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**Health and Safety of the District's Mentally Ill
Jeopardized By Program Deficiencies and Inadequate Oversight**

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EXECUTIVE SUMMARY

PURPOSE

Pursuant to Public Law 93-198, Section 455, the District of Columbia Auditor examined matters relevant to the operation, inspection and oversight of mental health community residential facilities (MHCRF) used by clients of the Commission on Mental Health Services (CHMS).

CONCLUSION

During the Auditor's examination, it was determined that some CMHS clients were residing in residences with widespread health and safety deficiencies. Annual inspections of MHCRFs were not regularly conducted; facility monitoring was inconsistent; some CMHS clients did not receive appropriate services and care; and the system for reporting and investigating complaints and unusual incidents lacked overall coherence and integrity. Finally, some MHCRF owners/operators were in violation of the District's tax laws with regard to the payment of real property taxes and improperly claiming homestead exemptions and the senior citizen deduction on multiple MHCRF properties.

The audit team's examination of monitoring files for Supported Independent Living (SIL) facilities under contract with CMHS, in addition to on-site visits of five SIL contract facilities, revealed numerous health and safety deficiencies and risks. These health and safety deficiencies and risks included, but were not limited to:

- rodent and insect infestations;
- hazardous fire conditions including improper storage of hazardous materials;
- missing or inoperable smoke detectors;
- structural violations including loose railings, damaged walls and ceilings;
- serious electrical and plumbing violations;
- inoperable appliances (i.e., stoves, refrigerators, air conditioning, and heating units); and
- insufficient lighting.

The Auditor found that there are currently no District laws or regulations requiring that:

1. SIL facilities be licensed to house CMHS clients or monitored by the Department of Health's Licensing Regulation Administration (LRA) in that 24-hour, on-site supervision of CMHS clients is not necessary; or
2. SIL facilities be inspected annually for compliance with the District's fire safety code by the Fire Marshal.

The Auditor's site visit of five SIL facilities revealed that each had obtained a certificate of occupancy, but only one had obtained the proper housing business license required by Title 14 of the DCMR. The remaining four SIL facilities were operating without a proper housing business license. Each facility was required to obtain a housing business license because "sleeping" accommodations were occupied, for consideration, by 5 or more persons who were not members of the immediate family of the owner or lessee.

The lack of a license requirement, coupled with inadequate monitoring and oversight of SIL facilities by the District, generally, and CMHS, specifically, allowed hazards in many of these facilities to often go undetected and thus unabated until a complaint was filed with DCRA, the Fire Department, the Metropolitan Police Department, or a call was made to the media.

The Auditor found that DOH's LRA failed to timely perform annual inspections of MHCRFs and failed to ensure that these facilities' licenses were renewed before or at the time their existing license expired. During the review period, LRA, through the DOH Director, sent a letter to MHCRFs that timely filed a renewal application authorizing them to continue operating indefinitely after their license expiration date.

Based on documentation received from DOH, as of October 2000, 107 of the 147 MHCRFs housing CMHS clients operated on expired licenses. Further, the Auditor's test sample of 84 of the 147 indicated that 70 of 84 facilities operated on an expired license as a result of delays in DOH's license renewal process. Additionally, the Auditor found that 43 of the 70 facilities operated for over 100 days on an expired license.

The Auditor found that fire inspections of MHCRFs were not conducted as required by current District of Columbia law. Pursuant to the Omnibus Regulatory Reform Amendment Act of 1998, annual fire inspections of MHCRFs must now be conducted by DCRA rather than the Fire Department. The Auditor found that, notwithstanding the execution of a Memorandum of Agreement (MOA) between DCRA and the Fire Marshal on September 14, 2000, DCRA failed to

conduct any annual fire inspections of MHCRFs between April 1998, the effective date of the Omnibus Regulatory Reform Amendment Act, and the execution of the MOA on September 14, 2000. In violation of 22 DCMR 3104.1, the Auditor found that many MHCRFs were not inspected by DCRA or the Fire Marshall for compliance with the fire safety code during the license renewal process.

Additionally, the Auditor found that only 15, or 17%, of the 84 tested facilities were inspected annually for fire code compliance during the three-year audit period. In other words, 69 of the 84 tested facilities were not annually inspected during the audit period as required by District regulations. In fact, the Auditor documented five MHCRFs that had not received any fire inspections during the three-year audit period.

The Auditor questioned fire officials as to why fire inspections were not conducted annually or prior to license expiration. These officials stated that fire inspections of MHCRFs were conducted only upon the request of LRA. The officials further stated that without a request for an inspection from LRA, the Fire Marshal had no way of knowing of the existence or location of a MHCRF.

Section 3235 of Title 16 of the DCMR grants the Fire Department legal authority to issue civil infractions, which carry monetary fines, to MHCRFs for fire code violations. The Auditor found that the Fire Department rarely, if ever, issued civil infractions during the audit period.

The Auditor found that CMHS had not established a written policy that prescribed the number of MHCRF monitoring visits to be made annually. According to the Director of CMHS' Clinical Monitoring and Evaluation Division (CMED), there was an unwritten internal policy of monitoring MHCRFs once every three months. This policy was established in September 1999. Contrary to this unofficial policy, the Auditor could not document a single facility that had received a monitoring visit once each quarter since the unwritten monitoring policy was established.

The Auditor tested a sample of 86 CMHS monitoring files for calendar years 1998, 1999, and 2000, and found that 126 facilities were not monitored three times each year by CMED. CMHS could not provide any assurances that the 126 facilities, not monitored by CMHS during the audit period, were operated in compliance with CMHS Residential Services Standards, or whether they complied with the District's health and safety standards.

There are currently no policies, procedures, regulations, or laws requiring the Department of Health's LRA to provide CMHS with monitoring reports, complaints, or unusual incidents

relative to MHCRFs. The Auditor found no evidence that the two organizations adequately communicated with each other in order to more effectively perform their common duties and responsibilities relative to properly resolving complaints and conducting effective, timely investigations of unusual incidents involving mentally ill residents housed in MHCRFs.

The Auditor found that LRA documented serious deficiencies in MHCRFs that required immediate abatement, however, LRA did not share this information with CMHS. The failure in communication and coordination between LRA and CMHS allowed for the continued placement of some CMHS clients in deficient facilities, in addition to leaving CMHS clients in facilities known to be unsafe or unsanitary.

The Auditor found the following service and care deficiencies, in violation of 22 DCMR, Chapter 38, noted in CMHS's and LRA's MHCRF monitoring reports:

- no verification of liability insurance coverage;
- inadequate staffing during high activity periods;
- employees without proper first aid certification;
- employees without current food handlers' certification;
- results of criminal background checks not on file;
- employment of individuals with a history of assault;
- clients not receiving annual medical examinations;
- mismanagement of clients' medications, including improper storage and security;
- failure to maintain clients' individual treatment plans; and
- improper maintenance of clients' financial records.

The Auditor found that CMHS generally will not remove clients from a seriously deficient facility, but may suspend the placement of additional clients until the facility abates cited deficiencies. The Auditor also found that many violations were documented by CMHS monitors on successive visits to facilities, yet existing residents were not removed and new placements were not suspended. The Auditor's review of CMHS records revealed that even when deficiencies were found, CMHS monitors would rate many of the facilities above average and recommend the continued placement of additional clients. The Auditor found that prior to the adoption of emergency rules in August 2000, LRA was not authorized to issue civil infractions for MHCRF deficiencies that violated 22 DCMR, Chapter 38. Prior to August 2000, LRA was only authorized to revoke or suspend a facility's license.

The Auditor found that neither LRA nor CMHS provided any discernible periodic financial oversight of client funds. As a result, the Auditor documented two examples of the mismanagement or misuse of client funds by a provider who operated several MHCRFs in the District. In one instance, the provider received payments for board and rent from the Social Security Administration by improperly filing to be the client's representative payee while at the same time receiving rental payments from the client's conservator. Between October 1998 and March 1999, the provider received in excess of \$5,664 from both sources. Further, the room and board rate to be received for this client should have been \$737 per month, or a total of \$4,422, rather than a \$1,133 per month or a total of \$5,664 for the five-month period. It appeared that this provider improperly received approximately \$2,376 of this client's funds over a six-month period. The Auditor could not find any follow-up documentation indicating that the provider had reimbursed the client for the overpayments.

In the second instance, the Auditor documented two complaints filed with LRA against a provider for failing to give clients their \$70 personal allotments each month. The Auditor could not find any evidence that the District initiated an audit or investigation into the provider's handling of clients' funds to ensure that personal allotments were given to clients and accurately accounted for as required by 22 DCMR 3816.5. The failure of CMHS to establish stringent financial oversight and accountability of client funds, including periodic audits, exposed such funds to a high risk of mismanagement, misuse, and theft. A vulnerable population, such as mentally ill clients residing in MHCRFs, requires continuous, stringent oversight to ensure that funds intended to cover the cost of their care, as well as their personal funds, are properly safeguarded, accounted for, and appropriately used.

The Auditor documented two contractor operated facilities that employed persons with criminal backgrounds. In reviewing CMHS records, the Auditor found that CMHS did not enforce the contract by ensuring that corrective action was taken against the MHCRF employees found to have criminal convictions for assault and possession of controlled substances.

The Auditor found that LRA was not adequately documenting complaints filed against MHCRFs. The Auditor reviewed 149 complaints filed with LRA against MHCRFs. LRA investigated only 57, or 38%, of the 149 complaints. The Auditor also found that:

- LRA failed to follow established internal procedures for maintaining a profile of complaints against each facility, showing the number, type and frequency of complaints and the results of investigations against each MHCRF.
- Complaints received by CMHS against MHCRFs were not forwarded to LRA to be recorded and investigated.
- LRA did not adequately respond to complaints filed by outside agencies. The Auditor reviewed 42 complaints submitted by the Long Term Care Ombudsman(LTCO). Of the 42 complaints submitted to LRA by the LTCO between February 1999 and June 2000, LRA investigated only four complaints.

Finally, the Auditor reviewed records at the Office of Tax and Revenue (OTR) to ascertain the ownership of properties that serve as MHCRFs. In doing so, the Auditor found that 81 of the 147 owners of premises serving as MHCRFs had failed to pay property taxes by the due date for the first half of tax year 2000. Three property owners had delinquent property taxes for calendar years 1997, 1998 and 1999. At the time of our field work, MHCRF owners/operators owed the District government approximately \$86,580 in delinquent property taxes.

The Auditor also found that approximately 28 owners of MHCRFs erroneously or falsely certified to the Department of Health, as part of their MHCRF license application, that they did not owe any outstanding debt over \$100 to the District government as a result of any fine, fee, penalty, interest, or past due tax as required by D.C. Code, Section 47-2862. In fact, these owners owed outstanding debts to the District government that substantially exceeded \$100. Nevertheless, in violation of D.C. Code, Section 47-2862(a), the Auditor found that the Department of Health renewed licenses for MHCRF facility owners even though they owed outstanding debts to the District government. The Auditor also found that neither CMHS, LRA, nor OTR have mechanisms in place to facilitate the timely flow of information necessary to identify MHCRF owners/operators who owed outstanding debts to the District government before issuing or renewing a license to operate a MHCRF. Unfortunately, LRA relies on an applicant's good faith self-certification that they are not indebted to the District government.

The Auditor found five MHCRF property owners/operators who received the Homestead Exemption on two or more properties that appear to have been concurrently claimed as the principal residence of the owner. The Auditor also found that, in addition to the multiple Homestead Exemptions, one MHCRF owner also received the Senior Citizen Property Tax credit on more than one property, resulting in a loss of tax revenue to the District government of approximately

\$12,522.37 from property owners improperly claiming multiple Homestead Exemptions and Senior Citizen Property Tax Credits for property tax year 1999 alone.

MAJOR FINDINGS

1. Independent living (IL) and supported independent living (SIL) facilities are not required to be licensed and, as a consequence, some pose significant health and safety risks.
2. Some CMHS clients are residing in unsafe and hazardous IL and SIL facilities.
3. Annual inspections of MHCRFs were not regularly conducted during the audit period.
4. LRA was not conducting annual inspections prior to license expiration.
5. Fire inspections were not conducted as required by District Law.
6. Fire inspections were not consistently conducted prior to license expiration during the license renewal process.
7. The Fire Department did not issue civil infractions for fire code violations.
8. CMHS's monitoring of MHCRFs was inadequate.
9. Communication between CMHS and LRA was ineffective.
10. Some CMHS clients were not receiving proper services and care.
11. CMHS clients' financial records were improperly maintained.
12. Some MHCRF staff had criminal backgrounds.
13. The system for reporting and investigating complaints at MHCRFs requires substantial improvement.
14. LRA is not adequately documenting and investigating complaints.
15. Unusual incidents were not reported and investigated correctly.

16. Some MHCRFs were operating in violation of District of Columbia tax laws:
 - A. Violations of the Clean Hands Act.
 - B. Multiple Homestead Exemptions were claimed by some MHCRF property owners/operators.

MAJOR RECOMMENDATIONS

1. The Department of Consumer and Regulatory Affairs strictly enforce housing business license and certificate of occupancy requirements for apartments, rooming and boarding houses, to ensure that they are: 1) inspected; 2) adhering to District of Columbia health and safety laws and regulations; and 3) adhering to the District's building and fire codes.
2. CMHS ensure that contractors providing SIL facilities are fulfilling their fiduciary and contractual obligations to ensure the health and safety of CMHS clients.
3. CMHS and SIL contractors expand the number of available beds and housing offered to CMHS clients.
4. The Director of DOH increase facility inspector staffing levels in order to ensure that health and environmental inspections are conducted in a timely manner prior to license expiration.
5. The Council of the District of Columbia consider enacting legislation requiring the Fire Marshal of the District of Columbia to conduct annual fire inspections of all community residential facilities, including those housing mentally ill clients served by the District of Columbia. Additionally, the Fire Marshal should issue civil infractions to owners/operators whose facilities are repeatedly found to be in violation of the District of Columbia Fire Code.
6. The Administrator of LRA ensure that the entity conducting annual fire inspections of MHCRFs is conducting the inspections in a thorough, timely manner.
7. CMHS [Director of the Department of Mental Health] establish written guidelines to be followed in monitoring MHCRFs to ensure that inspections of these facilities are conducted on a timely and consistent basis.

