

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 16-167)**

Overview and Legal and Fiscal Impact

These regulations (1) implement revisions to the statute governing the State Board for the Certification of Residential Child Care Program Professionals made by Chapter 331 of the Acts of 2015 and (2) alter the certification application and renewal requirements and processes for program administrators and residential child and youth care practitioners.

The regulations present no legal issues of concern.

There is no material fiscal impact on State agencies. There is no fiscal impact on local agencies.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Board for Certification of Residential Child Care Program Professionals: Definitions:
COMAR 10.57.01.01
Certification – Residential Child Care Program Administrators:
COMAR 10.57.02.01 through .06 and .08 through .10
Certification – Residential Child and Youth Care Practitioners:
COMAR 10.57.03.01, .02, and .05 through .07

Legal Analysis

Background

Chapter 331 of 2015 (1) required a child protective services background clearance, unless waived by the board, for certification and renewal of certification as a program administrator or a residential child and youth care practitioner; (2) repealed the requirement that each certificate issued by the board include the seal of the board; (3) required that a certified program administrator or certified residential child and youth care practitioner submit fingerprints to the board for use in the conduct of a State and national criminal history records check in order to renew the certificate; and (4) authorized the board to waive the requirement that a certified program administrator or certified residential child and youth care practitioner submit evidence of application for a child protective services background clearance in order for a certificate to be renewed or reinstated.

Summary of Regulations

Definitions

The regulations amend COMAR 10.57.01 to add “Central Repository,” “Chief Administrator,” and “child protective services background clearance” to the list of defined terms and repeal the defined terms “practitioner-in-training” and “provisional residential child and youth care practitioner.” The repealed terms are no longer used in the regulations governing the board.

Certification – Residential Child Care Program Administrators

COMAR 10.57.02.01 requires an applicant to submit to the board independent written verification from the applicant’s employer or employers describing the nature and duration of the applicant’s experience in the human service field, rather than three professional references from individuals attesting to the applicant’s work experience and competence as a program administrator. The regulation also requires, unless waived by the board, that an applicant submit evidence that the applicant has a child protective services background clearance. Additionally, the regulation also allows the documentation regarding experience for individuals who are in a leadership role of a residential child care program and do not have a supervisor, to come from the program’s Chief Administrator or other appropriate program authority.

COMAR 10.57.02.02 repeals the requirement that an applicant demonstrate proof of proficiency in the written and oral communication of the English language.

COMAR 10.57.02.03 requires that, unless waived by the board, an applicant provide adequate evidence that the applicant has submitted to a child protective services background clearance in order for the board to waive the examination requirement.

COMAR 10.57.02.04 repeals (1) the requirement that the board review all completed applications for certification as a program administrator within 120 days of receipt of the completed applications; (2) the authority for the board to delegate the initial review of the applications to a committee of the board; and (3) the requirement that each certificate include the signature of the chairman of the board under the seal of the board.

COMAR 10.57.02.05 requires the board to send a renewal notice at least one month, rather than three months, before a certificate expires. The regulation also allows the notice to be sent by electronic means. Additionally, the regulation requires that a certified program administrator, in order to renew the certificate, submit to the board (1) evidence of application for a child protective services background clearance and (2) evidence of having submitted to a State and national criminal history records check conducted by the Central Repository.

COMAR 10.57.02.06 requires that a program administrator, in order to have a certificate reinstated, submit to the board (1) evidence of application for a child protective services background clearance and (2) evidence of having submitted to a State and national criminal history records check conducted by the Central Repository.

COMAR 10.57.02.08 requires the Chief Administrator or other appropriate program authority, rather than the board of directors, to designate a certified program administrator to serve if a program administrator resigns or is removed from the position for an unexpected cause. The regulation also provides that a noncertified individual may serve as acting program administrator for a period not exceeding 90, rather than 180 days. Additionally, in order to obtain approval from the board for a noncertified individual to serve, the regulation requires the Chief Administrator or other appropriate program authority to submit to the board the State and national criminal history records check. Finally, the regulation repeals the requirement that the board review all requests for the appointment of noncertified program administrators to the extent practicable at the next regularly scheduled board meeting.

The regulations repeal COMAR 10.57.02.09, which governs the designation of an individual as a certified residential child care program administrator for two individually licensed organizations.

Certification – Residential Child and Youth Care Practitioners

COMAR 10.57.03.01 requires, unless waived by the board, that an applicant submit evidence that the applicant has a child protective services background clearance.

