

# HB

# 26

<TARGET><BILL>HB 26</BILL><SUBJECT>HB  
26</SUBJECT><COMM>HFIN29</COMM></TARGET>

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# Fiscal Note

State of Alaska  
2015 Legislative Session

Bill Version:	HB 26
Fiscal Note Number:	1
(H) Publish Date:	2/16/2015

Identifier: HB026-DCCED-CBPL-02-06-15  
 Title: EXTEND CERT. DIRECT-ENTRY MIDWIVES BOARD  
 Sponsor: OLSON  
 Requester: (H) LABOR AND COMMERCE

Department: Department of Commerce, Community and Economic Development  
 Appropriation: Corporations, Business and Professional Licensing  
 Allocation: Corporations, Business and Professional Licensing  
 OMB Component Number: 2360

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates					
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel		5.0	5.0	5.0	5.0	5.0	5.0	5.0
Services		0.5	0.5	0.5	0.5	0.5	0.5	0.5
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>

**Fund Source (Operating Only)**

1156 Rcpt Svcs		5.5	5.5	5.5	5.5	5.5	5.5
<b>Total</b>	<b>0.0</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>	<b>5.5</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2015) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2016) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By:	Sara Chambers, Director	Phone:	(907)465-2538
Division:	Corporations, Business, and Professional Licensing	Date:	02/06/2015 10:33 AM
Approved By:	Catherine Reardon, Director	Date:	02/06/15
Agency:	Division of Administrative Services		

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2015 LEGISLATIVE SESSION

## Analysis

HB26 implements Legislative Audit's recommendation to extend the Board of Certified Direct-Entry Midwives (BCDEM) through June 30, 2017.

This bill extends statutory authorization for the existing BCDEM. Adoption of the bill will continue existing activities by the board and administration by the division. Failure to adopt the bill will result in a one-year wind-down of the board in FY2018, and the division will assume all licensing responsibility in FY2019.

Extension of the BCDEM will require travel for board members and one staff to attend two board meetings per year \$5.0. Service costs include advertising of board meetings \$0.5. These estimated costs are based on the average board specific direct charges to this program over the previous biennium licensing cycle.

If the BCDEM is not extended, the Certified Direct-Entry Midwives licensing program will continue under the direction of the division, rather than the board. Costs associated with licensing the profession will continue to be incurred by the division, including license examiners, investigations, legal, supplies, and allocated administrative support services.

If the board dissolves, but the licensing program remains, the following expenses will still be incurred:

Personal services: \$37.3 (Licensing and investigations staff)

Services: \$4.0 (Includes activities such as legal advice, support from the Office of Administrative Hearings, and postage)

Administrative support: \$10.7 (Includes leased space, information technology support, insurance, risk management, ADA compliance, and other statewide centralized services.

# ALASKA STATE LEGISLATURE

## REPRESENTATIVE KURT OLSON

- Chair: Labor and Commerce
- Vice Chair: Rules
- Member: Resources, Legislative Budget & Audit

Session: January - April  
State Capitol, Room 24  
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Official Business

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### Sponsor Statement

#### HB 26

*"An Act extending the termination date of the Board of Certified Direct-Entry Midwives; and providing for an effective date."*

HB 26 extends the sunset date for the Board of Certified Direct-Entry Midwives to June 30, 2017.

I encourage all the members to review the Legislative Audit summary and the full audit report. You will see that in the opinion of our auditors, the Board of Certified Direct-Entry Midwives is serving the public's interest by effectively licensing certified direct-entry midwives (CDM) and apprentices. Additionally, it was found that the board worked to improve the profession by modifying and adopting midwifery regulations to conform to current standards of care.

The Board of Certified Direct-Entry Midwives serves an important role in protecting the well-being of Alaskans by identifying individuals who are willing to pursue technical training and meet specified technical qualifications necessary for license as midwives. The continuation of this board is very important to the health and safety of Alaska's women and children.

Thank you for your support of this legislation.

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347  
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SUMMARY OF: A Sunset Review on the Department of Commerce, Community, and Economic Development, Board of Certified Direct-Entry Midwives, June 30, 2014

### PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Department of Commerce, Community, and Economic Development's (DCCED) Board of Certified Direct-Entry Midwives (board). The purpose of this audit was to determine if there is a demonstrated public need for the board's continued existence and if it has been operating in an effective manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, under AS 08.03.010(c)(8), the board will terminate on June 30, 2015, and will have one year from that date to conclude its administrative operations.

