



COLORADO

Department of Health Care
Policy & Financing

Department of Health Care Policy and Financing
1570 Grant Street, Denver, CO 80203

September 26, 2016

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Richard Allen
Associate Regional Administrator, Department of Health and Human Services
Centers for Medicare and Medicaid Services
1961 Stout Street, Room 08-148
Denver, CO 80294

Re: CMS On-Site Review of the Colorado Pueblo Regional Center
CO-Pueblo Regional Center (CO 0007.R07.00) (LJ)

Dear Messrs. Nardone and Allen:

This letter is in response to the Centers for Medicare & Medicaid Services ("CMS") On-Site Review of the Colorado Pueblo Regional Center Waiver Program, CO 0007, including the request for a Corrective Action Plan, dated August 17, 2016 ("the Report"). The Pueblo Regional Center ("PRC") provides waiver services to adults in Colorado who have intellectual or developmental disabilities. We take seriously our role as the single state agency that oversees the care of these residents: their health, welfare and safety are our top priority.

The Department of Health Care Policy and Financing ("HCPF") appreciates your review and has taken swift action to address most of the findings in the Report. Enclosed please find a Corrective Action Plan ("CAP") that sets forth the efforts over the last 18 months that HCPF, along with the Colorado Department of Human Services ("CDHS") and the Colorado Department of Public Health and Environment ("CDPHE"), have undertaken. The CAP also sets forth a plan for future activity.

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HCPF respectfully disagrees with several of CMS's conclusions and recommendations for corrective action. The attached documents demonstrate HCPF came into compliance with most of the findings cited in the Report before November 2015, and we request that CMS reconsider the imposition of a disallowance.

Additionally, several of the findings are factually or legally questionable and should not be used as the basis for any recommended corrective action. Where possible, we have explained when questionable findings exist. We reserve the right to amend the attached CAP and any other portion of this response as we work through this process. We intend to collaborate with CMS to resolve any outstanding issues in the coming weeks. To the extent that we are unable to resolve all remaining disagreements, HCPF will appeal several of CMS's findings and recommended remedial actions. To be clear, by submitting this letter and CAP, HCPF does not, expressly or by implication, waive any procedural appeal rights, including those set forth at 42 C.F.R. Part 430, Subpart D. We hope to avoid such action.

Report and Specific Findings

A substantial majority of the incidents and issues identified in the Report occurred over the 18 months *prior* to CMS's site visit. Since March 2015, HCPF, CDHS, and CDHPE have implemented multiple procedural and other changes that address most of the findings listed in the Report and ensure compliance with Waiver requirements. In addition, HCPF has increased oversight activities to include monthly on-site PRC visits, on-site visits to the Community Centered Board working with PRC, and HCPF has conducted additional on-site surveys through our contract with CDPHE.

Considering all of this progress, HCPF respectfully disagrees with the disallowance period CMS identified in the Report. HCPF requests that CMS adjust the period or the amount of the disallowance – if any – to reflect the completed actions.

In addition, we believe that CMS should amend the following findings and recommendations:

1. Procure an Independent Monitor of PRC Reporting to HCPF and CMS

HCPF is willing to hire an independent monitor to oversee implementation of the CAP and has taken steps to identify an appropriate person to assume that



role. HCPF would like to discuss the scope and duration of that position, however, before finalizing an agreement regarding the independent monitor.

2. PRC Staffing Plan

HCPF has approved and attached a more complete and thorough staffing plan including commitments to staffing improvements by CDHS in five domains, containing dozens of specific actions. HCPF asks that CMS consider this plan as an alternative to its turnover rate requirement. CMS does not cite regulatory or other support for the specific requirement that PRC achieve a 20% turnover rate. In the event that CMS does not find this alternative acceptable, HCPF will explore its options to appeal.

3. Implementation of Regional Center Task Force Report

The Regional Center Task Force Report contains important recommendations for how to improve Colorado's treatment of those with intellectual and developmental disabilities. An Operations Team, which includes key staff from each of the three departments (HCPF, CDHS and CDPHE) has been established to determine which of the Task Force recommendations we can implement, how we can implement them, and appropriate time lines for implementation.

Incorporating the Regional Center Task Force recommendations into the CAP, however, are simply not feasible. Many of the goals contained in the Task Force Report are not specific or concrete enough to include in the CAP. Some will require additional appropriations and extensive work within the state agencies to determine how to implement them. Including them in the CAP will render the CAP unwieldy and amorphous. Moreover, they are goals aimed at improving state policy, not complying with federal law. HCPF requests that CMS remove this provision from the required elements of the CAP.