8. CMHS and LRA establish a policy regarding the timely exchange of information concerning deficiencies in MHCRF facilities so that the deficiencies can be abated in a timely manner.
9. Civil infractions should be aggressively used by LRA in an effort to timely abate deficiencies found in MHCRFs. Additionally, CMHS and LRA should establish a practice of sharing MHCRF monitoring results to ensure the timely abatement of deficiencies.
10. CMHS develop and implement an effective financial oversight program for client funds, including periodic audits, to ensure that client funds are properly accounted for and safeguarded.
11. Providers must be required to maintain strict compliance with the criminal background check requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 or face immediate monetary and other sanctions. Further, LRA must strictly enforce the sanctions.
12. Providers be required to strictly comply with the reporting of all UIs occurring in their facility or face immediate monetary or other appropriate sanctions.
13. LRA immediately implement a program for investigating and documenting all complaints filed against MHCRFs.
14. The Office of Tax and Revenue immediately collect outstanding property taxes owed by MHCRF owners/operators and impose the proper penalties and fines for violations of D.C. Code, Sections 47-2682 (a) and 47-850.

PURPOSE

Pursuant to Public Law 93-198, Section 455, the District of Columbia Auditor examined matters relevant to the operation, inspection and oversight of mental health community residential facilities (MHCRFs) used by clients of the Commission on Mental Health Services (CHMS).

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the examination were to determine:

1. the address, type and number of beds in mental health community residential facilities by ward;
2. the name and address of each facility's owner and operator;
3. whether the facilities used by CMHS were properly licensed;
4. the agency or agencies responsible for monitoring each facility;
5. the procedures used to monitor and regulate the operation of these facilities and whether the facilities were operating in accordance with applicable District of Columbia laws, regulations;
6. the procedures used to monitor the quality of care provided to clients living in these facilities; and
7. the procedures used to investigate complaints and unusual incidents regarding services and care provided to clients living in MHCRFs.

The scope of the audit included fiscal years 1998, 1999 and 2000, and focused primarily on community residential facilities utilized by CMHS to house persons with varying degrees of mental illness.

In conducting the audit, the Auditor reviewed relevant records of the Commission on Mental Health Services (CMHS); the Department of Health's Licensing Regulation Administration (LRA); the District of Columbia Fire Marshal's Fire Prevention Bureau; the District of Columbia Long-Term Care Ombudsman Program (LTCO); and the Department of Consumer and Regulatory Affairs'

Building and Land Regulation Administration and Fire Protection Division. Additionally, the Auditor interviewed knowledgeable officials and employees of the aforementioned agencies. The Auditor also reviewed applicable District of Columbia laws and regulations to ascertain the District's responsibility to ensure the safety of and provide care to mentally ill persons receiving services through CMHS.

BACKGROUND

The Commission on Mental Health Services (CMHS), which was under receivership during the audit period, was established in accordance with D.C. Code, Section 32-621 et seq.² CMHS is the primary District government entity authorized to provide mental health services to mentally ill residents of the District of Columbia. Rules governing the operation of, and prescribing standards for, community residence facilities for mentally ill persons are set forth in Chapter 38 of Title 22 of the District of Columbia Municipal Regulations (DCMR).

Services provided by the Commission on Mental Health Services were formerly provided by the federal government through its operation of a national mental health program at St. Elizabeths Hospital. For over 100 years, the federal government, through St. Elizabeths Hospital, assisted the District of Columbia Government in providing mental health services to District residents. For a short time, CMHS was under the auspices of the District's Department of Human Services until placed under the management of a receiver.

Pursuant to the Dixon Decree³, in December 1975 the U.S. District Court for the District of Columbia affirmed the right of persons who suffer from mental illness to receive appropriate, community-based treatment and services. This decision and several subsequent orders, along with federal legislation enacted in 1984⁴, required the District government to:

“Develop and provide an array of community-based services to accommodate the responsible placement of Dixon class members who remain at St. Elizabeths Hospital and to remediate

²CMHS came out of receivership in April 2001, and is now the Department of Mental Health (DMH). Nevertheless, the Auditor will use the term Commission on Mental Health Services and CMHS in this report rather than DMH because the receivership was in effect during the period of time covered by this audit.

³In *William Dixon et al., Plaintiffs, v. Caspar Weinberger, et al.*, the court found, among other things, that the 1964 Hospitalization of the Mentally Ill Act requires that patients confined in St. Elizabeths Hospital pursuant to the 1964 Act receive suitable care and treatment under the least restrictive conditions where appropriate; be placed in alternative facilities in proper facilities that are less restrictive alternatives to the Hospital, as it is presently constituted, such alternatives including but not being limited to nursing homes, foster homes, personal care homes and half-way houses.

⁴See D.C. Code, Section 32-621 et seq.

serious problems faced by class members who are already in the community but who remain at risk of (re)hospitalization and/or are homeless.”

Under the Dixon decree, CMHS was established to:

- provide upgraded crisis and intervention services;
- provide residential and support services for the mentally ill homeless;
- expand private provider housing;
- establish community outreach units; and
- establish a model residential service for the elderly mentally ill outside of nursing homes.

The District of Columbia, aside from being mandated by local law and the Dixon Decree, has a duty to provide safe and protected living environments to persons suffering from mental illness pursuant to the Hospitalization of the Mentally Ill Act of 1964. The fundamental goal of this act is to return the mentally ill, through care and treatment, to a full and productive life in the community.

District of Columbia residents obtain residential services from CMHS in one of three ways:

- voluntarily requesting psychiatric services by filing an application one of three mental health centers located in the District⁵;
- being referred to CMHS by an outside source or agency such as a hospital, social worker, or independent psychiatrist; or
- as part of a client’s outplacement from St. Elizabeths Hospital.

CMHS may place some mentally ill individuals in MHCRFs, provide financial assistance, and assist clients in locating independent living arrangements based upon needs identified in their Individual Treatment Plan (ITP). The clients’ needs are based on the level of support deemed necessary by a treatment team and placement worker, which is certified by the CMHS Medical Review Committee (MRC).⁶ Unless found incompetent by a court or involuntarily committed, clients have full discretion in choosing their place of residence.

⁵Clients are admitted for psychiatric services and may receive residential services as part of their treatment.

⁶The CMHS/Contract Referring Staff Treatment Team and the patient/client/family (or significant others) determine the patient’s/client’s readiness and preferences for outplacement to a community based residential facility. If the patient/client is found appropriate for placement in a community based facility, a referral package containing a medical certification and psychiatric assessment is sent to the Medical Review Committee (MRC). The MRC will then: (1) assess whether the patient/client is clinically ready for a community based facility; (2) determine whether the client’s needs can be reasonably accommodated within a community based facility; and (3) make a determination as to the type of facility in which the client should be housed. After approval by the MRC, the placement worker will work in conjunction with the client and family members in finding an appropriate community based residential facility.

Listed below are five levels of community living arrangements in which CMHS may place or refer clients.

1. **Supported Residence (SR)** - A supported residence is a licensed community residential facility occupied by six or fewer residents, including an adult in the home who is responsible for providing 24-hour supervision and assistance with the tasks of daily living. It is appropriate for people whose mental and/or physical disabilities interfere only minimally with their functioning. These facilities are funded, in part, by the individual client and, in part, with District appropriated dollars.
2. **Supported Rehabilitative Residence (SRR)** - A supported rehabilitative residence is a licensed community residential facility occupied by six or fewer residents, including at least one adult in the home who is responsible for providing 24-hour supervision and assistance with activities of daily living, meals, lodging and rehabilitative care. Rehabilitative care is coordinated under the direction of the resident's CMHS treatment team. Specialized services are provided on a scheduled basis as determined by the client's ITP. These facilities are funded with District appropriated dollars but some clients pay a portion of their expense for care in these facilities.
3. **Intensive Residence (IR)** - An intensive residence is a licensed supportive community residential facility occupied by six or fewer residents with a high staff-to-patient ratio, usually with no fewer than 1 staff to 2 clients, operating 24 hours a day, and a one-to-one ratio in times of high activity, such as meal time. Specialized programming may be provided for clients with problems that limit the likelihood of progress to higher functional levels. These facilities are funded with District appropriated dollars but some clients pay a portion of their expense for care in these facilities.
4. **Supported Independent Living (SIL)** - A supported independent living facility is an unlicensed residential setting such as an apartment, rooming house, or boarding house. This type of living arrangement is appropriate for a person who, either alone or with minimal assistance, is capable of performing activities of daily living, managing household affairs, functioning in the community and supporting themselves through public benefits, employment or other means, and does not require 24-hour supervision. Persons residing in supported independent living facilities receive assistance and training in daily living activities, home management, and community skills. Assistance and training is provided in and outside the residence, on a scheduled basis, as frequently as determined by the resident's ITP. Services are provided by persons such as vocational

counselors and case managers who do not live in the residence. Clients also receive services such as case management, psychiatric rehabilitation, and vocational services. CMHS funds SIL services, and in some cases housing costs, both of which are funded with District appropriated dollars.

5. **Independent Living (IL)** - An independent living arrangement is an unlicensed residential setting such as an apartment, rooming house, or boarding house. This type of living arrangement is appropriate for a person who, either alone or with minimal assistance, is capable of performing activities of daily living, managing household affairs, functioning in the community, and supporting themselves through public benefits, employment or other means. This type of placement does not require 24-hour supervision. Occasional medical, mental health care, and community support services may be needed. CMHS funds these services, which in some cases include housing costs in the form of rent subsidies, both of which are funded with District appropriated dollars.

By definition, a mental health community residential facility (MHCRF) is a licensed, publicly or privately owned residence that houses individuals 18 years or older, diagnosed with a mental illness, who require 24-hour on-site supervision, personal assistance, lodging and meals. MHCRFs are to provide a specific level of health care in a safe, hygienic, protective/sheltered living arrangement for one or more individuals who are not related by blood or marriage to the residence director.

The Auditor found that during the audit period there were 147 licensed MHCRFs with an inventory of approximately 946 beds available for use by CMHS to house approximately 769 clients with a diagnosis of mental illness. An average of 5 clients with a diagnosis of mental illness are housed in each of the 147 MHCRFs. Appendix I presents a list of MHCRFs which includes the owner/operator's name, address, number of beds, ward in which the MHCRF is located, and the type of facility. These facilities are required to operate in accordance with the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983 (the Act), D.C. Code, Section 32-1301 et seq., and Title 22, Chapters 31 and 38, Community Residence Facilities for Mentally Ill Persons, of the DCMR.

In addition to the MHCRFs, five vendors under contract with CMHS provide community residential placements to 389 clients living in 131 SIL facilities. As stated earlier, these facilities may be apartments, rooming houses or boarding houses. These facilities are *not* required to be

licensed and therefore are not subject to the Act or the rules set forth in Chapter 38 of Title 22 of the DCMR, Community Residence Facilities for Mentally Ill Persons.

Agencies Responsible for Regulating MHCRFs

The Auditor found that there are three agencies responsible for monitoring mental health community residential facilities housing clients receiving services through CMHS. The three agencies are:

1. **The Department of Health, Licensing Regulation Administration⁷ (LRA)** - Responsible for licensing and monitoring all MHCRFs. Within LRA, the Human Services Facilities Division (HSFD) is responsible for inspecting, regulating and licensing MHCRFs.
2. **The Commission on Mental Health Services (CMHS) (and CMHS Contractors)** - Monitors all MHCRFs housing CMHS clients. The Clinical Monitoring and Evaluation Division (CMED) is the component within the CMHS Community Services Administration (CSA) that is responsible for monitoring MHCRFs for CMHS. CMED also monitors contractors who provide SIL services, which may include the provision of housing occupied by CMHS clients. CMED does not monitor IL facilities.
3. **The Department of Consumer and Regulatory Affairs (DCRA), Fire Protection Division and the Building and Land Regulation Administration** - The Fire Protection Division is responsible for conducting annual fire inspections for all MHCRFs. Additionally, DCRA is responsible for conducting a one-time fire inspection of all facilities requiring a certificate of occupancy. Also, the Building and Land Regulation Administration (BLRA) is responsible for inspecting facilities requiring a license or certificate of occupancy to ensure that the facilities are in compliance with the District of Columbia's fire and building codes.

⁷LRA changed its name to Health Regulatory Affairs in fiscal year 2001. However, the Auditor will use LRA throughout this report in that this was the terminology used during the period covered by the District of Columbia Auditor's examination.

FINDINGS

INDEPENDENT LIVING AND SUPPORTED LIVING FACILITIES ARE NOT REQUIRED TO BE LICENSED AND, AS A CONSEQUENCE, SOME POSE SIGNIFICANT HEALTH AND SAFETY RISKS

Some CMHS Clients Are Residing In Unsafe and Hazardous IL and SIL Facilities

As previously noted, unless found incompetent by a court or involuntarily committed, CMHS clients have the right to choose their place of residence. However, in cases where a voluntary client of CMHS services is unable for a variety of reasons to find housing on their own and choose to rely upon CMHS and its contractors to provide residential services, the client's choices are limited to a finite number of facilities throughout the District of Columbia. CMHS officials cited a lack of affordable housing in the District and a limited number of available beds in SILs as the primary reasons for these limited housing choices.

The Auditor reviewed 25 CMHS monitoring files for five vendors under CMHS contracts to provide SIL residential services for clients diagnosed as capable of living independently without 24-hour on-site supervision. In reviewing monitoring files for SIL contracted facilities, in addition to conducting on-site inspections of five SIL contracted facilities, the Auditor found widespread health and safety deficiencies and risks. These health and safety deficiencies and risks included:

- rodent and insect infestations;
- hazardous fire conditions including improper storage of hazardous materials;
- missing or inoperable smoke detectors;
- structural violations including loose railings, damaged walls and ceilings;
- serious electrical and plumbing violations;
- inoperable appliances (i.e., stoves, refrigerators, air conditioning, and heating units);and
- insufficient lighting.

The Auditor found that there are no District laws or regulations requiring :

1. IL and SIL facilities to be licensed or monitored by LRA because 24-hour, on-site supervision of these mental health clients is not necessary; or

2. IL and SIL facilities be inspected annually by the District's Fire Marshal for compliance with the District's fire safety code.

