



## Commission on Health Care Facilities in the 21st Century

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Stephen Berger, Chairman • David Sandman, Ph.D., Executive Director

To: All General Hospital and Residential Health Care Facility Administrators

From: Stephen Berger, Chairman  
Commission on Health Care Facilities in the 21<sup>st</sup> Century

Dennis Whalen, Executive Deputy Commissioner  
New York State Department of Health

Date: March 9, 2006

Re: Voluntary Rightsizing Procedure

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Section 8(a) of Part K of Chapter 63 of the Laws of 2005 requires the Commission on Health Care Facilities in the 21<sup>st</sup> Century (“Commission”) to “foster discussions among . . . statewide and regional stakeholder interests” in furtherance of its goal to “develop recommendations for reconfiguring the state’s general hospital and nursing home bed supply to align bed supply to regional needs.” Accordingly, the following is the procedure that will be made available to general hospitals and/or residential health care facilities (collectively, “hospitals”) to facilitate such discussions among multiple providers in a manner that is consistent with state and federal antitrust laws and with the policy objectives of the Commission and the Department of Health (“DOH”):

1. Hospitals interested in pursuing such discussions must contact the Commission Executive Director and express such intention in writing. The Executive Director will arrange a discussion between staff from such hospitals and state staff. “State staff” shall consist of Commission staff and/or members and staff from DOH’s Office of Health Systems Management and/or Division of Legal Affairs. At such discussion, the participants will review the contemplated rightsizing activities, and, if state staff deems such discussions and contemplated rightsizing activities to be consistent with Commission and DOH policy objectives, develop a plan for future supervision of such discussions by state staff.
2. Participating hospitals shall continue such discussions pursuant to such plan. At a minimum, such plan shall include regular meetings with state staff to update them on the progress of such discussions and allow them to determine whether such discussions and contemplated rightsizing activities continue to be consistent with Commission and DOH policy objectives. If at any point state staff determines that such discussions or contemplated rightsizing activities are no longer consistent with Commission or DOH policy objectives, state staff participation in such discussions shall cease and this procedure shall terminate.

3. In no event shall state staff provide any formal assent to a contemplated rightsizing plan prior to the formal adoption of a related recommendation by the Commission, or otherwise act as parties to any rightsizing agreement.
4. In no event shall state staff relate to participating hospitals the content of confidential Commission deliberations concerning those or other hospitals.
5. In no event shall rightsizing activities discussed pursuant to this procedure be contingent on the rightsizing of other, nonparticipating hospitals.
6. State staff may provide participating hospitals with any appropriate assurances of confidentiality, consistent with applicable state and federal law.
7. Once the general parameters of a rightsizing plan have been established to the satisfaction of the participating hospitals and state staff, the participating hospitals shall reduce such plan to writing for purposes of circulating such plan among Commission members for consideration in the development of Commission recommendations.
8. If such rightsizing plan is incorporated into the final Commission recommendations, and such recommendations are approved by the Governor and not rejected by the Legislature, DOH should continue to work with the participating hospitals on implementation, and engage in any ongoing oversight required by such plan.
9. This notice has been circulated to hospitals via the Health Provider Network, and will be posted on the Commission website at [www.nyhealthcarecommission.org](http://www.nyhealthcarecommission.org). Any questions concerning this notice may be addressed to:

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