4. Admissions Moratorium

In addition to the corrective actions listed above and in the CAP, the PRC has instituted a voluntary moratorium on admissions pending the outcome of this process. HCPF does not believe that, given the corrective actions already



implemented and its demonstrated commitment to correct all deficiencies at PRC, an admissions moratorium is an appropriate remedial action. Furthermore, HCPF believes that this remedial measure is not supported by the federal regulations.

HCPF has taken, and will continue to take, all actions necessary to ensure the health, safety and welfare of the individuals PRC serves. We look forward to cooperating with you in this endeavor. Thank you in advance for your cooperation in this process. Should you have any questions please contact our Legal Director Paul Ritzma at (303) 866-3026 or via email at Paul.Ritzma@state.co.us.

Sincerely,



Gretchen M. Hammer
Medicaid Director

Enclosures

cc: Ralph Lollar, CMS
George Faila, CMS
Ondrea Richardson, CMS
Kathy Poisal, CMS
Jay Maitri, CMS
Barbara Ramsey, HCPF
Jed Ziegenhagen, HCPF
Paul Ritzma, HCPF

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- In process: action being taken to correct finding.

SECTION 1: Completed by CMS

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State	
Precipitating Cause or Event	
Waivers covered by CAP	Name (s), control number (s), population(s) served
CAP to Address	
Assurance(s)	
Date of CMS request	Date written notice sent to state
Regulation/statute/policy	Specify
Other	Specify
SECTION 2: Completed by CMS – subsequent to kick off meeting	
Goal Statement	<p>Specify goal of CAP (compare “what is” with “what should be”) – for example:</p> <ul style="list-style-type: none"> • Develop and implement waiver program monitoring processes across multiple waivers • Develop, implement and manage a system to track remediation actions across all waivers • Develop and implement a process to ensure Freedom of Choice is offered to all Aged waiver participants
CAP Conclusion Statement	Specify circumstance to describe when CAP will be deemed complete
SECTION 3: Completed by State and Approved by CMS	

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<p>Objective #1: Appendix G-1-b: Response to Critical Events or Incidents</p>	<p><u>Finding 1:</u> The PRC failed to report incidents in which a crime may have been committed to Law Enforcement and suspected incidents of abuse and neglect to county departments of social services adult protection according to the process in the approved waiver.</p> <p><u>Finding 2:</u> The PRC failed to report critical incidents to the designated Community Centered Board.</p> <p><u>Finding 3:</u> Colorado Bluesky failed to report critical incidents to the HCPF.</p> <p><u>Finding 4:</u> The Department of Health Care Policy and Financing failed to ensure that the critical incidents at PRC were reported in accordance with Appendix G-1-b of the approved waiver application.</p> <p><u>Finding 5:</u> There is a gap in the states critical incident reporting system, as HCPF relies on the CIRS in a web-based system and the CDPHE to be informed of incidents, but there is no monitoring or oversight by HCPF staff to ensure all incidents are being reported according to the approved waiver.</p>						
<p>Action Steps</p> <p><u>Finding 1:</u> On May 28 and 29, 2015, HCPF conducted on-site monitoring and met with the PRC administration to provide direction on the requirements for reporting incidents to law enforcement and Adult Protective Services. The on-site review encompassed a review of the 10 allegations of MANE identified during the March 2015 body audits to ensure each incident was reported to law</p>	<p>Milestones</p>	<p>Deliverables</p>	<p>Target Date</p>	<p>Responsible Entity</p>	<p>Status Updates</p>	<p>Date Completed</p>	<p>CMS Only</p>
<p><u>Finding 1:</u> On May 28 and 29, 2015, HCPF conducted on-site monitoring and met with the PRC administration to provide direction on the requirements for reporting incidents to law enforcement and Adult Protective Services. The on-site review encompassed a review of the 10 allegations of MANE identified during the March 2015 body audits to ensure each incident was reported to law</p>	<p>N/A</p>	<p>Appendix B</p>	<p>N/A</p>	<p>HCPF</p>	<p>Addressed</p>	<p>May 28 and 29, 2015</p>	