### REPORT CONCLUSIONS

Overall, the audit concluded that the board is serving the public's interest by effectively licensing certified direct-entry midwives (CDM) and apprentices. Furthermore, the board worked to improve the profession by modifying and adopting midwifery regulations to conform with current standards of care. The audit also concluded that Division of Corporations, Business and Professional Licensing (DCBPL) staff failed to operate in the public's interest by not pursuing timely disciplinary sanctions related to four CDM investigations. We recommend the board's termination date be extended only two years to June 30, 2017. The reduced extension recommendation is due to significant deficiencies by DCBPL staff in pursuing disciplinary sanctions.

### FINDINGS AND RECOMMENDATIONS

1. DCCED's commissioner should take immediate action to pursue disciplinary sanctions for CDM cases when warranted.
2. DCBPL, in consultation with the board, should increase licensing fees to eliminate the board's operating deficit.

3. The board should communicate certificate requirements to continuing education providers to facilitate compliance with centralized licensing regulations.
4. The board should approve apprentice permit applications in accordance with statutes.

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300  
Juneau, AK 99811-3300  
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July 21, 2014

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Certified Direct-Entry Midwives and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
BOARD OF CERTIFIED DIRECT-ENTRY MIDWIVES

June 30, 2014

Audit Control Number  
08-20089-14

The audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Per AS 08.03.010(c)(8), the Board of Certified Direct-Entry Midwives is scheduled to terminate on June 30, 2015. We recommend the legislature extend the termination date to June 30, 2017.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in black ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Certified Direct-Entry Midwives (board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, under AS 08.03.010(c)(8), the board will terminate on June 30, 2015, and will have one year from that date to conclude its administrative operations.

### Objectives

The four central, audit objectives were:

1. Determine whether the board's termination date should be extended.
2. Determine whether the board is operating in the public's interest.
3. Determine whether the board has exercised appropriate regulatory oversight of licensed and apprenticed midwives.
4. Provide a current status of recommendations made in the prior sunset audit.

### Scope and Methodology

The assessment of board operations and performance was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for a board.

The audit reviewed board operations and activities from FY 10 through March 31, 2014.

During the course of the audit, the following were reviewed and evaluated:

- Applicable statutes and regulations to identify board functions and responsibilities. Changes made during the audit period were reviewed to determine whether the changes enhanced or impeded board activities and to ascertain if the board operated in the public's interest.

- Board member applications and resumes filed with the Office of the Governor's Board and Commissions to verify that members met statutory requirements.
- Board meeting minutes and annual reports to understand board proceedings and activities as well as the nature and extent of public input.
- Public notice documentation to determine whether public notice for board meetings and regulatory changes were published as required by Alaska Statutes and Division of Corporations, Business and Professional Licensing (DCBPL) policies.
- The prior sunset audit report to identify issues affecting the board.

The current board chair and former public board member were interviewed to gain an understanding of the board's activities, the level of public input, and changes in fee levels. DCBPL's director, various other DCBPL personnel, and several employees in the information technology section of the Department of Commerce, Community, and Economic Development's (DCCED) Administrative Services Division were interviewed to assess the adequacy of DCBPL's support for board activities. Additionally, inquiries with agency staff at the Department of Law's Office of Special Prosecution and Appeals were conducted to determine the current status of certified direct-entry midwives cases forwarded by DCBPL investigative staff.

A random sample of six initial and renewal licensing files was selected from 52 active licenses and assessed for statutory and regulatory compliance. In determining sample size, the applicable controls were considered moderately significant; the inherent risk was considered limited; and the risk of noncompliance was considered low.

Twenty-six complaints against board licensees, applicants, or unlicensed individuals were either open or opened by DCBPL between July 1, 2009, and February 28, 2014. A judgmental sample of eight complaints was selected, and investigative files and documentation were tested to assess the efficiency and effectiveness of the investigative process. Prior audits found errors with the case management system. Therefore, when determining sample size, the risk of noncompliance was considered moderate, and a sample of 30 percent (8) was determined sufficient to detect errors. Three complaints were randomly selected, and five complaints open over a year were selected.

Board and DCBPL internal control procedures relating to various audit objectives, including procedures over licensing, investigations, and board proceedings, were assessed. Controls over the investigative case management system and the licensing database were also assessed.

Inquiries regarding board-related complaints were made with the following organizations:

- Alaska State Commission for Human Rights;

- Department of Administration's Division of Personnel and Labor Relations;
- United States Equal Employment Opportunity Commission;
- DCCED's Commissioner's Office;
- Office of the Ombudsman;
- Office of Victims' Rights; and
- Office of the Governor's Boards and Commissions.

