§ 16.05 Issuance of operating certificates.

(a)(1) Application for an operating certificate shall be made upon forms prescribed by the commissioner.

(2) Application shall be made by the person or entity responsible for operation of the facility or provider of services as described in subdivision four of section 16.03 of this article. Applications shall be in writing, shall be verified and shall contain such information as required by the commissioner.

(b) Notice of an application for an operating certificate shall be forwarded by the office to the appropriate local governmental unit in the area to be served and the local health planning agency.

(c) No operating certificate shall be issued by the commissioner unless the commissioner is satisfied as to:

(1) The public need for the facility or services to be established upon issuance of the operating certificate;

(2) The character, competence and standing in the community of the person or entity responsible for operating the facility or providing services;

(3) The financial resources of the proposed facility or provider of services and its sources of future revenues;

(4) The adequacy of the premises, equipment, personnel and program to provide the services which would be authorized by the operating certificate;

(5) The commissioner may deny an operating certificate to any operator who, within ten years of the date of application, has been denied renewal for cause of an operating certificate, or who has had an operating certificate revoked or suspended for cause, and such denial, revocation or suspension was not reversed after an administrative hearing or other appeal, for a program or facility licensed or operated by a health, mental hygiene, social services or education agency or department of this or any state or who has failed to operate a program serving the mentally disabled, other disabled persons as defined in subdivision twenty-one of section two hundred ninety-two of the executive law, the aged, children or other persons receiving health, mental hygiene, residential, social or educational services in continuous compliance with applicable laws or regulations within the previous ten years in any state;

(6) In the case of residential facilities, that arrangements have been made with other providers of services for the provision of health, habilitation, day treatment, education, sheltered workshop, transportation or other services as may be necessary to meet the needs of individuals who will reside in the facility; and

(6-a) In the case of a provider of services seeking to provide nursing tasks by non-licensed persons authorized to provide such tasks pursuant to subparagraph (v) of paragraph a of subdivision one of section sixty-nine hundred eight of the education law, that such provider will provide services and perform tasks in a safe and competent manner and will fully comply with the requirements of such subparagraph and any memorandum of understanding between the office and the state education department pursuant to such subparagraph. Any operating certificate subject to this paragraph shall specify that the provider of services is authorized to provide these nursing services.

(7) Such other matters as the commissioner shall deem pertinent in the public interest.

(d) No operating certificate shall be renewed by the commissioner unless the commissioner is satisfied as to:

(1) the financial resources of the proposed facility or provider of services and its sources of future revenues;

(2) the adequacy of the premises, equipment, personnel and program to provide the services which would be authorized by the operating certificate;

(3) the ability of the operator to provide the services required by the operating certificate as demonstrated by the operator's compliance with applicable laws and regulations within the previous ten years;

(4) in the case of residential facilities, that arrangements have been made with other providers of services for the provision of health, habilitation, day treatment, education, sheltered workshop, transportation or other services as may be necessary to meet the needs of individuals who will reside in the facility; and

(5) such other matters as the commissioner shall deem pertinent in the public interest.

(e) The commissioner may disapprove an application for an operating certificate, may authorize fewer services than applied for, and may place limitations or conditions on the operating certificate including,

but not limited to compliance with a time limited plan of correction of any deficiency which does not threaten the health or well-being of any individuals. In such cases the applicant shall be given an opportunity to be heard, at a public hearing if requested by the applicant.

(f) Operating certificates shall be valid for up to a three-year period as shall be expressly provided upon such certificate or renewal thereof. No application fee shall be required for an application for issuance or renewal of an operating certificate.

(g) The commissioner shall specify on each operating certificate the kind or kinds of services authorized, any limitations or conditions of the certificate and the expiration date of the certificate.

(h) Operating certificates shall not be transferable.

(i) In the event that the holder of an operating certificate for a residential facility issued by the commissioner pursuant to this article wishes to cease the operation or conduct of any of the activities, as defined in paragraph one or four of subdivision (a) of section 16.03 of this article, for which such certificate has been issued or to cease operation of any one or more of facilities for which such certificate has been issued; wishes to transfer ownership, possession or operation of the premises and facilities upon which such activities are being conducted or to transfer ownership, possession or operation of any one or more of the premises or facilities for which such certificate has been issued; or elects not to apply to the commissioner for re-certification upon the expiration of any current period of certification, it shall be the duty of such certificate holder to give to the commissioner written notice of such intention not less than sixty days prior to the intended effective date of such transaction. Such notice shall set forth a detailed plan which makes provision for the safe and orderly transfer of each person with a developmental disability served by such certificate holder pursuant to such certificate into a program of services appropriate to such person's on-going needs and/or for the continuous provision of a lawfully operated program of such activities and services at the premises and facilities to be conveyed by the certificate holder. Such certificate holder shall not cease to provide any such services to any such person with a developmental disability under any of the circumstances described in this section until the notice and plan required hereby are received, reviewed and

approved by the commissioner. For the purposes of this paragraph, the requirement of prior notice and continuous provision of programs and services by the certificate holder shall not apply to those situations and changes in circumstances directly affecting the certificate holder that are not reasonably foreseeable at the time of occurrence, including, but not limited to, death or other sudden incapacitating disability or infirmity. Written notice shall be given to the commissioner as soon as reasonably possible thereafter in the manner set forth within this subdivision.

(j) Notwithstanding any other provision of this chapter, except in the case of family care, the commissioner may issue one operating certificate for two or more facilities in the same program class operated by the same person or entity.