These facilities are required by 14 DCMR, Chapter 14, to obtain a certificate of occupancy, which requires a one-time inspection to determine compliance with the District of Columbia's building and fire code. Section 1401.1 of Title 14 provides, in pertinent part, that:

...no person shall use any structure, land, or part thereof for any purpose other than a one-family dwelling until a Certificate of Occupancy has been issued to that person stating that the use complies with the Zoning Regulations and related building, electrical, plumbing, mechanical and fire prevention requirements.

The Auditor determined that IL and SIL facilities must also obtain a housing business license if 5 or more unrelated persons are residing in the facility.⁸ Further, D.C. Code, Section 47-2828, provides that owners of residential buildings in which one or more dwelling units or rooming units are offered for rent or lease shall obtain from the Mayor a license to operate a housing business. Additionally, 14 DCMR, Chapter 2, Section 200.3, provides that:

No person shall operate a housing business in any premise in the District of Columbia without first having been issued a housing business license for the premises by the District.[Auditor's Emphasis]

The failure to comply with the housing business license requirement carries both civil and criminal penalties. Title 14 also sets forth other requirements regulating housing in the District of Columbia including, but not limited to, requirements regarding heating, lighting, construction, maintenance, sanitation, and safety and fire prevention. Chapters 10, 11, and 12 of Title 14 also provide specific requirements for rooming houses, boarding houses, individual apartments, and apartment houses.

As previously noted, the Auditor conducted site visits of five SIL facilities and found each had obtained a certificate of occupancy, but only one had obtained the proper housing business

⁸14 DCMR 199.1 defines a boarding house as "any building or part of a building, other than a hotel, used as, maintained as, advertised as, or held out to be an enclosure where meals or lunches are furnished for a consideration to 5 or more transients who have sleeping accommodations upon the premises, or to 5 or more boarders." A rooming house is defined as "any building or part of a building, other than a hotel or a motel, containing sleeping accommodations occupied for a consideration by or offered for occupancy for a consideration to 5 or more persons who are not members of the immediate family of the owner or lessee of the building or part of the building, and which accommodations are not under the exclusive control of the occupants of the accommodations." Finally, an apartment is defined as "one or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupant of the room(s)."

license required by Title 14 of the DCMR. The remaining four SIL facilities were operating without the proper housing business license required by 14 DCMR. Each of the four facilities was required to obtain a housing business license because “sleeping” accommodations were occupied, for consideration, by 5 or more persons who were not members of the immediate family of the owner or lessee. Further, the Auditor found that the certificates of occupancy had all been issued more than five years ago, with one being issued in 1991, indicating that no building or fire inspections had been conducted by the District of Columbia since the certificate of occupancy was issued.

Using a CMHS housing inspection form, CMHS monitors SIL facilities every six months to determine their compliance with contract requirements and to evaluate the facilities’ health and safety practices. The housing inspection form outlines criteria to be used by monitors and case managers to evaluate the cleanliness of the facility, the efficiency and safety of appliances, plumbing, electrical wiring, and the presence of operable smoke detectors.

According to CMED officials, CMHS does not inspect SIL facilities for compliance with housing business licensure or certificate of occupancy requirements, and readily admits that CMED staff is not trained to inspect and certify the safety of SIL facilities. The main function of the inspector is to monitor the quality of the facility to ensure that the facility is appropriate to meet the client’s needs. The Auditor found numerous deficiencies in the CMHS monitoring process including the following:

- CMHS has no authority to: close an SIL facility unless operated or managed by a CMHS contractor; revoke a facility’s certificate of occupancy; issue civil infractions; or initiate housing enforcement actions for deficiencies that violate Title 14 of the DCMR or the District of Columbia Fire Code. The only District agencies with this authority are DCRA and the Fire Marshal, yet the Auditor could not find any evidence that CMHS requested DCRA or the Fire Marshal to initiate investigations or enforcement actions for known deficiencies found through its monitoring of SIL facilities. The Auditor found that CMHS provided the Fire Department and DCRA with a list of all addresses occupied by SIL clients on March 3, 2000. According to CHMS officials, this list was provided at the request of DCRA and the Fire Department to facilitate a review of these facilities for compliance with applicable licensure and safety requirements. The Auditor requested from CMHS a copy of the results of the reviews, however, the results could not be provided because CMHS failed to follow-up with DCRA and the Fire Department to ascertain whether the reviews were conducted.

- CMHS is not documenting whether SIL facilities under contract with CMHS have certificates of occupancy and/or a current housing business license. For example, the Auditor reviewed monitoring reports noting the absence of a certificate of occupancy at three facilities. CMHS officials did not notify DCRA of these violations and did not conduct follow-up visits to ensure that the facilities subsequently obtained a valid certificate of occupancy. Despite these instances of non-compliance, CMHS contractors placed some of its mentally ill clients in these uncertified, uninspected facilities. Additionally, CMHS managers could not provide the Auditor with documentation indicating that CMHS staff verified a SIL or IL facility's compliance with District requirements for a certificate of occupancy or a housing business license prior to the contractor placing clients in these facilities. As a result, SIL or IL clients appear to be at risk choosing to reside in a facility that has not been inspected and has not been certified for occupancy. It further appears that CMHS is doing a poor job of ensuring that these SIL facilities are adhering to the District's fire and building codes.

The lack of a license requirement, coupled with inadequate monitoring and oversight of IL and SIL facilities by the District generally and CMHS specifically, allows hazards in many of these facilities to often go undetected and thus unabated until or unless a complaint is filed with DCRA, the Fire Department, the Metropolitan Police Department, or a call is made to the media. For example, health and safety conditions at an unlicensed boarding house located at 3722 9th Street N.W., housing five persons, including three CMHS clients, had deteriorated to the point that the facility was forced by the Fire Department to close February 29, 2000, after the news media contacted CMHS regarding a possible fire at the residence. Upon inspection of the facility, the following deficiencies were found:

- in violation of Chapters 2 and 14 of Title 14, the facility had no certificate of occupancy or housing business license, although 5 persons were residing in the facility. Three residents were CMHS clients that had resided in the facility for over two years;
- soiled and torn carpet, in violation of 14 DCMR Chapter 8 and 22 DCMR, section 3802.15;
- illegal wiring, in violation of the District's electrical code in 12 DCMR;
- inadequate plumbing, in violation of the plumbing code in 12 DCMR and 14 DCMR Chapter 6, and 22 DCMR Sections 3805.1 and 3805.2;

- broken furniture;
- unsanitary kitchen with a build-up of grease and smoke, in violation of 14 DCMR Chapters 8 and 9 and 22 DCMR 3815.1;
- improper food storage in violation of 24 DCMR;
- unsanitary bathroom, with broken tiles, in violation of 14 DCMR Chapter 6; and
- serious fire code deficiencies that violated 12 DCMR.

The Auditor found that a representative from the Department of Human Services' Adult Protective Service had visited the facility the morning of February 29, 2000, to remove the residents, but the residents refused to leave, and DHS took no further action. It was only after the media contacted CMHS later in the day about a possible fire at the location that other District agencies intervened. At the time of the media's call, CMHS officials were unable to confirm whether or not the facility was licensed or whether it was legally operating as a rooming or boarding house. After the media became involved, the facility was inspected by DOH, DCRA, the D.C. Fire Marshal, and the LTCO. In fact, after DCRA and the Fire Marshal inspected the facility, the premises were condemned and a determination was made to declare the facility uninhabitable. Only then were the residents transferred to another facility. The Auditor found that CMHS had been aware of problems at this facility and had requested that the clients be moved. The 3 CMHS clients refused to move and signed statements to that effect. CMHS officials stated that the contractor's case managers were to work with the clients in an attempt to find alternative residential placements and, in the interim, to visit the facility on a weekly basis. CMHS officials admitted that they failed to follow-up to ensure that the case managers were working diligently with these clients as planned according to their treatment plans. As a result of the District's failure to provide adequate, regular oversight of facilities such as these, mentally ill clients of CMHS and other organizations were found to be living in a residential setting that did not foster rehabilitation, and the health, welfare and safety of the clients was unnecessarily jeopardized.

RECOMMENDATIONS

1. The Department of Consumer and Regulatory Affairs strictly enforce housing business license and certificate of occupancy requirements for apartments, rooming and boarding

houses, to ensure that they are: 1) inspected; 2) adhering to District of Columbia health and safety laws and regulations; and 3) adhering to the District's building and fire codes;

2. CMHS ensure that contractors providing SIL facilities are fulfilling their fiduciary and contractual obligations to ensure the health and safety of CMHS clients; and
3. CMHS and SIL contractors expand the number of available beds and housing offered to CMHS clients.

ANNUAL INSPECTIONS OF MHCRFs WERE NOT REGULARLY CONDUCTED DURING THE AUDIT PERIOD

LRA Was Not Conducting Annual Inspections Prior to License Expiration

Section 3102.4 of Title 22 of the DCMR states:

A facility shall submit an application for licensure renewal to the Director [Department of Health] no later than ninety (90) days before the expiration date of the current license. [Auditor's Emphasis]

Pursuant to D.C. Code, Section 32-1302(d), facilities that timely file renewal applications are authorized to continue operating until the Department of Health completes the license renewal process. D.C. Code, Section 32-1302(d) provides the following:

The continued operation of a facility or agency pending action by the Mayor on an application for licensure renewal or initial licensure...shall not be deemed unlawful if a completed application was timely filed, but through no fault of the facility or agency or its governing body, staff, or employees, the Mayor has failed to act on the application before the expiration of the facility's or agency's current license or ... its authorized period of operation. [Auditor's Emphasis]

The Auditor found that DOH's Licensing Regulation Administration (LRA) failed to timely perform annual inspections of MHCRFs and failed to ensure that these facilities' licenses were renewed before or at the time their existing license expired. During the review period, LRA, through the DOH Director, sent a letter to MHCRFs that timely filed a renewal application authorizing them to continue operating after their license expiration date. Unless there was known imminent danger to residents or some other known emergency requiring a facility's closure, MHCRF operators who filed a renewal application 90 days before the expiration date of their current license, were allowed

to continue operating while waiting for LRA to complete its license renewal process. DOH may not have completed the license renewal process for as much as 6 months after a facility's license has expired.

The Auditor conducted a test of 84 MHCRFs utilized by CMHS and licensed by LRA for compliance with D.C. Code, Section 32-1305(b) and 22 DCMR 3104.1. The Auditor found that 76, or 90%, of the tested MHCRFs were adhering to 22 DCMR 3102.4 by filing a license application approximately 90 days prior to the expiration of their current license. The remaining 8, or 10%, filed their application for renewal within 60 days of the expiration of their license. The Auditor's test of the documentation revealed that:

1. 47, or 56 %, of the 84 tested facilities did not receive an annual inspection prior to license expiration in fiscal year 1998.
2. 56, or 67 %, of the 84 tested facilities did not receive an annual inspection prior to license expiration in fiscal year 1999.
3. 43, or 51%, of the 84 tested facilities did not receive an annual inspection prior to license expiration in fiscal year 2000, as of June 30, 2000.

Overall, the Auditor's findings indicated that, during the three fiscal years under audit, 70 of the 84 tested facilities operated on an expired license as a result of delays in the District's license renewal process. Appendix II lists the MHCRFs that operated on an expired license during the audit period.

Additionally, the Auditor found that 43 of the 70 facilities operating on an expired license did so for over 100 days as a result of delays in the District's license renewal process. Table I presents the number of facilities that operated for over 100 days on an expired license for each fiscal year.

Table I
Facilities In Auditor's Sample Operating On Expired License
During Fiscal Years 1998, 1999 and 2000

| Fiscal Year | Facilities Operating On Expired Licenses | Facilities Operating over 100 Days on Expired Licenses |
|-------------|--|--|
| 1998 | 47 | 15 |
| 1999 | 56 | 19 |
| 2000 | 43 | 9 |

Source: Department of Health, Licensing Regulation Administration

When questioned as to why renewal applications were not processed in a timely manner, DOH officials stated that inadequate staffing levels for inspectors were primarily responsible for license renewal delays. The number of inspectors decreased from 8 to 3 between fiscal years 1997 and 1998 and remained at 3 through fiscal year 2000. These inspectors were also responsible for inspecting hundreds of licensed community residential facilities in the District. As a consequence, annual inspections of MHCRFs decreased from a 95% performance rate in 1997⁹ to a 49% performance rate in 2000.

The purpose of annual inspections is to determine whether MHCRFs are complying with regulatory requirements, health and safety requirements, and to detect deficiencies in a facility's operations. Follow-up inspections are intended to ensure that deficiencies found during the inspection process are immediately corrected. It appears that past budget reductions weakened LRA's ability to timely and regularly inspect MHCRFs, thereby unnecessarily placing mentally ill clients' health and safety in imminent danger.

Fire Inspections Were Not Conducted As Required By District Law

The Auditor found that fire inspections of MHCRFs were not conducted as required by current District of Columbia law. Pursuant to the Omnibus Regulatory Reform Amendment Act of 1998, D.C. Law 12-86, Title 5, sections 501 and 502, annual fire inspections of MHCRFs must now be conducted by DCRA rather than the Fire Department.

⁹As stated by LRA officials.

Prior to the passage of D.C. Law 12-86, which became effective April 29, 1998, the Fire Chief of the District of Columbia was charged with the responsibility of enforcing the provisions of the District of Columbia Fire Prevention Code, including:

1. conducting all inspections of MHCRFs to determine compliance with fire safety requirements;
2. submitting to the Director [of DOH] the findings from fire inspections with a determination regarding licensure of a facility; and
3. taking the appropriate action against noncompliant MHCRFs.

D.C. Law 12-86 abolished the Fire Chief's position as the "Code official" responsible for the enforcement of the Fire Prevention Code and the annual inspection of MHCRFs.

The Auditor found that, notwithstanding the execution of a Memorandum of Agreement (MOA) between DCRA and the Fire Marshal¹⁰, DCRA never conducted annual fire inspections for MHCRFs between April 1998, the effective date of the Omnibus Regulatory Reform Amendment Act, and the execution of the MOA on September 14, 2000. DCRA, the Fire Marshal, and EMS agreed to be bound by the terms of the MOA until such legislation is enacted to clarify their respective roles and responsibilities. Further, the Auditor found that DCRA never established policies, procedures, or other systems necessary to perform annual fire inspections of MHCRFs, and never assigned the staff necessary to perform required annual fire inspections. Thus, mentally ill persons residing in MHCRFs may have been placed at great risk of harm from fire hazards that may have existed in these facilities.