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# ORGANIZATION AND FUNCTION

The Board of Certified Direct-Entry Midwives (board) was established under the provisions of Title 8, Chapter 65 of the Alaska Statutes. The board is composed of five members; two certified direct-entry midwives (CDM), one physician licensed by the State Medical Board,<sup>1</sup> one certified nurse midwife licensed by the Board of Nursing, and one public member.

Board members are appointed by the governor to serve staggered four-year terms. Board members may not serve more than two consecutive terms. A public member may not be engaged in the midwifery profession, have association by legal contract with a midwife, or have a direct financial interest in the midwifery profession. Members of the board, as of June 30, 2014, are listed in Exhibit 1.

## Board Duties and Powers

Alaska Statute 08.65.030 establishes the board's authority. This authority includes:

1. Issuing midwife licenses and apprentice permits to qualified applicants.
2. Establishing, amending, or eliminating regulations that affect the midwifery practice's professional standards.
3. Taking disciplinary action when a person violates midwifery-related statutes or regulations.
4. Adopting standards for basic education, training, and apprentice programs.
5. Reviewing and approving continuing education courses.

## Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Business and Professional Licensing (DCBPL)

DCBPL provides administrative and investigative assistance to the board. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing examination and meeting

<sup>1</sup>The physician is required to have an obstetrical practice or specialized training in obstetrics.

### **Exhibit 1**

#### **Board of Certified Direct-Entry Midwives as of June 30, 2014**

Cheryl Corrick  
*Certified Direct-Entry Midwife, Chair*

Deborah Schneider  
*Certified Direct-Entry Midwife*

Peggy A. Downing  
*Physician*

Sarah J. Taygan  
*Certified Nurse Midwife*

Jennifer A. Swander  
*Public Member*

notices. Investigative assistance is available upon request, or DCBPL may initiate an investigation if an individual appears to have engaged or is about to engage in a practice over which DCBPL has authority. DCBPL can issue an order that an individual stop a practice, bring an action in Alaska's Superior Court to enjoin the act, examine a license holder and/or an association's books and records, and subpoena witnesses and records.

Alaska Statute 08.01.065 mandates that DCCED adopt regulations to establish the amount and manner of fee payments for applications, examinations, licenses, registration, permits, investigations, and all other fees as appropriate for the occupations covered by statutes.

## **REPORT CONCLUSIONS**

In developing our conclusions, we evaluated the Board of Certified Direct-Entry Midwives' (board) operations using the 11 factors set out in AS 44.66.050. Under the State's "sunset" law, these factors are to be used to assess whether an agency has demonstrated a public policy need for continuing operations.

Overall, the audit concluded that the board is serving the public's interest by effectively licensing certified direct-entry midwives (CDM) and apprentices. Furthermore, the board worked to improve the profession by modifying and adopting midwifery regulations to conform with current standards of care. The audit also concluded that Division of Corporations, Business and Professional Licensing staff failed to operate in the public's interest by not pursuing timely disciplinary sanctions related to four CDM investigations.

In accordance with AS 08.03.010(c)(8), the board is scheduled to terminate June 30, 2015. We recommend the board's termination date be extended only two years to June 30, 2017. The reduced extension recommendation is due to significant deficiencies by DCBPL staff in pursuing disciplinary sanctions. (See Recommendation No. 1.) Additionally, we noted operational improvements and fee increases are needed. (See Recommendation Nos. 2 through 4.)

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## FINDINGS AND RECOMMENDATIONS

No recommendations were made as part of the Board of Certified Direct-Entry Midwives (board) 2006 sunset audit. This audit includes five new recommendations.

### Recommendation No. 1

The Department of Commerce, Community, and Economic Development's (DCCED) commissioner should take immediate action to pursue disciplinary sanctions for certified direct-entry midwives (CDM) cases when warranted.

Disciplinary sanctions were not actively pursued for four CDM-related investigations which were completed during the audit period. The investigations, involving two people, supported disciplinary sanctions including probation with continuing education and license revocation. However, Division of Corporations, Business and Professional Licensing (DCBPL) investigative staff did not actively pursue disciplinary sanctions to protect the public's safety.

The duty to investigate occupational licensing complaints is statutorily assigned to DCBPL. The efficiency with which complaints are investigated is one evaluation criteria used in the legislative sunset oversight process. Specifically, AS 44.66.050(c) requires examining:

*The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.*

DCBPL has standard procedures to investigate occupational licensing complaints. Once an investigation is complete, a board member reviews the evidence to ensure the proposed action to resolve a case is appropriate. If evidence is determined sufficient, a board member will recommend the investigator pursue a consent agreement (CA)<sup>2</sup> with the respondent. Where appropriate, CA's are used to avoid the additional use of time and resources associated with litigation.

