

Preliminary Evaluation of the State Board for Certification of Residential Child Care Program Professionals

Recommendations: Waive from Full Evaluation

Extend Termination Date by 10 Years to July 1, 2024

**Require Follow-up Reports by October 1, 2013, and
Annually Thereafter Until Certification of Residential
Child and Youth Care Practitioners Is Fully
Implemented**

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board for Certification of Residential Child Care Program Professionals was established by Chapter 438 of 2004, with a termination date of July 1, 2014. This is the first time the board has undergone sunset review.

In conducting this preliminary evaluation, DLS staff attended a public and executive session board meeting and reviewed annual reports; board meeting minutes; complaint, certification, and fiscal information; board newsletters; board transmittals to providers and program administrators; and various other information provided by the board. DLS staff also reviewed a 2006 *Joint Chairmen’s Report* response (the Status Report on the Implementation of Chapter 438 of 2004); the 2001 *Final Report of the Task Force to Study the Licensing and Monitoring of Community-Based Homes for Children*; the 2008 *Report on Recommendations for Direct Care Training and Certification*; information regarding licensed residential child care facilities from the Governor’s Office for Children (GOC); and information on residential child care professional certification requirements in other states.

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Additionally, DLS staff interviewed the board chairman and executive director. Telephone interviews were conducted with five board members and the executive directors of two associations – the Maryland Association of Resources for Families and Youth (MARFY) and the Maryland Association of Community Services (MACS).

The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 4**. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

Residential Child Care Programs in Maryland

Residential child care programs provide structure and 24-hour supervision, basic care, social work, and health care services for children, including children in foster care, children involved in the juvenile justice system, and children with developmental disabilities. Residential child care programs include group homes (which may serve special populations such as medically fragile children), shelter care, alternative living units for children with developmental disabilities, and therapeutic group homes for emotionally or developmentally disabled youth. Many programs utilize community-based ancillary services and enroll children in the local school system.

Multiple Agencies Involved in Programs

Residential child care programs are licensed by three State agencies: the Department of Health and Mental Hygiene (DHMH), the Department of Human Resources (DHR), and the Department of Juvenile Services (DJS). The Office of Health Care Quality (OHCQ) in DHMH licenses and monitors therapeutic group homes (a type of residential child care program) for the Mental Hygiene Administration (MHA). DHMH's Developmental Disabilities Administration (DDA) licenses residential child care programs that serve children with developmental disabilities; however, OHCQ monitors those programs on behalf of DDA.

As of June 28, 2011, there were 261 licensed residential child care facilities in Maryland. **Exhibit 1** provides information on the number of programs licensed by each agency. A program must obtain a license to operate. In addition to a license, the program must also have a contract with a State agency to receive placements of children in the program's care. Regardless of which agency issues the license, a residential child care program may contract with any State agency for placements.

Exhibit 1
Licensed Residential Child Care Programs by Agency
As of June 28, 2011

| | |
|--|------------|
| Department of Human Resources | 133 |
| Department of Health and Mental Hygiene | |
| Developmental Disabilities Providers | 93 |
| Therapeutic Group Homes (Mental Hygiene) | 25 |
| Department of Juvenile Services | 10 |
| Total | 261 |

Note: The number of licensed programs may differ from the number of certified administrators because programs may operate at more than one site.

Source: Governor's Office for Children

The Code of Maryland Regulations includes general regulations related to the operation of residential child care programs, encompassing topics related to licensing and monitoring as well as standards for the programs. These regulations include requirements for boards of directors, employee qualifications, emergency planning, and services. In addition, each licensing agency may have separate regulations with specific requirements for programs licensed and monitored by the agency. For example, regulations related to therapeutic group homes require specific types of staff to be available to the program and prescribe the type of experience that staff must have.

Programs licensed by DHR, DJS, and therapeutic group homes licensed by DHMH receive State funding for placements at rates set by the Interagency Rates Committee (IRC). The IRC consists of representatives of the Department of Budget and Management, DHMH, DHR, DJS, the Maryland State Department of Education (MSDE), and GOC. MSDE, which provides staff support for IRC, reviews the budget submissions. Programs are separated into categories based on the populations served and services offered. The program rates are then set after a comparison of the request to other programs in the same category. Rates for developmental disabilities providers are set by DDA using a separate process based on fees for various components of service.

Number of Children Placed in Residential Child Care Program Varies and Has Declined in Recent Years

The number of children placed in residential child care programs varies and can include children from agencies outside of Maryland, such as from the District of Columbia. DHR reports that, at the close of fiscal 2011, 811 children under the agency's care were placed in

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residential child care programs. DJS reports that, in fiscal 2011, the average daily population of DJS-committed children placed in residential child care programs was 703. As reported in the *Out of Home Placement and Family Preservation Resource Plan FY 2010*, DDA placed 12 children in residential child care programs in fiscal 2010.

In recent years, there has been a constriction in the residential child care industry in Maryland, in part due to a change in focus at DHR. DHR licenses the greatest number of residential child care programs and places the greatest number of children in these programs. In 2007, DHR began the Place Matters initiative. One component of the program is to serve children in the least restrictive environment and, as a result, reduce the number of children in group homes. The initiative has reduced both the total number of children in foster care (from an average of 10,219 for July to September 2007 to 7,559 in March to May 2011) and the number of children in group homes (from an average of 2,038 in July to September 2007 to 801 in March to May 2011).

Few Other States Require Program Administrator Certification and None Requires Certification of Direct Care Staff

Each residential child care program in Maryland is required to have a certified program administrator. Nationally, professional certification requirements are rare. Certification or licensure of administrators is required in only three states: California, Texas, and Maryland. Requirements vary among states. **Appendix 1** provides a summary of certification or licensure requirements in California and Texas.

Chapter 218 of 2008 requires Maryland to begin certifying direct care staff that work in residential child care programs (residential child and youth care practitioners). Once implemented, Maryland will be the first and only state to require such certification.