COMAR 10.57.03.02 requires that an applicant submit certified copies of transcripts with school seals to document evidence of at least two years' experience in the health and human services field. The regulation also repeals the requirement that an applicant demonstrate proof of proficiency in the written and oral communication of the English language.

COMAR 10.57.03.05 repeals (1) the requirement that the board review all completed applications for certification as a program administrator within 120 days of receipt of the completed applications; (2) the authority for the board to delegate the initial review of the applications to a committee of the board; and (3) the requirement that each certificate include the signature of the chairman of the board under the seal of the board.

COMAR 10.57.03.06 requires the board to send a renewal notice at least one month, rather than three months, before a certificate expires. The regulation also allows the notice to be sent by electronic means. Additionally, the regulation requires that a certified program administrator, in order to renew the certificate, submit to the board (1) evidence of application for a child protective services background clearance and (2) evidence of having submitted to a State and national criminal history records check conducted by the Central Repository.

COMAR 10.57.03.07 requires that a residential child and youth care practitioner, in order to have a certificate reinstated, submit to the board (1) evidence of application for a child protective services background clearance and (2) evidence of having submitted to a State and national criminal history records check conducted by the Central Repository.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites § 20-101, 20-205, 20-301, 20-302, 20-302.1, 20-303, 20-305, 20-310, 20-311, 20-404 of the Health Occupations Article as statutory authority for the regulations. More specifically, § 20-101 contains defined terms used in the Maryland Certification of Residential Child Care Program Professionals Act. Section 20-205 requires the board to adopt regulations to carry out the provisions of the Act. Section 20-301 requires an individual to be certified before being a program administrator or residential child and youth care practitioner in the State. The section also specifies the procedure for when a program administrator leaves or is removed from the position for an unexpected cause. Section 20-302 governs the qualifications for certification as a program administrator. Section 20-302.1 governs the qualifications for certification as a residential child and youth care practitioner. Section 20-303 governs the application process. Section 20-310 governs the expiration and renewal of certificates. Section 20-311 governs the reinstatement of certificates. The remaining cited authority is not relevant to these regulations.

Although not cited by the department as authority for COMAR 10.57.02, §§ 20-305, 20-306, and 20-307 of the Health Occupations Article should be cited as authority. Section 20-306 governs the waiver of examinations and § 20-307 governs the issuance of certificates. For COMAR 10.57.03, §§ 20-307, 20-310, and 20-311 of the Health Occupations Article should be cited as authority.

With the addition of §§ 20-305, 20-306, and 20-307 for COMAR 10.57.02 and §§ 20-307, 20-310, and 20-311 for COMAR 10.57.03, the relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department Legislative Services, staff for the board agrees to make the following changes to the regulations:

- correcting a typographical error for the statutory authority for COMAR 10.57.01 to correctly refer to § 20-205, rather than § 20-105, of the Health Occupations Article;
- adding as statutory authority §§ 20-305, 20-306, and 20-307 of the Health Occupations Article for COMAR 10.57.02 and §§ 20-307, 20-310, and 20-311 of the Health Occupations Article for COMAR 10.57.03;
- adding language to COMAR 10.57.02.05C(3)(c) and .06A(4)(c) and 10.57.03.06C(3)(c) and .07A(3)(c) to clarify that the board may waive the child protective services background clearance requirement for renewals and reinstatements; and

- adding a description of the repeal of COMAR 10.57.02.09 to the Statement of Purpose.

The Department of Legislative services raised a concern with staff for the board regarding a discrepancy between statute and the regulations regarding what has to be submitted relating to the criminal history records checks for renewals and reinstatements. The regulations require that evidence be submitted to the board that the applicant submitted to a State and national criminal history records check conducted by the Central Repository. However, §§ 20-310 and 20-311 of the Health Occupations Article require that applicants for renewal or reinstatement submit fingerprints to the board. The requirements in §§ 20-310 and 20-311, however, conflict with § 20-303(b)(1) of the Health Occupations Article which requires that the fingerprints be submitted to the Central Repository, not the board. The regulations accurately reflect the criminal history records check process.

Fiscal Analysis

There is no material fiscal impact on State agencies. There is no fiscal impact on local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations implement procedural changes and revisions enacted by Chapter 331 of 2015 (Senate Bill 201), as well as repeal certain requirements to reflect the board's current practice and statutory authority. The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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