§ 31.02 Operating certificate required.

(a) * Except as provided in subdivision (b) of this section no provider of services shall engage in any of the following activities without an operating certificate issued by the commissioner pursuant to this article:

* NB Effective until the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

* Except as provided in subdivisions (b) and (f) of this section no provider of services shall engage in any of the following activities without an operating certificate issued by the commissioner pursuant to this article:

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

1. operation of a residential facility or institution, including a community residence, for the care, custody, or treatment of the mentally disabled; provided, however, that giving domestic care and comfort to a person in the home shall not constitute such an operation.

2. operation of any part of a general hospital for the purpose of providing residential or non-residential services for the mentally disabled.

3. operation of a facility established or maintained by a public agency, board, or commission, or by a corporation for the rendition of out-patient or non-residential services for the mentally disabled; 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 nonresidential 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. operation of a residential treatment facility for children and youth.

5. operation of a residential care center for adults.

* 6. operation of a comprehensive psychiatric emergency program.

* NB Repealed July 1, 2027

(b) A provider of services operating a community residence on April first, nineteen hundred seventy-six, shall be issued an operating certificate by the commissioner without requiring proof that there is a public need for such residence, providing application for such operating certificate to the department in accordance with this article is submitted prior to September first, nineteen hundred seventy-six. Pending the determination of any such application the continuance of such operation shall be lawful. An application pursuant to this section shall be deemed filed with the department upon being mailed to the department by registered or certified mail.

(c) The operation of a facility for which an operating certificate is required shall be in accordance with the terms of the operating certificate and the regulations of the commissioner.

(d) Any provider of services who knowingly fails to comply with the provisions of this section or of section 31.03 of this article shall be guilty of a misdemeanor.

(e) If the commissioner has reason to believe that there is a provider of services for the mentally disabled who does not possess a required current valid operating certificate, he or she shall proceed pursuant to applicable sections of this chapter including but not limited to sections 31.07, 31.09, 31.11, 31.13 and 31.21 of this article.

* (f) 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 sixteen or article thirty-two of this chapter to obtain an operating certificate from the office of mental health if such provider has been

authorized to provide integrated services in accordance with regulations issued by the commissioner of the office of mental health in consultation with the commissioner of the department of health, the commissioner of the office of alcoholism and substance abuse services and the commissioner of the office for people with developmental disabilities, 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.

* NB Effective until the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8

* (f) No provision of this article or any other provision of law shall be construed to: (i) require a provider licensed pursuant to article twenty-eight of the public health law or certified pursuant to article sixteen or article thirty-two of this chapter to obtain an operating certificate from the office of mental health if such provider has been authorized to provide integrated services in accordance with regulations issued by the commissioner of the office of mental health in consultation with the commissioner of the department of health, the commissioner of the office of addiction services and supports and the commissioner of the office for people with developmental disabilities, 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; or (ii) require a provider licensed under section 36.08 of this title to obtain a license from the office of mental health. Furthermore, no provision of this article or any other provision of law shall be construed to limit the volume of mental health services by a program licensed to provide integrated behavioral health services, as defined in section 36.08 of this title.

* NB Effective on the date that the rates of reimbursement for integrated behavioral health services are approved and certified by parties set forth in chapter 60 of 2026 § 8