The State Board for Certification of Residential Child Care Program Professionals

The State Board for Certification of Residential Child Care Program Professionals, housed in DHMH, was first appointed and began meeting in the fall of 2005. The primary purpose of the board is to protect children served in residential child care programs by certifying residential child care program administrators and residential child and youth care practitioners, investigating complaints, and disciplining individuals. Duties assigned to the board include adopting regulations, establishing certification standards, conducting a continuing study and investigation of program administrators to improve certification standards and enforcement procedures, establishing continuing education requirements, creating committees, and adopting a code of ethics for residential child care program professionals.

The board comprises 12 members. Six members are appointed by the Secretary or head of State agencies involved in residential child care – one member each from DHR, DDA, MHA, DJS, the Children’s Cabinet, and MSDE. The remaining six members are appointed by the Governor with the advice and consent of the Senate, of which three must be residential child care program professionals, one must be a residential child and youth care practitioner, and two must be consumers. Terms are set at four years, and a board member may serve no more than two consecutive terms. All new board members receive training through the annual training provided for all health occupations board members. No additional training is provided by the board.

The board has a limited committee structure. A committee reviews continuing education program approval, but membership is *ad hoc*. During the spring of 2011, the board established a certification committee to review and recommend changes to the residential child and youth care practitioner certification. Other committees are formed as needed, such as a committee developed to review draft sanctioning guidelines. Functions such as review of legislation, regulations, and the disciplinary process are currently completed by the full board.

With limited exceptions each year, the board meets once a month. However, on occasion the board does not have a quorum. In such instances, board business is discussed, but no formal action is taken. The board occasionally conducts electronic votes between meetings.

Major Legislation Affecting the Board Since Its Establishment

Major legislation impacting the board is shown in **Exhibit 2**. The board was established by Chapter 438 of 2004 as the State Board for Certification of Residential Child Care Program Administrators following a recommendation that these individuals be certified in the 2001 *Final Report of the Task Force to Study the Licensing and Monitoring of Community-Based Homes for Children*. The task force was developed to evaluate the licensing and monitoring of community-based homes for children to address the concerns of the community. At its inception, the board had 11 members (the residential child and youth care practitioner was not yet added) and was responsible only for the certification of residential child care program administrators. Chapter 438 established general processes and procedures for the board, certification of program administrators, and the disciplinary process. The Act also established a State Board for Certification of Residential Child Care Program Administrators Fund to be capitalized from licensing fee revenues and used to cover the operating costs of the board. Initial board operations were expected to be supported with general funds.

Exhibit 2
**Major Legislation Concerning the State Board for
Certification of Residential Child Care Program Professionals**

| <u>Year</u> | <u>Chapter(s)</u> | <u>Change</u> |
|--------------------|--------------------------|--|
| 2004 | 438 | <p>Establishes the State Board for Certification of Residential Child Care Program Administrators in the Department of Health and Mental Hygiene (DHMH).</p> <p>Requires program administrators to be certified by October 1, 2007.</p> <p>Specifies membership of the board and sets term limits and requirements for board members.</p> <p>Creates a State Board for Certification of Residential Child Care Program Administrators Fund and requires the board to set reasonable fees to cover board expenses.</p> <p>Sets educational, experience, and examination requirements for certification; renewal and reinstatement procedures; disciplinary grounds and appeals procedures; and fines and penalties for violations.</p> <p>Requires applicants for certification to submit to a criminal history records check.</p> <p>Subjects the board to the Maryland Program Evaluation Act and establishes a termination date of July 1, 2014.</p> |
| 2007 | 133 | <p>Requires the Governor's Office for Children (GOC), the Department of Human Resources, the Department of Juvenile Services, and DHMH, in cooperation with stakeholders, to develop recommendations and regulations for certification of direct care staff.</p> <p>Requires GOC to report to the General Assembly on the recommendations by January 1, 2008.</p> |
| | 204/205 | <p>Allows the board to be supported by general funds rather than special funds by repealing the State Board for Certification of Residential Child Care Program Administrators Fund and requiring the board to pay all revenues collected to the general fund.</p> |

| <u>Year</u> | <u>Chapter(s)</u> | <u>Change</u> |
|-------------|-------------------|--|
| 2008 | 218 | <p>Expands the purview of the board to include the certification of residential child and youth care practitioners, who must be certified by the board by October 1, 2013.</p> <p>Renames the board the State Board for Certification of Residential Child Care Professionals.</p> <p>Adds one residential child and youth care practitioner to the membership of the board.</p> <p>Excludes direct care staff in facilities licensed by the Developmental Disabilities Administration from the definition of residential child and youth care practitioner.</p> |
| 2010 | 583 | <p>Delays the date by which residential child and youth care practitioners must be certified from October 1, 2013, until October 1, 2015.</p> |
| 2011 | 219/220 | <p>Requires GOC to establish a workgroup to study the feasibility of implementing the certification of residential child and youth care practitioners in 2015 and develop an implementation plan.</p> <p>Requires GOC to submit the implementation plan to the Governor and specified committees of the General Assembly by September 1, 2011.</p> |

Source: Laws of Maryland

Chapters 204 and 205 of 2007 allow the board to retain fee-setting authority while eliminating the requirement to set fees at a level to support the expenditures of the board. As a result, the board continues to receive a general fund appropriation.

Chapter 133 of 2007 required DJS, DHR, DHMH, and GOC to adopt regulations requiring direct care staff to be at least 21 years old and complete a training program approved by the licensing agency. In addition, uncodified language in the Act required GOC and the agencies licensing residential child care programs to develop recommendations for a process and standards for certification of direct care staff by January 1, 2008.

