ann Lee Infirmary, residents of that facility who were not able to be placed elsewhere were transferred to Albany County Nursing Home. As a result, the remaining facility remains slightly above the mandated capacity of 250 (as of this writing, the facility census is 257) and have been given temporary approval for additional capacity while the remaining residents are transitioned.

Planning for a replacement facility is underway, the County has issued a request for proposals for a developer to construct the new facility. Projected completion date for the construction is 2010.

A HEAL grant of up to \$3 million was awarded to assist with non-institutional services.

The facilities have effectively merged through the closure of one of the facilities; implementation will be complete upon the construction of the new facility.

Recommendation 2

Facilities The Avenue and The Dutch Manor (Schenectady County)

Recommended Action

It is recommended that The Avenue and The Dutch Manor merge and downsize both facilities by approximately 48 RHCF beds to approximately 200 RHCF beds in a rebuilt Avenue facility. It is

further recommended that the merged entity add a 50-bed ALP, a 25-slot ADHCP and possibly other non-institutional services in a renovated Dutch Manor facility.

Actions/Steps Taken Toward Compliance

These facilities have downsized by 70 beds. They have submitted a Certificate of Merger to the Department, which was not accompanied by a Certificate of Need application. In a letter dated June 24, 2008, the Department amended the operating certificates of the facilities to terminate effective December 31, 2008 and instructed them to submit a Certificate of Need application for the merger. Upon their merger, a new operating certificate will be issued. To date, the facility has been unable to submit a financially feasible plan to build a new facility or to expand to non-institutional services. The Department will expand non-institutional services through other providers.

A HEAL grant of up to \$1.9 million was awarded.

Implementation of this recommendation is substantially complete.

Recommendation 3

Facility Glendale Home (Schenectady County)

Recommended Action

It is recommended that the Glendale Home downsize by approximately 192 RHCF beds to approximately 168 RHCF beds to be operated in the newest building.

Actions/Steps Taken Toward Compliance

The facility has submitted a Certificate of Need application, currently under Department review, for the construction of a 200 bed facility, scheduled for completion in 2011. This configuration is reasonable and cost-effective, as an arithmetical error infected the Commission's calculation of bed need in Schenectady County, and a 200 bed facility was deemed to be more feasible than a 168 bed facility. The facility will reduce its capacity to 220 beds by December 31, 2008, and eliminate an additional 10 beds in each subsequent year (2009 and 2010).

A HEAL grant of up to \$3 million was awarded to support construction costs

Implementation of this recommendation is substantially complete.

CENTRAL REGION ACUTE CARE RECOMMENDATIONS

Recommendation 1

Facilities Crouse Hospital (Onondaga County)
 University Hospital, SUNY Upstate Health Science Center (Onondaga County)

Recommended Action

It is recommended that Crouse Hospital and SUNY Upstate Medical Center be joined under a single unified governance structure under the control of an entity other than the State University of New York, and that the joined facility be licensed for approximately 500 to 600 inpatient beds. It is further recommended that the Commissioner refrain from either approving any applications that have been or will be filed by either facility or providing any other consent requested by either facility, prior to the execution by the facilities of a binding agreement to join under a single unified governance structure, except where such approval or consent is necessary to protect the life, health, safety and welfare of facility patients, residents or staff.

Actions/Steps Taken Toward Compliance

On June 20, 2007, these two facilities entered into an Affiliation and Collaboration Agreement through which they created a contract merger. That Agreement creates an Affiliation Council, not under the control of State University of New York. The Council is charged, among other things, to identify clinical programs that might be consolidated or affiliated between the hospitals, and to undertake coordinated planning review of proposals by the two hospitals. The facilities will also strengthen and explore opportunities to expand cooperative and clinical educational affiliations between the two entities, and explore further affiliation in areas such as administrative and support services, infrastructure, and information technology. The Department has committed itself to acting on Certificate of Need applications submitted by these facilities only if supported by the Affiliation Council.

