§ 2818. Health care efficiency and affordability law of New Yorkers (HEAL NY) capital grant program. 1. The commissioner and the director of the dormitory authority of the state of New York shall enter into an agreement, subject to the approval of the director of the budget, for the purpose of administering the funds available to the health care efficiency and affordability law for New Yorkers (HEAL NY) capital grant program as authorized under section sixteen hundred eighty-j of the public authorities law, in a manner that will encourage improvements in the operation and efficiency of the health care delivery system within the state. A copy of such agreement, and any amendments thereto, shall be provided to the chair of the senate finance committee, the director of the division of budget and the chair of the assembly ways and means committee.

Such agreement shall include criteria, to be developed by the commissioner and the director of the authority, to be considered in their evaluation of applications and determination of awards, including, but not limited to:

(a) determination of eligible applicants, provided that such eligible applicants shall include entities representative of any part of the health care delivery system;

(b) consideration of statewide geographic distribution of funds;

(c) minimum and maximum amounts of funding to be awarded under the program;

(d) the relationship between the project proposed by an applicant and identified community need; and

(e) the extent to which the applicant has access to alternative financing.

Such agreement shall be provided to the chair of the senate finance committee, the director of the division of budget and the chair of the assembly ways and means committee no later than thirty days prior to the scheduled approval of the first bond issuance for the program by the public authorities control board. The authority shall also report quarterly to such chairpersons on the awards made through the program, including the name of the applicant, a description of the project and the amount of the award.

The commissioner and the director of the authority shall award grants to eligible applicants after due public notice of the availability of funds and through a process which ensures to the maximum extent practicable and where appropriate, competition among such applicants, consistent with the following requirements: the commissioner and the director of the authority shall publish the priorities and goals that are to be achieved through grant funding, and regularly provide public notice of the availability of funding. These priorities and goals shall be consistent with objectives and determinations of the Commission on Health Care facilities in the Twenty-First Century established pursuant to a chapter of the laws of two thousand five, provided, however, that nothing shall prohibit the commissioner and the director for the authority from awarding grants prior to a final report by the commission. For each project that will be recommended for approval, the commissioner and the director of the authority shall report to the chair of the senate finance committee, the director of the division of budget and the chair of the assembly ways and means committee how the project meets the priorities, goals and criteria established pursuant to this section.

Contracts awarded to eligible applicants shall require that work performed thereunder shall be deemed "public work" and subject to and preformed in accordance with articles eight, nine and ten of the labor law and the contractors performing such work shall also be deemed a state agency for the purpose of article fifteen-A of the executive law and subject to the provisions of such article.

2. Notwithstanding the provisions of subdivision one of this section, the commissioner and the director of the dormitory authority may award, in an amount not to exceed twenty-five percent of the health care system improvement capital grant program allocation in any given fiscal year, grants to eligible applicants without the process set forth in subdivision one of this section. With respect to the process for the awarding of such funds without the process set forth in subdivision one of this section, the commissioner and the director of the dormitory authority shall determine eligible awardees based solely on an

applicant's ability to meet the following criteria:

(i) Have a loss from operations for each of the three consecutive preceding years as evidenced by audited financial statements; and

(ii) Have a negative fund balance or negative equity position in each of the three preceding years as evidenced by audited financial statements; and

(iii) Have a current ratio of less than 1:1 for each of three consecutive preceding years; or

(iv) Be deemed to the satisfaction of the commissioner to be a provider that fulfills an unmet health care need for the community as determined by the department through consideration of the volume of Medicaid and medically indigent patients served; the service volume and mix, including but not limited to maternity, pediatrics, trauma, behavioral and neurobehavioral, ventilator, and emergency room volume; and, the significance of the institution in ensuring health care services access as measured by market share within the region.

(c) Prior to an award being granted to an eligible applicant without a competitive bid or request for proposal process, the commissioner and the director of the dormitory authority shall notify the chair of the senate finance committee, the chair of the assembly ways and means committee and the director of the division of budget of the intent to grant such an award. Such notice shall include information regarding how the eligible applicant meets criteria established pursuant to this section.

3. Notwithstanding subdivisions one and two of this section, sections one hundred twelve and one hundred sixty-three of the state finance law, or any other inconsistent provision of law, of the funds available for expenditure pursuant to this section, thirty million dollars may be allocated and distributed by the commissioner without a competitive bid or request for proposal process for grants to residential health care facilities for the purpose of restructuring such facilities to achieve a reduction in certified inpatient bed capacity. Consideration relied upon by the commissioner in determining the allocation and distribution of these funds shall include, but not be limited to, the following: (a) the existing and projected need for inpatient nursing home beds and community based long-term care services in the area in which a facility

applying for such funds is located; (b) the quality of the care being provided by the facility; (c) the ability of the facility to access, in a timely manner, alternative sources of funding, including other sources of government funding; and (d) whether additional funding would permit the facility to achieve greater stability and efficiency in the delivery of needed health care services.