The February 2008 report submitted in response to Chapter 133 cited several reasons for difficulties in recruiting and retaining child and youth care staff including an inability to provide adequate job training, lack of a career ladder, and lack of job prestige. The report also noted that unlike other related professions there were no workforce standards, which was believed to limit formal education and training options. The Children's Cabinet recommended requiring certification of direct care workers by 2013 with separate paths for certification for existing and new direct care workers, a biennial renewal period with a requirement that certificate holders earn 20 hours of continuing education every two years, and a performance assessment. The

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Children's Cabinet recommended that the State Board for Certification of Residential Child Care Program Administrators' responsibilities be expanded to include these workers. The report also noted the impact that requiring certification would have on salaries of direct care workers, but explained that these increases could be included in future rate adjustments. Further, the report indicated that the increased cost resulting from the direct care staff salary increases could be offset by reductions in the number of children in out-of-home care.

Chapter 218 of 2008 required the certification of residential child and youth care practitioners by October 1, 2013, with the exception of practitioners in programs licensed by DDA who are exempt from the requirement. Chapter 218 authorized the board to certify residential child and youth care practitioners, changed the name of the board, and altered board membership to its current composition. Chapter 583 of 2010 later delayed the date by which residential child and youth care practitioners were required to be certified from October 1, 2013, until October 1, 2015.

Chapters 219 and 220 of 2011 required GOC to establish a workgroup consisting of the board, DHR, DJS, DHMH, IRC, residential child care programs, the Community Behavioral Health Association of Maryland, MARFY, and other interested persons to determine whether it is feasible to implement the certification of residential child and youth care practitioners by 2015. The workgroup was required to develop an implementation plan for certification of residential child and youth care practitioners, including any needed adjustment to rates and how those adjustments could be addressed in the State budget, and make a recommendation for an alternative implementation date if 2015 is determined not to be feasible. This report has been submitted.

Certification Activity

The board currently offers three types of certification for administrators: residential child care program administrator, acting capacity residential child care program administrator, and designation as a certified administrator at two individually licensed programs. Certification of residential child and youth care practitioners has not yet begun; however, upon implementation of the certification requirement, all practitioners working in residential child care programs licensed by DHR, DJS, and OHCQ will be required to be certified.

Board Implements New Certification Requirement for Program Administrators

The board's establishing legislation required residential child care program administrators to be certified by October 1, 2007, and created requirements for certification of program administrators including:

- minimum age of 21;

- education and experience requirement options: (1) a bachelor's degree with at least four years of experience in a human service field including at least three years in a supervisory or administrative capacity; or (2) a master's degree with at least two years experience in a human service field – at least one in a supervisory or administrative capacity;
- passage of a standard examination which was to be given at least four times a year related to health and safety, staff training, rights of children, physical plant, criminal history checks of personnel, fiscal accountability, recordkeeping, emergency planning, and other standards included in regulation, within three years of first attempting the examination; and
- a criminal history records check.

The board decided to provide all administrators a 180-day grace period to complete certification meaning that *enforcement* of the certification did not begin until April 1, 2008. The 180-day grace period is consistent with the length of time a noncertified individual may act as a program administrator following a change in leadership. The board, in fact, did not begin to *issue* certificates until January 2008 due to lack of staff. However, when certificates began to be issued the certificates were backdated to the date the individual met all the requirements, including the passing of the standard examination, with some backdated to October 2007. Despite the grace period, a number of individuals had not completed the certification by the April 1, 2008 enforcement date. Only 52 certificates were issued prior to April 2008, although more than 100 applications were in various stages of the process at that time. Some delay in the processing of initial certifications when such certification is first required may be expected as individuals learn the process and a much larger number of applications must be processed. The board indicates, however, now that once all information has been provided by the applicant, only one day is needed to process the certification.

Chapter 438 of 2004 granted the board the authority to waive certification requirements for individuals who filed a letter of intent with the board by October 1, 2007, completed no less than eight years experience in a human service field with at least four years in a supervisory or administrative field, and passed the standard examination. The board granted seven waivers, although only six of the waivers resulted in certification.

The board was also provided authority to approve individuals in an acting capacity in the event a certified program administrator leaves or is removed and no certified program administrator is available. The acting capacity authorization is limited to 180 days (with a 30-day extension) from the date the prior program administrator leaves the position.

Chapter 438 set a certification length of two years and established general renewal reinstatement requirements. Reinstatement was limited to individuals applying for reinstatement within five years of the expiration of the certificate. To renew certification, residential child care program administrators are required to have completed 40 units of continuing education, of

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which no more than 5 units may be in the field of behavioral management. The board has organizations which are approved training providers and automatically approves programs that are approved by other health occupation boards. Continuing education units, among other options, may also be obtained through academic course work, publications, presentations or teaching, staff development, and attendance at board meetings (no more than two can be obtained from this option in a renewal cycle). The first renewal cycle for administrators began during fiscal 2010, with the first renewal certificates issued in September 2009.

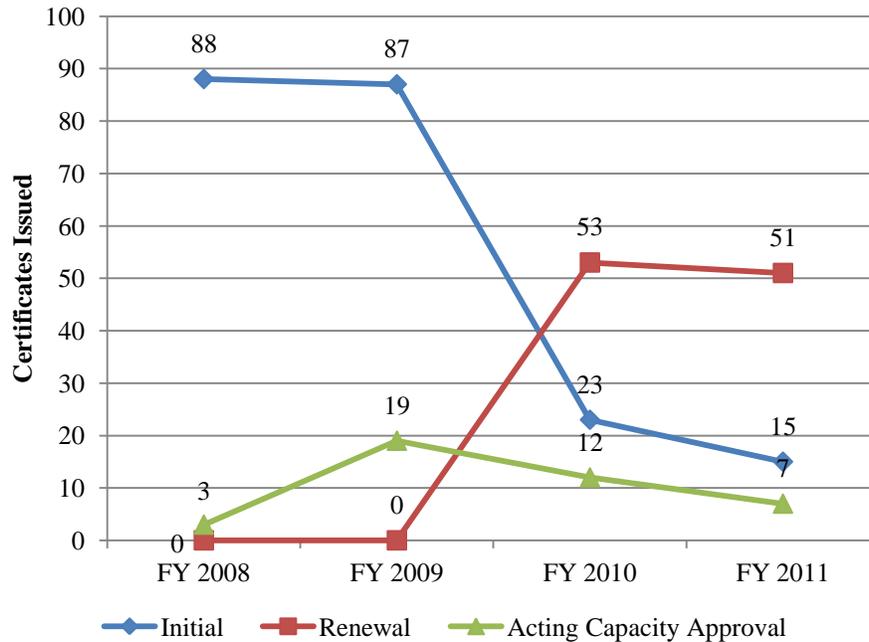
Although not developed initially, the board has created a process by which individuals can be designated as the certified administrators of two individually licensed organizations. This process requires a written statement of approval by the licensing authority of the programs and the consideration of factors including geographical locations of the program, the organizational structure, background and experience of the administrator, employment hours, and needs of the children and youth being served. This policy was developed following a question that arose about whether this was allowed. Through fiscal 2011, no individuals have been approved to serve as the administrator of two individually licensed organizations.

