§ 2806. Hospital operating certificates; suspension or revocation. 1. A hospital operating certificate may be revoked, suspended, limited or annulled by the commissioner on proof that: (a) the hospital has failed to comply with the provisions of this article or rules and regulations promulgated thereunder; or (b) a general hospital has refused or failed to admit or to provide for necessary emergency care and treatment for an unidentified person brought to it in an unconscious, seriously ill or wounded condition. A hospital operating certificate shall be revoked, limited or annulled by the commissioner upon revocation, limitation or annulment by the public health council of approval of establishment of such hospital.

2. No hospital operating certificate shall be revoked, suspended, limited or annulled without a hearing, except for operating certificates revoked, limited or annulled because of revocation, limitation, or annulment of establishment approval.

Also, an operating certificate may be temporarily suspended or limited without a hearing for a period not in excess of sixty days upon written notice to the hospital and opportunity for a hearing following a finding by the department that the public health or safety is in imminent danger or there exists any condition or practice or a continuing pattern of conditions or practices which poses imminent danger to the health or safety of any patient. The department may also, consistent with applicable federal law and regulations, prohibit or limit the placement of new patients in a residential health care facility without a hearing for a period not in excess of sixty days upon written notice to such facility and opportunity for a hearing upon a determination that such facility no longer substantially meets the requirements of this article and the regulations thereunder and that such deficiencies do not pose an imminent danger to the health and safety of any patient, provided, however, that the department shall not make such a determination with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that such facility no longer substantially meets the requirements of this article, to correct its deficiencies and following this period, has been given written notice and opportunity for a hearing. Provided, however, that any delay

in the hearing process during the sixty-day period occasioned by the hospital shall toll the running of said suspension or limitation and shall not abridge the full time provided for in this subdivision. Upon such finding and notice the power of the commissioner temporarily to suspend or limit a hospital operating certificate shall include, but shall not be limited to, the power to:

(a) prohibit or limit the placement of new patients in the hospital;

(b) remove or cause to be removed some or all of the patients in the hospital;

(c) suspend or limit or cause to be suspended or limited the payment of any governmental funds to the hospital.

At any time subsequent to the suspension or limitation of any operating certificate pursuant to this subdivision, the hospital may request the department to reinspect the hospital to redetermine whether a specific condition or practice continues to exist. After the receipt of such a request the department shall reinspect the hospital within ten days and in the event that the previously found condition or practice has been eliminated the suspension or limitation shall be withdrawn. If the condition or practice has not been eliminated, the commissioner shall not thereafter be required to reinspect the hospital during the temporary period of suspension or limitation. Nor shall the commissioner be required to reinspect upon request during a temporary period of suspension or limitation any hospital whose operating certificate has been temporarily suspended or limited due to the existence of a continuing pattern of conditions or practices which poses imminent danger to the health and safety of any patient.

3. The commissioner shall fix a time and place for the hearing. A copy of the charges, together with the notice of the time and place of the hearing, shall be served in person or mailed by registered or certified mail to the hospital at least ten days before the date fixed for the hearing. The hospital shall file with the department not less than three days prior to the hearing a written answer to the charges.

4. All orders or determinations hereunder shall be subject to review as provided in article seventy-eight of the civil practice law and

rules. Application for such review must be made within sixty days after service in person or by registered or certified mail of a copy of the order or determination upon the applicant.

5. (a) Except as provided in paragraphs (b) and (d) of this subdivision, anything contained in this section or in a certificate of relief from disabilities or a certificate of good conduct issued pursuant to article twenty-three of the correction law to the contrary notwithstanding, a hospital operating certificate of a hospital under control of a controlling person as defined in paragraph (a) of subdivision twelve of section twenty-eight hundred one-a of this article, or under control of any other entity, shall be revoked upon a finding by the department that such controlling person or any individual, member of a partnership or shareholder of a corporation to whom or to which an operating certificate has been issued, has been convicted of a class A, B or C felony, or a felony related in any way to any activity or program subject to the regulations, supervision, or administration of the department or of the office of temporary and disability assistance or in violation of the public officers law in a court of competent jurisdiction in the state, or of a crime outside the state which, if committed within the state, would have been a class A, B or C felony or a felony related in any way to any activity or program subject to the regulations, supervision, or administration of the department or of the office of temporary and disability assistance or in violation of the public officers law.

(b) In the event one or more members of a partnership or shareholders of a corporation shall have been convicted of a felony as described in paragraph (a) of this subdivision, the commissioner shall, in addition to his other powers, limit the existing operating certificate of such partnership or corporation so that it shall apply only to the remaining partner or shareholders, as the case may be, provided that every such convicted person immediately and completely ceases and withdraws from participation in the management and operation of the hospital, and further provided that an application for approval of change of ownership or transfer of stock is filed without delay in accordance with the pertinent provisions of section twenty-eight hundred one-a of this chapter.