Because the recommendation involved the integration of a state agency and a private, not-for-profit corporation, the contract merger was determined by the Department to be a reasonable and cost-efficient means of implementing this recommendation. Accordingly, the Department of Health approved the agreement in August 2007. The Department also awarded a HEAL 4 grant of up to \$5.1 million for Information Technology updates at SUNY Upstate, so that both facilities can share electronic information.

On June 30, 2008, the Department approved the downsizing plan submitted by the facilities to eliminate from Crouse Hospital 70 medical surgical beds. The number of beds eliminated was fewer than that recommended by the Commission. The Department determined that patient flows in the

Syracuse region had changed subsequent to the Commission’s analysis, and that it could not confidently reduce capacity beyond that limit without threatening public health and safety.

By streamlining services and eliminating inpatient capacity, it is anticipated that the implementation of this recommendation will result in some shifting of resources to primary/ambulatory services. These effects are in addition to those described in “The Summary of Implementation” Section E above.

Implementation of this recommendation is substantially complete. However, the Department will continue to actively supervise these facilities through the Certificate of Need process to ensure that the goals reflected in this recommendation, as implemented through the contract merger and bed reductions, will continue to be achieved, and will seek further bed reductions if it determines beds can be safely eliminated.

Recommendation 2

Facility Auburn Hospital (Cayuga County)

Recommended Action

It is recommended that Auburn Hospital downsize by approximately 91 beds to approximately 100 certified beds. It is further recommended that Auburn Hospital discontinue its obstetrical services and that these services be provided by other area hospitals.

Actions/Steps Taken Toward Compliance

The facility has downsized by 92 beds, and a new operating certificate has been issued reflecting 99 certified beds. Included in the reduction was the elimination of 10 obstetrical beds, one-half of current capacity. In order to protect patient health and safety, the Department has approved the continued provision of obstetrical services in the reduced configuration.

This facility currently provides obstetric services primarily to low-income women, who often lack private transportation, and who are at high-risk for not obtaining appropriate pre-natal care. After careful deliberation, the Department determined that eliminating obstetric services at Auburn would jeopardize patient safety. Rather than allow quality concerns to force the elimination of this important public service, the Department supervised the facility’s agreement with Crouse Hospital’s Regional Perinatal Center, for Crouse to provide oversight services. A HEAL 4 grant of up to \$274,000 was awarded to fund the partnership and the enhanced quality-monitoring plan.

By streamlining services and eliminating inpatient capacity, it is anticipated that the implementation of this recommendation will result in some shifting of resources to primary/ambulatory services. These effects are in addition to those described in “The Summary of Implementation” Section E above.

Implementation of this recommendation is complete, and no further action is contemplated. The Department will continue to monitor the quality of the obstetric services program at Auburn to ensure that quality is adequate to protect the public health.

Recommendation 3

Facilities

Joseph's Hospital (Chemung County)
Arnot Ogden Medical Center (Chemung County)

Recommended Action

It is recommended that Arnot Ogden Medical Center and St. Joseph's Hospital participate in discussions supervised by the Commissioner of Health to explore the affiliation of such facilities to end the medical arms race in Elmira that is expending scarce resources on duplicative services and progressively weakening both institutions. St. Joseph's pursuit of a relationship with the Guthrie Health System will not serve the best interests of the Elmira community. It is further recommended that the Commissioner refrain from either approving any applications that have been or will be filed by either facility or providing any other consent requested by either facility, prior to the conclusion of such discussions between Arnot Ogden Medical Center and St. Joseph's Hospital, as determined by the Commissioner of Health, except where such approval or consent is necessary to protect the life, health, safety and welfare of facility patients, residents or staff. If either Arnot Ogden Medical Center or St. Joseph's Hospital fail to participate in such discussions in good faith, as determined by the Commissioner of Health, it is recommended that the Commissioner of Health close that facility and expand the other to accommodate the patient volume of the closed facility.

Actions/Steps Taken Toward Compliance

These facilities have participated in discussions supervised by the Department of Health to explore the affiliation of their facilities to end the medical arms race in Elmira. Under the supervision of the Department of Health, both facilities met numerous times to explore possibilities of affiliation. These meetings continued over a period of nine months, both by phone and in person, and included five joint meetings between board members from both facilities.

