§ 32.09 Issuance of operating certificates.

(a) No operating certificate shall be issued by the commissioner unless the commissioner is satisfied as to:

1. the public need for the chemical dependence services to be established upon the issuance of the operating certificate, taking into consideration local, regional, and statewide need; and

2. the character, competence and standing in the community of the person or entity responsible for operating the facility;

3. the overall financial condition of applicants, through review of audited financial statements, taking into consideration financial resources of the proposed facility and its sources of future revenues;

4. the adequacy of the premises, equipment, personnel, records, and program to provide the services which would be authorized by the operating certificate;

5. that such services will be provided in compliance with applicable law and regulations;

6. that the provider of services will provide patients with continuity of care consistent with treatment and discharge plans; and

7. such other matters as the commissioner shall deem pertinent and in the public interest.

(b) In addition to the provisions of subdivision (a) of this section, no operating certificate shall be issued by the commissioner to authorize the administration and dispensing of methadone or other controlled substances by certain physicians and/or medical facilities in accordance with subdivision (b) of section 32.05 of this article unless such commissioner is satisfied that:

1. the applicant is ready, willing and able to properly carry on a chemical dependency program;

2. the applicant will be able to maintain effective control against diversion of controlled substances;

3. it is in the public interest that such certification be granted;

4. the applicant is able to comply with all applicable state and federal laws; and

5. the applicant will establish procedures to effectively implement a detoxification program to further relieve people with substance use disorder from dependence upon methadone or such other controlled substances prescribed for treatment in subject maintenance programs.

(c) Operating certificates shall be valid for up to a five year period as shall be expressly provided upon such certificate or renewal thereof.

(d) The commissioner shall specify on each operating certificate the kind or kinds of services authorized, any limitations or conditions of the certificate, and the expiration date of the certificate.

(e) Notwithstanding the provisions of subdivision (a) of this section, the commissioner shall have the authority to grant temporary approval of an operating certificate for a period not to exceed one hundred twenty days, in the event of a threat or imminent threat of a catastrophic or emergency loss of available services. Such temporary approval may be extended beyond one hundred twenty days as deemed necessary by the commissioner, but not to exceed more than an additional one hundred twenty days.

(f) The commissioner may disapprove an application for an operating certificate, may authorize fewer services than applied for, and may place limitations and conditions on the operating certificate he or she determines to be reasonable and necessary, including, but not limited to compliance with a time limited plan of correction of any deficiency which does not threaten the health or well being of any patient. In such cases the applicant shall be given an opportunity to be heard at a public hearing, if requested by the applicant.

(g) All operating certificates shall remain the property of the office and must be returned to the office upon revocation or expiration thereof, or upon the demand of the commissioner. Operating certificates are not transferable.