

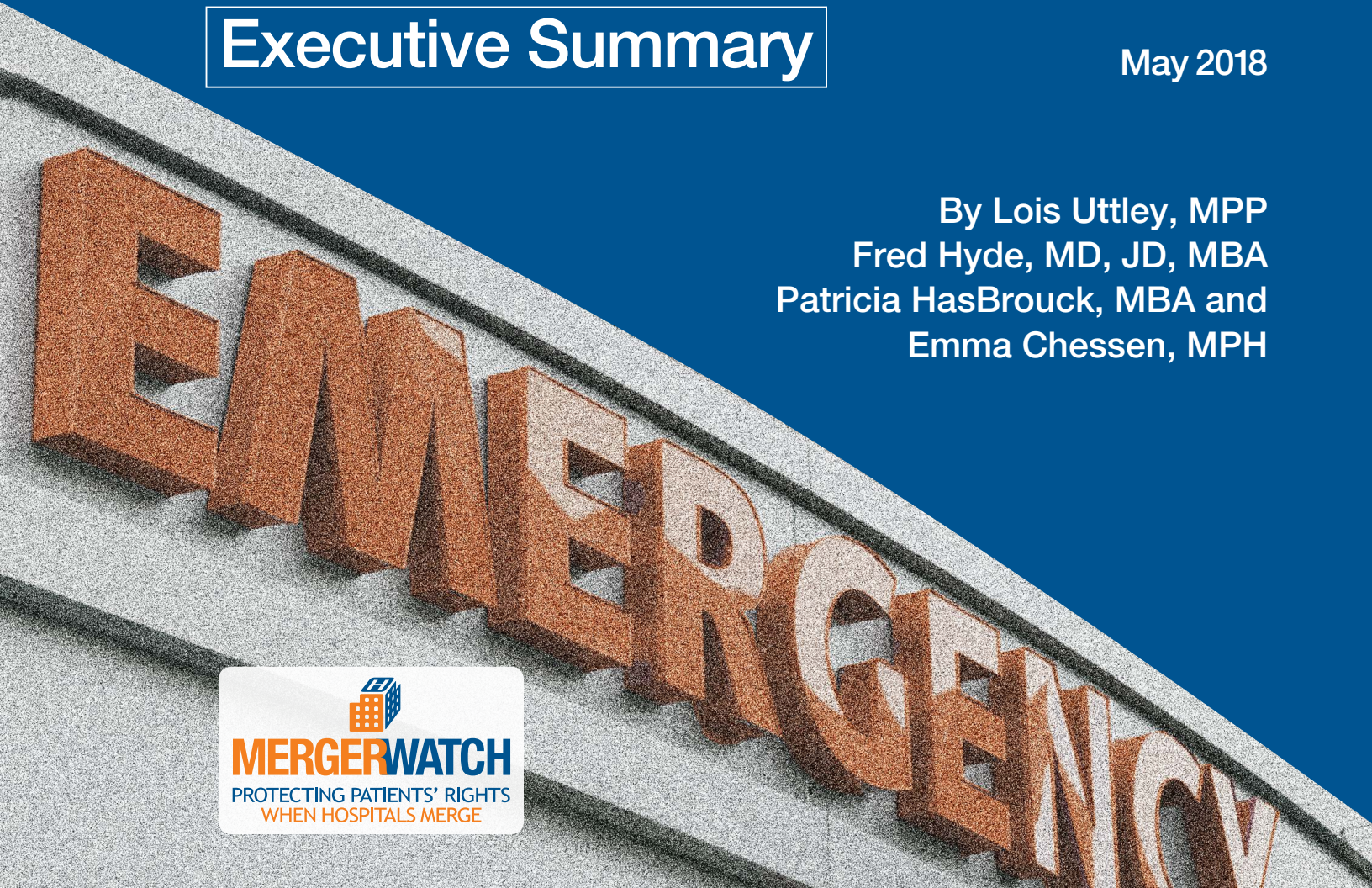
# EMPOWERING NEW YORK CONSUMERS IN AN ERA OF HOSPITAL CONSOLIDATION



Executive Summary

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## Executive Summary

Over the last 20 years, changes in reimbursement policies and medical advances have altered the hospital landscape nationwide and in New York. Three trends have dominated the hospital industry: 1) downsizing and closing of community hospitals, 2) hospital consolidation and creation of large regional health systems, accompanied by 3) movement of some medical care from hospitals into lower-cost outpatient settings.

The impact of these trends can be seen in the findings from MergerWatch research:

- **Forty-one New York hospitals have closed all of their inpatient services over the last 20 years.** Some hospitals have been converted to use as outpatient centers, medical offices, nursing homes or rehabilitation centers, while others have been turned into condominiums or abandoned.
- **The number of hospital beds being decertified across New York State jumped from 102 in 2015 to 440 in 2017,** with the largest losses occurring in medical/surgical, psychiatric, maternity and pediatric care, according to New York State Department of Health data.
- **A group of large non-profit health systems has been steadily moving to manage or acquire many of the remaining community hospitals in the state.** The 12 largest systems now control half of all the acute care hospitals in New York and 70 percent of the inpatient acute care beds. Four mega-systems – New York-Presbyterian, Northwell Health, NYU Hospitals Center and Mount Sinai Health System – have accumulated multiple hospitals and a combined total of \$14.2 billion in net assets, giving them significant economic power and ability to shape the health system.