4. Notwithstanding the provisions of subdivision one of this section, the commissioner and the director of the dormitory authority may award, in an amount not to exceed twenty-five million dollars of the health care system improvement capital grant program allocated in any given fiscal year, grants to eligible applicants without the process set forth in subdivision one of this section to provide necessary restructuring support to hospitals for transition to a new reimbursement methodology.

(a) With respect to the process for the awarding of such funds without the process set forth in subdivision one of this section, the commissioner and director of the dormitory authority shall determine eligible awardees based solely on an applicant's ability to meet the following criteria:

(i) have a loss of operations for each of the three consecutive preceding years as evidence by audited financial statements; and

(ii) have a negative fund balance or negative equity position in each of the three preceding years as evidence by audited financial statements; and

(iii) have a current ratio of less than 1:1 for each of three consecutive preceding days; or

(iv) be deemed to the satisfaction of the commissioner to be a provider that fulfills an unmet health care need for the community as determined by the department through consideration of the volume of Medicaid and medically indigent patients served; the service volume and mix, including but not limited to maternity, pediatrics, trauma, behavior and neurobehavioral, ventilator, and emergency room volume; and, the significance of the institution in ensuring health care services access as measured by market share within the region; or

(v) be deemed to the satisfaction of the commissioner to have incurred operating losses resulting from the implementation of reimbursement rate reforms and other reductions enacted by a chapter of the laws of two

thousand nine, to provide for the continued financial viability of the applicant.

(b) Prior to an award being granted to an eligible applicant without a competitive bid or request for proposal process, the commissioner and the director of the dormitory authority shall notify the chair of the senate finance committee, the chair of the assembly ways and means committee and the director of the budget of the intent to grant such an award. Such notice shall include information regarding how the eligible applicant meets criteria established pursuant to this section.

5. (a) Notwithstanding subdivision one, two or three of this section, the commissioner, with the approval of the director of the budget, may expend funds for the purpose of providing cost effective increased access to the capital markets, including but not limited to through the use of mortgage insurance, credit enhancement, letters of credit, bond insurance or other arrangements, for capital projects that are determined to meet one or more of the following objectives for hospitals licensed under this article:

(i) securing financing for facilities in a manner that will improve the operation and efficiency of the health care delivery system within the state;

(ii) securing financing for facilities in a manner consistent with the objectives and determinations of the Commission on Health Care Facilities in the Twenty-First Century, established pursuant to chapter sixty-three of the laws of two thousand five;

(iii) securing financing for facilities in a manner that will help rightsize the state's acute care infrastructure, including reducing inpatient capacity, downsizing, restructuring, and closing facilities;

(iv) securing financing for facilities in a manner that advances the reform of the long-term care system, including through rightsizing and providing community-based services;

(v) securing financing for facilities in a manner that improves the primary and ambulatory care system including programs undertaken in collaboration with a local development corporation incorporated pursuant to sections four hundred one and one thousand four hundred eleven of the not-for-profit corporation law to foster the development and expansion of high quality, cost effective primary health care services and related

ambulatory care and ancillary services benefiting medically underserved communities, principally in the state, to increase access of community residents to such services, to improve the health status of such residents and to lessen the burdens of government and act in the public interest; and

(vi) such other objectives as the commissioner deems appropriate to effectuate the intent of this subdivision.

(b) The commissioner may transfer funds to other state agencies or public authorities, with the approval of the director of budget, to effectuate the purposes of this subdivision.

6. Notwithstanding any contrary provision of this section, sections one hundred twelve and one hundred sixty-three of the state finance law, or any other contrary provision of law, subject to available appropriations, funds available for expenditure pursuant to this section may be distributed by the commissioner without a competitive bid or request for proposal process for grants to general hospitals and residential health care facilities for the purpose of facilitating closures, mergers and restructuring of such facilities in order to strengthen and protect continued access to essential health care resources. Provided however, that to the extent practicable, the commissioner shall award such grants equitably among health planning regions of the state. Prior to an award being granted to an eligible applicant without a competitive bid or request for proposal process, the commissioner shall notify the chair of the senate finance committee, the chair of the assembly ways and means committee and the director of the division of budget of the intent to grant such an award. Such notice shall include information regarding how the eligible applicant meets criteria established pursuant to this section.

7. Notwithstanding subdivisions one and two of this section, sections one hundred twelve and one hundred sixty-three of the state finance law, or any other inconsistent provision of law, of the funds available for expenditure pursuant to this section, the commissioner may allocate and distribute, without a competitive bid or request for proposal process, grants to accountable care organizations under article twenty-nine-E of this chapter for the purpose of promoting their formation and improving

their operation. Consideration relied upon by the commissioner in determining the allocation and distribution of these funds shall include, but not be limited to, the need for and capacity of the accountable care organization to accomplish the purposes of article twenty-nine-E of this chapter in the area to be served.

8. On or before December first, two thousand fourteen, the department shall issue a report to the governor, the temporary president of the senate and the speaker of the assembly regarding grants made pursuant to this section to support health information technology.