If a respondent refuses the terms of a CA, the investigator requests an assistant attorney general (AAG) review the evidence to determine if it is legally sufficient for adjudication. If the AAG concludes that the evidence is legally sufficient, the AAG prepares an accusation for DCBPL to file. The litigation phase begins with DCCED's commissioner filing an

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<sup>2</sup>A CA is a signed agreement between the respondent and DCCED's commissioner in which the respondent agrees to the facts of the case and to the proposed decision and disciplinary sanctions. The board must review the signed CA and may reject or adopt it through a board order issued during a public meeting.

accusation with the board. After an accusation is filed, a respondent has 15 days from the accusation receipt date to file a notice of defense. If the respondent requests a hearing, an AAG is assigned to represent DCCED, and the Office of Administrative Hearings (OAH) is notified that a hearing was requested. Alaska Statute 44.64.060(d) mandates that an OAH judge conduct a hearing and issue a proposed decision within 120 days from the date the hearing was requested. The board has 45 days to adopt or amend the proposed decision or to require additional proceedings.

In all four CDM cases, the respondents refused to sign a CA. Rather than file an accusation and pursue an administrative hearing, DCBPL staff followed alternate procedures. Two of the four cases were forwarded to the Department of Law's Office of Special Prosecutions and Appeals (OSPA) without a sufficiency of evidence review by an AAG. A year after the cases were forwarded to OSPA, no action had been taken. According to OSPA, the cases represent their lowest priority as the related offenses were categorized as Class B misdemeanors. The other two cases were held by DCBPL investigators with the understanding that the cases would be forwarded to OSPA once the other cases were addressed. Due to staff turnover, it is unclear why DCBPL staff did not pursue a civil licensing action as required by standard operating procedures. At a minimum, licensing action should be pursued concurrently to ensure the public is protected from incompetent, negligent, or unlicensed practitioners. By not pursuing licensing action, the respondents were allowed to continue practicing, and the public's safety was placed at risk. Risk was further increased in that the two respondents were also licensed to train apprentice midwives.

We recommend DCCED's commissioner take immediate action to pursue disciplinary sanctions for CDM cases when warranted.

### Recommendation No. 2

DCBPL, in consultation with the board, should increase licensing fees to eliminate the board's operating deficit.

Occupational fees did not cover the cost of regulating the board. As of March 31, 2014, the board had an operating deficit of \$115,261. Alaska Statute 08.01.065(c) requires DCCED to set occupational fees so that fees collected approximately equal the board's regulatory costs.

The sufficiency of licensing fees has been an ongoing issue for the board. Historically, expenditures have significantly fluctuated depending on the board's investigative and regulatory activities. During the audit period, licensing fees increased in FY 11 and again in FY 13; however, the fee increases were insufficient to cover the board's regulatory costs.

Expenditures for administrative and investigative activities resulted in an operating deficit. Without further increases to licensing fees, a significant deficit will remain, shifting regulatory costs to future licensees.

We recommend DCBPL, in consultation with the board, increase licensing fees to eliminate the board's operating deficit.

### Recommendation No. 3

The board should communicate certificate requirements to continuing education providers to facilitate compliance with centralized licensing regulations.

An examination of DCBPL's continuing education audit function found that the board accepted proof of continuing education that did not comply with centralized licensing regulations. Continuing education certificates for two of two licensees tested were missing activity descriptions and the instructor, sponsor, or other verifier's mailing addresses.

Centralized licensing regulation 12 AAC 02.960(e) states, in part, that a licensee selected for audit will be notified of the following by DCCED.

*Within 30 days of notification, the licensee shall submit to the department, documentation to verify completion of the continuing competency activities claimed on the statement submitted with the application for license renewal. The documentation must include a valid copy of a certificate or similar verification of satisfactory completion of the continuing competency activities claimed that provides*

- (1) The name of the licensee;*
- (2) The amount of continuing competency credit awarded;*
- (3) A description of the continuing competency activity;*
- (4) The dates of actual participation or successful completion; and*
- (5) The name, mailing address and signature of the instructor, sponsor, or other verifier.*

Certificates were missing information because providers were unaware of the requirements. The board did not communicate continuing education certificate requirements to the approved providers due to not understanding centralized licensing regulations. Incomplete certificates do not provide adequate evidence that a licensee met continuing education requirements. Furthermore, incomplete certificates increase administrative costs due to the licensing examiner needing to research and follow-up missing information to verify classes taken by a licensee complied with continuing education requirements.

