§ 16.11 Oversight of facilities and services. (a) The commissioner shall provide for the oversight of facilities and providers of services holding operating certificates pursuant to section 16.03 of this article and shall provide for the annual review of such facilities and providers in implementing the requirements of the office and in providing quality care and person centered and community based services.

(1) The review of facilities issued an operating certificate pursuant to this article shall include periodic visitation and review of each facility. Reviews shall be made as frequently as the commissioner may deem necessary but in any event such inspections shall be made on at least two occasions during each calendar year which shall be without prior notice, provided, however, that where, in the discretion of the commissioner, an operating certificate has been issued to a program with a history of compliance and a record of providing a high quality of care, the periodic inspection and visitation required by this subdivision shall be made at least once during each calendar year provided such visit shall be without prior notice. Areas of review shall include, but not be limited to, a review of a facility's: physical plant, fire safety procedures, health care, protective oversight, abuse and neglect prevention, and reporting procedures.

(2) The review of providers of services, as defined in paragraph four of subdivision (a) of section 16.03 of this article, shall ensure that the provider of services complies with all the requirements of the applicable federal home and community based services waiver program, or other successor Medicaid waiver program, and applicable federal regulation, subdivisions seven and seven-a of section three hundred sixty-six of the social services law and rules and regulations adopted by the commissioner.

(3) The review of providers of services, as defined in paragraph five of subdivision (a) of section 16.03 of this article, shall ensure that the provider of services complies with all the requirements of the applicable federal regulations and rules and the regulations adopted by the commissioner.

(b) The commissioner shall have the power to conduct investigations into the operations of any provider of service, person or entity which holds an operating certificate issued by the office, into the operation of any facility, service or program issued an operating certificate by

the office and into the operations, related to the provision of services regulated by this chapter, of any person or entity providing a residence for one or more unrelated persons with developmental disabilities.

(c) In conducting a review or investigation, the commissioner or his or her authorized representative shall have the power to inspect facilities, conduct interviews of clients, interview personnel, examine and copy all records, including financial and medical records of the facility or provider of services, and obtain such other information as may be required in order to carry out his or her responsibilities under this chapter.

(d) In conducting any review or investigation under this chapter, the commissioner or his or her authorized representative is empowered to subpoena witnesses, compel their attendance, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the investigation, inspection, or hearing. A subpoena issued under this section shall be regulated by the civil practice law and rules.

(e) The supreme court may enjoin persons or entities subject to review or investigation pursuant to this article to cooperate with the commissioner and to allow the commissioner access to providers of services, facilities, records, clients and personnel as necessary to enable the commissioner to conduct the review or investigation.

(f) All inspections and investigations shall be made by persons competent to conduct such activities. Information obtained by the commissioner in the course of such inspections and investigations shall be kept confidential in accordance with the provisions of this chapter and other applicable provisions of law.