**With all this change occurring in the hospital landscape, do New Yorkers have a say in hospital closure and consolidation decisions?** How are New York's health consumers being notified of proposed changes to their local hospitals? Are they being afforded the opportunity to comment on how their access to timely, affordable care might be affected? Are state regulators able to ensure that proposed hospital mergers, closings, downsizing and movements of care to outpatient settings benefit consumers and do not create gaps in access to care? Equally important, how are regulators ensuring that these consolidations do not exacerbate existing health disparities or unnecessarily increase health care prices?

## THE CERTIFICATE OF NEED PROCESS PROVIDES AN OPPORTUNITY TO ENGAGE COMMUNITY RESIDENTS IN THESE DECISIONS THAT CAN DRAMATICALLY AFFECT THEIR LIVES.

The state Certificate of Need (CON) process provides an opportunity to engage community residents in these decisions that can dramatically affect their lives. In 1964, New York established the first-in-the nation CON process at a time when new hospitals were being constructed with the aid of the federal Hill-Burton Act. Demand for hospital care was fueled by the growth of third-party private health insurance and by the enactment of Medicare and Medicaid in 1965. Policymakers were concerned that unregulated construction of new hospitals and expansion of existing facilities would lead to unnecessary construction and duplication of expensive equipment, resulting in higher-than-necessary health

care costs. CON was also intended to protect a hospital's "franchise" from competition that could hurt its ability to repay loans. The CON program has required hospitals and other institutional health providers to seek state approval for construction, expansion, renovation and establishment of new facilities and services.

### **In the new era of hospital consolidation, is New York's 54-year-old CON process effective in working to notify the public, meaningfully engage consumers and protect community access to timely, affordable care?**

A year-long study by MergerWatch, funded by the New York State Health Foundation, set out to find the answer. The study found that New York State Department of Health staff and leaders of the Public Health and Health Planning Council (PHHPC), which reviews the most important CON applications (those designated for "full review"), have taken some positive steps in recent years to improve CON review. However, the study concluded that the CON process still lacks transparency, consumer engagement and sufficient oversight of health care providers in this rapidly changing landscape.

A 2012 PHHPC report made a number of significant suggestions about ways to reform the CON process. However, some of those suggestions were never acted upon or were implemented in ways other than what the PHHPC had envisioned. Moreover, since that 2012 PHHPC report, the pace of change in the hospital sector has quickened. New York's Delivery System Reform Incentive Payment (DSRIP) Medicaid redesign program has put large systems with ample administrative capacity at an advantage and has pushed stand-alone community hospitals to join larger hospital systems. Such marriages of community hospitals and dominant systems come to the CON application process as virtual "done deals," encouraged by state officials and sweetened with state grants.

PHHPC members and DOH staff are engaged in another round of examining how to modernize CON and other state health regulatory oversight processes, with PHHPC Chair Jeffrey Kraut suggesting that the Department of Health "is trying to solve new millennial challenges with a



## THE CON PROGRAM DOES NOT ADEQUATELY INFORM OR ENGAGE HEALTH CONSUMERS ABOUT HOSPITAL CONSOLIDATION, DOWNSIZING OR CLOSING THAT COULD AFFECT THEIR ACCESS TO TIMELY, AFFORDABLE CARE.

regulatory and CON chassis that is 30-40 years old.” At a PHHPC strategic planning retreat in September 2017, Kraut (who is also Executive Vice President of Strategy and Analysis for the Northwell Health system) described a need to “articulate a different vision of a new framework for DOH to fulfill its mission of accountability and oversight, to have transparency and public engagement.”

This MergerWatch study is intended to offer valuable suggestions on how to ensure that CON reform enhances transparency and consumer engagement, and that it protects access to affordable care for vulnerable health consumers. The study concludes that the CON program as currently operated in New York State does not adequately inform or engage health consumers about hospital consolidation, downsizing or closing that could affect their access to timely, affordable care.

