§ 4008. Certification of hospices. 1. The commissioner shall not issue a certificate of approval to any hospice unless it complies with the provisions 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, and is qualified to participate as a hospice under title XVIII of the Federal Social Security Act, provided, however that the commissioner shall issue a certificate of approval to a hospice if he is satisfied that the hospice cannot qualify to participate as a hospice under title XVIII of the Federal Social Security Act solely because it proposes to provide nursing services by arrangement with a certified home health agency. No person, partnership or organization shall hold itself out as a hospice unless it shall possess a valid certificate of approval.

2. Any hospice demonstration program participant applying for a certificate of approval by the first day of June nineteen hundred eighty-four and meeting all applicable standards shall be issued a certificate of approval.

3. Subject to the provisions of this section and section four thousand ten of this article, contractual agreements between a hospice and other providers of other care and services shall not be prohibited, and a hospice may employ and enter into contracts with any licensed healthcare professional or any lawful combination thereof in relation to services provided by the hospice under this article, provided that the hospice maintains full responsibility for the planning, coordination and quality of such services and the adherence to the plan of care established for the patients.

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

5. No hospice 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 hospice following a finding by the department that the public health or safety is in imminent danger.

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

7. 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.

8. (a) Notwithstanding the provisions of subdivisions five through seven of this section, the commissioner shall suspend, limit or revoke a hospice certificate of approval after taking into consideration the public need for the hospice 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 the hospice 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 hospice, the commissioner shall cause to be published, in a newspaper of general circulation in the geographic area of the hospice, at least thirty days prior to making such a finding an announcement that such 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 hospice, cause

such hospice 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 the hospice'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 hospice or the appropriate health systems agency may request a public hearing to be held in the county in which the hospice 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.