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<p>enforcement and Adult Protective Services. HCPF completes on-going reviews of incidents at the PRC to ensure compliance with reporting to law enforcement and Adult Protective Services. The on-going monitoring has not resulted in a finding of deficient practice.</p>						<p style="text-align: center;">On-going</p>	
<p>CDHS identified 18 personnel responsible for failure to report to law enforcement and Adult Protective Services and took corrective action up to and including termination. All 18 personnel identified were suspended from duty April 2015 and did not have contact with residents at PRC until final action was determined and taken. The final action taken may be found in the table in Appendix G.</p>	<p style="text-align: center;">N/A</p>	<p style="text-align: center;">Appendix G</p>	<p style="text-align: center;">N/A</p>	<p style="text-align: center;">CDHS</p>	<p style="text-align: center;">Addressed</p>	<p style="text-align: center;">April 2015- October 2015</p>	
<p>CDHS enhanced the process for internal monitoring of reporting incidents of MANE, including separating Quality Assurance personnel from PRC administration authority. Quality Assurance personnel now report to the Division of Regional Center Operations Director.</p>	<p style="text-align: center;">N/A</p>	<p style="text-align: center;">Appendix G</p>	<p style="text-align: center;">N/A</p>	<p style="text-align: center;">CDHS</p>	<p style="text-align: center;">Addressed</p>	<p style="text-align: center;">October 2015</p>	

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<p>The processes below were implemented by April 2015, after which CDHS ensured that all allegations of crimes or MANE were reported to law enforcement and Adult Protective Services as required.</p> <p>Among the changes CDHS has implemented since April 2015 are:</p> <ul style="list-style-type: none"> • Reports to law enforcement are made to dispatch and not directly to one person at the Sheriff's office as had been the previous practice. 	<p>N/A</p>	<p>Appendix G</p>	<p>N/A</p>	<p>CDHS</p>	<p>Addressed</p>	<p>April 2015</p>
<ul style="list-style-type: none"> • An electronic incident report management system that automatically notifies key PRC staff and CDHS Executive Management up to and including the Executive Director of serious incidents, providing greater awareness of serious incidents and ensuring improved follow-up. CDHS established a Quality Assurance unit in the Office of Performance and Strategic Outcomes which will independently review compliance with regulations and other requirements of all direct care facilities, including the three Regional Centers. 	<p>N/A</p>	<p>Appendix J</p>	<p>N/A</p>	<p>CDHS</p>	<p>Addressed</p>	<p>April 29, 2016</p>

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<p><u>Finding 2:</u> On May 28 and 29, 2015 HCPF conducted on-site monitoring and met with the PRC to advise the PRC administration about the requirements for reporting critical incidents to Colorado Bluesky.</p> <p>HCPF completes on-going reviews of incidents at the PRC to ensure compliance with reporting requirements to Colorado Bluesky. The on-going monitoring has not resulted in a finding deficient practice since April 2015.</p>	N/A	Appendix B	N/A	HCPF	Addressed	May 28 and 29, 2015 On-going
<p>Since April 2015 PRC has reported all incident reports including allegations of MANE are reported to Colorado Bluesky as required.</p>	N/A	N/A	N/A	CDHS	Addressed	April 2015
<p><u>Finding 3:</u> On May 28 and 29, 2015 HCPF conducted an on-site meeting with Colorado Bluesky case management staff and provided direction on the requirements for critical incident reporting.</p> <p>HCPF completes on-going reviews of critical incidents reporting by Colorado</p>	N/A	Appendix C	N/A	HCPF	Addressed On-going	May 28 and 29, 2015

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Bluesky to ensure compliance with reporting requirements. The on-going monitoring has not resulted in a finding of deficient practice since April 2015.									
<u>Finding 4:</u> On May 28, 2015 HCPF conducted an on-site meeting with the PRC and Colorado Bluesky to provide direction on the requirements for reporting critical incidents. This joint meeting was to address concerns that neither agency understood Colorado Bluesky's role in the reporting and monitoring of critical incidents at PRC.	N/A	Appendix C	N/A	HCPF	Addressed	May 28, 2015			
<u>Finding 5:</u> HCPF receives all PRC occurrence reports from CDPHE to reconcile with critical incidents reported by Colorado Bluesky to HCPF.	N/A	N/A	N/A	HCPF/C DPHE	Addressed	January 2016			
The analysis at CBE and PRC will contribute to HCPF's statewide analysis of critical event or incident procedures.	N/A	N/A	September 2017	HCPF	In process	January 2016 and on-going			