A number of ideas were explored, including proposals for an outright merger, partnering on transitional care units, partnering on Medicaid primary care units, a joint outpatient psychiatric clinic, dual sponsorship of a home health agency, shared chronic dialysis, and a combined effort on a sleep disorders center.

The facilities determined that although they could not agree on a formal affiliation, they would jointly pursue projects by creating a transitional care unit, and partnering on a Certified Home Healthcare Agency, Medicaid primary care services and evidence-based medicine.

The Department did not agree to the facilities' proposal to create a transitional care unit and a Certified Home Health Care Agency, since those programs are currently capped or frozen. The Department accepted their proposal to jointly pursue Medicaid primary services and evidence-based medicine in order to meet minimum Commission compliance. Accordingly, by letter dated October 31, 2007, the Department notified the facilities that they were in compliance.

Implementation of this recommendation is complete, and no further action is required.

The facilities' agreement to jointly provide Medicaid primary care services and to collaborate on evidence-based medicine should improve primary and ambulatory care services in the community. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Recommendation 4

Facility

Albert Lindley Lee Hospital (Oswego County)

Recommended Action

It is recommended that Albert Lindley Lee Hospital close all of its 67 beds. It is further recommended that the hospital convert to an outpatient/urgent care center with Article 28 diagnostic and treatment center licensure.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008, the Department amended the facility's operating certificate to terminate effective June 30, 2009. The facility will close its inpatient beds and convert to an outpatient/urgent care center with Article 28 diagnostic and treatment center licensure at that time. Implementation was deferred in order to allow for an orderly transition from a community hospital to a diagnostic and treatment center.

Upon full implementation, the closure of the beds and conversion to a DTC will improve access to ambulatory and primary care in the community.

CENTRAL REGION LONG-TERM CARE RECOMMENDATIONS

Recommendation 1

Facilities Van Duyn Home and Hospital (Onondaga County)
 Community General Hospital's Skilled Nursing Facility (Onondaga County)

Recommended Action

It is recommended that Van Duyn Home and Hospital and Community General Hospital's Skilled Nursing Facility be joined under a single unified governance structure under the control of Community General Hospital, and downsize their combined number of RHCF beds by approximately 75.

Actions/Steps Taken Toward Compliance

These two facilities have joined together under a single unified governance structure through a contract merger that provides for a new corporate entity called County Health Information and Planning Services (CHIPS), under the control of Community General Hospital. CHIPS is authorized to develop and adopt strategic plans and a master facilities plan; and review and comment on Certificate of Need applications as well as the county's annual operating and capital budget for Van Duyn.

This recommendation calls for the integration of two nursing homes under the control of Community General Hospital and the elimination of 75 SNF beds. To meet this mandate, Community General Hospital closed its nursing home entirely, eliminating all 50 of its beds and surrendered its operating certificate. Van Duyn eliminated 13 beds from their operation certificate.

Providers in the City of Syracuse have been engaged in a comprehensive effort to meet the needs of hospital patients who are difficult to place, which has placed greater demands on residential health care facility beds. Eliminating an additional 12 beds would endanger patient safety.

In these circumstances, the Department determined that eliminating 63 of the 75 beds recommended by the Report was reasonable and cost-effective means of implementation and necessary to protect the public health. A HEAL grant of up to \$12.8 million has been awarded to support the downsizing including facility renovations, debt relief, and other costs.

Implementation of this recommendation is complete. The Department anticipates continuing to work with the facility and with CHIPS to improve quality and efficiency in Onondaga County.

Recommendation 2

Facility Mercy of Northern New York (Jefferson County)

Recommended Action

It is recommended that Mercy of Northern New York downsize by 76 RHCF beds to 224 RHCF beds. It is further recommended that the facility add a 60-bed ALP, a 16-slot ADHCP and possibly other non-institutional services in the vacated Madonna building.