### Key findings

Study findings include:

- **No state-mandated system exists to notify and engage affected consumers in advance when their community hospitals will be closing, downsizing, transforming into outpatient settings and/or joining a large health system that will assume decision-making over the local facility.** Public hearings are not required *in the affected communities or at convenient times for consumers* in advance of a hospital closing, downsizing or other transaction with a major impact on the facility and community.
- **Hospital closings and some types of downsizing (such as eliminating the emergency department or maternity services) are not subject to “full review” by the PHHPC in a public meeting.** Instead, many are being handled through “limited review” CON applications that are decided by state DOH staff.
- **Increasing numbers of CON applications are being decided out of public view through “administrative review” and “limited review” or through simple “notice” to the state.** State processing of CON applications has been streamlined and shortened at the urging of hospitals, making it more difficult for affected consumers to learn about and comment on proposals.
- **User-friendly information is difficult to find on the NYS DOH website concerning individual CON applications, the CON review process or how to submit comments on pending applications.**

- **PHHPC meetings and their agendas are not widely publicized.** The meetings are held only on weekdays in Albany or New York City, creating hurdles for consumers who would have to take time off from work and travel to present comments. There frequently is no response when the committee chair asks, “Are there any comments from the public?”
- **The public’s voice is not well represented on the PHHPC itself, with only a single seat being designated for a consumer representative (and that seat having been vacant since mid-2016).** This is in stark contrast to public representation in some other states, where health care *provider* representation is severely limited on CON-decision making bodies and the chair must be a consumer.
- **Since the demise of all but one local Health System Agency (HSA), no replacement process has been devised to seek and consider the views of local health officials and affected communities on pending CON applications.**
- **Until now, CON decision-making has not included consideration of whether proposed hospital transactions would advance identified local or state health planning goals, such as those articulated in the Prevention Agenda.** In June of 2018, the “full review” CON applications for general hospitals will begin to ask applicants about how the proposed project advances local Prevention Agenda priorities, which will represent an important step in the right direction.
- **Publicly-available summaries of CON applications often do not explain how the project would meet the needs of medically-underserved people, such as those who are low income, racial and ethnic minorities, women or people with disabilities.**
- **Also unaddressed in CON decision-making is whether a proposed consolidation could increase the price of health care in affected communities.**
- **No CON review or public notification is required when health systems initiate takeovers of local hospitals by using an unregulated “passive parent” mechanism found in no other state.** When systems do submit CON applications to assume “active parent” governance of hospitals (which gives them direct authority over the hospital’s budget and management), applicants are not required to explain how local residents would be given a continuing voice in hospital decision-making (such as through seats on the board).

**NO PROCESS HAS BEEN DEVISED TO SEEK AND CONSIDER THE VIEWS OF LOCAL HEALTH OFFICIALS AND AFFECTED COMMUNITIES ON PENDING CON APPLICATIONS.**

## **“WE HAVE NOT HAD A DISCUSSION ABOUT THE IMPLICATIONS OF CONSOLIDATION.”**

**– DR. JOHN RUGGE**

“We look with a microscope at individual applications with criteria that are decades old, and have not had a discussion here about the implications of consolidation and should there be expectations of consolidation,” said Dr. John Rugge, who is Chair of the PHHPC’s Planning Committee and Founder, Executive Chairman of the Hudson Headwaters Health Network. “For example,” he asked, “should there be expectations about local governance?”

## Summary of Recommendations

**How can New York’s CON process be made more transparent and engaging of consumers in the new era of hospital consolidation?** The study produced four categories of recommendations about how to make the process more transparent, drawing on practices found in other states and in a few cases on recommendations from the 2012 PHHPC report that were not acted upon:

- 1. Ensure that consumers affected by hospital closures or elimination of key hospital services are notified and engaged.** We propose (a) requiring 90 days advance notice and provision of a proposed closure plan, as well as (b) a public hearing in the affected community at least 60 days in advance and (c) full review of these transactions in public meetings by the Public Health and Health Planning Council (PHHPC), with special attention to the potential effect on health consumers who are low-income, racial and ethnic minorities, women, people with disabilities, the elderly, and members of other underserved groups.
- 2. Improve transparency, consumer engagement and accountability when health systems propose takeovers of community hospitals.** We urge full disclosure by systems of plans to downsize or transform hospitals they are acquiring, followed by post-transaction reporting and monitoring to ensure accountability to affected consumers. We urge a requirement for public hearings in affected communities to ensure consumer engagement, especially for consumers who are medically underserved or could become so as a result of the transaction. We propose eliminating health systems’ use of an unregulated mechanism (called “passive parent”) to begin takeovers of local hospitals without transparency or accountability to affected consumers.

**WE URGE FULL DISCLOSURE BY HEALTH SYSTEMS OF PLANS TO DOWNSIZE OR TRANSFORM HOSPITALS THEY ARE ACQUIRING.**

- 3. Increase consumer representation on the PHHPC and improve the overall transparency and consumer engagement of the current NYS CON process.** We urge the addition of more consumer representatives to the PHHPC to better ensure consumer views are heard and considered, and to counterbalance the presence of health system representatives. We recommend improvements to the NYS DOH website to make it easier for consumers to find hospital CON applications and to submit comments on them. We recommend requiring CON applicants to submit Letters of Intent 30 days prior to the filing of a CON, and posting those LOIs promptly on the DOH website.
- 4. Ensure CON-approved projects protect access to timely, affordable care and advance identified local and state health planning goals.** We recommend that CON applicants be required to state how their projects would address identified state and local health planning goals, such as the Prevention Agenda, and advance health equity by improving access to care for medically-undeserved health consumers. We also suggest that applications for large-scale transactions, especially hospital consolidations, be required to project the impact of the transactions on the price of health care services.

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