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<p>Objective #2: Appendix G-1-c: Participant Training and Education</p>	<p><u>Findings:</u> The information that is provided to waiver recipients and/or guardians is insufficient to assist waiver participant and guardians to recognize signs of mistreatment, abuse, neglect and exploitation, and report mistreatment, abuse, neglect and exploitation.</p> <p>When CMS interviewed guardians of residents of PRC, guardians informed CMS that they have never witnessed restraints, never witnessed critical incidents and have only recently been informed of one or two incidents which have occurred. This information is inconsistent with information that both PRC and Colorado Bluesky provided to CMS which indicates that several hundred critical incidents have occurred at PRC just since January 1, 2016.</p>							
	<p>Action Steps</p> <p><u>Finding 1:</u> Per the September 7, 2016 response letter from CMS, CMS stated that the total number of incidents provided to CMS by the CDHS/PRC quality assurance team was not exclusive to those that would be considered as critical incidents as defined in Appendix G-1-b of the HCBS waiver.</p> <p>321 incidents were reported by PRC between January 1, 2016-March 21, 2016. HCPF staff reviewed all of these and has determined that incidents that met the criteria for critical incident reporting were reported as required.</p> <p>HCPF completes on-going reviews of incidents at the PRC to ensure</p>	<p>Milestones</p> <p>N/A</p>	<p>Deliverables</p> <p>Appendix B</p>	<p>Target Date</p> <p>N/A</p>	<p>Responsible Entity</p> <p>HCPF</p>	<p>Status Updates</p> <p>Incomplete or incorrect information</p>	<p>Date Completed</p> <p>N/A</p>	<p>CMS Only</p>

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<p>compliance with reporting to law enforcement and Adult Protective Services. The on-going monitoring has not resulted in a finding of deficient practice since April 2015.</p>							
<p>On January 20, 2016 HCPF conducted an on-site meeting with Colorado Bluesky case management staff to provide direction on the waiver requirements to provide information to participants/guardians/families regarding MANE</p> <p>Colorado Bluesky fully implemented new procedures for providing participants/guardians/families information on MANE on April 13, 2016.</p>	<p>N/A</p>	<p>Appendix C and D</p>	<p>N/A</p>	<p>HCPF</p>	<p>Complete</p>	<p>April 13, 2016</p>	

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<p>Objective #3: Appendix G-1 - d: Response to Critical Events or Incidents- Responsibility for Review of and Response to Critical Events or Incidents</p>	<p><u>Finding 1:</u> PRC and Colorado Bluesky did not follow the process described in the approved waiver application to report and investigate incidents. Currently, PRC is investigating all incidents of abuse, neglect and exploitation and Colorado Bluesky is only receiving a summary document.</p> <p><u>Finding 2:</u> Colorado Bluesky did not and does not now investigate the allegations of mistreatment, abuse, neglect and exploitation at PRC in accordance with the approved waiver application. As described above, Colorado Bluesky is the case management agency (CMA) and the local community centered board (CCB) for PRC and in accordance with the waiver should be conducting investigations of, "all allegations of mistreatment, abuse, neglect and exploitation". During the CMS interview of PRC staff, Colorado Bluesky indicated that PRC has prevented them from investigating and obtaining full information about investigations because state staff are involved and state staff have a right to privacy.</p> <p><u>Finding 3:</u> The HCPF failed to ensure, and continues to fail to ensure, that the critical incidents at PRC are investigated according to Appendix G-1-d of the approved waiver application. During the CMS on-site review CMS determined that PRC is still completing their own investigations of incidents and the HCPF has not taken action to correct this non-compliance.</p>						
<p>Action Steps</p> <p><u>Finding 1:</u> On May 28 and 29, 2015 HCPF conducted an on-site monitoring and met with the PRC and Colorado Bluesky to provide direction on the requirements for reporting critical incidents. This joint meeting was to address concerns that neither agency understood Colorado Bluesky's role in the reporting and monitoring of critical incidents at PRC.</p>	<p>Milestones</p> <p>N/A</p>	<p>Deliverables</p> <p>Appendix C</p>	<p>Target Date</p> <p>N/A</p>	<p>Responsible Entity</p> <p>HCPF</p>	<p>Status Updates</p> <p>Addressed</p>	<p>Date Completed</p> <p>May 28 and 29, 2015</p>	<p>CMS Only</p>

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<p>Since April 2015 PRC has reported all critical incidents are reported per requirements.</p> <p>The approved waiver application does not limit or prevent CDHS from conducting internal investigations or quality assurance activities. Internal investigations are completed by DRCO level staff not PRC staff. This practice does not supersede the requirements for Colorado Bluesky to conduct MANE investigations.</p>							
<p><u>Findings 1 and 2</u>: The PRC is providing full investigation reports to Colorado Bluesky.</p>	N/A	Appendix E	N/A	HCPF	Addressed	August 28, 2016	
<p><u>Findings 1, 2 and 3</u>: HCPF required that Colorado Bluesky conduct MANE investigations at the PRC.</p> <p>HCPF will complete on-going reviews of incidents of MANE at the PRC to ensure Colorado Bluesky's compliance with investigation requirements.</p>	N/A	N/A	N/A	HCPF	Addressed	September 21, 2016	