(c) With respect to the conviction of any such person of a class D or E felony, the commissioner shall make a determination before revoking, or limiting pursuant to paragraph (b), the operating certificate that such conviction was related to an activity or program subject to the regulations, supervision, or administration of the department or of the department of social services. With respect to the conviction of such person of a crime committed outside the state, the commissioner shall make a determination before revoking, or limiting pursuant to paragraph (b), the operating certificate that such crime, if committed within the state, would have been a class A, B or C felony or a felony related to an activity or program subject to the regulations, supervision, or administration of the department or of the department of social services or in violation of the public officers law. The commissioner shall notify the person convicted that such determination has been made and shall give such person thirty days to request a hearing pursuant to this subdivision.

(d) The commissioner shall not revoke, or limit pursuant to paragraph (b) of this subdivision, the operating certificate of any facility solely because of a conviction, more than ten years prior to the effective date of this paragraph, of any person of a felony unless the commissioner makes a determination that such conviction was related to an activity or program subject to the regulations, supervision, or administration of the department or of the department of social services. The commissioner shall not revoke, or limit pursuant to paragraph (b) of this subdivision, the operating certificate of any facility solely because of the conviction, more than ten years prior to the effective date of this paragraph, of any person of a crime outside the state unless the commissioner makes a determination that such crime, if committed within the state, would have been a felony related to an activity or program subject to the regulations, supervision, or administration of the department or of the department of social services or in violation of the public officers law. The commissioner shall notify the person convicted that such determination has been made and shall give such person thirty days to request a hearing pursuant to this subdivision.

(e) Any hearing conducted hereunder shall be strictly limited to the issue of whether the determination of the commissioner is supported by

the evidence. All such hearings shall be conducted as provided in paragraph (f) of this subdivision, and no hearing, revocation or limitation shall be stayed by the pendency of any appeal or other challenge to the conviction.

(f) The commissioner shall fix a time and place for the hearing. A copy of the notice and charges shall be served in person or mailed by registered or certified mail no less than ten days before the date fixed for the hearing. A written answer to the charges shall be filed with the department not less than two days prior to the hearing. No adjournment shall be granted in excess of forty-eight hours. The respondent may attend the hearing in person, with or without counsel, or be represented by counsel alone, but need not attend personally if unavailable because of incarceration, hospitalization or other reason. If no answer is filed with the department within the time limitation of this paragraph, a hearing shall be deemed to have been waived, and the commissioner shall issue an order based on the record before him.

(g) Nothing in this subdivision shall be construed to limit the authority of the public health council to revoke, limit or annul any approval of establishment.

6. (a) Notwithstanding the provisions of subdivisions two through four of this section, the commissioner shall suspend, limit, modify, or revoke a hospital operating certificate, after taking into consideration the total number of beds necessary to meet the public need, the availability of facilities or services such as preadmission, ambulatory, home care or other services which may serve as alternatives or substitutes for the whole or any part of any such hospital facility, and, in the case of modification, the level of care and the nature and type of services provided or required by all or some of the patients in or seeking admission to such hospital facility, and whether such level of care is consistent with the operating certificate of the hospital, and after finding that suspending, limiting, modifying, or revoking the operating certificate of such facility would be within the public interest in order to conserve health resources by restricting the number of beds and/or the level of services to those which are actually needed.

(b) Whenever any finding as described in paragraph (a) of this subdivision is under consideration with respect to any particular

facility, the commissioner shall cause to be published, in a newspaper of general circulation in the geographic area of the facility at least thirty days prior to making such a finding an announcement that such a finding is under consideration and an address to which interested persons can write to make their views known. The commissioner shall take all public comments into consideration in making such a finding.

(c) The commissioner shall, upon making any finding described in paragraph (a) of this subdivision with respect to any facility, cause such facility and the appropriate health systems agency to be notified of the finding at least thirty days in advance of taking the proposed action to revoke, suspend, limit, or modify the facility's operating certificate. Upon receipt of any such notification and before the expiration of the thirty days or such longer period as may be specified in the notice, the facility or the appropriate health systems agency may request a public hearing to be held in the county in which the hospital is located. In no event shall the revocation, suspension or limitation take effect prior to the thirtieth day after the date of the notice, or prior to the effective date specified in the notice or prior to the date of the hearing decision, whichever is later.

(d) In the case of a modification of an operating certificate by the commissioner pursuant to paragraph (a) of this subdivision, the commissioner may not modify an operating certificate to reclassify beds previously authorized as hospital beds to domiciliary care beds or to increase the total number of beds authorized by such certificate, and, provided further that no patient in a hospital is to be removed as a result of the pendency or conclusion of a proceeding pursuant to this subdivision.

(e) Except as otherwise provided by law, all appeals from a finding of the commissioner made pursuant to paragraph (a) of this subdivision shall be directly to the appellate division of the supreme court in the third department. Except as otherwise expressly provided by law, such appeals shall have preference over all issues in all courts.

(f) In determining whether there is a public need for any services or facilities as required by this subdivision, the commissioner shall consider the advice of the state health planning and development agency designated pursuant to the provisions of the national health planning and resources development act of nineteen hundred seventy-four and any

amendments thereto and the state health plan developed thereunder.