§ 3620. Authorization to provide an AIDS home care program. 1. An AIDS home care program may be provided only by a provider of a long term home health care program possessing a valid operating certificate issued under this article or an AIDS center as defined in accordance with regulations promulgated by the commissioner.

2. No agency or facility shall provide an AIDS home care program without the written authorization of the commissioner to provide such a program.

3. A provider of a long term home health care program or AIDS center seeking authorization to provide an AIDS home care program shall transmit to the commissioner an application setting forth the scope of the proposed program. Such application shall be submitted in a format and quantity determined by the commissioner. The application shall include a detailed description of the proposed program including, but not limited to, the following:

(a) an outline of the applicant's plans for the AIDS home care program;

(b) the need for the proposed program;

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

(d) the ability of the applicant to provide the AIDS home care 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 commissioner shall not approve the application unless he 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;

(d) the ability of the proposed program to meet the needs of AIDS patients; and

(e) such other matters as he 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 an AIDS home care program. If the commissioner proposes to disapprove the application, he shall notify the applicant in writing, stating his reasons for disapproval, and afford the applicant an opportunity for a public hearing.

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

5. (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 an AIDS home 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 an AIDS home 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.

6. (a) Notwithstanding the provisions of subdivision five of this section, the commissioner shall suspend, limit or revoke the authorization of a provider of an AIDS home 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.

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

(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.