Fire Inspections Were Not Consistently Conducted Prior to License Expiration During the License Renewal Process

In violation of 22 DCMR 3104.1, the Auditor found that many MHCRFs were not inspected by DCRA or the Fire Marshall for fire safety during the license renewal process. 22 DCMR 3104.1 requires an on-site inspection of a facility prior to license expiration to determine compliance with fire safety and other licensure requirements.

¹⁰ The MOA was signed on September 14, 2000, but was made retroactive to October 1, 1998. This MOA was entered into because DCRA and Fire and Emergency Medical Services (EMS) agreed that changes in the Building Code and Fire Prevention Code are needed to clarify their respective functions. Pursuant to the MOA, Fire and EMS agreed to assist DCRA in enforcing the Fire Prevention Code in the same manner as was provided in District Regulations in effect prior to the passage of D.C. Law 12-86, provided however, that DCRA shall have final authority to approve all actions of Fire and EMS under the Fire Prevention Code. This MOA also outlines the procedures for issuing citations and infractions under the Fire Prevention Code.

The Auditor reviewed records and reports submitted by the Office of the Fire Marshal for calendar years 1998, 1999 and 2000. These records and reports were used to determine whether the 84 facilities in the Auditor's sample were inspected on an annual basis. The results of the Auditor's test are presented in Table II.

Table II
Facilities Receiving Fire Inspections
During 1998, 1999 and 2000

| Fiscal Year | Test Sample | Facilities Receiving Annual Fire Inspection | Facilities Not Receiving Annual Fire Inspection |
|--------------------|--------------------|--|--|
| 1998 | 84 | 31 (37%) | 53 (63%) |
| 1999 | 84 | 57 (68%) | 27 (32%) |
| 2000 | 84 | 41 (49%) | 43 (51%) |

Source: Department of Health, Licensing Regulation Administration and D.C. Fire Marshal

Additionally, the Auditor found that only 15, or 17%, of the 84 facilities were inspected annually for fire code compliance during the audit period. In other words, 69 of the 84 tested facilities had not been annually inspected each year during the audit period as required by District regulations. In fact, the Auditor documented five facilities that had received no fire inspections during the three-year audit period. The five facilities are presented below in Table III.

Table III
Facilities Not Receiving Any Fire Inspections
During the Three-Year Audit Period

| Facility Address | Number of Beds in Facility |
|-----------------------------|-----------------------------------|
| 1438 Minnesota Ave SE | 6 |
| 1604 21 st Pl SE | 6 |
| 1605 Minnesota Ave SE | 6 |
| 1116 Buchanan St NW | 4 |
| 1833 1 st St NW | 5 |

Source: Department of Health, Licensing Regulation Administration and D.C. Fire Marshal

The Auditor questioned fire officials as to why fire inspections were not conducted annually or prior to license expiration. These officials stated that fire inspections of MHCRFs were conducted only upon the request of LRA. The officials further stated that without a request for an inspection from LRA, the Fire Marshal had no way of knowing of the existence or location of a MHCRF. It should be reiterated that the Fire Marshal was not legally obligated to conduct annual fire inspections of MHCRFs. The failure to consistently conduct annual fire inspections of MHCRFs placed mentally ill clients' residing in these facilities in jeopardy.

The Fire Department Did Not Issue Civil Infractions For Fire Code Violations

Section 3235 of Title 16 of the DCMR grants the Fire Department legal authority to issue civil infractions, which carry monetary fines, to MHCRFs for fire code violations. The Auditor found that civil infractions were rarely, if ever, issued during the audit period. For example, the Fire Department conducted 124 fire inspections at MHCRFs during 1999. Sixty-six, or 53%, were found out of compliance with applicable life safety provisions of the D.C. Fire Prevention Code, and were issued violation notices which are, in essence, only warnings to abate the violations. Of the 79 fire inspections conducted in fiscal year 2000, 48 facilities, or 61%, were found out of compliance with life safety provisions of the District's fire code, and were issued warnings to abate the violations. The Auditor found only one case where a Notice of Infraction, which carries a monetary fine, was served on a property owner for fire code violations during the audit period. Violations for which warnings were issued included, but were not limited to:

- inoperable fire pull stations;
- lack of an adequate number of fire drills;
- inoperable or non-existent smoke detectors;
- accumulation of combustible materials; and
- obstructed exit ways.

CMHS'S MONITORING OF MHCRFs WAS INADEQUATE

CMHS maintains a Clinical Monitoring and Evaluation Division (CMED) with a mission "to promote and maximize the quality of life of CMHS clients in the community." According to CMHS officials, this mission is to be achieved through regular monitoring of facilities to ensure the availability of effective, high standards of therapeutic residential, rehabilitation and support services delivered by contractors. In order to achieve this goal, CMED evaluates a facility based upon its

Residential Services Standards Guide¹¹, and the facility's compliance with the health and safety standards set forth in Chapter 38, Title 22 of the DCMR, Community Residence Facilities for Mentally Ill Persons.

The Auditor found that CMHS had not established a written policy which prescribed the number of residential monitoring visits to be made annually in order to effectively achieve the above stated mission. According to the Director of CMED, there was an unwritten internal policy of monitoring MHCRFs once every three months.¹² This policy was established in September 1999. Contrary to this unofficial policy, the Auditor could not document a single facility that had received a monitoring visit once each quarter beginning September 1999. The Auditor tested a sample of 86 CMHS monitoring files¹³ for calendar years 1998, 1999 and 2000, and found that:

- 71 of the 86 facilities did not receive any monitoring visits by CMHS in fiscal year 1998;
- 10 of the 86 facilities did not receive any monitoring visits by CMHS in fiscal year 1999; and
- 45 of the 86 facilities did not receive any monitoring visits by CMHS as of May 1, 2000.

CMHS could not provide any assurances that the 126 facilities, not monitored by CMHS during the audit period, were operated in compliance with the Residential Services Standards, or complied with the District's health and safety standards.

Due to the lack of evidence of consistent monitoring during the audit period, CMHS failed to ensure that MHCRFs were providing a safe and healthy environment for its clients. Thus, it

¹¹This guide outlines criteria used by CMED to evaluate a facility for life and safety standards, medication standards, nutritional standards, facility program standards, accessibility standards and linkage standards. Accessibility and linkage standards are defined as a consumer's access to continuity of care, coordination of services and communication of information with the treatment network.

¹²As of June 1, 2001, there was still no written policy in CMHS's policy manual. Additionally, CMHS officials stated on June 1, 2001 that effective March 2000, a new residential monitoring tool for MHCRFs was piloted and put into effect. This monitoring tool is based on a grade as well as a numerical score based on a 100-point scale. Based on the score received, a facility may be monitored a minimum of every six months. It should be noted that, at the time of the Auditor's field work in April and May of 2000, documentation for this pilot program was not provided to the Auditor and none of the 86 files sampled contained a grade or a numerical score.

¹³These 86 files comprised a different sample than the 84 files tested at LRA.

appears that CMHS has not achieved its mission of promoting and maximizing the quality of life for CMHS clients residing in MHCRFs.

Communication Between CMHS And LRA Was Ineffective

There are currently no policies, procedures, regulations, or laws requiring the Department of Health's LRA to provide CMHS with monitoring reports, complaints, or unusual incidents regarding MHCRFs. The Auditor found no evidence that the two organizations adequately communicated with each other in order to more effectively perform their common duties and responsibilities relative to mentally ill residents housed in MHCRFs. Although LRA has the legal responsibility of ensuring that a facility complies with 22 DCMR, Chapter 38, it is not mandated to provide the results of its monitoring and investigation of MHCRFs to CMHS.

The Auditor found that LRA documented serious deficiencies in MHCRFs that needed immediate abatement, yet LRA did not share this information with CMHS. This failure in communication and coordination between LRA and CMHS allowed for the continued placement of CMHS clients in deficient facilities, in addition to leaving CMHS clients in facilities known to be unsafe.

Additionally, the Auditor found that CMHS had no legal authority to sanction a facility, revoke or suspend a facility's license, or close a facility. CMHS staff documented deficiencies in MHCRFs that violated District of Columbia municipal regulations, but these reports were never provided to LRA so that LRA could initiate the appropriate enforcement procedures to compel the abatement of the deficiencies.

Increased cooperation and collaboration between LRA and CMHS would have facilitated a more effective utilization of human resources, the sharing of vital information necessary to ensure the proper regulation of MHCRFs, and a more efficient and effective monitoring, enforcement, and deficiency abatement process.

RECOMMENDATIONS

The Auditor recommends that:

1. the Director of DOH increase facility inspector staffing levels in order to ensure that health and environmental inspections are conducted in a timely manner prior to license expiration;

2. the Council of the District of Columbia consider enacting legislation requiring the Fire Marshal of the District of Columbia to conduct annual fire inspections of all community residential facilities, including those housing mentally ill clients served by the District of Columbia. Additionally, the Fire Marshal should issue civil infractions to owners/operators whose facilities are repeatedly found to be in violation of the District of Columbia Fire Code;
3. the Administrator of LRA ensure that the entity conducting annual fire inspections of MHCRFs is conducting the inspections in a thorough, timely manner;
4. CMHS [Director of the Department of Mental Health] establish written guidelines to be followed in monitoring MHCRFs to ensure that inspections of these facilities are conducted on a timely and consistent basis; and
5. CMHS and LRA establish a policy regarding the timely exchange of information concerning deficiencies in MHCRF facilities so that the deficiencies can be abated in a timely manner.

SOME CMHS CLIENTS WERE NOT RECEIVING PROPER SERVICES AND CARE

The Auditor's review of CMHS and LRA monitoring files revealed that some CMHS clients are not receiving proper services and care in the MHCRF in which they reside. The Auditor found the following service and care deficiencies, in violation of 22 DCMR, Chapter 38, noted in monitoring reports:

- no verification of liability insurance coverage;
- inadequate staffing during high activity periods;
- employees without proper first aid certification;
- employees without current food handlers' certification;
- results of criminal background checks not on file;
- employment of individuals with a history of assault;
- clients not receiving annual medical examinations;
- mismanagement of clients' medications, including improper storage and security;
- failure to maintain clients' individual treatment plans; and
- improper maintenance of clients' financial records.

The Auditor found that prior to the adoption of emergency rules in August 2000, LRA did not have authority to issue civil infractions for deficiencies which violated 22 DCMR, Chapter 38.¹⁴ Prior to August 2000, LRA was only authorized to revoke or suspend a facility's license. When questioned about procedures used to ensure deficiency abatement prior to August 2000, LRA officials stated they would: 1) attempt to work with the provider to abate deficiencies, and 2) refuse to renew the facility's license until the deficiencies were abated. LRA readily admitted that deficient facilities were allowed to continue operating in these situations. In a sample of 84 files tested at LRA, the Auditor was unable to document a single case in which LRA revoked or suspended a facility's license, or closed a facility due to non-abatement of cited deficiencies.

As stated earlier, CMHS has no sanctioning authority, cannot revoke or suspend a facility's license, or close a facility. According to CMHS officials, their only authority is to remove a client from a facility, which occurs only in a life threatening situation. The Auditor found that CMHS generally will not remove clients from a facility, but may suspend the placement of additional clients in a seriously deficient facility until the facility abates cited deficiencies. The Auditor also found that many violations were documented by CMHS monitors on successive visits to facilities, yet existing residents were not removed and new placements were not suspended. The Auditor's review of CMHS records revealed that even when deficiencies were found, CMHS monitors would rate many of the facilities above average and recommend the continued placement of additional clients.

CMHS Clients' Financial Records Were Improperly Maintained

Section 3816.5 of Title 22 of the DCMR states:

Each MHCRF shall maintain a separate and accurate record of all funds and personal property, deposited with the MHCRF for safekeeping or managed by the MHCRF for the benefit of the resident.

In reviewing 86 monitoring files at CMHS, the Auditor found that CMHS monitoring reports documented numerous cases of: 1) financial records not being available; 2) financial records being located at the operators' corporate offices instead of maintained at the MHCRF as required by regulation; and 3) financial records being maintained by the clients' case managers instead of being maintained at the facility. The unavailability of clients' financial records did not allow for the proper review, monitoring, and accountability for client funds. It should be noted that CMHS monitoring reports consistently did not document any effort by CMHS to obtain these records for review. Thus, this vulnerable area was habitually overlooked by CMHS monitors and managers.

¹⁴Final rules were adopted December 8, 2000, at 47 DCR 9677.

22 DCMR Section 3816.5 requires that each MHCRF maintain a separate and accurate record of all funds and personal belongings held in safekeeping by the MHCRF for the benefit of the resident. The record must include:

- the date, amount, and value of all property received;
- the date and amount of each withdrawal by the resident or disbursement for the benefit of the resident, along with signed receipts;
- the items or purposes for which the disbursements were made;
- the current balance; and
- signatures of the resident and facility staff.

22 DCMR 3816.9 also requires written consent from the client or his or her conservator or legal guardian before a provider may handle or manage the resident's personal funds, and an annual review of the management of the funds. Unfortunately, the DCMR does not specify who is to conduct the annual review, thereby failing to establish an accountable entity to perform this important function.

The Auditor found that neither LRA nor CMHS provided any discernible annual financial oversight of client funds. As a result, the Auditor documented two examples of the mismanagement of client funds by a provider who operates several MHCRFs in the District. In one instance, the provider received payments for board and rent from the Social Security Administration by improperly filing an application to be the client's representative payee while at the same time receiving rental payments from the client's conservator and guardian through a trust fund set up for the client. This provider, while receiving payments from Social Security, never informed the conservator of the payments received from Social Security and continued to bill the conservator for the client's board and rent. It was only when the conservator filed for Social Security benefits on behalf of the client that he discovered the provider had improperly filed to be the client's representative payee and had been receiving the monthly Social Security payments. The Auditor found that the provider received in excess of \$5,664 from both sources between October 1998 and March 1999. Further, the room and board rate to be received for this client should have been \$737 per month¹⁵, or a total of \$4,422, rather than \$1,133 per month or a total of \$5,664 for the six-month period. The Auditor could not find any follow-up documentation indicating that the provider had reimbursed the client for the overpayments.

