§ 32.31 Establishment or incorporation of facilities for chemical dependence services.

(a) No provider of services or facility providing chemical dependence services shall be established except with the written approval of the commissioner. No certificate of incorporation of a business, membership or not-for-profit corporation or articles of organization of a limited liability company shall hereafter be filed which includes among its corporate purposes or powers the establishment or operation of a facility providing chemical dependence services or the solicitation of contributions for any such purpose, or two or more of such purposes, except with the written approval of the commissioner and, when otherwise required by law, the approval of a justice of the supreme court endorsed on or annexed to the certificate of incorporation. Notwithstanding any other provision of law, the commissioner shall not require a corporation to amend its certificate of incorporation or a limited liability company to amend its articles of organization which includes among the purposes of the corporation or limited liability company the establishment or operation of a substance abuse program or alcoholism facility. Any such corporate or limited liability company purposes, powers, or provisions previously approved by the office shall be deemed consent by the office for such corporation or limited liability company to provide chemical dependence services. Nothing herein obviates the need for such corporation or limited liability company to possess a valid operating certificate.

(b) With respect to the incorporation or establishment of a provider or facility providing chemical dependence services, the commissioner shall give written approval after all of the following requirements have been met:

1. An application for approval of the proposed certificate of incorporation or articles of organization shall be filed with the commissioner together with such other forms and information as shall be prescribed by, or acceptable to, him or her. Thereafter, the commissioner shall forward a copy of the proposed certificate or articles or organization and application for establishment and accompanying documents, to the local governmental unit of the area in which such facility is to be located. The commissioner shall not act

upon such application until the local governmental unit has had a reasonable time to submit their recommendations.

2. Upon receipt of the recommendations of the local governmental unit, or the lapse of a reasonable time for comment, the commissioner shall submit the application along with the recommendations of the local governmental unit to the advisory council on alcoholism and substance abuse services for its review and recommendation. The commissioner shall not act upon an application for establishment of a facility without having first given such advisory council a reasonable opportunity to make its recommendation on the application.

3. The commissioner shall not take any action contrary to the recommendation of the council unless he or she first appears before the council and explains his or her reasons therefor. The commissioner shall not take any action contrary to the advice of the local governmental unit until he or she affords, to such entity, an opportunity to request a public hearing and if so requested, a public hearing shall be held in accordance with subdivision (e) of section 32.29 of this article. If the commissioner proposes to disapprove the application he or she shall afford the applicant an opportunity to request a public hearing in accordance with subdivision (e) of section 32.29 of this article. The commissioner may hold such a public hearing on the application on his or her own motion. Any public hearing held pursuant to this subdivision may be conducted by the commissioner or by any individual designated by the commissioner.

(c) The commissioner shall not approve a certificate of incorporation or articles of organization or application for establishment unless the provisions of subdivision (a) of section 32.09 of this article have been met and that the commissioner is satisfied, insofar as applicable, as to:

1. the public need for the existence of the facility at the time and place and under the circumstances proposed taking into consideration local, regional, and statewide need;

2. the absence of availability and feasibility of development of

facilities or services which may serve as alternatives or substitutes for the whole or any part of the proposed facility;

3. the character, competence and standing in the community of the proposed incorporators, directors, members, partners, sponsors, stockholders or operators; considering, with respect to any proposed incorporator, director, member, partner, sponsor, stockholder or operator who is already or within the past ten years has been an incorporator, director, member, partner, sponsor, stockholder or operator of any hospital, private proprietary home for adults, residence for adults, or not-for-profit home for the aged or blind which has been issued an operating certificate by the office of children and family services or a halfway house, hostel or other facility or institution for the care, custody or treatment of the mentally disabled which is subject to approval by an office of the department, the level of care being or having been rendered in each such hospital, home, residence, halfway house, hostel, or other residential facility or institution with which such person is or was affiliated;

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

5. the sufficiency of such other matters as he or she shall deem in the public interest.

(d) 1. Any change in the person who or partnership which is the provider of services shall be approved by the commissioner in accordance with the provisions of this subdivision and subdivisions (a) through (c) of this section.

2. Any transfer, assignment or other disposition of ten percent or more of the stock, membership interest or voting rights thereunder of a corporation or a limited liability company which is the provider of services providing chemical dependence services or any transfer, assignment or other disposition of the stock, ownership or voting rights thereunder of such a corporation or a limited liability company which

results in the ownership or control of more than ten percent of the stock, ownership or voting rights thereunder of such corporation or limited liability company by any person shall be subject to approval by the commissioner in accordance with the provisions of this subdivision and subdivisions (a) through (c) of this section and rules and regulations promulgated pursuant thereto. In the absence of such approval, the operating certificate of such facility shall be subject to revocation or suspension.

3. No facility shall be approved for establishment which would be operated by a partnership or limited liability company any of the members of which are not natural persons.

4. No facility shall be approved for establishment which would be operated by a corporation any of the stock of which is owned by another corporation.

5. No corporation having power to solicit contributions for charitable purposes shall be deemed to have authority to solicit contributions for any purposes for which the approval of the commissioner is required pursuant to subdivision (a) of this section, unless the certificate of incorporation or articles of organization specifically makes provisions therefor, and the written approval of the commissioner is endorsed on or annexed to such certificate or articles of organization. Where such approval has not been obtained the commissioner may institute and maintain an action in the supreme court through the attorney general to procure a judgment dissolving and vacating or annulling the certificate of incorporation or articles of organization of any such corporation or limited liability company.

6. Only a natural person or a partnership existing under the partnership law may hereafter undertake to engage in the business of operating or conducting a facility providing chemical dependence services for profit, except that: (i) a person, partnership or corporation which owned and was operating such a facility on July first, nineteen hundred eighty-three may continue to own and operate such facility; (ii) a business corporation organized pursuant to the business

corporation law or a limited liability company organized pursuant to the limited liability company law may, with the approval of the commissioner and in accordance with the provisions of this section, undertake to engage in the business of operating or conducting such a facility provided that such corporation or limited liability company shall not discriminate because of race, color, creed, national origin or sponsor in admission or retention of patients; (iii) any person who, or a partnership which, is operating a private proprietary facility in accordance with applicable provisions of law may, with the approval of the commissioner, and in accordance with the provisions of this section and any rules and regulations thereunder, form a business corporation to engage in the business of operating or conducting such facility, provided, however, that such corporation shall not discriminate because of race, color, creed, national origin or sponsor in admission or retention of patients.

(e) The commissioner shall adopt and amend rules and regulations to effectuate the provisions and purposes of this section, and to provide for the revocation, limitation or annulment of approvals of establishment or formation of limited liability companies or incorporation of corporations.

(f) Where the approval required by subdivision (a) of this section has not been obtained, the commissioner may institute and maintain an action in the supreme court through the attorney general to procure a judgment dissolving and vacating or annulling:

1. the certificate of incorporation of any such corporation or articles of organization of any such limited liability company, or

2. the certificate of incorporation of any such corporation or the articles of organization of any such limited liability company hereafter incorporated or formed, the name, purposes, objectives, or activities of which in any manner may reasonably lead to the belief that the corporation or limited liability company possesses or may exercise any of such purposes.