§ 31.23 Approval of new construction.

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

"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.

"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) 1. The construction of a facility for which an operating certificate issued by the commissioner of mental health is required pursuant to article thirty-one of this chapter shall require the approval of the commissioner of mental health. An application for such construction shall be submitted to the office of mental health. The office shall forward a copy of the application for approval of the proposed construction, and any 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 family care homes, community residences or residential care centers for adults, to the concerned health systems agency. The local governmental unit and health systems agency shall report their recommendations on the proposed construction within a reasonable time. Upon receipt of the recommendations of the local governmental unit and the health systems agency, or upon the lapse of a reasonable time for comment by the local governmental unit or health systems agency, the commissioner shall submit the application for facilities other than family care homes, community residences or residential care centers for adults along with the recommendations of the local governmental unit or health systems agency to the mental health services council for its review and comment. The commissioner shall not act upon an application for construction of a facility other than a family care home, community residence or residential care center for adults without having first given the mental health services council a reasonable opportunity to make a recommendation about the application.

2. 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; (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 family care homes, community residences or residential care centers for adults, 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 in the same manner as prescribed in section 31.17 of this article. The commissioner shall not take any action contrary to the advice of the health systems agency for facilities other than family care homes, community residences or residential care centers for adults until he affords an opportunity to the agency to request a public hearing and if so requested, a public hearing shall be held. The commissioner, on his own motion, may hold a hearing on an application for construction of a facility.

3. Nothing in this subdivision shall limit the application of provisions of article twenty-eight of the public health law.

(c) The commissioner may submit any plans for construction including a substantial change in bed capacity, of a facility operated by the office of mental health, other than a community residence, residential care center for adults or family care home, to the local governmental unit responsible for community services for the mentally disabled where the facility is located, to the concerned health systems agency and to the mental health services council, for their review and recommendations in accordance with this section.