§ 16.09 Approval of new construction.

(a) As used or referred to in this section, unless a different meaning clearly appears from the context:

(1) "Facility" is limited to a facility in which services are offered for which an operating certificate is required by this article. For the purposes of this section facility shall include family care homes but shall not include the provision of services, as defined in paragraph four of subdivision (a) of section 16.03 of this article, outside of a facility.

(2) "Construction" means the erection, building, or substantial acquisition, alteration, reconstruction, improvement, extension or modification of a facility, including its equipment, the inspection and supervision thereof; and the studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto.

(b) The construction of a facility, whether public or private, incorporated or not incorporated, shall require the prior approval of the commissioner. An application for such construction shall be filed with the office, together with such other forms and information as shall be prescribed by, or acceptable to, the office. Thereafter, the office shall forward for comment a copy of the application and accompanying documents to the local governmental unit responsible for community services for the mentally disabled where the facility is to be located, and, for facilities other than community residences, to the concerned health systems agency. The commissioner shall not act upon an application for construction of a facility unless the applicant has obtained all approvals and consents required by law for its incorporation or establishment. The commissioner in approving the construction of a facility shall take into consideration and is empowered to request information and advice from all available sources including local and area mental hygiene and health planning agencies and groups as to (i) the availability of facilities or services which may serve as alternatives or substitutes for the whole or any part of the proposed construction and (ii) the adequacy of financial resources and sources of future revenue and (iii) the public need for the facility or the services, for facilities other than community residences, at the time and place and under the circumstances proposed. If the commissioner

proposes to disapprove an application for construction of a facility, he shall afford the applicant an opportunity to be heard. The commissioner, on his own motion, may hold a hearing on an application for construction of a facility.

(c) In determining whether there is a public need for any services or facilities, for facilities other than community residences, as required by this article, the commissioner shall consider the advice of the state health planning and development agency designated pursuant to the provisions of the national health planning and resources development act of nineteen hundred seventy-four and any amendments thereto. The commissioner shall not take any action contrary to the advice of the health systems agency for facilities other than community residences until he affords an opportunity to the agency to request a public hearing and, if so requested, a public hearing shall be held.