§ 3608. Certification of home care services agencies. 1. The commissioner shall issue a certificate of approval to any home care services agency qualified to participate as a home health agency under titles XVIII and XIX of the federal Social Security Act applying therefor which complies with the provision of this article and the rules and regulations promulgated pursuant thereto, in accordance with the standards and procedures adopted by the state hospital review and planning council.

2. A certified home health agency certificate of approval may be revoked, suspended, limited or annulled by the commissioner on proof that the certified home health agency has failed to comply with the provisions of this article or rules and regulations promulgated thereunder.

3. No certified home health agency certificate of approval shall be revoked, suspended, limited or annulled without a hearing. However, a certificate may be temporarily suspended or limited without a hearing for a period not in excess of thirty days upon written notice to the certified home health agency following a finding by the department that the public health or safety is in imminent danger.

4. 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 certified home health agency at least twenty-one days before the date fixed for the hearing. The certified home health agency shall file with the department not less than eight days prior to the hearing, a written answer to the charges.

5. 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.

6. (a) Notwithstanding the provisions of subdivisions three through

five of this section, the commissioner shall suspend, limit or revoke a certified home health agency certificate of approval after taking into consideration the public need for the agency and the availability of other services which may serve as alternatives or substitutes, and after finding that suspending, limiting, or revoking the certificate of approval of such agency would be within the public interest in order to conserve health resources by restricting 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 certified home health agency, the commissioner shall cause to be published, in a newspaper of general circulation in the geographic area of the agency, 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 certified home health agency, cause such agency 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 or limit such agency's certificate of approval. 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 certified home health agency or the appropriate health sytems agency may request a public hearing to be held in the county in which the agency 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) 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.