§ 3610. Authorization to provide a long term home health care program. 1. A long term home health care program may be provided only by a certified home health agency, or by a residential health care facility or hospital possessing a valid operating certificate issued under article twenty-eight of this chapter. No agency, facility or hospital shall provide a long term home health care program without the written authorization of the commissioner to provide such a program.

2. A hospital, residential health care facility, or certified home health agency seeking authorization to provide a long term home health care program shall transmit to the commissioner an application setting forth the scope of the proposed program. Such application shall be in a format and shall be submitted in a quantity determined by the commissioner. The commissioner shall transmit the application to the public health and health planning council and to the health systems agency, if any, having geographic jurisdiction of the area where the proposed program is to be located. The application shall include a detailed description of the proposed program including, but not limited to, the following:

(a) an outline of the institution's or agency's plans for the program;

(b) the need for the proposed program;

(c) the number and types of personnel to be employed;

(d) the ability of the agency, hospital, or facility to provide the program;

(e) the estimated number of visits to be provided;

(f) the geographic area in which the proposed programs will be provided;

(g) any special or unusual services, programs, or equipment to be provided;

(h) a demonstration that the proposed program is feasible and adequate in terms of both short range and long range goals;

(i) such other information as the commissioner may require.

The health systems agency and the public health and health planning council shall review the application and submit their recommendations to the commissioner. At the time members of the public health and health planning council are notified that an application is scheduled for

consideration, the applicant and the health systems agency shall be so notified in writing. The health systems agency or the public health and health planning council shall not recommend approval of the application unless it is satisfied as to:

(a) the public need for the program at the time and place and under the circumstances proposed;

(b) the financial resources of the provider of the proposed program and its sources of future revenues;

(c) the ability of the proposed program to meet those standards established for participation as a home health agency under title XVIII of the federal Social Security Act; and

(d) such other matters as it shall deem pertinent.

After receiving and considering the recommendations of the public health and health planning council and the health systems agency, the commissioner shall make his or her determination. The commissioner shall act upon an application after the public health and health planning council and the health systems agency have had a reasonable time to submit their recommendations. The commissioner shall not take any action contrary to the advice of either until he or she affords to either an opportunity to request a public hearing and, if so requested, a public hearing shall be held. The commissioner shall not approve the application unless he or she is satisfied as to the detailed description of the proposed program and

(a) the public need for the existence of the program at the time and place and under the circumstances proposed;

(b) the financial resources of the provider of the proposed program and its sources of future revenues;

(c) the ability of the proposed program to meet those standards established for participation as a home health agency under title XVIII of the federal Social Security Act; and

(d) such other matters as he or she shall deem pertinent.

If the application is approved, the applicant shall be so notified in writing. The commissioner's written approval of the application shall constitute authorization to provide a long term home health care program. If the commissioner proposes to disapprove the application, he

or she shall notify the applicant in writing, stating his or her reasons for disapproval, and afford the applicant an opportunity for a public hearing.

3. Authorization to provide a long term home health program may be revoked, suspended, limited or annulled by the commissioner on proof that a provider of a long term home health care program has failed to comply with the provisions of this article or rules and regulations promulgated thereunder.

4. (a) Such authorization shall not be revoked, suspended, limited or annulled without a hearing. However, such authorization may be temporarily suspended or limited without a hearing for a period not in excess of thirty days upon written notice to the provider of a long term home health care program following a finding by the department that the public health or safety is in imminent danger.

(b) 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 provider of a long term home health care program at least twenty-one days before the date fixed for the hearing. Such provider shall file with the department not less than eight days prior to the hearing, a written answer to the charges.

(c) 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) Notwithstanding the provisions of subdivision four of this section, the commissioner shall suspend, limit or revoke the authorization of a provider of a long term home health care program after taking into consideration the public need for the program and the availability of other services which may serve as alternatives or substitutes, and after finding that suspending, limiting, or revoking the authorization of such provider would be within the public interest in order to conserve health resources by restricting the level of

services to those which are actually needed.

(c) Whenever any finding as described in paragraph (a) of this subdivision is under consideration with respect to any particular provider of a long term home health care program, the commissioner shall cause to be published, in a newspaper of general circulation in the geographic area of such provider, at least thirty days prior to making such a finding an annnouncement 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.

(d) The commissioner shall, upon making any finding described in paragraph (a) of this subdivision with respect to any provider of a long term home health care program, cause such provider and the appropriate health systems agency to be notified of the finding at least thirty days in advance of taking the proposed action. 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 provider or the appropriate health systems agency may request a public hearing to be held in the county in which the provider 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.

(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.

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

(b) The fees 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.