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<p>Objective #4: Appendix G-1-d- Monitoring-Community Centered Boards (CCB) and Program Approved Service Agencies (PASA).</p>	<p><u>Finding 2:</u> The HCPF did not and does not now investigate incidents according to the approved process in the approved waiver application. During the CMS review of PRC, there was no indication that the HCPF conducted any investigation of incidents at PRC, even though there have been numerous incidents and the PRC has a history of not reporting or responding to incidents according to the approved waiver.</p>						
Action Steps	Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only
<p><u>Finding 2:</u> Appendix G-1-d states that “When necessary the Department may conduct an investigation or on-site review to ensure thorough completion of follow-up by the CCB or PASA”.</p> <p>HCPF conducts on-site reviews of all MANE critical incidents at PRC since April 2015 to make a determination regarding department level investigation in compliance with waiver requirements.</p> <p>HCPF reviews each investigation, outcome and follow-up action taken for compliance with waiver requirements. HCPF provides direction when a change in practice or policy is needed to come into compliance with waiver requirements. HCPF monitors on-going to ensure implementation.</p>	<p>N/A</p>	<p>Appendix B and C</p>	<p>N/A</p>	<p>HCPF</p>	<p>Incomplete or incorrect information</p>	<p>May 2015</p>	

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<p>Objective #5: Standard: Appendix G-1-d Notification of Outcomes of Investigations</p>	<p>Finding 1: Individuals and guardians were not kept advised of the progress of the investigations, and no assistance was provided by HCPF, CDPHE or CDHS to put victim supports into place.</p>						
Action Steps	Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only
<p>HCPF required PRC to assess individuals for the need for victim support after being notified of the body audits. PRC completed assessments to determine the need for victim support. CBE contacted individuals and families to inform them of available victim assistance and support. Guardians were kept apprised through notification letters and meetings.</p> <p>CDHS took comprehensive and deliberate actions to keep parents/guardians informed of investigations and other programmatic leadership, policy and procedural changes made at PRC following the March 2015 intervention. This included:</p> <ul style="list-style-type: none"> • Establishing a full-time, temporary social worker position to be the point of contact for all parents/guardians. • Sending multiple mailings to keep guardians informed. • Establishing regular face to face parent/guardian meetings at the PRC. 	<p>N/A</p>	<p>Appendix N</p>	<p>N/A</p>	<p>HCPF/ CDHS</p>	<p>Incomplete or incorrect information</p>	<p>June 24, 2015</p>	

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<ul style="list-style-type: none"> • Notifying each parent/guardian of all actions taken and results of any internal MANE investigations involving residents. • When residents or guardians expressed concerns about the impact of the body audits, Dr. Patrick Fox, Chief Medical Officer for CDHS and Board-certified Forensic Psychiatrist met with individual residents at PRC and reviewed their PRC records to assess whether residents required treatment or victim supports. <p>Since December 2015 CDHS conducts monthly parent/guardian/advocate meetings that includes the Division of Regional Center Operations, the Office of Community Access and Independence Director and other relevant PRC leadership and staff.</p> <p>CDPHE, as the survey and certification agency, does not provide victim supports directly.</p>	N/A	N/A	NA	CDHS	Complete	September 26, 2016
<p>CDHS implemented new procedures for Quality Assurance staff to notify guardians of investigation outcomes at PRC. PRC provides guardians written copies of incident reports.</p>	N/A	N/A	N/A			

