§ 253. Utilization of out-of-state provider pharmacies; necessity and convenience. 1. In counties having a population of seventy-five thousand or less that are in proximity to the state boundary and which are determined by the commissioner of health to be not adequately served by provider pharmacies registered in New York, and in Fishers Island in the town of Southold, Suffolk county, the commissioner may approve as provider pharmacies, pharmacies located in New Jersey, Connecticut, Vermont, Pennsylvania or Massachusetts. Such approvals shall be made after (a) consideration of the convenience and necessity of New York residents in the rural areas served by such pharmacies, (b) consideration of the quality of service of such pharmacies and the standing of such pharmacies with the governmental board or agency of the state in which such pharmacy is located, (c) the commissioner shall give all licensed pharmacies within the county notice of his or her intention to approve such out-of-state provider pharmacies, and (d) the commissioner has held a public hearing at which he or she has determined factually that the licensed pharmacies within such county are not adequately serving as provider pharmacies.

2. The commissioner of health shall investigate and determine whether certification shall be granted within ninety days of the filing of an application for certification by the governing body of any city, town or village, within a county determined by the commissioner to be not adequately served by provider pharmacies registered in New York pursuant to subdivision one of this section, claiming to be lacking adequate pharmaceutical service.

3. Every certification granted pursuant to this section shall expire not more than five years after the date of issuance.