§ 4004. Establishment of hospices. 1. The commissioner shall not issue a certificate of approval to any hospice except with the written approval of the public health and health planning council. However, a hospice demonstration program participant making application to the commissioner solely to establish a hospice shall be deemed to have met such requirement.

2. An application for approval of the proposed hospice shall be filed with the public health and health planning council together with such other forms and information as shall be prescribed by, or acceptable to, the public health and health planning council. Thereafter, the public health and health planning council shall forward a copy of the proposed application for establishment and accompanying documents to the health systems agency, if any, having geographical jurisdiction of the area where the services of the proposed hospice are to be offered. The public health and health planning council shall act upon such application after the health systems agency has had a reasonable time to submit its recommendations. 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 public health and health planning council shall not take any action contrary to the advice of the health systems agency until it affords to the health system agency an opportunity to request a public hearing and, if so requested, a public hearing shall be held. If the public health and health planning council proposes to disapprove the application, it shall afford the applicant an opportunity to request a public hearing. The public health and health planning council may hold a public hearing on the application on its own motion. Any public hearing held pursuant to this subdivision may be conducted by the public health and health planning council or by any individual designated by the public health and health planning council. The public health and health planning council shall not approve an application for establishment unless it is satisfied, insofar as applicable, as to (a) the public need for the existence of the hospice at the time and place and under the circumstances proposed; (b) the character, competence, and standing in the community, of the proposed incorporators, directors, sponsors, stockholders or operators; (c) the financial resources of the proposed

hospice and its sources of future revenues; and (d) such other matters as it shall deem pertinent.

3. (a) No hospice shall be approved for establishment which would be operated by a corporation any of the stock of which is owned by another corporation.

(b) Any change in the person, principal stockholder or partnership which is the operator of a hospice shall be approved by the public health and health planning council in accordance with the provisions of subdivisions one and two of this section.

4. (a) The public health and health planning council, by a majority vote of its members, shall adopt and amend rules and regulations, to effectuate the provisions and purposes of this section, and to provide for the revocation, limitation or annulment of approvals of establishment.

(b) (i) No approval of establishment shall be revoked, limited or annulled without first offering the person who received such approval the opportunity of requesting a public hearing, (ii) the commissioner, at the request of the public health and health planning council, shall fix a time and place for any such hearing requested, (iii) notice of the time and place of the hearing shall be served in person or mailed by registered mail to the person who has received establishment approval at least twenty-one days before the date fixed for the hearing, (iv) such person shall file with the department, not less than eight days prior to the hearing, a written answer, (v) 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 mail of a copy of such order or determination.

5. (a) The commissioner shall charge to applicants for the establishment of a hospice an application fee in the amount of two thousand dollars.

(b) An applicant for both establishment and construction of a hospice shall not be subject to this subdivision and shall be subject to fees and charges as set forth in section four thousand six of this article.

(c) 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.