Actions/Steps Taken Toward Compliance

By letter dated June 27, 2008, the Department issued a revised operating certificate downsizing the facility by 76 RHCF beds to 224 RHDF beds.

The facility has applied for a 60 bed ALP and a 16 slot ADHCP. The Department is currently reviewing responses submitted by the applicant addressing architectural, financial and legal concerns raised by the Department. Additionally, the Department is proceeding to identify other providers in the county to make non-institutional services available if future need arises.

Implementation of this recommendation is complete and no further steps need to be taken for compliance.

Recommendation 3

Facility Willow Point Nursing Home (Broome County)

Recommended Action

It is recommended that Willow Point downsize by between 83 and 103 RHCF beds to approximately 280 to 300 RHCF beds, rebuild its facility in a configuration that reflects today's therapeutic milieu, and add a 30-slot ADHCP.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008, the Department amended the facility's operating certificate to downsize capacity by 83 beds, to 300 beds, effective July 1, 2012. Capacity will be reduced by 10 beds for each six-month period beginning July 1, 2008, until the 300 bed capacity is reached. The staggered bed reduction will protect patient safety and is a reasonable, cost efficient means of downsizing the facility while it rebuilds. The planning process for the new facility is well underway and construction should be complete by July 2012. The nursing home is also planning the addition of the 30 slot ADHCP.

Implementation of this recommendation will be complete upon the construction of the new building. Implementation of the downsizing requires no additional steps because the facility's operating certificate has been amended by the Department.

Recommendation 4

Facility Lakeside Nursing Home (Tompkins County)

Recommended Action

It is recommended that Lakeside Nursing Home close, and that an 80-bed ALP, a 25-slot ADHCP and possibly other non-institutional services be added somewhere in Tompkins County by another sponsor, pending completion of an RFP process.

Actions/Steps Taken Toward Compliance

Lakeside Nursing Home will close upon approval of the bankruptcy court. The Department has determined that there is insufficient capacity in the region to absorb the facility's residents, and that new capacity should be established in order to protect patient health and safety. Accordingly, the Department authorized Peregrine Landing Adult Care, LLC (PLAC) to operate a 100 bed nursing home at the former site of Lakeside Nursing Home for a period of 5 years. The Department is exploring options for the ALP, ADHCP and other non-institutional services.

A HEAL award of up to \$4.9 million was awarded to facilitate the closure.

Implementation of this recommendation is substantially complete. The Department will continue to monitor the quality of care, and the bed need in Tompkins County during the next five years. Quality of care and need for the beds will be the benchmarks for considering an extension of the operating certificate in 2013.

Recommendation 5

Facility United Helpers, Canton (St. Lawrence County)

Recommended Action

It is recommended that United Helpers, Canton downsize by approximately 64 RHCF beds to approximately 96 RHCF beds, rebuild its facility, and add a 48-bed ALP and possibly other non-institutional services.

Actions/Steps Taken Toward Compliance

The Department has approved the facility's application to downsize by 64 RHCF beds to 96 RHCF beds and to rebuild its facility. The facility's application for a 48 bed ALP is under Department review.

A HEAL grant of up to \$8.1 million has been awarded for the new construction. This recommendation will be fully implemented upon approval of the ALP and the completion of construction. The Department will continue to monitor implementation as this facility goes through the construction/rebuilding phase.

WESTERN NEW YORK ACUTE CARE RECOMMENDATIONS

Recommendation 1

Facility Millard Fillmore Hospital – Gates Circle (Erie County)

Recommended Action

It is recommended that Millard Fillmore Hospital – Gates Circle close in an orderly fashion. It is further recommended that Millard Fillmore Hospital – Gates Circle’s 75 RHCF beds be preserved and transferred to DeGraff Memorial Hospital.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008 the Department terminated the facility’s operating certificates for the hospital and the residential health care facility effective December 31, 2009. The facility has submitted a Certificate of Need application for closure of the hospital and transfer of the services (but not the beds) to Buffalo General Hospital, which has been contingently approved by the Department. The Department has determined that it would be reasonable and cost-efficient to close the facility at a time in which the heart vascular center and other construction has been completed at Buffalo General Hospital. The transfer of the facility’s 75 RHCF beds will be addressed in conjunction with the closure of this hospital and DeGraff Memorial Hospital.