We recommend the board communicate certificate requirements to continuing education providers to facilitate compliance with centralized licensing regulations.

Recommendation No. 4

The board should approve apprentice permit applications in accordance with statutes.

For two of two apprentice applications tested, permits were inappropriately issued by DCBPL's licensing examiner rather than by the board.

Board regulation 12 AAC 14.130(c) allows the DCBPL licensing examiner to review apprentice permit applications; however, the regulation does not authorize the licensing examiner to approve permits. Furthermore, per AS 08.65.030(a)(3), only the board has authority to approve permits.

The board adopted regulation 12 AAC 14.130(c) with the intent of delegating approval authority to DCBPL under the incorrect understanding that such delegation was legal. Once the regulation passed, DCBPL's licensing examiner proceeded to review and approve permit applications. Misapplication of regulatory language resulted in apprentices being issued permits without the oversight of experienced board members.

We recommend the board approve apprentice permit applications in accordance with statutes.

## **A ANALYSIS OF PUBLIC NEED D**

The following analysis of the Board of Certified Direct-Entry Midwives (board) activities relate to the public need factors defined in AS 44.66.050(c). This analysis is not intended to be comprehensive but to address those areas we were able to cover within the scope of our review.

***Determine the extent to which the board, commission, or program has operated in the public interest.***

The board operated in the public's interest by licensing qualified individuals, modifying and adopting regulations to improve midwifery practices, and holding meetings as required by statutes.

From FY 10 through March 31, 2014, the board met at least twice per year as statutorily required. A quorum was established at all meetings, and all board vacancies were filled in a timely manner. A review of two board member applications found both members were appointed in compliance with statutory requirements.

The board further operated in the public's interest by reviewing peer review reports submitted by the Midwives Association of Alaska (MAA) to ensure that licensed certified direct-entry midwives (CDM) met peer review requirements. *Peer review* is a method used by the board to ensure that the quality of care provided by licensed CDMs meets midwifery care standards.

***Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.***

Board operations were impeded by high regulatory costs relative to the low number of licensees. This has been an ongoing challenge. In the 2006 sunset audit, the board operated in a deficit even though license fees were the highest of any profession at \$2,088 per license.

Exhibit 2 (following page) presents a schedule of board revenues and expenditures from FY 10 through March 31, 2014. The amounts were provided by Division of Corporations, Business and Professional Licensing (DCBPL) management and are unaudited. The information is provided for general informational purposes.

The exhibit shows that the board remained in a deficit position from FY 10 through March 31, 2014. During that time, expenditures increased approximately 270 percent. As of March 31, 2014, the board had an operating deficit of \$115,261. Expenditure increases were mainly due to regulatory and investigative activities.

**Exhibit 2**

**Board of Certified Direct-Entry Midwives  
Schedule of Revenues and Expenditures  
FY 10 through March 31, 2014  
(Unaudited)**

	<u>FY 10</u>	<u>FY 11</u>	<u>FY 12</u>	<u>FY 13</u>	<u>July 1, 2013 - March 31, 2014</u>
Licensing Revenue	\$ 3,080	\$ 43,695	\$ 5,290	\$ 51,545	\$ 2,970
Direct Expenditures					
Personal Services	16,488	22,654	34,945	53,564	27,433
Travel	5,028	4,090	8,520	4,793	3,035
Contractual	1,020	4,656	5,544	6,580	2,092
Supplies	64	-	-	24	12
Total Direct Expenditures	22,600	31,400	49,009	64,961	32,572
Indirect Expenditures*	2,585	2,700	3,459	3,946	2,959
Total Expenditures	25,185	34,100	52,468	68,907	35,531
Annual Surplus (Deficit)	(22,105)	9,595	(47,178)	(17,362)	(32,561)
Beginning Cumulative Surplus (Deficit)	(5,651)	(27,756)	(18,161)	(65,339)	(82,701)
Ending Cumulative Surplus (Deficit)	\$ (27,756)	\$ (18,161)	\$ (65,339)	\$ (82,701)	\$ (115,262)

Source: DCBPL management.

\*FY 14 indirect expenditures are estimated based on the prior fiscal year's amount.

Alaska Statute 08.01.065(c) states DCCED shall establish fees “so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation.” Exhibit 3 (following page) presents the board’s schedule of licensing fees from FY 10 through FY 14. The exhibit highlights that initial midwife certification and biennial renewal fees increased from \$500 during FY 10 to \$1,250 in FY 11. Fees increased again to \$1,450 in FY 13. However, fee increases were not adequate to cover the board’s regulatory costs. (See Recommendation No. 2.)