Number of Program Administrator Certifications Has Decreased Substantially Since Implementation

As shown in **Exhibit 3**, following the initial surge of certification as the program was implemented in fiscal 2008 and 2009, few new certifications have occurred. In fiscal 2011, only 15 initial certificates were issued. Only 104 renewals were issued in fiscal 2010 and 2011, compared to the 175 initial certificates issued during fiscal 2008 and 2009. As of July 8, 2011, 59 individuals had chosen not to renew the certificate. Through fiscal 2011, only one nonrenewed certificate has been reinstated.

The board indicates that several factors influence an individual's decision to not renew a certificate. Individual reasons include changes in career, a change in position to one that no longer requires certification, and constriction in the industry.

**Exhibit 3
Certification Activity
Fiscal 2008-2011**



Source: State Board for Certification of Residential Child Care Program Professionals

Requirements for Certification of Residential Child and Youth Care Practitioners

Chapter 218 of 2008 established general requirements for the certification of residential and child and youth care practitioners. Generally, practitioners are required to be age 21 or older. However, practitioners can be as young as 18 if they have an associate’s or bachelor’s degree. As with administrators, Chapter 218 required residential child and youth care practitioner applicants to submit to a criminal history records check. All practitioners must pass a standard examination.

As initially developed, individuals had three potential paths to full certification for residential child and youth care practitioners: (1) an associate’s or bachelor’s degree; (2) a high school diploma or equivalent and completion of an approved training program; or (3) a high school diploma or equivalent and sponsorship requiring at least two years experience in a human service field. An approved training program was required to be at least 25 credit hours or 375 contact hours in specific subject areas:

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- introduction to the field;
- life skills development;
- child and youth growth and development;
- standards of health and safety in child and youth care services;
- interviewing and counseling techniques for child and youth services;
- behavior management and crisis intervention in youth;
- legal and ethical issue in child and youth care; and
- an internship.

The board also approved processes for individuals to receive a provisional certification, pending the passage of the standards examination, and a practitioner-in-training program. The practitioner-in-training certification requires either a two-year apprentice training program or enrollment in an approved training program.

Residential child and youth care practitioner certification is expected to be renewed biennially and require the completion of 20 units of continuing education.

Practitioner Certification Has Been Delayed

Immediately following the 2008 session, the board began to prepare for the certification of residential child and youth care practitioners. In May 2008, the board approved a work plan for implementation of the program; ultimately the work plan was modified to account for the revised implementation date. The board appeared to be on target to meet the implementation date through summer 2010. Although the board repeatedly expressed concerns regarding whether it had adequate fiscal resources to implement the certification, the board took a number of actions to begin the implementation process including:

- providing communication on the new requirement through changes to the board's website, a notice to program administrators, articles in the newsletter, a town hall meeting, and a press release;
- drafting and approving regulations for the certification program, which became effective in April 2010;
- developing an application form and a process for certification; and
- modifying its certification database.

However, further action is on hold pending any action taken based on recommendations from the summer study required under Chapters 219 and 220 of 2011.

In December 2010, the board created a certification committee that was tasked with developing “minimum standard requirements reflecting essential skills, knowledge and abilities needed by child care workers to effectively manage the increased acuity of child and youth placed in care.” The committee met nine times and involved board members and the Executive Director of MARFY. In July 2011, the board released the recommendations of the certification committee, including recommendations to create a uniform framework for practitioner training programs consisting of at least 30 contact hours, simplifying education and training requirements, developing a clause for the grandfathering of certain workers, and establishing post-tests for each training module that can be used in lieu of a standard examination.

The summer study workgroup convened as a result of Chapters 219 and 220 of 2011 submitted the required report on September 9, 2011. In general, the workgroup’s recommendations for changes to the certification process matched those recommended by the board. Recommendations for changes to certification and provider recommendations are detailed in **Appendix 2**.

Many of these recommendations would require changes to statute or regulations. In addition to recommendations for changes to the certification process, the report addressed impacts of certification on providers and board staffing. One of the recommendations is to exempt the Maryland School for the Blind from the certification requirement for practitioners. The school is subject to this requirement because it is licensed by DHR. The exemption is based on a paraprofessional certification of workers at the school. It is the understanding of DLS that this certification is related to the educational aspect of the school rather than the residential component. **The General Assembly may wish to examine this certification status further before determining whether the school should be exempt from this requirement.**

Provider concerns focused on the cost of training of employees as well as higher salaries that would be required by certified employees. Recently providers have not been able to receive increases in rates; in fact, cost containment actions approved by the Board of Public Works reduced rates by 1% in fiscal 2009, and rates have been held at existing levels as a result of the Budget Reconciliation and Financing Acts of 2009, 2010, and 2011. In general, the providers assume that they will be required to pay the cost of training and assert that they cannot do so without financial assistance from the State. There was no consensus on the issue of rates and funding by the summer study workgroup. The State agencies noted that the providers would not be required to develop an individual program and that there was no requirement that the provider pay the cost of employee training time or testing. Regardless of the cost of training or whether increases in salaries are necessary with implementation of certification, State agency comments showed that there were options for the State to allow for increases in rates if it was determined that salaries in the industry should be adjusted.