¹⁵As established by the DHS Income Maintenance Administration.

In the second instance, the Auditor documented two complaints filed with LRA against a provider for failing to provide clients with their personal allotments each month.¹⁵ The Auditor could not find any evidence that the District initiated an audit or investigation into the provider's handling of clients' funds to ensure that personal allotments or spending money was accurately accounted for as required by 22 DCMR 3816.5.

The failure to provide stringent financial oversight and accountability of client funds, including periodic audits, exposes such funds to a high risk of mismanagement, misuse and theft. A vulnerable population, such as mentally ill clients residing in MHCRFs, requires the District's continuous, thorough oversight to ensure that funds intended to cover the cost of their care, as well as their personal funds, are properly safeguarded, accounted for, and expended. At present, CMHS specifically, and the District government generally, are not providing effective financial oversight, accountability, and safeguards for MHCRFs clients' funds.

Some MHCRF Staff Had Criminal Backgrounds

Section 3819 of Title 22 of the DCMR states:

No person who is known to have abused or mistreated any person shall provide services, either as an employee or volunteer or own or operate a MHCRF.

Contracts between MHCRF providers and CMHS state that a contractor shall ensure that all direct and indirect staff, including consultants, do not have a prior criminal conviction for child abuse or molestation, sexual abuse, rape, or drug possession or distribution. In addition to conducting criminal background checks on employees, the contract states that the provider is to ensure that corrective action is taken against an employee found to have a criminal background in violation of D.C. Law 12-238¹⁶, the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998. The contract also provides that corrective action is to include, but is not limited to, termination, enrollment in a substance abuse program, or counseling.

¹⁵In addition to the payment for room and board, MHCRF providers receive an additional amount monthly which is to be provided to the client for their own personal use to spend on items such as toiletries, cigarettes, etc. The current amount of this personal needs allotment for FY 2000 is \$70.

¹⁶D.C. Law 12-238 states in relevant part that no facility shall employ or contract with any person who is not a licensed professional if that person has been convicted in the District of Columbia or in any other state or territory of the United States of any of the following offenses or their equivalent in another state or territory: murder, attempted murder, or manslaughter; arson; assault, battery, assault and battery, assault with a dangerous weapon, mayhem or threats to do bodily harm; burglary; robbery; kidnaping; theft, fraud, forgery, extortion or blackmail; illegal use or possession of a firearm; trespass or injury to property; rape, sexual assault, sexual battery, or sexual abuse; child abuse or cruelty to children; or unlawful distribution, possession, or possession with intent to distribute a controlled substance.

The Auditor documented two facilities that employed persons with criminal backgrounds. In reviewing CMHS records, the Auditor found that CMHS did not enforce the contract by ensuring that corrective action was taken against the MHCRF employees found to have criminal convictions for assault and possession of controlled substances.

RECOMMENDATIONS

The Auditor recommends that:

1. Civil infractions should be aggressively used by LRA in an effort to timely abate deficiencies found in MHCRFs. Additionally, CMHS and LRA should establish a practice of sharing MHCRF monitoring results to ensure the timely abatement of deficiencies.
2. CMHS develop and implement an effective financial oversight program for client funds, including periodic audits, to ensure that client funds are properly accounted for and safeguarded.
3. Providers must be required to maintain strict compliance with the criminal background check requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 or face immediate monetary and other sanctions. Further, LRA must strictly enforce the sanctions.

THE SYSTEM FOR REPORTING AND INVESTIGATING COMPLAINTS AND UNUSUAL INCIDENTS AT MHCRFs REQUIRES SUBSTANTIAL IMPROVEMENT

LRA Was Not Adequately Documenting and Investigating Complaints

The Auditor reviewed 149 complaints against MHCRFs filed with LRA during fiscal years 1999 and 2000. LRA could not provide any 1998 complaint records for the Auditor's review. Allegations found in the 1999 and 2000 complaint reports included, but were not limited, to complaints of:

- sexual abuse of clients and staff;
- lack of heating, air conditioning, and water;
- lack of gas or leaking gas;
- physical and verbal abuse of clients;
- insufficient food at facilities;

- inadequate monitoring/reporting of client whereabouts;
- misuse of clients' personal funds;
- no supervision of clients;
- hazardous fire conditions;
- improper storage of medication;
- clients subjected to possible infections of communicable diseases, (i.e. tuberculosis, hepatitis); and
- unsanitary living conditions.

The Auditor found that only 57, or 38%, of the 149 complaints were investigated by LRA. The Auditor also found that:

- LRA failed to follow established internal procedures for maintaining a profile of complaints against each facility, showing the number, type and frequency of complaints and the results of investigations against each MHCRF.
- Complaints received by CMHS against MHCRFs were not forwarded to LRA to be recorded and investigated. The Auditor tested a sample of 24 complaints received and investigated directly by CMHS during the audit period and found that CMHS failed to forward the results of their investigations to LRA. When LRA is not notified of complaints filed against MHCRFs, there is no assurance that the complaints are properly and timely investigated and resolved.
- LRA is not adequately responding to complaints filed by outside agencies. The Auditor reviewed 42 complaints submitted by the Long Term Care Ombudsman (LTCO). Of the 42 complaints submitted to LRA by the LTCO between February 1999 and June 2000, LRA investigated only four complaints.

22 DCMR Section 3105.6 provides that: "the Director [DOH] shall investigate complaint allegations of a life threatening nature or those that represent immediate danger within twenty-four (24) hours of receipt of the complaint by the Department. All other complaints shall be investigated by the Director no later than thirty (30) days from their receipt or as considered appropriate." Pursuant to LRA's Health Facility Division Policy No. 0007 (HFD 007), LRA is also required to receive, record, investigate, and manage all complaints related to the health and safety of persons residing in MHCRFs in the District of Columbia.

By not investigating all complaints, LRA failed to ascertain whether the complaints could be substantiated, and if so, require the facility to correct the deficiencies within thirty 30 days as required by 22 DCMR 3105.8.

Unusual Incidents Were Not Reported and Investigated Correctly

The reporting of Unusual Incidents to CMHS is mandated by 22 DCMR 3829.1, which states:

The Residence Director shall orally notify CMHS and the resident's legal guardian, if any, within twenty-four (24) hours of any serious illness, accident or unusual incident involving the resident, and shall document the incident in the resident's permanent record.

The Auditor reviewed Unusual Incidents reported to LRA and CMHS' Office of Quality Improvements for fiscal years 1998, 1999 and 2000, and found that:

- MHCRFs are not following proper procedures, as stated above, in reporting UIs. The Auditor documented 14 UIs sent directly to LRA by MHCRFs, yet the MHCRFs never forwarded a copy to CMHS, nor did LRA forward this information to CMHS so that the UIs could be recorded, investigated, and resolved.
- LRA is not investigating UIs received in their offices. Although there are no regulations mandating that MHCRFs: 1) report UIs to LRA; or 2) that LRA investigate these UIs, the Auditor found that under LRA's HFD Policy 0006, it is the policy of HFD to receive, record, investigate, and manage all incidents, not limited to emergency or life-threatening situations, which have an immediate adverse effect on the health and safety of patients/residents in the District of Columbia. The Auditor documented that LRA received 14 UIs during the audit period, yet failed to conduct an investigation. When questioned as to why they did not follow their own internal procedures for investigating the UIs, officials stated they were not mandated by law to receive UIs nor investigate UIs.
- CMHS is not forwarding UIs to LRA for investigation. CMHS received 1,418¹⁸ UIs pertaining to MHCRFs during the audit period, however, the Auditor found that CMHS

¹⁸As reported to the Auditor May 30, 2001.

failed to forward any of these UIs to LRA for investigation and inclusion in the facilities' licensing files at DOH.

- All MHCRFs are not reporting UIs to CMHS.

The Auditor found that of the 1,418 UIs received by CMHS during the audit period, all reported incidents occurred in MHCRFs run by CMHS contractors. No UIs were filed by the 65 independent MHCRF providers. In fact, the Auditor found that neither CMHS nor LRA have established effective systems to ensure that UIs recorded in log books at MHCRFs were reported to CMHS. The Auditor also found that CMHS monitoring reports only made a notation as to whether there was an unusual incident log on the premises, but did not verify that any UIs entered in the log had been reported to CMHS. Additionally, in two site visits to MHCRFs conducted by the Auditor, neither of the MHCRFs maintained a log to record unusual incidents. When questioned as to why these logs were not established, MHCRF staff indicated they were unaware that they were required to maintain such records.

Unusual Incidents (UIs) are defined by CMHS Policy No. 5000.480.1D as any significant occurrence or extraordinary event which deviates from established procedures. CMHS has three specific types of UIs:

1. major incidents which do not have a criminal component;
2. criminal incidents which may require criminal investigations; and
3. minor incidents or those mishaps that are not serious, do not have a serious nature, and are not criminal in nature.

These UIs usually involve patient injury, patient to patient assaults, patient to staff or staff to patient assaults, suicide attempts, missing person reports, or allegations of abuse. This policy also mandates that all contractors and individuals providing services to CMHS clients are to report any UIs to CMHS, whereupon they are recorded and investigated by CMHS. Further, a MHCRF is required to record incidents in a daily log book located at the facility, as well as in the affected client's personal records. The oral notification is to be followed by a written notice within 48 hours of the unusual incident. The Residence Director shall ensure that a copy of the written notice is placed in the resident's permanent record.

Without strict enforcement of the reporting of UIs and the assurance that UIs will be investigated, there is little or no incentive for MHCRFs to report the incidents on behalf of the

clients. As a consequence, CMHS does not receive notice of all UIs, and therefore cannot take the required corrective action to resolve the reported incidents.

RECOMMENDATIONS

The Auditor recommends that:

1. Providers be required to strictly comply with the reporting of all UIs occurring in their facility or face immediate monetary or other appropriate sanctions.
2. LRA immediately implement a program for investigating and documenting all complaints filed against MHCRFs.

SOME MHCRFs WERE OPERATING IN VIOLATION OF DISTRICT OF COLUMBIA TAX LAWS

I. Violations of the Clean Hands Act

The Auditor reviewed records at the Office of Tax and Revenue to ascertain the ownership of properties that serve as MHCRFs. In doing so, the Auditor found that 81 of the 147 owners of premises serving as MHCRFs had failed to pay property taxes by the due date for the first half of tax year 2000. Three property owners had delinquent property taxes for calendar years 1997, 1998 and 1999. At the time of our field work, MHCRF owners/operators owed the District government approximately \$86,580 in delinquent property taxes.

The Auditor also found that approximately 28 owners of MHCRFs erroneously, or falsely, certified to the Department of Health, as part of their MHCRF license application, that they did not owe any outstanding debt over \$100 to the District government as a result of any fine, fee, penalty, interest, or past due tax as required by D.C. Code, Section 47-2862. A list of these properties, which includes the owner's name and amount of taxes apparently owed, has been referred to the Office of the Tax and Revenue for further investigation.

MHCRF owners owing delinquent property taxes are in violation of D.C. Code, Section 47-2862(a), which states:

Notwithstanding any other provision of law, the District government shall not issue or reissue any license or permit to any applicant for a license or permit

if the applicant owes more than \$100 in outstanding debt to the District as a result of:

1. Fines, penalties, or interest assessed pursuant to Chapter 29 of Title 6;
2. Fines or penalties assessed pursuant to Chapter 29A of Title 6;
3. Fines, penalties, or interest assessed pursuant to Chapter 27 of Title 6; or
4. Past due taxes.

In violation of D.C. Code, Section 47-2862(a), the Auditor found that the Department of Health issued renewal licenses to MHCRF facility owners with outstanding debts to the District government. The Auditor also found that neither CMHS, LRA, nor OTR have mechanisms in place to facilitate the timely flow of information necessary to identify MHCRF owners/operators who have outstanding indebtedness with the District government prior to the issuance or renewal of a license. Unfortunately, LRA relies on an applicant's good faith self-certification they are not indebted to the District government. LRA does not make any discernible attempt to verify the accuracy of the certification statement. The Auditor documented only one instance in which LRA cited a MHCRF operator for false certification. Despite this falsification, the Auditor found that: 1) the operator's license was not suspended, 2) the operator failed to appear for two scheduled hearings on a civil infraction for falsifying their Clean Hands certification, and 3) the operator continued to operate the MHCRF with taxes in arrears for five years.

II. Multiple Homestead Exemptions Were Claimed by Some MHCRF Property Owners/Operators

In order to claim a Homestead Exemption, D.C. Code, Section 47-850, requires that the property be occupied by the owner who is subject to District income taxation during the period in which the exemption is claimed. The Auditor found five MHCRF property owners/operators who received the Homestead Exemption on two or more properties that appear to have been concurrently claimed as the principal residence of the owner.

The Auditor found that, in addition to the multiple Homestead Exemptions, one MHCRF owner also received the Senior Citizen Property Tax credit on more than one property, resulting in

\$12,522.37 in lost tax revenue from improperly claiming Homestead Exemptions and Senior Citizen Property Tax Credits for property tax year 1999 alone.¹⁸

Additionally, the Auditor reviewed other renewal applications that listed the property owners as having home addresses outside of the District of Columbia, making them ineligible for the exemption given the requirement that one must actually reside at the premises and pay District income taxes in order to claim the Homestead Exemption and the Senior Citizen Property Tax Credit. A list of the five MHCRF properties on which the owner claimed multiple Homestead Exemptions has been sent to the Office of Tax and Revenue (OTR) for further investigation. Within 90 days of this report, the Auditor will conduct a follow-up audit to determine the status and outcome of OTR's investigation.

RECOMMENDATION

The Office of Tax and Revenue immediately collect outstanding property taxes owed by MHCRF owners/operators and impose the proper penalties and fines for violations of D.C. Code, Sections 47-2682 (a)¹⁹ and 47-850.²⁰

¹⁸The Auditor calculated lost property tax revenue for 1999 only because the system reviewed at OTR showed only if a property owner was claiming the Homestead Exemption for years 1999 and 2000. Since the Auditor's field work at OTR did not include the full tax year for 2000, an assertion could not be made with 100% accuracy regarding lost tax revenue for that period. The Auditor also did not calculate lost property tax revenue for 1998 because OTR records did not indicate if the owner had claimed the Homestead Exemption for 1998.