**Exhibit 3**

**Board of Certified Direct-Entry Midwives  
License Fees  
FY 10 through FY 14**

<b>Fee Type</b>	<b>FY 10</b>	<b>FY 11</b>	<b>FY 12</b>	<b>FY 13</b>	<b>FY 14</b>
Nonrefundable Midwife Application Fee	\$ 100	\$ 250	\$ 250	\$ 250	\$ 250
Midwife Initial Certification and Renewal Fee	500	1,250	1,250	1,450	1,450
Nonrefundable Apprentice Application Fee	50	125	125	125	125
Apprentice Permit and Renewal Fee	50	125	125	125	125

Source: DCBPL management

***Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.***

During the audit period, the board initiated a statutory revision project which resulted in Senate Bill (SB) 156 being introduced in February 2014. The bill increased qualified preceptor requirements, moved the codification of required practices from statutes to regulations, amended the definition of *practice of midwifery*, and removed cultural exemptions. The bill passed in April 2014.

***Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.***

From FY 10 through March 31, 2014, the board held nine regular meetings and three emergency teleconference meetings. All regular meetings were published at least 10 days in advance of the meeting date on the State’s Online Public Notice System and in the *Anchorage Daily News*. Additionally, all three teleconference meetings were published at least five days in advance of the meeting date. The board encouraged public participation by allotting time for public comment during all board meetings.

***Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.***

The board consistently published proposed regulation changes on the State’s Online Public Notice System and in the *Anchorage Daily News* at least 30 days before the adoption date as statutorily required. Furthermore, the board encouraged public participation by providing the opportunity to submit written comments on proposed regulatory changes.

***Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.***

No board-related complaints were filed with the State's Office of the Ombudsman, Office of Victims' Rights, Office of the Governor, or the Department of Commerce, Community, and Economic Development, Commissioner's Office from FY 10 through February 28, 2014.

Twenty-six complaints against board licensees, applicants, or unlicensed individuals were either open or opened by DCBPL from FY 10 through February 28, 2014. All but four of the complaints were either closed or open for a reasonable amount of time as of February 28, 2014. The audit found that, although investigations supported disciplinary sanctions, DCBPL investigative staff did not actively pursue sanctions to protect the public's safety in four cases. Instead of following standard operating procedure which calls for licensing sanctions through the attorney general's office and the Office of Administrative Hearings, DCBPL forwarded two of the cases to the Office of Special Prosecutions and Appeals (OSPA) for criminal proceedings. The two remaining cases were held pending the availability of resources at OSPA. At the time of the audit, the cases had remained at OSPA for a year without action. OSPA, with its limited resources, regards CDM cases as low priority because the alleged offenses were only Class B misdemeanors. (See Recommendation No. 1.) The board inquired regarding the status of the investigations and was told by DCBPL investigative staff that all four cases were at the Department of Law. The board was unaware that DCBPL staff had forwarded two of the four cases to OSPA.

***Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.***

As shown in Exhibit 4 (following page), from FY 10 through FY 13, the board issued 40 new licenses. Eleven of these were midwife licenses, and 29 were apprentice permits. As of March 31, 2014, there were 35 licensed CDMs and 13 apprentice midwives.<sup>3</sup>

CDM applicants may be licensed either through examination or based on professional credentials. Testing of two license applications and three license renewal applications concluded that the board reviewed and approved license and license renewal applications in accordance with statutes and regulations.

Licensed CDMs are subject to peer review per regulation 12 AAC 14.900. The board designated the MAA to review the quality of care provided by a CDM. During peer review, the MAA reviews birth summaries submitted by CDMs, and if considered necessary, birth charts are also reviewed. Our examination of peer review reports for three licensees showed that peer reviews were completed in accordance with statutes and regulations.

<sup>3</sup>The prior sunset audit reported 28 midwives and eight apprentices as of June 30, 2006. The count as of March 31, 2014, represents a 25 percent increase in licensed midwives and a 62 percent increase in permitted apprentices over approximately eight years.

**Exhibit 4**

**New Midwife Licenses and Apprentice Permits Issued  
FY10 through FY13**

<u>License Type</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>Total Issued FY10 – FY13</u>	<u>Total Licenses (as of March 31, 2014)</u>
Midwives	3	4	2	2	11	35
Apprentices	8	12	2	7	29	13
Totals	11	16	4	9	40	48

*Source:* BCDEM annual reports and DCBPL’s licensing database

To promote continued competency, all licensees are required to comply with continuing education requirements when renewing licenses. Ten percent of license renewals are subject to a continuing education audit each biennial licensing cycle. Two of two licensees’ continuing education certificates tested did not comply with centralized licensing regulations because they did not contain all of the required information. (See Recommendation No. 3.)