Ultimately, the workgroup also recommended, based on the staffing analysis, that the implementation of the certification should not move forward until the board has staffing in place for the additional responsibilities.

Complaint Resolution

Chapter 438 of 2004 established a disciplinary process for violations of the Act, including reasons for disciplinary action or denial of a certificate. These reasons include:

- fraudulent or deceptive means of obtaining or attempting to obtain a certificate or use of a certificate;
- failure to meet the standards of certification;
- conviction, guilty plea, plea of *nolo contendere* to certain crimes or discipline by other licensing authorities or states for certain actions;
- substance abuse while performing duties;
- performing duties with or supervising an uncertified individual;
- willfully making a false report, filing a required record or report, or obstructing the filing of a required report;
- unprofessional conduct; and
- refusing, denying, withholding professional services, or discriminating against an individual due to the individual being HIV positive.

Majority of Complaints Investigated Relate to Certification Learning Curve

Due to the recent creation of the board, limited history exists about the number and type of complaints received and the length of the disciplinary process. In the four years for which information is available, the board has been involved in a total of 75 investigations. To date, most of the cases can be attributed to the learning curve in beginning a certification program, as shown in **Exhibit 4**. Of the 75 complaints, 34 (45%) involved practicing without certification in fiscal 2009, reflecting the initial enforcement of the certification requirement. Since fiscal 2009, only 29 additional complaints have been investigated by the board, of which 14 relate to failing to renew a certificate or not obtaining enough continuing education credits. Outside of certification issues, the most common complaint investigations relate to criminal history records check results or criminal convictions.

The limited history of complaints other than those related to implementation of the initial certification requirement makes it difficult to understand whether there are any patterns of problems that the board will need to address.

Exhibit 4
Type of Complaints Investigated
Fiscal 2008-2011

| | <u>FY 2008</u> | <u>FY 2009</u> | <u>FY 2010</u> | <u>FY 2011</u> |
|--|----------------|----------------|----------------|----------------|
| Practicing without Certification | 0 | 34 | 6 | 1 |
| Other Certification Issues (nonrenewal, continuing education) | 0 | 0 | 8 | 6 |
| Abuse/Neglect | 2 | 1 | 1 | 1 |
| Quality of Care | 1 | 0 | 0 | 0 |
| Criminal Background Check/Conviction | 3 | 1 | 1 | 3 |
| Fraudulent Use of Certificate | 0 | 3 | 1 | 0 |
| Fraud | 0 | 0 | 1 | 0 |
| Violations of Acting Capacity Approval | 0 | 0 | 0 | 1 |
| Noncompliance Board Structure (General COMAR Regulations for Residential Child Care Program) | 1 | 0 | 0 | 0 |
| Total Complaints Received | 7 | 39 | 17 | 12 |

Note: In fiscal 2010, one complaint involved two types of complaint; therefore, the sum of the types of complaints will not match the total number of complaints investigated.

Source: State Board for Certification of Residential Child Care Program Professionals

Administrative Closure Most Common Resolution, Other Resolutions on the Increase

As shown in **Exhibit 5**, the board currently has no complaints from fiscal 2011 under investigation. Although one case opened in fiscal 2011 has not been officially closed, the disposition has been determined through a vote of the board. This case is in the final phase of the process, pending action by the Office of Attorney General (OAG).

To date, the most common resolution of complaint investigations has been administrative closure (36 complaints have been resolved through this method). The board indicates that administrative closure occurs when it is determined the individual has not violated the Maryland Residential Child Care Program Professionals Act. The board has also used administrative closure when the board was able to bring an individual practicing without a certification into compliance. Most of the administrative closures occurred for complaints investigated in fiscal 2009. In the initial enforcement of the certification requirement, it was determined by the board that a number of the individuals listed as the program administrator in the State Children, Youth, and Family Information System (SCYFIS) for which cases were opened due to practicing

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without a certificate, were not actually the program administrator. SCYFIS is a computer system that assists the State in tracking State-funded interagency services provided to children and their families. As a result, the cases were administratively closed. Since fiscal 2009, administrative closure of complaints has occurred rarely.

Certificate surrender or revocation has been an uncommon result of investigations, but it has occurred three times to date, with one instance pending final action. Two other certificates have been surrendered outside of the complaint investigation process.

Exhibit 5 Resolution of Complaints Received Fiscal 2008-2011

| | <u>FY 2008</u> | <u>FY 2009</u> | <u>FY 2010</u> | <u>FY 2011</u> |
|---|----------------|----------------|----------------|----------------|
| Number of Complaints Received | 7 | 39 | 17 | 12 |
| Disposition of Complaint | | | | |
| Under Investigation | 0 | 0 | 0 | 0 |
| Referred to Another Agency | 2 | 0 | 2 | 0 |
| Referred to Office of Attorney General | 0 | 0 | 0 | 0 |
| Cease and Desist | 0 | 6 | 10 | 0 |
| Letter of Agreement | 0 | 5 | 1 | 1 |
| Consent Order/Agreement | 0 | 0 | 1 | 5 |
| License Surrender/Revocation | 0 | 1 | 0 | 3 |
| Suspension | 0 | 0 | 0 | 0 |
| Denial (Acting Capacity or Certification) | 0 | 0 | 0 | 2 |
| Administratively Closed | 5 | 27 | 3 | 1 |

Note: One fiscal 2011 complaint disposition is included based on the board's approved discipline; however, the final order has not been issued and disposition is not complete.