¹⁹D.C. Code, Section 47-2863, entitled "Self-certification and enforcement," and 47-2864, entitled "Penalties," state, in relevant part, the following:

§ 47-2863. Self-certification and enforcement.

- (a) This subchapter shall be enforced by self-certification by the applicant for a license or permit, provided that the veracity of the self-certification may be investigated upon the initiative of the District government at any time.
- (b) At the time of application for a license or permit the applicant shall certify on a form provided by the District government that the applicant owes no outstanding debt over \$100 to the District government as a result of any fine, fee, penalty, interest, or past due tax as set forth in § 47-2862

§ 47-2864. Penalties.

- (a) If the District government determines at any time that an applicant knowingly falsified the certification required by this subchapter, the District government shall:
 - (1) Proceed immediately to revoke each license or permit, the application for which contains such a falsified certification; and
 - (2) Fine the applicant \$1,000 for each false certification.
- (b) The penalties prescribed by this section shall be applicable only after the applicant is afforded an opportunity for a hearing by the agency which ordinarily would hold a hearing on a revocation of the affected license or permit, and these penalties shall be in addition to any other penalties available by law.

²⁰D.C. Code, Section 47-850 makes the failure of an owner to notify the Mayor of the termination of eligibility from the Homestead Exemption program a misdemeanor.

CONCLUSION

During the Auditor's examination, it was determined that some CMHS clients were residing in residences with widespread health and safety deficiencies. Annual inspections of MHCRFs were not regularly conducted; facility monitoring was inconsistent; some CMHS clients did not receive appropriate services and care; and the system for reporting and investigating complaints and unusual incidents lacked overall coherence and integrity. Finally, some MHCRF owners/operators were in violation of the District's tax laws with regard to the payment of real property taxes and improperly claiming homestead exemptions and the senior citizen deduction on multiple MHCRF properties.

The audit team's examination of monitoring files for Supported Independent Living (SIL) facilities under contract with CMHS, in addition to on-site visits of five SIL contract facilities, revealed numerous health and safety deficiencies and risks. These health and safety deficiencies and risks included, but were not limited to:

- rodent and insect infestations;
- hazardous fire conditions including improper storage of hazardous materials;
- missing or inoperable smoke detectors;
- structural violations including loose railings, damaged walls and ceilings;
- serious electrical and plumbing violations;
- inoperable appliances (i.e., stoves, refrigerators, air conditioning, and heating units); and
- insufficient lighting.

The Auditor found that there are currently no District laws or regulations requiring that:

1. SIL facilities be licensed to house CMHS clients or monitored by the Department of Health's Licensing Regulation Administration (LRA) in that 24-hour, on-site supervision of CMHS clients is not necessary; or
2. SIL facilities be inspected annually for compliance with the District's fire safety code by the Fire Marshal.

The Auditor's site visit of five SIL facilities revealed that each had obtained a certificate of occupancy, but only one had obtained the proper housing business license required by Title 14 of the DCMR. The remaining four SIL facilities were operating without a proper housing business license. Each facility was required to obtain a housing business license because "sleeping"

accommodations were occupied, for consideration, by 5 or more persons who were not members of the immediate family of the owner or lessee.

The lack of a license requirement, coupled with inadequate monitoring and oversight of SIL facilities by the District, generally, and CMHS, specifically, allowed hazards in many of these facilities to often go undetected and thus unabated until a complaint was filed with DCRA, the Fire Department, the Metropolitan Police Department, or a call was made to the media.

The Auditor found that DOH's LRA failed to timely perform annual inspections of MHCRFs and failed to ensure that these facilities' licenses were renewed before or at the time their existing license expired. During the review period, LRA, through the DOH Director, sent a letter to MHCRFs that timely filed a renewal application authorizing them to continue operating indefinitely after their license expiration date.

Based on documentation received from DOH, as of October 2000, 107 of the 147 MHCRFs housing CMHS clients operated on expired licenses. Further, the Auditor's test sample of 84 of the 147 indicated that 70 of 84 facilities operated on an expired license as a result of delays in DOH's license renewal process. Additionally, the Auditor found that 43 of the 70 facilities operated for over 100 days on an expired license.

The Auditor found that fire inspections of MHCRFs were not conducted as required by current District of Columbia law. Pursuant to the Omnibus Regulatory Reform Amendment Act of 1998, annual fire inspections of MHCRFs must now be conducted by DCRA rather than the Fire Department. The Auditor found that, notwithstanding the execution of a Memorandum of Agreement (MOA) between DCRA and the Fire Marshal on September 14, 2000, DCRA failed to conduct any annual fire inspections of MHCRFs between April 1998, the effective date of the Omnibus Regulatory Reform Amendment Act, and the execution of the MOA on September 14, 2000. In violation of 22 DCMR 3104.1, the Auditor found that many MHCRFs were not inspected by DCRA or the Fire Marshal for compliance with the fire safety code during the license renewal process.

Additionally, the Auditor found that only 15, or 17%, of the 84 tested facilities were inspected annually for fire code compliance during the three-year audit period. In other words, 69 of the 84 tested facilities were not annually inspected during the audit period as required by District regulations. In fact, the Auditor documented five MHCRFs that had not received any fire inspections during the three-year audit period.

The Auditor questioned fire officials as to why fire inspections were not conducted annually or prior to license expiration. These officials stated that fire inspections of MHCRFs were conducted only upon the request of LRA. The officials further stated that without a request for an inspection from LRA, the Fire Marshal had no way of knowing of the existence or location of a MHCRF.

Section 3235 of Title 16 of the DCMR grants the Fire Department legal authority to issue civil infractions, which carry monetary fines, to MHCRFs for fire code violations. The Auditor found that the Fire Department rarely, if ever, issued civil infractions during the audit period.

The Auditor found that CMHS had not established a written policy that prescribed the number of MHCRF monitoring visits to be made annually. According to the Director of CMHS' Clinical Monitoring and Evaluation Division (CMED), there was an unwritten internal policy of monitoring MHCRFs once every three months. This policy was established in September 1999. Contrary to this unofficial policy, the Auditor could not document a single facility that had received a monitoring visit once each quarter since the unwritten monitoring policy was established.

The Auditor tested a sample of 86 CMHS monitoring files for calendar years 1998, 1999, and 2000, and found that 126 facilities were not monitored three times each year by CMED. CMHS could not provide any assurances that the 126 facilities, not monitored by CMHS during the audit period, were operated in compliance with CMHS Residential Services Standards, or whether they complied with the District's health and safety standards.

There are currently no policies, procedures, regulations, or laws requiring the Department of Health's LRA to provide CMHS with monitoring reports, complaints, or unusual incidents relative to MHCRFs. The Auditor found no evidence that the two organizations adequately communicated with each other in order to more effectively perform their common duties and responsibilities relative to properly resolving complaints and conducting effective, timely investigations of unusual incidents involving mentally ill residents housed in MHCRFs.

The Auditor found that LRA documented serious deficiencies in MHCRFs that required immediate abatement, however, LRA did not share this information with CMHS. The failure in communication and coordination between LRA and CMHS allowed for the continued placement of some CMHS clients in deficient facilities, in addition to leaving CMHS clients in facilities known to be unsafe or unsanitary.

The Auditor found the following service and care deficiencies, in violation of 22 DCMR, Chapter 38, noted in CMHS's and LRA's MHCRF monitoring reports:

- no verification of liability insurance coverage;
- inadequate staffing during high activity periods;
- employees without proper first aid certification;
- employees without current food handlers' certification;
- results of criminal background checks not on file;
- employment of individuals with a history of assault;
- clients not receiving annual medical examinations;
- mismanagement of clients' medications, including improper storage and security;
- failure to maintain clients' individual treatment plans; and
- improper maintenance of clients' financial records.

The Auditor found that CMHS generally will not remove clients from a seriously deficient facility, but may suspend the placement of additional clients until the facility abates cited deficiencies. The Auditor also found that many violations were documented by CMHS monitors on successive visits to facilities, yet existing residents were not removed and new placements were not suspended. The Auditor's review of CMHS records revealed that even when deficiencies were found, CMHS monitors would rate many of the facilities above average and recommend the continued placement of additional clients. The Auditor found that prior to the adoption of emergency rules in August 2000, LRA was not authorized to issue civil infractions for deficiencies that violated 22 DCMR, Chapter 38. Prior to August 2000, LRA was only authorized to revoke or suspend a facility's license.

The Auditor found that neither LRA nor CMHS provided any discernible periodic financial oversight of client funds. As a result, the Auditor documented two examples of the mismanagement or misuse of client funds by a provider who operated several MHCRFs in the District. In one instance, the provider received payments for board and rent from the Social Security Administration by improperly filing to be the client's representative payee while at the same time receiving rental payments from the client's conservator. Between October 1998 and March 1999, the provider received in excess of \$5,664 from both sources. Further, the room and board rate to be received for this client should have been \$737 per month, or a total of \$4,422, rather than a \$1,133 per month or a total of \$5,664 for the five-month period. It appeared that this provider improperly received approximately \$2,376 of this client's funds over a six-month period. The Auditor could not find any follow-up documentation indicating that the provider had reimbursed the client for the overpayments.

In the second instance, the Auditor documented two complaints filed with LRA against a provider for failing to give clients their \$70 personal allotments each month. The Auditor could not find any evidence that the District initiated an audit or investigation into the provider's handling of the clients' funds to ensure that personal allotments were given to clients and accurately accounted for as required by 22 DCMR 3816.5. The failure of CMHS to establish stringent financial oversight and accountability of client funds, including periodic audits, exposed such funds to a high risk of mismanagement, misuse, and theft. A vulnerable population, such as mentally ill clients residing in MHCRFs, requires continuous, stringent oversight to ensure that funds intended to cover the cost of their care, as well as their personal funds, are properly safeguarded, accounted for, and appropriately used.

The Auditor documented two contractor operated facilities that employed persons with criminal backgrounds. In reviewing CMHS records, the Auditor found that CMHS did not enforce the contract by ensuring that corrective action was taken against the MHCRF employees found to have criminal convictions for assault and possession of controlled substances.

The Auditor found that LRA was not adequately documenting complaints filed against MHCRFs. The Auditor reviewed 149 complaints filed with LRA against MHCRFs. LRA investigated only 57, or 38%, of the 149 complaints. The Auditor also found that:

- LRA failed to follow established internal procedures for maintaining a profile of complaints against each facility, showing the number, type and frequency of complaints and the results of investigations against each MHCRF.
- Complaints received by CMHS against MHCRFs were not forwarded to LRA to be recorded and investigated.
- LRA did not adequately respond to complaints filed by outside agencies. The Auditor reviewed 42 complaints submitted by the Long Term Care Ombudsman (LTCO). Of the 42 complaints submitted to LRA by the LTCO between February 1999 and June 2000, LRA investigated only four complaints.

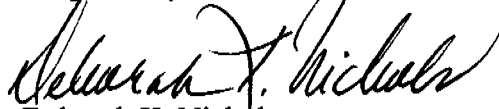
Finally, the Auditor reviewed records at the Office of Tax and Revenue (OTR) to ascertain the ownership of properties that serve as MHCRFs. In doing so, the Auditor found that 81 of the 147 owners of premises serving as MHCRFs had failed to pay property taxes by the due date for the first half of tax year 2000. Three property owners had delinquent property taxes for calendar years 1997,

1998 and 1999. At the time of our field work, MHCRF owners/operators owed the District government approximately \$86,580 in delinquent property taxes.

The Auditor also found that approximately 28 owners of MHCRFs erroneously or falsely certified to the Department of Health, as part of their MHCRF license application, that they did not owe any outstanding debt over \$100 to the District government as a result of any fine, fee, penalty, interest, or past due tax as required by D.C. Code, Section 47-2862. In fact, these owners owed outstanding debts to the District government that substantially exceeded \$100. Nevertheless, in violation of D.C. Code, Section 47-2862(a), the Auditor found that the Department of Health renewed licenses for MHCRF facility owners even though they owned outstanding debts to the District government. The Auditor also found that neither CMHS, LRA, nor OTR have mechanisms in place to facilitate the timely flow of information necessary to identify MHCRF owners/operators who owed outstanding debts to the District government before issuing or renewing a license to operate a MHCRF. Unfortunately, LRA relies on an applicant's good faith self-certification that they are not indebted to the District government.

The Auditor found five MHCRF property owners/operators who received the Homestead Exemption on two or more properties that appear to have been concurrently claimed as the principal residence of the owner. The Auditor also found that, in addition to the multiple Homestead Exemptions, one MHCRF owner also received the Senior Citizen Property Tax credit on more than one property, resulting in a loss of tax revenue to the District government of approximately \$12,522.37 from property owners improperly claiming multiple Homestead Exemptions and Senior Citizen Property Tax Credits for property tax year 1999 alone.

Respectfully submitted,



Deborah K. Nichols

District of Columbia Auditor

APPENDICES

Individual MHCRFs Operating In
The District Of Columbia
By Ward

| Ward | Number of MHCRFs | Total Number Of Available Beds |
|-------------|-------------------------|---------------------------------------|
| 1 | 20 | 147 |
| 2 | 5 | 33 |
| 3 | 1 | 6 |
| 4 | 32 | 192 |
| 5 | 28 | 165 |
| 6 | 36 | 236 |
| 7 | 12 | 62 |
| 8 | 13 | 105 |

Source: Department Of Health, License Regulation Administration and Commission On Mental Health

AGENCY COMMENTS

Agency Comments

On May 14, 2001 and June 22, 2001, the Office of the District of Columbia Auditor submitted a draft report for review and comment to the City Administrator, Transitional Receiver for the Commission on Mental Health Services, Acting Director of the Department of Mental Health, Acting Director of the Department of Consumer and Regulatory Affairs, Director of the District of Columbia Long Term Care Ombudsman Program, Fire Marshal of the District of Columbia, Deputy Chief Financial Officer for the Office of Tax and Revenue, and the Director of the Department of Health.