A HEAL grant of up to \$65 million has been awarded to assist with the closures.

Implementation of this recommendation will be substantially complete with the closure of the hospital and transfer of the RHCF beds.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

Recommendation 2

Facility St. Joseph’s Hospital of Cheektowaga (Erie County)

Recommended Action

It is recommended that St. Joseph Hospital of Cheektowaga close in an orderly fashion.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008 the Department terminated the facility's operating certificate effective March 31, 2009. The Department has agreed to authorize Sisters of Charity to operate an emergency room and 123 beds at the site of the former St. Joseph's Hospital until June 30, 2011 to protect patient health and safety; This authority may be extended, if necessary, to continue to protect patient health and safety.

A HEAL grant of up to \$8 million has been awarded to support costs associated with closure.

Implementation of this recommendation will be complete upon the closure of St. Joseph's Hospital on March 31, 2009.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in "The Summary of Implementation" Section E above.

Recommendation 3

Facility DeGraff Memorial Hospital (Niagara County)

Recommended Action

It is recommended DeGraff Memorial Hospital downsize all 70 medical/surgical beds and cease operation as an acute care hospital. It is further recommended that DeGraff Memorial Hospital convert completely to a Residential Health Care Facility encompassing its existing 80 RHCF beds and the 75 RHCF beds to be transferred from Millard Fillmore Hospital- Gates Circle.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008, the Department terminated the facility's operating certificate, effective June 30, 2011. It was neither cost effective nor safe for patients to close DeGraff as an acute care hospital and instead transfer more nursing home beds to the campus. The facility will convert completely to a Residential Health Care Facility encompassing its existing 80 RHCF beds and the 75 RHCF beds to be transferred from Millard Fillmore, contingent on a study to be conducted of long-term care needs in the Buffalo-Niagara Region. The Department will review both the long-term care needs of Erie and Niagara County and the emergency room capacity to determine the future configuration of DeGraff. Upon the closure of the acute care beds at DeGraff Hospital Memorial Hospital, those 75 RHCF beds will be added to DeGraff, contingent upon the suitable conversion of DeGraff, and contingent upon the Department's determination that these actions will not endanger patient health and safety.

Implementation of this recommendation will be complete upon closure of the facility and expansion of the nursing home (contingent on need).

Recommendation 4

Facility Sheehan Memorial Hospital (Erie County)

Recommended Action

It is recommended that Sheehan Memorial Hospital be maintained as an Article 28 provider. It is further recommended that 69 medical/surgical beds at Sheehan Memorial hospital be downsized. It is further recommended that 22 inpatient detoxification beds currently at Erie County Medical Center be transferred to Sheehan Memorial Hospital, provided that the Commissioner of Alcoholism and Substance Abuse Services approves such transfers. It is further recommended that Sheehan Memorial Hospital enhance its community based ambulatory care services, be licensed to provide methadone maintenance, and be licensed as an Article 31 provider of outpatient psychiatric services, provided that the Commissioner of Alcoholism and Substance Abuse Services and Commissioner of Mental Health approve such actions.

Actions/Steps Taken Toward Compliance

Sheehan Memorial Hospital has been maintained as an Article 28 provider, and 59 medical/surgical beds have been downsized. The Commissioner of Alcoholism and Substance Abuse Services and Commissioner of Mental Health did not approve the other contingent portions of the recommendation.

A HEAL grant of \$4 million has been awarded to support facility reconfiguration.

Implementation of this recommendation is substantially complete, and the Department continues to work with the facility to ensure its financial and clinical viability.

By eliminating inpatient capacity, implementation of this recommendation should have the effect of increasing reliance upon the primary care and ambulatory care services. These improvements are in addition to those described in “The Summary of Implementation” Section E above.

