§ 3606-a. Certified home health agency construction. 1. The construction of a certified home health agency shall require the prior approval of the commissioner.

2. An application for such construction shall be filed with the department, together with such other forms and information as shall be prescribed by, or acceptable to, the department. Thereafter the department shall forward a copy of the application and accompanying documents to the public health and health planning council and the health systems agency, if any, having geographical jurisdiction of the area where the agency is located.

3. The commissioner shall not act upon an application for construction unless (a) the applicant has obtained all approvals and consents required by law for its incorporation or establishment (including the approval of the public health and health planning council pursuant to the provisions of this article) and until the public health and health planning council and the health systems agency, if any, concerned have had a reasonable time to submit their recommendations; and (b) the commissioner is satisfied as to the public need for the construction, at the time and place and under the circumstances proposed.

4. Subject to the provisions of paragraph (b) of subdivision three of this section, the commissioner in approving the construction shall take into consideration and be empowered to request information and advice as to (a) the availability of facilities or services which currently serve as alternatives or substitutes for the whole or any part of the proposed construction;

(b) the need for program changes in view of existing utilization at the time and place and under the circumstances proposed; and

(c) the adequacy of financial resources and sources of future revenue.

5. In determining whether there is a public need for the proposed construction pursuant to subdivisions three and four of this section, 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.

6. No government agency shall construct any certified home health agency without securing the written approval of the commissioner in accordance with the applicable requirements and procedures of the preceding subdivisions.

7. If the commissioner proposes to disapprove an application for construction of a certified home health agency, he shall afford the applicant an opportunity to request a public hearing. The commissioner shall not take any action contrary to the advice of the health systems agency until he affords an opportunity to the agency to request a public hearing and, if so requested, a public hearing shall be held.

8. The commissioner, on his own motion, may hold a public hearing on an application for construction of a certified home health agency.

9. (a) The commissioner shall charge to applicants for construction of certified home health agencies an application fee of two thousand dollars. Each such applicant shall, at such time as the commissioner's written approval of the construction is granted, pay an additional fee of thirty hundredths of one percent of the total capital value of the application.

(b) The fees and charges paid by an applicant pursuant to this subdivision for any application approved in accordance with this section shall be deemed allowable costs in the determination of reimbursement rates established pursuant to this article. All fees pursuant to this section shall be payable to the department of health for deposit into the special revenue funds - other, miscellaneous special revenue fund - 339, certificate of need account.