Examination of two apprentice permit applications showed that the permits were issued by the licensing examiner without the board’s approval. The board adopted regulation 12 AAC 14.130(c) with the intent of delegating authority to issue apprentice permits to the licensing examiner; however, statutes do not authorize the licensing examiner to issue permits. (See Recommendation No. 4.)

***Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.***

From FY 10 through February 28, 2014, no board-related complaints were filed with the Alaska State Commission for Human Rights, the United States Equal Employment Opportunity Commission, or the Department of Administration’s Division of Personnel and Labor Relations.

***Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.***

Recommendation No. 1 discusses DCBPL’s need to improve investigative case management procedures and oversight to ensure DCBPL provides adequate investigative support to the board. Furthermore, as identified in a prior special audit,<sup>4</sup> case confidentiality in DCBPL’s

<sup>4</sup>*Department of Commerce, Community and Economic Development; Division of Corporations, Business, and Professional Licensing; Select Occupational Licensing and Enforcement Issues, June 29, 2011, Audit Control Number 08-30063-11*

investigation database is weak. Though investigators are discouraged from viewing cases to which they are not assigned, they have view and change capabilities to all electronic investigative files. Per DCBPL's director, the need to reassign cases among investigators is essential for managing investigative work loads, and therefore, DCBPL has chosen to assume the related risk.

Additionally, Recommendation Nos. 2 through 4 address changes needed to improve the board's operational activities to better serve the public.

***Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.***

The board identifies goals and objectives each year in its annual report. The board established three general goals: carry out the board's assigned duties; work toward keeping license fees low to promote entry into the profession; and identify future projects such as needed regulatory and statutory changes. Review of board meeting minutes, annual reports, and inquiries with board members and DCBPL staff indicate that the board actively worked towards accomplishing its planned goals and objectives. Significant accomplishments related to the board's goals include:

- Successfully recommended statutory updates that were enacted through the passage of SB 156 in April 2014;
- Modified and adopted regulations that reflect current practice and safety protocols for the midwifery profession;
- Approved additional courses of study for providers to ensure that educational courses to promote competency in the midwifery profession are available for licensees; and
- Revised peer review processes which include improvements to peer review reports and the creation of new forms for providing summaries of the peer reviews conducted on CDMs. The peer review committee uses the forms to ensure an acceptable level of care and safety is being met by licensed CDMs.

***Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.***

The board does not duplicate the activities of another governmental or private sector agency as it is the only entity responsible for licensing, regulating, and disciplining midwives in the State.

The board mainly interacts with the North American Registry of Midwives (NARM) and the MAA. *NARM* is a national organization which has a role in the board's licensing process as

new license applicants are required to pass the exam administered and graded by NARM. The MAA performs peer reviews, provides certification opportunities<sup>5</sup> for applicants to meet licensing requirements, and offers classes to meet continuing education requirements for license renewal. The board does not duplicate NARM and the MAA's efforts. Licensees are not required to be members of either organization.

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<sup>5</sup>The MAA provides certification in intravenous therapy treatment for Group B Streptococci, intravenous therapy, and neonatal resuscitation as required by 12 AAC 14.400(4) for CDMs renewing their license.

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THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Commerce, Community,  
and Economic Development

OFFICE OF THE COMMISSIONER

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August 26, 2014

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AUG 26 2014

LEGISLATIVE AUDIT

Ms. Kris Curtis, CPA, CISA  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

Re: Preliminary Audit Report, Department of Commerce, Community, and Economic Development, Board of Certified Direct-Entry Midwives, June 30, 2014, Audit Control Number 08-20089-14

Dear Ms. Curtis,

Thank you for the opportunity to respond to the auditor's conclusions and recommendations regarding the sunset review of the Board of Certified Direct-Entry Midwives (board). The department concurs that the board serves the public's interest and supports extending the termination date to June 30, 2017. Our comments on the auditor's recommendations are provided below.

Recommendation No.1

The Department of Commerce, Community, and Economic Development's (DCCED) commissioner should take immediate action to pursue disciplinary sanctions for certified direct-entry midwives (CDM) cases when warranted.

The department concurs with this recommendation. The director of the Division of Corporations, Business and Professional Licensing (DCBPL) will take action to ensure compliance that investigators comply with standard procedures. DCBPL has begun working with the Department of Law to pursue civil licensing action on the four cases noted by the auditor in accordance with division policy.

