§ 2801-e. Voluntary residential health care facility rightsizing demonstration program. 1. The voluntary residential health care facility rightsizing demonstration program is intended to be a flexible and innovative approach to dealing with excess capacity in residential health care facilities due to changes in care delivery and other factors. The demonstration is designed to promote the development of less restrictive and less institutional long-term care programs and services; discourage inappropriate nursing home placements; generate medicaid savings to the state and localities; and assist residential health care facilities with the financial implications of declining occupancies.

2. Notwithstanding any inconsistent provision of law or regulation to the contrary, a residential health care facility, as defined in section twenty-eight hundred one of this article, may apply to temporarily decertify or permanently convert a portion of its existing certified beds to another type of program or service under the voluntary residential health care facility rightsizing demonstration program. The commissioner may approve temporary decertifications and permanent conversions of beds totaling no more than five thousand residential health care facility beds on a statewide basis under this program. Such approvals shall reflect, to the extent practicable, participation by a variety of residential health care facilities based on geography, size and other pertinent factors.

3. For this purpose, a residential health care facility may submit, in a format and within timeframes specified by the commissioner, an application to temporarily decertify beds, or to permanently convert beds under this demonstration. Each such application shall include an estimate of the cost savings to the Medicaid program that would result from the proposal within the applicant facility. The commissioner shall begin soliciting applications within one hundred eighty days of the effective date of this section, provided however that multiple solicitations for proposals may be issued. In considering such applications, the commissioner shall take into account:

(a) the potential for improved quality of care and quality of life for consumers;

(b) the likelihood that the proposal would result in cost savings to the Medicaid program;

(c) residential health care facility capacity and estimated public need in the planning area in which the applicant is located;

(d) the availability of less restrictive and less institutional long-term care programs and services, as defined in this section, in the planning area; and

(e) the potential for improving the financial viability of the applicant facility or facilities.

4. Any reductions in the number of operational residential health care facility beds resulting from this demonstration shall not be considered to create additional public need for residential health care facility beds under this article.

5. (a) Subject to the approval of the commissioner and the director of the budget, a residential health care facility may temporarily decertify beds for up to five years. Such beds will remain on the facility's license during and after the five-year period. Temporarily decertified beds may, with the prior approval of the commissioner and the director of the budget be reactivated in whole or in part at any time on or after one year after the effective date of temporary decertification by the facility and may be reactivated with the prior approval of the commissioner and the director of the budget after the five-year period has ended. A residential health care facility that reactivates temporarily decertified beds may not temporarily decertify such beds again during the demonstration. The commissioner may require the immediate reactivation of such beds if necessary to respond to emergency situations and/or facility closures. In the event the commissioner requires such reactivation, the prohibition on temporarily decertifying beds after a reactivation of beds shall not apply.

(b) Notwithstanding any inconsistent provision of law or regulation to the contrary, for purposes of determining medical assistance payments by government agencies for residential health care facility services provided pursuant to title eleven of article five of the social services law for facilities that have temporarily decertified beds:

(i) the facility's capital cost reimbursement shall be adjusted to

appropriately take into account the new bed capacity of the facility;

(ii) the facility's peer group assignment for indirect cost reimbursement shall be based on its total certified beds less the number of beds that have been temporarily decertified; and

(iii) the facility's vacancy rate shall be calculated on the basis of its total certified beds less the number of beds that have been temporarily decertified for purposes of determining eligibility for payments for reserved bed days for residents of residential health care facilities, provided, however, that such payments for reserved bed days for facilities that have temporarily decertified beds shall be in an amount that is fifty percent of the otherwise applicable payment amount for such beds.

6. (a) Subject to the approval of the commissioner, a residential health care facility may permanently convert beds to less restrictive and less institutional long-term care beds, units or slots, including, but not limited to, assisted living program, adult care facility, adult day health care, long-term home health care program and managed long-term care demonstration beds, units or slots. For this purpose, residential health care facility beds may be converted to beds, units or slots in the selected program or service on a one-to-one or other ratio or basis. A residential health care facility that permanently converts beds under this subdivision relinquishes its license for the converted beds.

(b) If the facility seeks to permanently convert beds and neither the facility nor its sponsoring organization is licensed to provide the program or service, it must obtain the written approval of the public health council, if required, pursuant to section twenty-eight hundred one-a of this article or article thirty-six of this chapter to initiate the new program or service.

(c) The commissioner may, as necessary, waive existing methodologies for determining public need under this article, article thirty-six of this chapter and article seven of the social services law, as well as enrollment limitations under section forty-four hundred three-f of this chapter, to accommodate permanent conversions of beds to other programs or services on the basis that any such increases in capacity are linked to commensurate reductions in the number of residential health care

facility beds.

(d) For purposes of adjusting the capital component of residential health care facility rates of payment determined pursuant to this article for facilities that have permanently converted beds, the commissioner shall appropriately take into account the new bed capacity of the facility.

7. No later than January first, two thousand seven, the commissioner shall provide the governor, the majority leader of the senate and the speaker of the assembly with a written evaluation of the program. Such evaluation shall address the overall effectiveness of the program in reducing costs, encouraging placements in appropriate long-term care settings and enhancing the availability of less restrictive and less institutional long-term care programs and services, and contain recommendations relative to extending and/or expanding the program.