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<p>Objective #6: Appendix G-1-e: Responsibility for Oversight of Critical Incidents and Events</p>	<p><u>Finding 1:</u> Health Care Policy and Financing has not provided adequate oversight of the critical incidents or events that occurred at PRC. Health Care Policy and Financing did not identify the trend of problematic practices or provide follow-up for the incidents that occurred at PRC. This largely occurred because of the lack of PRC reporting these incidents to Colorado Bluesky and continues due to the insufficient documentation submitted in the summary reports. CMS further notes that the number of incidents reported by PRC staff is significantly higher than the number of incidents Colorado Bluesky reports receiving.</p> <p><u>Finding 2:</u> Health Care Policy and Financing's on-site regulatory survey of incident management practices at PRC and Colorado Bluesky failed to identify the lack of appropriate reporting of PRC incidents according to the process in the approved waiver.</p>														
<p>Action Steps</p> <p><u>Finding 1:</u> HCPF reviews each critical incident at the PRC since April 2015. HCPF reviews each investigation, outcome and follow-up action taken for compliance with waiver requirements. HCPF identified a number of issues and trends from regular review of both critical and non-critical incidents. All issues were addressed as follows:</p> <p>HCPF provides direction to PRC when a change in policy or practice is needed to come into compliance with the waiver requirements and completes on-going monitoring to ensure implementation.</p>	<table border="1"> <thead> <tr> <th data-bbox="694 1243 758 1388">Milestones</th> <th data-bbox="694 1064 758 1243">Deliverables</th> <th data-bbox="694 940 758 1064">Target Date</th> <th data-bbox="694 795 758 940">Responsible Entity</th> <th data-bbox="694 616 758 795">Status Updates</th> <th data-bbox="694 436 758 616">Date Completed</th> <th data-bbox="694 340 758 436">CMS Only</th> </tr> </thead> <tbody> <tr> <td data-bbox="758 1243 885 1388">N/A</td> <td data-bbox="758 1064 885 1243">Appendix B</td> <td data-bbox="758 940 885 1064">N/A</td> <td data-bbox="758 795 885 940">HCPF</td> <td data-bbox="758 616 885 795">Addressed</td> <td data-bbox="758 436 885 616">May 2015</td> <td data-bbox="758 340 885 436"></td> </tr> </tbody> </table>	Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only	N/A	Appendix B	N/A	HCPF	Addressed	May 2015	
Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only									
N/A	Appendix B	N/A	HCPF	Addressed	May 2015										

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<p>CDHS implemented an electronic incident report management system that automatically notifies key PRC staff and CDHS Executive Management up to an including the Executive Director of serious incidents. This provides CDHS broad visibility to serious incidents and ensures improved follow-up.</p>	N/A	Appendix J	N/A	CDHS	Addressed	April 29, 2016
<p>The PRC provides a copy of every incident report to Colorado Bluesky. Critical incidents as defined by HCPF to be reported by Colorado Bluesky to HCPF represent approximately 13% of all incident reports generated by the PRC.</p>	N/A	Appendix B	N/A	HCPF/ CDHS	Addressed	May 28 and 29, 2015
<p>CDHS believes that the increased incident reports and the proper disposition of these reports is a strong indication that the interventions taken in Spring 2015 and the subsequent program interventions are effective. Staff and residents are reporting concerns in greater number, which is an indicator that people feel increasingly comfortable identifying and reporting concerns. They have greater confidence that concerns/incidents will be properly addressed and that improvements to PRC will be made as a result.</p>	N/A	N/A	N/A	CDHS	N/A	N/A

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<p><u>Finding 1:</u> HCPF required that Colorado Bluesky conduct MANE investigations at the PRC.</p> <p>HCPF will complete on-going reviews of incidents of MANE at the PRC to ensure Colorado Bluesky's compliance with investigation requirements.</p>	N/A	N/A	N/A	HCPF	Addressed	September 21, 2016	
<p><u>Finding 2:</u> HCPF developed and implemented an on-site performance and quality review of Case Management Agencies for compliance with waiver, statutory, regulatory and contract requirements. HCPF conducted an on-site performance and quality review at Colorado Bluesky the week of August 22, 2016.</p> <p>HCPF is compiling the audit findings and based on preliminary review anticipates a plan of correction will be issued to Colorado Bluesky.</p> <p>HCPF will employ contract provisions with Colorado Bluesky to ensure Colorado Bluesky implements action to correct areas of deficient practice.</p>	N/A	Appendix F	N/A	HCPF	Addressed	August 22, 2016	

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Objective #7: Appendix G-2- a-i:
Safeguards Concerning Restraints and
Restrictive Interventions.

Finding 1: PRC's use of restraints is not in compliance with the approved waiver. The approved waiver application specifies that "restraints may only be used in an emergency, after alternative procedures have been attempted and failed". During the CMS site visit, CMS observed an individual being placed in a two-person physical restraint. CMS did not observe the staff using any "alternative procedures" prior to using the physical restraint. In addition, as reported by guardians, restraints are never used when family and guardians are present, possibly indicating that staff are aware of and use alternative procedures when these individuals are present.