Written comments were received from the Acting Director of the Department of Mental Health on June 29, 2001; Acting Director of the Department of Consumer and Regulatory Affairs on May 29, 2001; Chief Operating Officer for the Department of Health on May 25, 2001, Fire Marshal on May 24, 2001, the Deputy Chief Financial Officer for the Office of Tax and Revenue on June 4, 2001, and the Acting Director of the D.C. Long Term Care Ombudsman Program on May 23, 2001. Where appropriate, changes to the final report were made to reflect the comments received. All written comments received by the Auditor are appended, in their entirety, to the final report.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health

Theodore J. Gordon
Chief Operating Officer



VIA FAXSMILE AND MAIL

May 25, 2001

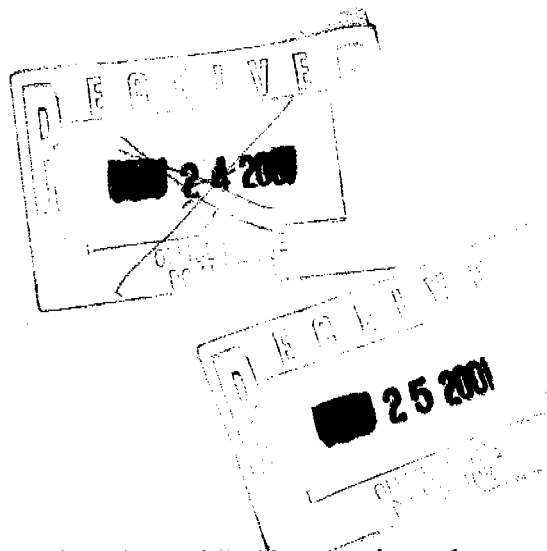
Deborah K. Nichols
District of Columbia Auditor
717 14th Street N.W. Suite 900
Washington D.C. 20005

Dear Ms. Nichols:

The Department of Health, Health Regulation Administration (DOH/HRA) appreciates the opportunity to provide comments on the D.C. Auditor's report "Examination of Deficiencies in the Operation and Oversight of Mental Health Community Residential Facilities". Since the Department of Mental Health Establishment Emergency Amendment Act of 2001 transferred all licensure functions for the CRFs for the mentally ill from HRA to the newly created Department of Mental Health (DMH), the audit report will provide assistance to DMH on improvements needed in the licensure and monitoring of CRFs for the mentally ill. The report will also be beneficial to HRA in guiding its operations for those licensure functions that remain with HRA. Therefore, HRA welcomes the opportunity to respond to the concerns of the D.C. Auditor regarding HRA's licensure inspections program. HRA's response will track the report by using the same topical headings in the Auditor's report. As shown below, HRA agrees with many of the comments and suggestions provided to HRA by the Auditor.

In December, 1996, DOH, was established as a separate agency by the Financial Responsibility and Management Assistance Authority (Authority). Effective January 1, 1998, the Authority transferred the Health and Social Service Facility Regulation Division (HSSFRD) from the Department of Consumer and Regulatory Affairs (DCRA) to DOH. Along with the transfer of the licensure responsibility to DOH, there was to have also been a transfer of budget, staff and equipment associated with these functions. This was not accomplished until much later.

Early on, the DOH recognized that there were operational and procedural problems within the HSSFRD, and moved quickly to address them. DOH moved quickly to replace the management and hired a new Administrator with broader work experience and a skill set that better matched the new vision. In addition, the Division was realigned into a new Health Regulation Administration (HRA) when Mayor's Order 2001-39 realigned DOH on March 21, 2001.



Agencies responsible for regulation MHCRFs

The Licensing Regulation Administration title has been changed by Mayor's Order No. 2001-39 to the Health Regulation Administration (HRA). During the time period of the audit, HRA was only responsible for the licensure of MHCRFs facilities; the CMHS was responsible for activities related to monitoring. Again, as stated above, the Department of Mental Health Establishment Emergency Amendment Act of 2001 transfers as of October 1, 2001 all licensure functions for the CRFs for the mentally ill from HRA to the newly created DMH.

HRA was not conducting annual inspections prior to license expiration

HRA agrees that many of its license renewal inspections were not conducted prior to the formal expiration of the CRFs licenses. However, pursuant to D.C. Code § 32-1302(d), HRA must allow a facility to continue operating even past the formal expiration date of the license so long as an application for renewal is pending. Therefore, in many instances, while the audit correctly identified facilities whose licenses had technically expired, the facility's continued operations were in compliance with the foregoing statute.

Prior to the arrival of the new administrator in January 2000, the working conditions and practices within HRA may have contributed to the lack of timely renewals. Moreover, at the time, HRA may have further contributed to the delayed inspection process because HRA staff would not issue a license to a facility that was not in 100% compliance with the licensure requirement. Although this practice may have been somewhat laudable in intent, this practice actually conflicted with the applicable statutory requirement. In fact, a facility needed only to be in "substantial compliance" for a license to be renewed. In addition, HRA did not use alternative procedures, such as "provisional licenses".

HRA is currently issuing provisional licenses, which allow facilities to be licensed for a period of 90 days in limited circumstances. This is used primarily for environmental deficiencies, which need to be corrected, so long as there is no evidence of life-threatening or immediate harm to the residents. The renewal applications are mailed to MHCRFs 120 days in advance of the license expiration date, and the renewal cycle is initiated and completed within 30-60 days in advance of licensure. The HRA administrator must approve the decision for either renewal or non-licensure of an MHCRF.

When a provider has not taken corrective action to abate deficiencies in a timely manner, a meeting is held with the provider, program manager or administrator, depending on the severity of the deficiencies. During this meeting, an action plan with defined deadlines is established with the understanding that if the action plan is not implemented and deficiencies not abated the provider will be referred for enforcement. The current compliance rate for annual inspections in 2001 is 76%.

Although the audit report stated that staff went from 13 to four (4) licensing employees in late 1999, the number of staff actually was eight (8), which decreased to three (3) employees. However, since that time, HRA has made some gains in this area. The total number of human services licensing specialists is now five (5) consisting of (4) four social workers and one supervisor. In addition, there is one sanitarian for a total staff of six. It is important also for one to recognize that during the time period of this audit the same staff licensed child-placing agencies (CPAs), day care homes, CFRs for the mentally retarded until October 2000, attended civil infraction hearings, responded to emergencies, investigated complaints and provided technical assistance to the public.

Request for fire inspections

The audit report further states that many MHCRFs were not inspected for fire safety during the annual license renewal process. This is somewhat incorrect. Licenses were not issued without a fire safety inspection. However, delays in the fire inspection also delayed completion of the license renewal process. In fact, at the time of the audit, a schedule identifying the expiration date of the MHCRF's licenses for the upcoming year had been submitted to the DCFD. However, this annual notification to DCFD did not always result in the inspections being done in a timely manner. During 2000-2001, HRA and representatives from the DCFD met to address this issue. As a result of these meetings, HRA now submits a list to the DCFD each month of facilities needing license renewals. If the provider does not correct the deficiencies within the deadlines identified by the DCFD, the deficiencies are referred to HRA enforcement, which may include revocation of the license.

Communication between CMHS and HRA is ineffective

There are no official policies or procedures, which address interagency communication between HRA and CMHS. However, there is constant communication and cooperation between the two agencies. This has been demonstrated by joint complaint collaboration between the two agencies to assist a problem provider to come into compliance, and joint meetings with providers and other stakeholders in the community to address needs of the MHCRFs. HRA always informs the CMHS when there is a question or indication of immediate harm or threat to the residents of a facility. Resources are then combined to make sure that residents are not in facilities that are unsafe.

Finally, even with ongoing coordination between the agencies, HRA cannot take enforcement action based solely on deficiencies identified by CHMS staff. HRA inspectors must actually observe the deficient practice and after consultation with an HRA attorney make a determination on whether to proceed with an enforcement action.

Violations to Clean Hands Act

Prior to 2001, it was the practice at LRA for the provider to self-certify its compliance with the Clean Hands Act by completing a DOH Certification Form. Since that time, there has been a District-wide initiative to address this issue. DOH is working closely with the Office of Finance and Revenue and the Office of the Chief Technology to develop new forms and a process for verifying a provider's compliance with the law.

DOH Response to the Auditor's Specific Recommendations

Recommendation #1:

Since the audit, the total number of human services licensing specialists has increased to six (6) (four social workers, one supervisor and a sanitarian). Again, that same staff licensed child-placing agencies (CPAs), and until October 2000 licensed CFRs for the mentally retarded. The same staff also will attend civil infraction hearings and respond to emergencies, investigate complaints and provide technical assistance to the public. Since the responsibility for licensure will transfer to the new Commission on Mental Health as of October 2001, the current level of staffing is sufficient to timely license the remaining MHCRFs and all of the other activities that accompany this process.

Recommendation #2:

The administrator of HRA cannot schedule or assure the resources needed by another agency to make sure that fire inspections are done in a timely manner. However, HRA can make sure that no facility is licensed if it is not in compliance with the annual fire inspection requirement.

Recommendation #3:

Since the Commission on Mental Health will be taking over licensure of these facilities soon, HRA will continue to provide technical assistance and information to CMHS to assist them in the development of policies and procedures.

CMHS Clients are not receiving proper services and care

HRA now has the ability to issue civil infractions (CI) for deficiencies to providers of MHCRFs, which it did not have in the past. HRA felt it was important to inform providers of the new rules and how they would be implemented prior to issuing any Notices of Infractions to (NOI) to providers. So HRA and other stakeholders held a community meeting for CRF providers at Martin Luther King Library on April 26, 2001 in which these issues were discussed. The inspectors have also received training on the adjudication process and procedures from HRA legal staff for the issuance of NOIs and began issuing NOIs in May of 2001.

CMHS Clients' Financial records were improperly maintained

HRA does not have any enforcement or regulatory authority to address this issue.

Some MHCRF Staff have Criminal Backgrounds

The final regulations were implemented in February 2001 for D.C. Law 12-238 "The Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998".

DOH Response to the Auditor's Specific Recommendations

Recommendation #1:

Civil infractions as of May 2001 are being issued to providers. HRA will monitor the effectiveness of this method of enforcement over the next six months.

Recommendation #2:

Once the process and procedures are finalized with the MPD on how the criminal backgrounds checks will be implemented by the MPD, the providers will be required to maintain strict compliance with this law.

LRA is not adequately Documenting and Investigating Complaints and Unusual Incidents

The audit report states that LRA failed to establish internal procedures for maintaining a profile of complaints against each facility. Prior to this administration, a consultant was hired by HSSFRD to develop such a program. The final policies and procedures for this program were not in place at the time of the audit because there had been a change in the program manager for this area. Since that time, a program for handling complaints is being finalized utilizing a computerized database.

There has been a substantial improvement responding to some complaints filed by outside agencies. At the present time, outside agencies are notified in writing with an acknowledgement of the complaint, and for some agencies this is done by e-mail at their request. Moreover, all complaints from outside agencies are now answered within 10 days and if the investigation is not completed a status report is provided. Once the investigation is completed, the agency receives a copy of the report.

Unusual Incidents are not being reported and Investigated correctly

There has been no distinction in this program between HRA's receipt of a complaint and an unusual incident. This is one of the areas identified by the current administration, which is being

revised. HRA is currently developing an unusual incident protocol with DMH to establish the policies and procedures for handling unusual incidents and/or complaints.

Again, HRA appreciates the time and effort expended by the D.C. Auditor in preparing the report regarding the District's oversight of CRFs for the mentally ill. If you would like any additional information or have additional questions regarding our program, please contact Denise Pope, Administrator, HRA, at (202) 442-4747.

Sincerely,

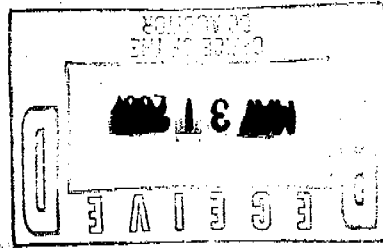


Theodore J. Gordon

cc: John A. Koskinen
Carolyn Graham
Ivan C.A. Walks, M.D.
Denise Pope

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF MENTAL HEALTH

Office of the Director



Ms. Deborah K. Nichols
District of Columbia Auditor
717 14th Street NW, Suite 900
Washington, D.C. 2005

JUN 1 2001

Dear Ms. Nichols:

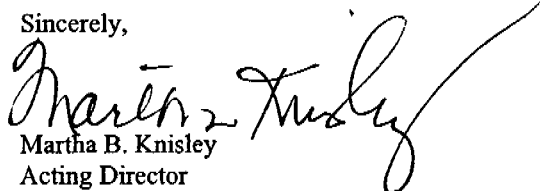
Thank you for the opportunity to respond to your draft report entitled "Examination of Deficiencies in the Operation and Oversight of Mental Health Community Residential Facilities". We have also presented a detailed response with accompanying documentation to the auditor-in-charge, Mr. Lawrence Perry.

It is my understanding that the information provided, as well as the recommended language changes will be considered and another draft will be provided for our review.

I am available at your convenience to answer questions or discuss the report at your request. Thank you for the consideration you have shown this Department as we attempt to quickly take on new responsibilities. I have made new staff assignments for licensing and oversight. I have also contracted for an external monitor to oversee our corrective actions to this report and other issues we will be working on to improve our oversight capacity. She starts in this role on June 5, 2001.

I look forward to continued collaboration with your office to ensure that District of Columbia residents who suffer from mental illness receive appropriate and quality services.

Sincerely,

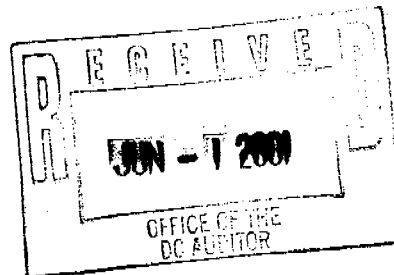

Martha B. Knisley
Acting Director

Enclosure

Cc: Ronnie Few
Fire Chief

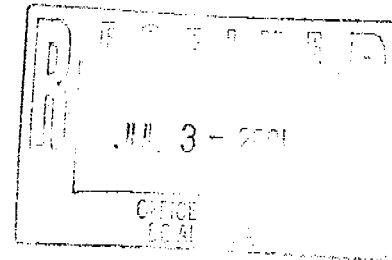
Ivan C.A. Walks, M.D.
Director, Department of Health

David Clark, Director
Dept. of Consumer & Regulatory Affairs



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF MENTAL HEALTH

Office of the Director



June 29, 2001

Ms. Deborah K. Nichols
District of Columbia Auditor
717 14th Street NW, Suite 900
Washington, D.C. 20005

Dear Ms. Nichols:

Thank you for the opportunity to meet with you and to respond to your report entitled "Examination of Deficiencies in the Operation and Oversight of Mental Health Community Residential Facilities".

