§ 31.03 Operating certificates for family care homes.

(a) No provider of services as a family care home for mentally disabled persons shall engage in any such activities on or after April first, nineteen hundred seventy-seven, unless it possesses an operating certificate issued by the commissioner pursuant to this article.

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

(c) The operating certificate issued for a family care home shall be valid for two years. There shall be no initial or renewal certification fee required.

(d) Application for the operating certificate shall be made by the owner of the family care home. The application shall be made in writing, be verified under oath, shall state the name and address of the owner and shall be in such form and contain such information as required by regulations promulgated by the commissioner pursuant to this article.

(e) Notice of an application for an operating certificate as a family care home shall be forwarded by the department to the appropriate local governmental unit pursuant to the provisions of section 31.23 of this chapter, to the directors of department facilities and to the regional director in the area proposed to be served.

(f) Except as otherwise provided in subdivision (g) of this section, the commissioner shall not be required to approve an application for an initial operating certificate as a family care home unless he shall be satisfied that it would be in the public interest to approve such certificate in consideration of the public need for the home in the area proposed to be served, availability of adequate finances for the establishment and continued operation of the home and such other factors as may be pertinent.

(g) If any person is in bona fide operation as a family care home on April first, nineteen hundred seventy-six, within the local governmental unit for which application for an operating certificate is made pursuant to the provisions of this section, and has so operated since that time, the commissioner shall issue such operating certificate without requiring proof that there is a public need for such family care home, providing application for such operating certificate to the department in accordance with this article is submitted prior to April first,

nineteen hundred seventy-seven. 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.

(h) In order more effectively to assure that the life, health, safety and comfort of persons cared for in family care homes will be adequately protected and promoted and that such persons will receive the kind and quality of care, supervision and attention required by reason of their condition:

(1) Operating certificates for family care homes shall be issued only to natural persons, and corporations for profit shall not be formed under the business corporation law for any such purpose.

(2) Except as provided in paragraph three, no family care home shall be issued an operating certificate for the purpose of providing suitable care therein to more than six persons.

(3) Any provider of service providing family care to more than six persons on July first, nineteen hundred seventy-five shall be issued an operating certificate for a family care home effective April first, nineteen hundred seventy-seven, pursuant to the provisions of this section, provided that such person fulfills all requirements of this section except for the number of persons in care, and that such person agrees to provide family care to no more than ten persons on and after April first, nineteen hundred seventy-seven.

(4) No operating certificate issued under this section shall be transferable.

(5) The commissioner shall promulgate and distribute a caretaker's manual for the operation of family care homes, and any amendments thereto, and regulations pursuant to this section.

(6) The department shall investigate the financial condition, income and good moral character of every applicant for an operating certificate under this section.

(7) The department shall provide substitute caretakers to each family care home for a maximum of ten days per year, either directly or as a purchase of service.

(8) The commissioner shall establish a procedure, subject to the approval of the state comptroller, whereby payments may be made to

operators of family care homes for one or more of the following needs of clients residing in such facilities, limited to two hundred ninety dollars per client per year and paid semi-annually in the manner specified by such procedures:

(i) Replacement of necessary clothing;

(ii) Personal requirements and incidental needs of clients;

(iii) Recreational and cultural activities of clients. Such payments may be made from monies appropriated to the offices for this purpose. Such payments shall be audited by each office pursuant to an audit plan approved by the comptroller.