§ 16.03 Operating certificate required.

(a) No provider of services shall engage in any of the following activities without an operating certificate issued by the commissioner pursuant to this article:

(1) Operation of a residential facility for the care and treatment of persons with developmental disabilities including a family care home.

(2) Operation of any distinct part of a general hospital or other facility possessing an operating certificate, pursuant to article twenty-eight of the public health law, operated for the primary purpose of providing residential or non-residential services for persons with developmental disabilities.

(3) Operation of a facility established or maintained by a public agency, board, or commission, or by a corporation or voluntary association for the rendition of out-patient or non-residential services for persons with developmental disabilities; provided, however, that such operation shall not be deemed to include (i) professional practice, within the scope of a professional license or certificate issued by an agency of the state, by an individual practitioner or by a partnership of such individuals or by a professional service corporation duly incorporated pursuant to the business corporation law or by a university faculty practice corporation duly incorporated pursuant to the not-for-profit corporation law or (ii) non-residential services which are licensed, supervised, or operated by another agency of the state and non-residential services which are chartered or issued a certificate of incorporation pursuant to the education law or (iii) pastoral counseling by a clergyman or minister, including those defined as clergyman or minister by section two of the religious corporations law.

(4) The provision of home and community based services approved under a waiver program authorized pursuant to section eleven hundred fifteen of the federal social security act or subdivision (c) of section nineteen hundred fifteen of the federal social security act and subdivisions seven and seven-a of section three hundred sixty-six of the social services law, provided that an operating certificate issued pursuant to this paragraph shall only authorize services in a home or community setting.

(5) The provision of services approved in a medicaid state plan authorized pursuant to section nineteen hundred two of the federal

social security act, including optional state plan services authorized pursuant to subdivision (g) of section nineteen hundred fifteen of the federal social security act, and designated by the commissioner of health, in consultation with the commissioner, as being for persons with developmental disabilities.

(b) The commissioner shall enter into a cooperative agreement with the commissioner of education with respect to all issues regarding certification under this article of providers of non-residential services which are chartered or issued a certificate of incorporation pursuant to the education law.

(c) The commissioner shall enter into a cooperative agreement with the commissioner of health with respect to all issues regarding certification under this article of providers of services possessing an operating certificate pursuant to article twenty-eight of the public health law.

(d) The operation of a facility or provision of services for which an operating certificate is required pursuant to this article shall be in accordance with the terms of the operating certificate and the regulations of the commissioner.

(e) Any provider of services who knowingly fails to comply with the provisions of this section shall be guilty of a misdemeanor.

(f) Any provider of services that holds an operating certificate pursuant to paragraph four of subdivision (a) of this section, shall be authorized to employ or contract with persons licensed to practice nursing pursuant to article one hundred thirty-nine of the education law; employ or contract with exempt individuals authorized to perform tasks pursuant to subparagraph (v) of paragraph a of subdivision one of section sixty-nine hundred eight of the education law; or contract with entities legally authorized to employ persons licensed to practice nursing pursuant to article one hundred thirty-nine of the education law or exempt individuals authorized to perform tasks pursuant to subparagraph (v) of paragraph a of subdivision one of section sixty-nine hundred eight of the education law; provided that such exempt individuals shall only be authorized to provide those tasks delegated pursuant to subparagraph (v) of paragraph a of subdivision one of section sixty-nine hundred eight of the education law.

(g) No provision of this article or any other provision of law shall

be construed to require a provider licensed pursuant to article twenty-eight of the public health law or certified pursuant to article thirty-one or thirty-two of this chapter to obtain an operating certificate from the office for people with developmental disabilities if such provider has been authorized to provide integrated services in accordance with regulations issued by the commissioner of the office for people with developmental disabilities, in consultation with the commissioner of the department of health, the commissioner of the office of mental health and the commissioner of the office of alcoholism and substance abuse services, including regulations issued pursuant to subdivision seven of section three hundred sixty-five-l of the social services law or part L of chapter fifty-six of the laws of two thousand twelve.