Recommendation 5

Facilities Erie County Medical Center (Erie County)
Buffalo General Hospital/Kaleida Health (Erie County)

Recommended Action

It is recommended that the facilities controlled by the Erie County Medical Center Corporation and Kaleida Health be joined under a single unified governance structure under the control of an entity other than Erie County Medical Center Corporation, Kaleida Health, or any other public benefit

corporation. It is further recommended that this entity consist of a reconstituted single board including representation of Kaleida Health, the Erie County Medical Center Corporation, the University at Buffalo School of Medicine and Biomedical Sciences, and community leaders. If the Commissioner of Health determines that the single board proposed by the member entities does not meet these requirements, it is further recommended that the Commissioner of Health alter the composition of the board to satisfy these requirements. It is further recommended that this entity have unified management with powers sufficient to compel the service mix provided at any of the individual institutions under its control. It is further recommended that the joined entity utilize existing infrastructure to the extent possible to consolidate all necessary services into clinical centers of excellence, including tertiary, quaternary, psychiatric, and long term care services. It is further recommended that the joined entity develop new infrastructure in which to locate comprehensive heart and vascular services. It is further recommended that the Commissioner of Health:

(i) Refrain from either approving any applications that have been or will be filed by either entity or providing any other consent requested by either facility, prior to the execution by the facilities of a binding agreement to join under a single unified governance structure pursuant to the terms of this recommendation, except where such approval or consent is necessary to protect the life, health, safety and welfare of facility patients, residents or staff. If Kaleida Health and Erie County Medical Center Corporation fail to execute such an agreement by December 31, 2007, close either Buffalo General Hospital or Erie County Medical Center and expand the other to accommodate the patient volume of the closed facility; and present to the State Legislature any necessary draft legislation in a time and manner sufficient to implement this recommendation by June 30, 2008.

Actions/Steps Taken Toward Compliance

Erie County Medical Center Corporation and Kaleida Health have joined under a single unified governance structure under the control of the Western New York Health System. Western New York Health System consists of a single board including representation of Kaleida Health, the Erie County Medical Center Corporation, the University at Buffalo School of Medicine and Biomedical Sciences, and community leaders. This entity has powers sufficient to compel the service mix provided at any of the individual institutions under its control, and is responsible to utilize existing infrastructure to the extent possible to consolidate all necessary services into clinical centers of excellence, including tertiary, quaternary, psychiatric, and long term care services. The joined entity has approved the location of the comprehensive heart and vascular services center at Buffalo General Hospital.

The facilities have also entered a binding agreement to enter a full-asset merger, which would include unified management and full integration pending passage of legislation that may be needed to accomplish this goal.

Implementation of this recommendation is complete, and the Department anticipates further integration as the facilities join together in a full-asset merger.

Recommendation 6

Facilities Lockport Memorial Hospital (Niagara County)
 Inter-Community Memorial Hospital at Newfane (Niagara County)

Recommended Action

It is recommended that Lockport Memorial Hospital and Inter-Community Memorial Hospital at Newfane engage in a full asset merger and reconfiguration of services.

Actions/Steps Taken Toward Compliance

The Department has approved the facilities' application for the full asset merger of Inter-Community Memorial Hospital of Newfane and Lockport Memorial Hospital and for renovations at Inter-Community Memorial Hospital. The application was approved by the Public Health Council with routine contingencies which should be satisfied in due course.

A HEAL grant of up to \$9.1 million was awarded to support service configuration.

Implementation of this recommendation is substantially complete, and will be fully complete upon the facilities meeting the ordinary contingencies.