Recommendation No. 2

DCBPL, in consultation with the board, should increase licensing fees to eliminate the board's operating deficit.

The department concurs with this recommendation. DCBPL, with agreement from the board, increased the fee for midwife license. With the board's concurrence, DCBPL intends

to increase the apprentice midwife license fee the next time a fee change regulation is noticed. DCBPL will continue to partner with the board to reduce the operating deficit.

Recommendation No. 3

The board should communicate certificate requirements to continuing education providers to facilitate compliance with centralized licensing regulations.

Although this audit recommendation is directed to the board, DCBPL is committed to protecting consumers will work with the board to improve operational activities.

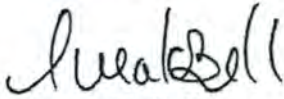
Recommendation No. 4

The board should approve apprentice permit applications in accordance with statues.

Although this audit recommendation is directed to the board, DCBPL is committed to protecting consumers will work with the board to improve operational activities.

Again, thank you for the opportunity to respond to the audit report conclusions and recommendations. If you have any additional questions, please contact me at 465-2500.

Regards,



Susan K. Bell  
Commissioner

Cc: Sara Chambers, Director, Division of Corporations, Business, and Professional Licensing  
Jeanne Mungle, Director, Division of Administrative Services

Cheryl Corrick  
P.O. Box 81573  
Fairbanks, AK 99708

Kris Curtis, CPA, CISA  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

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LEGISLATIVE AUDIT

Dear Ms. Curtis,

Thank you for the opportunity to respond to your audit findings. I will attempt to answer the Findings and Recommendations point by point.

**Recommendation No. 1:**

I concur with this recommendation. The Board has been concerned with the time and expense of investigations and has expressed those concerns to the Investigators on numerous occasions since I have been on the Board. The Board is also concerned with the potential issue of public safety, although very few details have been made available to the Board since I have been a part of the Board, therefore we really don't have any knowledge as to whether or not there are ongoing public safety issues. The time spent on investigations has been frustrating to the Board and the cost to the profession is more than it should be due to this problem. It is my understanding that the current Chief Investigator has been taking steps to expedite these investigations and reduce cost to the Board and he has taken the time to attend Board meetings and explain this to the Board.

**Recommendation No. 2:**

I concur with this recommendation, with reservations. The Board has requested that, in addition to the proposed increases in licensing fees for CDMs, the Division also increase apprentice licensing fees to 50% of CDM fees. The Board sees this as a potential way to help meet the shortfall. So far, the Board's request has been denied over the past two years. At this point, the deficit has been allowed to grow to the point that it would not be possible to make up the shortfall within one or two licensing periods. If the Division were to try to raise licensing fees to cover the shortfall too quickly, the licensing fees would be prohibitive for many CDMs and they would not re-license, leaving too few licensees to cover the shortfall and the deficit would remain. I concur that DCBPL, in consultation with the Board, should increase licensing fees with a plan to eliminate the Board's operating deficit over a period of time.

**Recommendation No. 3:**

I concur with this recommendation. The Board has already taken steps to notify the continuing education providers of the certificate requirements and the Board will not accept incomplete certificates in the future. It was the Board's understanding that all of the providers were aware of the certificate requirements prior to the receipt of incomplete certificates and the Board did not want to penalize the licensees at the time of the audit. The Board is now aware of the problem and has taken steps to resolve it.

Recommendation No. 4:

I concur with this recommendation. The Board now understands that the regulation intending to delegate approval authority to the division was not legal. This Board action was recommended by the licensing examiner and was passed with approval from Legal, which is the standard by which all regulations projects are approved. In the future the Board will approve all apprentice permit applications in accordance with statutes.

In conclusion, I would like to say that my largest concern from the audit findings is that of cost. We are one of the smallest professions with one of the highest licensing fees. The Board is trying to find ways to cut cost, including meeting in the area where the largest number of Board members reside in order to save costs for board meetings; working on a disciplinary matrix to help investigations with time and cost considerations; and researching the possibility of a legal defense fund to help smaller professions with the cost of investigations. We have also combined regulatory projects and are putting others on hold.

Although I agree with the need to review the progress of this board, particularly regarding the investigative process, I am concerned with the time and cost of another Audit in such a short period of time.

Again, I appreciate the opportunity to respond to the Audit findings. The Audit team were a pleasure to work with and were very clear about their expectations and findings as well as answering any questions I had.

Sincerely,



Cheryl Corrick, CDM, CPM  
CDM Board Chair