Source: State Board for Certification of Residential Child Care Program Professionals

Cases Often Handled Timely, but Timeliness Should Be Monitored

The timeliness with which the board has closed complaint investigations is shown in **Exhibit 6**. Since its inception, the board has generally handled complaint cases in a timely manner, with case closure occurring in two months or less in the majority of cases in fiscal 2008, 2010, and 2011. The most significant issues regarding timely complaint resolution (including 9 of the 10 cases open 12 months or longer) occurred in fiscal 2009, the year in which the majority of investigations occurred. As discussed, cases in fiscal 2009 almost entirely involved

practicing without certification. The timeliness issues in that year largely resulted from the volume of cases and instances in which the board was working with individuals to become certified. In several cases, the volume impacted the closure of cases even though actions had been taken by the board. Other causes for lengthy resolutions include delays in the receipt of information on the status of the program or the program administrator and lack of staff to complete investigations.

Exhibit 6
Length of Time to Case Closure
Fiscal 2008-2011

| | <u>FY 2008</u> | <u>FY 2009</u> | <u>FY 2010</u> | <u>FY 2011</u> |
|-------------------------------|----------------|----------------|----------------|----------------|
| Number of Complaints Received | 7 | 39 | 17 | 12 |
| Approximately 30 days or less | 3 | 7 | 13 | 5 |
| Approximately 1-2 months | 0 | 8 | 1 | 2 |
| Approximately 2-3 months | 0 | 0 | 0 | 1 |
| Approximately 3-6 months | 3 | 9 | 1 | 1 |
| 6 months to 12 months | 0 | 6 | 2 | 2 |
| 12 months + | 1 | 9 | 0 | 0 |

Notes: The one outstanding case received in fiscal 2011 had its disposition determined by the board. This complaint is not included in this exhibit because the final order has not been issued and the case is not officially closed. Cases are included based on the year opened, regardless of case closure date. Data as of September 6, 2011.

Source: State Board for Certification of Residential Child Care Program Professionals

To date the board's experience with the disciplinary process has been limited. **As the board gains experience and additional certificate holders, the board should monitor the trends in the complaint investigation and disciplinary process, including causes for discipline and timeliness of the investigation and disciplinary process to ensure that if issues arise, the problems can be addressed.**

Board Expenditures

As discussed previously, the board has been general funded since its inception. As shown in **Exhibit 7**, the board's expenditures and appropriations have remained relatively stable since fiscal 2009. Limited expenditures were required in the early years of the board because the board shared existing health occupations board staff and did not hire its own staff or begin issuing certificates until fiscal 2008. With the exception of the early years of implementation, nearly all of the expenditures of the board have been related to personnel costs.

**Exhibit 7
Fiscal History
Fiscal 2006-2011**

| | <u>FY 2006</u> | <u>FY 2007</u> | <u>FY 2008</u> | <u>FY 2009</u> | <u>FY 2010</u> | <u>FY 2011</u> | <u>Est. FY 2012</u> |
|---|----------------|----------------|----------------|----------------|----------------|----------------|-------------------------|
| Total Revenues | \$0 | \$2,025 | \$43,500 | \$22,425 | \$14,505 | \$16,050 | \$15,000 |
| Total Expenditures | 5,738 | 16,825 | 116,389 | 150,370 | 141,030 | 151,798 | 148,368 |
| Personnel | 4,141 | 7,127 | 66,105 | 136,966 | 127,910 | 134,584 | 127,642 |
| Nonpersonnel | 1,597 | 9,698 | 50,284 | 13,404 | 13,120 | 17,214 | 20,726 |
| Revenue Surplus/(Gap) | (5,738) | (14,800) | (72,889) | (127,945) | (126,525) | (135,748) | (133,368) |
| % of Expenditures Covered by Revenue | 0.0% | 12.0% | 37.4% | 14.9% | 10.3% | 10.6% | 10.1% |

Note: Numbers may not sum to total due to rounding. Although the board did not begin issuing certificates until fiscal 2008, the board received some applications prior in fiscal 2007.

Source: State Board for Certification of Residential Child Care Program Professionals, Governor's Budget Books

Board May Be Understaffed when Certification of Residential Child and Youth Care Practitioners Begins

The board currently has 1.3 full-time equivalent (FTE) positions, which includes a part-time (0.5 FTE) executive director and a part-time (0.8 FTE) deputy director/licensing coordinator. Remaining personnel supporting the work of the board are shared with other health occupations boards housed in DHMH. The shared personnel include an investigator, for which the board funds 20% of the cost along with four other boards (the State Board of Examiners of Nursing Home Administrators, the State Acupuncture Board, the State Board of Audiology/Hearing Aid Dispensers/Speech Language Pathologists, and the State Board of Podiatric Medical Examiners). The work of the board also is supported by an assistant Attorney General. All other shared positions support administrative functions, and the board provides less than 10% of the funding for each position.

As part of the 2011 summer study process, the board completed a staffing analysis to determine the number and type of additional positions that would be required with the implementation of residential child and youth care practitioner certification. In completing the analysis, the board used a methodology developed by a federal expert retained by OHCQ. The calculation includes the staff time required to process initial certifications, renewal certifications,

complaint investigations, approval of training programs, and approval of continuing education programs; it is grounded in part on the experiences of other health occupations boards. The staffing analysis focused only on the impact of the addition of practitioner certification and does not include the work associated with the existing processes for administrators.

Based on an online survey of program administrators, which showed that 2,350 individuals could be expected to be certified as residential child and youth care practitioners, the staffing analysis found that 5.86 FTE positions are required to complete the tasks associated with practitioner certification (4.56 FTE more positions than the board currently maintains). Most of the deficit is in the area of complaint investigation. According to the staffing analysis, 4.07 FTE positions are estimated to be required due to higher volumes of complaints, for which the board currently shares one FTE position with four other boards.

The staffing analysis may overstate the number of other positions required long term to implement the certification. The analysis calculates the need for staffing associated with providing initial certification to 2,350 individuals (the full number of residential child and youth care practitioners requiring certification), and renewal certifications to 1,175 individuals (50% of the individuals estimated to be initially certified). Following the initial implementation of the practitioner certification, lower numbers of initial certifications will occur each year. Accounting for this overstatement indicates that the 1.3 FTE positions the board currently maintains would likely be sufficient for staff support for all functions except complaint investigation.