Recommendation 7

Facilities Bertrand Chaffee Hospital (Erie County)
 TLC Health Network – Lakeshore Hospital (Chautauqua County)
 TLC Health Network – Tri –County Memorial Hospital (Cattaraugus County)
 Brooks Memorial Hospital (Chautauqua County)
 Westfield Memorial Hospital (Chautauqua County)

Recommended Action

It is recommended that Bertrand Chaffee Hospital downsize by at least 25 inpatient beds to less than 25 beds and seek designation as a Critical Access Hospital or sole community provider, and that Brooks Memorial Hospital seek designation as a sole community provider, and that:

- (i) Bertrand Chaffee Hospital affiliate with TLC Tri-County and TLC Lake Shore;
- (ii) TLC Tri-County downsize 28 medical/surgical beds, convert the remaining 10 medical/surgical beds to 10 detoxification beds provided that the Commissioner of Alcoholism and Substance Abuse Services approves such additions, and continue to provide chemical dependency, emergency and outpatient primary care services;
- (iii) TLC Lake Shore downsize all 42 medical/surgical beds and 40 RHCF beds and convert its acute care services to an outpatient/urgent care center with Article 28 diagnostic and treatment center licensure;

(iv) TLC Lake Shore, at its option, either continue to provide mental health services or downsize all 20 psychiatric beds provided that approximately 20 psychiatric beds be added somewhere in southern Erie, northern Chautauqua or northern Cattaraugus Counties by another sponsor, pending completion of an RFP process and provided that the Commissioner of Mental Health approves such additions; and

(iv) Westfield Memorial Hospital downsize all 32 inpatient beds and convert to an outpatient/urgent care center with Article 28 diagnostic and treatment center licensure.

Actions/Steps Taken Toward Compliance

Bertrand Chaffee Hospital has downsized by 25 inpatient beds to 24 beds and has sought designation as a Critical Access Hospital. Brooks Memorial Hospital has sought designation as a sole community provider.

Bertrand Chaffee Hospital has entered an affiliation agreement with TLC Tri-County and TLC Lake Shore.

TLC Tri-County has downsized 28 medical/surgical beds. Conversion of the remaining 10 medical/surgical beds to 10 detoxification beds did not get approval from the Commissioner of Alcoholism and Substance Abuse Services. The facility, however, continues to provide chemical dependency, emergency and outpatient primary care services.

TLC Lake Shore downsized all 42 medical/surgical beds and 40 RHCF beds. Through an active parent arrangement with Brooks Hospital, hospital beds that were formerly on Brooks Hospital's operating certificate will be operated at Lake Shore.

Westfield Memorial Hospital has downsized 28 inpatient beds. Its operating certificate has been amended so that authority to operate the remaining in 4 beds will expire June 30, 2010 and it will then convert to an outpatient/urgent care center with Article 28 licensure.

A HEAL grant of up to \$3.7 million has been awarded to Brooks Memorial Hospital for debt relief and reorganization costs..

A HEAL grant of up to \$12.6 million has been awarded to TLC network for debt relief, construction and other expenses.

A HEAL grant of up to \$5 million has been awarded to Westfield Memorial Hospital for debt relief and closure costs.

Implementation of this recommendation is substantially complete.

Recommendation 8

Facilities Mount St. Mary's Hospital and Health Center (County)
Niagara Falls Memorial Medical Center (County)

Recommended Action

It is recommended that Mount St. Mary's Hospital and Health Center or its sponsoring entity and Niagara Falls Memorial Medical Center participate in discussions supervised by the Commissioner of Health to explore the creation of a single unified governance structure to end the medical arms race in Niagara County that is expending scarce resources on duplicative services. It is further recommended that the Commissioner refrain from either approving any applications that have been or will be filed by either facility or providing any other consent requested by either facility prior to the conclusion of such discussions, as determined by the Commissioner of Health, except where such approval or consent is necessary to protect the life, health, safety and welfare of facility patients, residents or staff. If either Mount St. Mary's Hospital and Health Center or its sponsoring entity or Niagara Falls Memorial Medical Center fail to participate in such discussions in good faith, as determined by the Commissioner of Health, it is recommended that the Commissioner of Health close that facility and expand the other to accommodate the patient volume of the closed facility.

Actions/Steps Taken Toward Compliance

Mount St. Mary's Hospital and Health Center and its sponsoring entity, and Niagara Falls Memorial Medical Center, participated in good faith discussions supervised by the Commissioner of Health to explore the creation of a single unified governance structure to end the medical arms race in Niagara County. After significant good faith efforts, they were unable to reach an agreement to create such a structure.