Finding 2: PRC use of restraints may negatively influence residents' ability to move to less restrictive environments. During a guardian interview with CMS, the guardian voiced concerns about a failed transition from the person she is guardian for to a private provider. She indicated that from her perspective, a major cause of this failure was because the person that she is guardian for did not learn appropriate coping skills while at PRC. When she had a behavior problem, she was used to being placed in a physical restraint and had learned no other coping mechanisms; because private providers do not use restraints she was returned to PRC.

Finding 3: Based on the CMS review of documentation and our observations, it appears that some PRC staff are engaging in unreasonable restraints of PRC residents. For instance, the same resident that was involved in the two-person restraint described above, had a baseball size circular wound in his middle or lower back. When CMS inquired about the wound, PRC staff indicated that it was a burn, the individual "did it to himself", but after further questions staff admitted that the wound was a rug burn that occurred during a physical restraint. PRC Quality Assurance staff were unaware of the serious nature of the injury stating the nurse said it was healed or was better. PRC did not investigate the use of this forceful physical restraint. There also did not appear to be any evidence that the wound was consistent or inconsistent with the staff account of the injury.

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	<p>In addition, the restraint CMS witnessed included the use of a "body blocker". PRC staff pushed the blocker underneath the resident's head, by forcing his head up off the table. The blocker was very large and hard, and PRC Quality Assurance staff told CMS that the blocker was not intended to be used on clients, instead it was to be used by staff to block aggression by clients.</p> <p><u>Finding 4:</u> Colorado Bluesky is not monitoring the use of safety control and emergency control procedures in accordance with the approved process in the waiver. When CMS interviewed Colorado Bluesky, staff responsible for reviewing and following up on incidents, indicated that they did not know when an individual at PRC has an approved safety control procedure vs. when PRC was using an Emergency Control procedure. This lack of knowledge prevents the state's critical incident safeguards from being implemented appropriately and also indicates that the staff are unaware of critical information that should be documented in the service plan.</p>						
Action Steps	Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only
<p><u>Finding 1 and 2:</u> HCPF identified this issue through on-site monitoring visits starting November 2015 and provided technical assistance to PRC administrative staff on the requirements of the use of restraints.</p> <p>HCPF is monitoring the use of restraints at PRC and continues to provide direction for the requirements for the use of restraints.</p>	N/A	Appendix B	N/A	HCPF	Addressed	November 2015-August 2016	
<p><u>Finding 1 and 2:</u> The CDPHE cited use of restraints as a deficiency in the March</p>	N/A	N/A	N/A	HCPF/CD PHE	Addressed	On-going	March 2016-

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<p>2016 on-site licensure and recertification survey.</p> <p>CDPHE accepted PRC's plan of correction for the deficiency and cited again as a deficiency in the August 2016 follow-up licensure and recertification survey.</p> <p>HCPF is monitoring the use of restraints at PRC to ensure compliance with the plan of correction.</p>					<p>August 2016</p> <p>On-going</p>	
<p>CDHS monitors the use of physical restraints monthly through C-Stat (performance management system that examines key data points of organizational performance that involves CDHS executive management and the OCAI entire office leadership).</p> <p>PRC is piloting two homes as restraint free, increasing staff knowledge and use of verbal de-escalation rather than physical restraint.</p> <p>CDHS is developing a strategic plan for quality and compliance that will include evaluation of training provided to PRC staff.</p>	<p>N/A</p>	<p>Appendix M</p>	<p>N/A</p>	<p>HCPF</p>	<p>July 2016</p> <p>September 2016</p>	<p>Addressed</p>

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<p><u>Finding 2:</u> This finding is made on the perspective of one source, without further validation of the cause for the failed transition. There were multiple contributing factors to the community living arrangement not being successful for this person.</p> <p>CDHS completed a debrief of the failed transition to establish a strategy for future successful transitions.</p>	N/A	Appendix K	N/A	CDHS	Incomplete/information	March 16, 2016	
<p><u>Finding 3:</u> HCPF verified that the injury incurred from the use of a restraint was reported and investigated and that PRC took necessary personnel action.</p> <p>HCPF verified that the use of the body blocker restraint was reported per requirements. PRC took necessary personnel action to address the incorrect use of the restraint. The action taken is detailed in Appendix L.</p>	N/A	Appendix L	N/A	HCPF/CDHS	Addressed	August 22, 2016	
<p><u>Finding 4:</u> On July 6, 2016 HCPF conducted on-site training with Colorado Bluesky case management on the requirements for the use of restraints. This includes the requirements for service provider agencies and for case management monitoring and oversight.</p>	N/A	Appendix H	N/A	HCPF	Addressed	July 6, 2016	