The board should consider hiring additional staff for complaint investigation on a contractual basis with a plan to add regular positions as the board's experience with the number of complaints and length of the disciplinary process develops over time. Additional help required during the initial surge of certification should also be added on a contractual basis.

Board Fees Expanded and Increased in 2010

The board's initial regulations became effective through emergency regulations in January 2008. These regulations included fees related to the certification process for residential child care program administrators, as well as a limited number of other activities. In April 2010, the board's revised regulations went into effect, which included changes to fees. **Appendix 3** compares the current fees implemented in April 2010, with the prior fees. Among other changes, the board increased several fees associated with administrator certification and added fees for:

- the authorization for an individual to serve as an administrator of two individually licensed organizations;
- acting capacity approval;

20 Preliminary Evaluation of the State Board for Certification of Residential Child Care Program Professionals

- a late renewal fee; and
- fees associated with the certification of residential child and youth care practitioners.

Certification fees for practitioners under these regulations are generally about 25% of the fees associated with certification for administrators.

As would be expected, nearly all of the revenue received by the board, even with the addition of new fees, has been associated with the initial certification/original certificate/standards examination and biennial certificate renewal of program administrators. Despite the increase in fees in fiscal 2010, the revenue collected in fiscal 2011 was only approximately \$16,000 and covered approximately 10.6% of board expenditures.

Board Is General Funded

Most health occupations boards are special funded, supporting board expenditures solely with special fund revenues from fees for board services. However, the board, along with the State Board of Examiners of Nursing Home Administrators, is general funded.

In its establishing legislation, the board was provided the authority to set fees and was required to set fees to produce revenue sufficient to support the board's expenditures. Uncodified language in Chapter 438 expressed intent that funds be provided in fiscal 2006 to begin board operations and special funds collected from the board be used to reimburse the general fund for these costs when sufficient revenue became available. As a result, the board was expected to begin receiving a special fund appropriation in fiscal 2008. Prior to the anticipated change from general to special funding, the board recognized that due to the limited number of individuals requiring certification it would not be possible for the board to support all expenditures with special funds without setting unreasonable fees. Chapters 204 and 205 of 2007 allowed the board to continue to receive a general fund appropriation.

Due to limited fee revenue the maintenance of a general fund appropriation is necessary to allow the board to function, as shown in Exhibit 7. Given the role that residential child care providers play in the care of vulnerable children, it is appropriate for the board to continue to receive general fund appropriations to ensure the board can achieve its primary functions.

However, the requirement to certify practitioners is expected to lead to 2,350 additional certificate holders. DLS estimates a fee of \$50 for each of these certificate holders, the level initially set through regulation for the biennial renewal, could yield biennial revenue of \$117,500. Fee revenues from these additional licensees will significantly reduce the board's current gap between general fund revenues and expenditures.

The ability of the board to more fully cover its expenses with fee revenue will likely be impacted by decisions related to the timing and number of additional staff hired and based on the 2011 summer study and any subsequent legislative and regulatory changes (and any other actions

that may be taken). The recommendation for changes to the residential child and youth care practitioner certification program would reduce revenue collections as a result of (1) elimination of the standard examination fee; (2) providing the board with the authority to waive fees; and (3) the board not requiring approval fees for training programs if the program could demonstrate that it could provide the program at little or no cost. While the board's general funded status remains appropriate at this time, to the extent that fee revenues increase substantially and consistently enough in future years with the regulation of residential child and youth care practitioners, the board may be able to convert to special fund status in several years.

Findings and Recommendations

Throughout this preliminary evaluation, DLS found that the board appears to be functioning well. The board is aware of and responds to legislative changes in a timely fashion. The board works with the associations of residential child care providers and has a generally positive relationship with these organizations. The board is receptive and addresses questions from program administrators and other issues that develop about the processes of the board. Given staffing limitations, the board responds timely to questions.

The board membership currently represents relevant parties in the certification of residential child care program professionals. Of potential concern is whether residential child and youth care practitioners will be underrepresented on the board once their certification process is implemented, given that there will be only one practitioner member for an estimated 2,350 certificate holders compared to three residential child care program administrator members for less than 200 certificate holders.

The board is relatively new. Certification of administrators has been enforced only since fiscal 2008. The board is early in the second renewal cycle, providing limited experience with certification trends. With the small number of administrators and short time period since certification was initiated, little historical experience is available on the board's ability to process complaints and take disciplinary action.

Delays in implementation of the certification of residential child and youth care practitioners are not related to any failure on the part of the board to move forward with implementation. The board immediately developed a work plan and began preparing regulations and processes to accommodate this change. The certification process for practitioners is in a state of flux, as legislation in the 2011 session required a summer study to examine the process. Legislative changes are likely to be proposed in response to these recommendations, but uncertainty exists about the changes that might ultimately be enacted. **Therefore, DLS recommends that LPC waive the State Board for Certification of Residential Child Care Program Professionals from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2024.**

DLS also recommends that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by October 1 of each year beginning in 2013 until the certification of residential child and youth care practitioners is fully implemented (a full biennial certification cycle) to update the committees on the progress of implementing certification of these practitioners. In the final report submitted, the board should also address the following:

- the outlook for the board to be self-supporting in the future (special-funded) following the implementation of the certification of residential child and youth care practitioners, based on certification levels, additional FTE and contractual staff support, and revenue and expenditure patterns; and
- the need for further changes to board membership based on the volume of certified practitioners.

Appendix 1. Information on Other States’ Residential Child Care Professional Certification

As noted earlier, only two other states require certification of residential child care program administrators. California requires group homes to have a certified administrator. To become certified, California requires a 40-hour initial certification training program from an approved vendor, the passage of a standard-examination, and completion of a criminal history records check. Applicants for certification must be at least 21 years old. Certificates in California are valid for two years and require 40 hours of continuing education for renewal. California allows for a reinstatement of an expired certificate within four years of expiration. California generally allows certificate holders to act as an administrator in more than one facility. California charges a \$100 fee for the initial application process and for renewal certification.