We appreciate the consideration you have shown this newly formed Department as we continue to transition responsibilities from other agencies to the Department of Mental Health. We will continue to design an efficient licensing and oversight team while initiating corrective actions that address the recommendations in this report.

We believe it critical that the following be added to page five of your report at the end of your statement, "Consumers unless found incompetent by a court or having been involuntarily committed, have full discretion in choosing their place of residence" *in a manner consistent with public safety. They may do so even against the counsel and suggestions of their treatment team. However, they cannot legally over ride a court order.*

In addition, we take the position that it is the Department of Mental Health's responsibility to assure that case managers are adequately trained to assist consumers in their decisions and choices regarding housing and to immediately provide full attention to any client who needs mental health services.

We have already taken short-term actions regarding the recommendations in your report and we have developed intermediate and long-term goals. The following actions have been taken:

- Appointed new management staff with expertise in organizational assessment, redesign and operational oversight.

- Evaluated all policies, procedures and guidelines regarding the operation and oversight of community residential facilities. Policies and procedures to address recommendations in the report are being revised.
- Conducted weekly site reviews of community residential facilities by management staff to identify those facilities that require immediate action which assure consumer safety. As a result, in the month of June, two community residential facilities were cited for deficiencies both by the Department of Mental Health and the Department of Health with notices to move consumers if deficiencies are not abated within twenty-one days.
- Reorganized our monitoring team to increase productivity and increase the number of facilities that the team monitors on a daily basis. Deficient facilities are now reported to the Department of Health and other responsible agencies the same day that the deficiency is noted by the Department of Mental Health so that the Department of Health may evaluate licensing deficits.
- Increased communication with the Long Term Care Ombudsman and University Legal Services Office with a follow up meeting planned to share findings and act to assure that consumers are safe.
- Increased communication with Department of Health officials to plan the transition of licensure responsibilities to the Department of Mental Health by October 1, 2001 and to communicate regarding actions taken when community residential facilities are deficient including the process for aggressive civil infraction citation.
- Discussions with senior Department of Mental Health officials to recommend legislation to prevent systematic failures in the mental health system.
- Engaged an outside monitor to provide systems analysis and subsequent recommendations for change that are in the best interest of the client.
- Stepped up communication with the DC Fire department to improve communications regarding facilities that require follow up evaluation.
- Agreement with DCRA, DOH, DC Fire and the Department of Mental Health to provide quarterly updates regarding deficiencies, and other identified code violations to trigger unscheduled site visits and to trigger annual fire inspections.
- Planning by financial oversight executive staff regarding all financial aspects recommended in the plan.
- Stepped up communication with all agencies involved with community residential facility review processes to ensure the establishment of a practice of sharing monitoring results to timely abate deficiencies to ensure safe, appropriate housing for our clients.

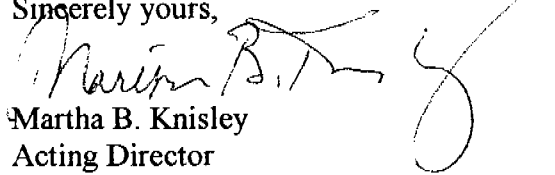
Our intermediate goal is to transition the responsibility for the licensing process from the Department of Health to the Department of Mental Health. As part of this process, we have formulated a plan with DOH to complete this process by October 1, 2001. In addition, we have developed an interagency partnership approach to facilitate communication and coordination of a short term, intermediate term and long term corrective action plan to be used as the underpinnings for future agency interactions. In addition, our intermediate and long-term goals are being developed and outlined in a comprehensive licensing plan.

Our long-term goal is to conduct a state of the art licensing program that meets the needs of our client base in a manner consistent with the national standard of care for mentally ill clients.

We hope that this letter provides you with the information you seek regarding our Department's plan to provide a mental health system that effectively serves the Citizens of the District of Columbia in need of mental health housing assistance and services.

We look forward to continued collaboration with your office to ensure that all District of Columbia residents who have a mental illness receive safe, appropriate, quality services.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Martha B. Knisley", with a large, stylized flourish extending to the right.

Martha B. Knisley
Acting Director

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs**

Office of the Director



May 29, 2001

Ms. Deborah K. Nichols
District of Columbia Auditor
717 14th Street NW, Suite 900
Washington, D.C. 20005

Attn: Lawrence Perry

Dear Ms. Nichols:

Reference is made to your letter dated May 14, 2001 with which you transmitted a draft copy of "Examination of Deficiencies in the Operation and Oversight of Mental Health Community Residential Facilities." Your letter asks that the Department of Consumer and Regulatory Affairs (DCRA) provide comment within ten (10) business days.

While the Department has no substantive comment on the findings of the report, it should be noted that the Executive Branch did introduced legislation to the District of Columbia Council in 2000 ("Construction Codes Amendment Act of 2000") whose purpose was to correct conflicting language in existing codes regarding responsibility for enforcing the Fire Prevention Code. That legislation was not passed by the Council, and has not been reintroduced. This action was taken to correct the Omnibus Regulatory Reform Amendment Act and to resolve the issue of responsibility for post-Certificate of Occupancy fire inspections. It was generally recognized that the Fire Marshall should continue to perform these latter inspections because they had the experience, policies, procedures, and staff necessary to perform the functions.

Thank you for the opportunity to comment on the draft to ensure its accuracy. We will be working jointly with other involved agencies to prepare proper

management responses regarding the recommendations in the report. Please do not hesitate to contact me at 442-8936 if you wish to discuss these matters further.

Sincerely,

A handwritten signature in black ink, appearing to read "David A. Clark". The signature is stylized with several loops and a long tail that extends downwards and to the right.

David A. Clark
Acting Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health

Office of the Director



June 29, 2001

Deborah K. Nichols
District of Columbia Auditor
717 14th Street, N.W.
Suite 900
Washington D.C. 20005

Re: Examination of Deficiencies in the Operation and Oversight of Mental Health Community Residential Facilities

Dear Ms. Nichols:

The Department of Health has reviewed the Second Draft of the Auditor's report "Examination of Deficiencies in the Operation and Oversight of Mental Health Community Residential Facilities". DOH submitted written comments to the first draft that have not been included in this draft.

As indicated in my May 24, 2001 response, the Health Regulation Administration (HRA) agrees with many of the comments and suggestions provided to HRA by the Auditor. DOH's response outlined the steps the administration has taken and implemented prior to the Auditor's release of this draft report which address the concerns identified in your report. The HRA will continue to improve the licensure process of CRFMHs in conjunction with the Department of Mental Health (DOMH) as the two agencies work together for a smooth transition of this function to DOMH on October 1, 2001.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Ivan C. A. Walks, M.D.".

Ivan C. A. Walks, M.D.
Chief Health Officer of the District of Columbia
Director, Department of Health

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer



Herbert J. Huff
Deputy Chief Financial Officer

Tax and Revenue

June 4, 2001

Deborah K. Nichols
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Nichols:

Thank you for the opportunity to respond to your letter of May 12, 2001 regarding your draft report entitled "Examination of Deficiencies in the Operation and Oversight of Mental Health Community Residential Facilities".

The DC Auditor recommended that the Office of Tax and Revenue immediately collect outstanding property taxes owed by the MHCRF owners/operators and impose property penalties and fines for violations of D.C. Code 47-2682 and 47-850."

The Office of Tax and Revenue (OTR) Real Property Tax Administration (RPTA) agrees with this recommendation. Property taxes may not have been paid on the accounts in question and may not have been paid for prior years. The statute requires, that one year following non-payment of taxes, a tax lien must be imposed and the property placed in tax sale proceedings. There is also no statute of limitation on collection of real property taxes and OTR will aggressively collect all back taxes.

In addition, the Clean Hands act requires compliance with the code with regard to payment of taxes before issuance of a license. A licensing agency, such as the Department of Health (DOH), may contact OTR by phone or mail to verify the applicant's tax status. It also should check OTR's online real property tax database, currently available for government and public use through our in-house systems. We will soon make receivables available on the Internet for government, title industry, and mortgage company access to ensure compliance with tax laws and Clean Hands legislation.

While the law seems ambiguous as to which agency is responsible for enforcement of fines and/or penalties, the real hammer in this case is the revocation of license, which would be a DOH responsibility. It would seem that loss of license, along with the \$1,000 dollar penalty, would have an immediate enforcement effect. In addition, late payment of property tax carries a 10% penalty and 18% interest penalty.

Deborah K. Nichols
June 4, 2001
Page 2

Unfortunately, the auditor of these accounts did not contact OTR/RPTA to develop the appropriate mechanism for processing these accounts. We will be contacting DOH to request that the list of accounts be forwarded to William H. Riley, Director of Real Property Tax Administration. We will then attempt to set up a meeting between DOH and OTR to establish the appropriate methods of accounting and collection that will be the most effective in assuring collection.

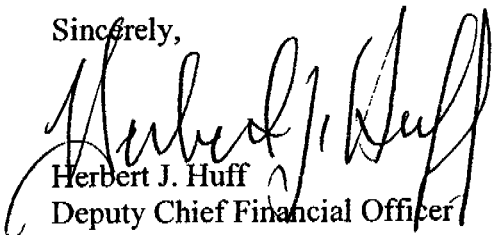
OTR recommends that in the future before licenses are issued, the granting agency review the online real property tax billing system for payment information. If that cannot be done, we would develop a process, where the licensing agency would be required to have in their license system the Square Suffix Lot Property Identification Number so that computer file comparisons and audits with OTR tax files can be made after a license is issued.

The DC Auditor recommended that certain MHCRF's property owners were claiming real property homestead exemptions on more than one property.

The Office of Tax and Revenue agreed with the recommendation. The Office of Tax and Revenue has a major compliance effort in the owner-occupied residential real property tax benefit area, which includes the Homestead program. While there is not a strict residency requirement written into the law, we believe the intent was that the same owner should not receive the Homestead deduction on more than one account. Our new systems will audit by name those owners with more than one property. This system should be operational in early FY 2002. OTR is currently mailing reconfirmation notices 16,000 property owners to determine their eligibility for Homestead and Senior Citizen deductions. There are instances when a mailing address is different from the property address; thus an eligibility confirmation will be needed from the owner.

If you have any questions, please feel free to contact me at (202) 442-6383, or William Riley, Director of Real Property Tax Administration at (202) 442-6760.

Sincerely,



Herbert J. Huff
Deputy Chief Financial Officer

MAY 23 2001

OFFICE OF THE
DC AUDITOR

May 19th, 2001

Mr. Lawrence Perry, Auditor
Office of the District of Columbia Auditor
717 14th Street, N.W., Suite 900
Washington, DC 20005

Re: Comments for the Examination of Deficiencies in the Operation
and Oversight of Mental Health Community Residential Facilities

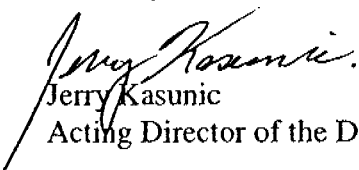
Dear Mr. Perry:

After reviewing your report regarding the operation and oversight of mental health community residential facilities (MHCRFs), the DC Long-Term Care Ombudsman Program submits the following comments:

- Page 3. Paragraph 1, under Background: in the first sentence, "currently under receivership" should be eliminated and replaced with, "now the Department of Mental Health (DMH)." A footnote should then be added explaining that, although CMHS came out from under receivership in April, 2001, and is now an independent department, the report will continue to use CMHS rather DMH in the report because the receivership was in effect during the entire time that the DC Auditor's investigation took place.
- Page 6. Number 3: Intensive Residence (IR): double check DCMR Title 22, Chapter 38, Intensive Rehabilitation Residence, to verify staff-to-patient ratio. According to 3837.4: An I.R. shall have a staff-to-resident ratio of 2:8, for sixteen hours, for sixteen hours (16hrs.) a day during awake hours, whenever a resident is present. Additional staff shall be available during times of high activity, and the residence shall have the capacity to provide 1:1 staffing when necessary as determined by the resident's treatment plan.
- Page 8. Under "Agencies Responsible for Regulating MHCRFs," it should be noted or explained to the reader that "LRA" has recently changed its name to "HRA, Health Regulatory Affairs" during this fiscal year. The auditor may want to substitute "HRA" for "LRA" throughout this report.
- Page 13. Recommendation section should include the recommendation that the Ombudsman Program be provided with a list of all I.L. and S.I.L. units, their addresses, and owner's name, and contact information to provide oversight assistance.
- Page 26. Recommendation Section: the following changes should be considered:

This concludes the comments from the DC Long-Term Care Ombudsman Program. If you have any concerns or questions regarding these comments, please feel free to call me (202) 434-2140. We look forward to working with you in the future.

Sincerely,




Jerry Kasunic
Acting Director of the DC Long-Term Care Ombudsman Program

GOVERNMENT OF THE DISTRICT OF COLUMBIA
FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT
WASHINGTON, D.C. 20001



TO: Deborah K. Nichols
District of Columbia Auditor

FROM: Adrian H. Thompson, 
Fire Marshal
District of Columbia Fire/EMS Department

SUBJECT: CRFs - Response/Clarification.

DATE: May 24, 2001

The enactment of the Omnibus Regulatory Reform Amendment Act of 1998, D.C. Law 12-86, Title 5, Sections 501 and 502 effectively removed the authority of enforcement, and inspections for fire code violations from the D.C. Fire/EMS Department.

The statistics of inspections performed for the three (3) fiscal years chosen are mis-leading; By not being part of the Certificate of Occupancy process due to the Omnibus Regulatory reform Amendment Act, our office had no knowledge of the existence of these facilities .

Notifications for inspections which were performed were received from the Department of Consumer and Regulatory Affairs.

In those instances where inspections were performed and Notices of Violations were issued, the violations were corrected within the specified time which meant no Civil Infractions were issued.

The signing of a Memorandum of Agreement in September of 2000, allows the D.C. Fire/EMS Department, Fire Prevention Bureau, prior to the issuance of a Certificate of Occupancy, to perform an inspection. Once notified, an inspection will be performed within seventy-two (72) hours.

In regards to the second paragraph on page twenty (20), I cannot respond on this situation without additional information.