In a letter dated October 31, 2007, the Department notified these facilities that they had met their obligations under this recommendation.

Implementation of this recommendation is complete and no further action is necessary.

WESTERN NEW YORK LONG-TERM CARE RECOMMENDATIONS

Recommendation 1

Facility Mount View Health Facility (Niagara County)

Recommended Action

It is recommended that Mount View Health Facility downsize all 172 RHCF beds, rebuild a new facility on its existing campus, and add a 100-bed ALP, a 50-slot ADHCP and possibly other non-institutional services.

Actions/Steps Taken Toward Compliance

Mount View Health Facility has downsized all 172 RHCF beds. It decided not to build a new facility because a county operated ALP was not financially feasible. The Department has issued an RFP for those services to be provided by another provider as a reasonable, cost-effective means of implementation.

A HEAL grant of up to \$8.8 million was awarded to support costs associated with closing.

Implementation of this recommendation is complete and no additional steps are required for compliance.

Recommendation 2

Facilities Nazareth Nursing Home (Erie County)
 Mercy Hospital Skilled Nursing Facility (Erie County)

Recommended Action

It is recommended that Nazareth Nursing Home downsize all 125 RHCF beds and the facility be converted for use as part of a PACE program to be added at the former Our Lady of Victory Hospital; 10 RHCF beds be added to the 74 RHCF beds currently at Mercy Hospital Skilled Nursing Facility, and all 84 RHCF beds be transferred from Mercy Hospital Skilled Nursing Facility to the former Our Lady of Victory Hospital; and 80 adult home beds at St. Elizabeth's Home of Lancaster in Erie County be converted to an 80-bed ALP.

Actions/Steps Taken Toward Compliance

Nazareth Nursing Home has downsized all 125 RHCF beds and the facility is being converted for use as part of a PACE program to be added at the former Our Lady of Victory Hospital; 10 RHCF beds have been added to the 74 RHCF beds currently at Mercy Hospital Skilled Nursing Facility, and all 84 RHCF beds have been transferred from Mercy Hospital Skilled Nursing Facility to the former Our Lady of Victory Hospital. St. Elizabeth's Home of Lancaster has submitted plans to convert to an 80 bed ALP effective June 30, 2009.

A HEAL grant of up to \$7.3 million has been awarded to Nazareth Nursing Home to support costs associated with closure.

This recommendation is substantially complete. Nazareth Nursing Home has closed and Mercy Hospital Skilled Nursing Facility has converted services. The enhanced licensure at St. Elizabeth's Home is technically beyond the Commission mandate and should be completed by June 30, 2009.

Recommendation 3

Facility Williamsville Suburban, LLC (Erie County)

Recommended Action

It is recommended that Williamsville Suburban downsize all 220 RHCF beds.

Actions/Steps Taken Toward Compliance

In May 2008, the facility filed a lawsuit against the Department of Health. The facility received a stay from the bankruptcy court and will be able to remain in operation until the lawsuit is resolved.

With the permission of the court, the Department has terminated the operating certificate of this facility effective December 31, 2008. The federal bankruptcy court has stayed further enforcement, pending its determination of the merits of the facility's lawsuit against the Department. The facility will be closed contingent on the Department prevailing in the lawsuit.

Recommendation 4

Facility(ies) DeGraff Memorial Hospital Skilled Nursing Facility (Niagara County)
 Millard Fillmore Gates Circle Skilled Nursing Facility (Erie County)

Recommended Action

It is recommended that Millard Fillmore Gates Circle downsize all 75 RHCF beds, and upon the closure of the acute care beds at DeGraff Memorial Hospital (see Western Region Acute Care Recommendation 1), that those 75 RHCF beds be added to DeGraff contingent upon the suitable conversion of DeGraff.

Actions/Steps Taken Toward Compliance

By letter dated June 24, 2008, the Department downsized all Millard Fillmore Gates Circle's 75 RHCF beds effective December 31, 2009.

Implementation of this recommendation will be complete upon the closure of DeGraff inpatient beds and conversion to suitable space for long term care services.