Texas requires licensure of administrators of both child care programs and child placing agency administrators. For each type of administrator, one year of management or supervisory experience in a residential child care or licensed child placing agency (respectively) is required. Also each type of administrator must have either (1) a master’s or doctoral degree or (2) a bachelor’s degree and at least two years experience in the field. Individuals must also complete a criminal history records check and a check of the abuse/neglect central registry and pass an examination. Texas requires biennial renewal and requires 15 hours of training in each year of the renewal cycle. Texas allows licensees to act as an administrator in two facilities if the program is in good standing, the size and scope are manageable by one person, and the programs are contiguous. Texas allows for an inactive status of the license. Texas requires a \$100 application fee for initial certification and a \$50 renewal fee if the fee is received before expiration of the license.

Appendix 2. Recommendations from 2011 Summer Study Workgroup

The 2011 summer study workgroup recommendations for changes to the certification process for practitioners agreed with those recommended by the board. These recommendations are:

- the board should have the authority to waive fees;
- the Maryland School for the Blind should be waived from the certification requirement;
- a minimum salary structure based on the increased requirements of certification should be developed;
- changes should be made to the common regulations for initial and annual training requirements;
- the purpose of the practitioner training program should be identified;
- a uniform framework for practitioner training programs should be developed to include at least 30 contact hours which cover six modules and require passage of a post-test with a score of at least 70%;
- the training program should be available through a free online webinar format but programs should be allowed to customize training programs;
- protocol for board approval of training programs should be identified;
- a training program approval fee should be established;
- a process for qualification of trainers should be established;
- the educational and training requirements for certification should be simplified;
- a trainee provision with set timeframes to achieve certification should be established;
- certain workers should be grandfathered into certification under certain conditions;

- the standards examination should be modified to a series of post-tests linked to training modules; and
- the fee for the standards examination should be eliminated.

The workgroup recommended that the Children's Cabinet work with the Child and Adolescent Mental Health Institute to design the training curriculum and that the Child and Adolescent Mental Health Institute test the curriculum. Final approval of the curriculum would rest with the board and the Children's Cabinet.

The board has also expressed its support for a tiered certification system proposed by providers as part of the summer study. Provider recommendations are:

- a State commitment to fund reimbursements at a level to support a competitive salary structure;
- a three tier certification structure including an initial tier for grandfathered employees and new employees completing the approved training and higher tiers based on experience and education level; and
- a commitment from the State to fund a reimbursement rate that supports the development of individualized program training.

Appendix 3. Schedule of Fees

| | <u>Fee Prior to April 19, 2010</u> | <u>Current Fee</u> |
|---|--|--------------------|
| <u>Residential Child Care Program Administrators</u> | | |
| Initial Application | \$100 | \$200 |
| Original Certificate | 100 | N/A |
| State Standards Examination | 125 | 125 |
| Biennial Certificate Renewal | 100 | 200 |
| Reinstatement Fee | 200 | 200 |
| Late Renewal Fee | N/A | 100 |
| Acting Capacity Approval | N/A | 75 |
| Authorization to Serve as Residential Child Care Administrator for Two Individually Licensed Organizations | N/A | 100 |
| Preceptor Authorization | N/A | 100 |
| <u>Residential Child and Youth Care Practitioner</u> | | |
| Initial Application | N/A | 50 |
| State Standards Examination | N/A | 50 |
| Biennial Certificate Renewal | N/A | 50 |
| Reinstatement Fee | N/A | 50 |
| Late Renewal Fee | N/A | 25 |
| Provisional Certification | N/A | 25 |
| Practitioner-in-training | N/A | 50 |
| <u>Other Fees</u> | | |
| Application for Approval of a Continuing Education Program of Studies | 100 | 100 |
| Fine for Failure to Notify the Board within 30 Days of a Change in the Name of the Certificate Holder; Home Address of the Certificate Holder; Electronic Mail Address of the Certificate Holder; or Name or Address of Employer or Business Connection of the Certificate Holder | 50 | 50 |
| Returned Check Fee | N/A | 25 |
| Diskettes, Labels, or Rosters of Certified Individuals | | |
| Residential Child Care Administrators | N/A | 50 |
| Residential Child and Youth Care Practitioner | N/A | 100 |
| Lost, Destroyed, Duplicate Certificate | 25 | 25 |
| Written Verification of Certification | N/A | 15 |
| Failure to Appear at Standards Examination without Justification | N/A | 15 |
| Missing Documentation Reprocessing Fee | N/A | 5 |

Source: Code of Maryland Regulations, State Board for Certification of Residential Child Care Program Professionals.

**Appendix 4. Written Comments of the
State Board for Certification of
Residential Child Care Program Professionals**



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

State Board for the Certification of Residential Child Care Program Professionals

November 29, 2011

SENT VIA ELECTRONIC MAIL

Mr. Warren G. Deschenaux,
Director, Office of Policy Analysis,
Department of Legislative Services,
90 State Circle,
Annapolis, MD 21401.

Dear Mr. Deschenaux:

The State Board for the Certification of Residential Child Care Program Professionals ("State Board") appreciates the opportunity to review the preliminary evaluation report. The State Board's response to the report was very positive.

The State Board concurs with the recommendations and offers no changes or corrections to the thorough analysis reflected in this report.

Thank you for your fair assessment of this program.

Sincerely,

Albert Zachik, M.D., Chairman
State Board for the Certification of
Residential Child Care Program
Professionals

cc: Secretary Joshua M. Sharfstein, M.D.
Kimberly Mayer, Executive Director
Mr. Patrick D. Dooley
Mr. Karl S. Aro, Executive Director
Department of Legislative Services
Ms. Tonya Zimmerman
Ms. Jennifer Chasse