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<p>Objective #8: Appendix G-2- b-i: Safeguards Concerning the Use of Restrictive Interventions.</p>	<p><u>Finding 1:</u> PRC staff are suspending the rights of some clients without following the process in the approved waiver. CMS reviewed incidents reports in which client property was taken from them without subsequent review by the interdisciplinary team (IDT) and by the local Human Rights Committee (HRC) to ensure the suspension was the least restrictive on the participant's rights as required by the approved waiver.</p> <p><u>Finding 2:</u> CMS has determined that body audits conducted by CDHS were not in compliance with the approved waiver and federal regulations §441.301(c) (2) (vi) and (xiii) (A-H), and §441.301(c) (4) (iii-v). According to the, "CDPHE Deficiency List," dated May 11, 2015, CDHS conducted unclothed body audits that sometimes included inspections of genitals, of all of the 62 residents at PRC without client or guardian consent. This action was taken without regard to residents' assessed needs or ability to consent and deprived them of their right to privacy, dignity and respect, and freedom from coercion and restraint.</p> <p><u>Finding 3:</u> Requiring blanket consent restricts individual rights and is inconsistent with person-centered planning and informed consent. During the CMS interviews with guardians of residents at PRC, CMS was informed that PRC administration is requiring individuals and guardians to sign blanket consents. The consents are for things like psychotropic medication, restraints and body audits. Consents should be based upon individual's needs and preferences and afford participants due process.</p>						
Action Steps	Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only
<p><u>Finding 1:</u> HCPF identified this issue through on-site monitoring visits starting November 2015 and met with PRC administrative staff to provide direction on the requirements of the use of suspension of rights.</p>	<p>N/A</p>	<p>Appendix B</p>	<p>N/A</p>	<p>HCPF</p>	<p>Addressed</p>	<p>November 2015- August 2016</p>	

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HCPF is monitoring the use of suspension of rights at PRC and continues to provide direction for the requirements for the use of suspension of rights.							On-going
<u>Finding 1:</u> CDPHE cited this as a deficiency in the March 2016 on-site licensure and recertification survey. CDPHE accepted PRC's plan of correction for the deficiency and did cite this as a deficiency in the August 2016 follow-up licensure and recertification survey. PRC is developing a plan of correction for this deficiency.	N/A	N/A	N/A		HCPF/CDPHE	Addressed	March 2016- On-going
HCPF established on-going monitoring for the use of suspensions of rights at the PRC to ensure compliance with the plan of correction.							On-going
<u>Finding 2:</u> CDPHE completed an on-site complaint survey regarding the body audits at PRC on April 22, 2015 and cited this as deficient practice. CDPHE accepted the plan of correction and completed a re-visit complaint survey and did not cite deficiencies.	N/A	April 22, 2015	N/A		HCPF/CDHE	Addressed	December 2015

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<u>Findings 2 and 3</u> : CDPHE cited this as a deficiency in the March 2016 licensure and recertification survey. PRC implemented a Plan of Correction and blanket consents are no longer in use.	N/A	N/A	N/A	HCPF/CDPHE	Addressed	April 2016			
Objective #9: Appendix G-3- b: Medication Management and Follow-up.	<p><u>Finding</u>: Over 90% of the residents are prescribed psychotropic medications. Yet, PRC, HCPF and Colorado Bluesky failed to follow the process described in Appendix G-3-b of the approved waiver for oversight and management of medications, which includes monitoring the use of these medications by the Colorado Bluesky HRC because PRC was using an internal process, including an internal HRC as opposed to using Colorado Bluesky HRC as required in the approved waiver.</p>								
Action Steps	Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only		
On May 28 and 29, 2015 HCPF conducted an on-site review and met with PRC administration and Colorado Bluesky case management and quality assurances staff to provide direction on the requirements for the HRC review of the use of psychotropic medications. HCPF required that the Colorado Bluesky HRC to review the use of psychotropic medication for people served by the PRC.	N/A	Appendix C	N/A	HCPF	Addressed	May 28 and 29, 2015			
HCPF established on-going on-site monitoring that includes monitoring of						On-going			

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<p>HRC reviews being completed by Colorado Bluesky to ensure compliance with requirements.</p>							
<p>Objective #10: Appendix H-1 - a: Systems Improvement</p>	<p><u>Finding 1:</u> PRC and Colorado Bluesky failed to follow the critical incident reporting process in the approved waiver. As such, HCPF lacked access to correct data in order to properly monitor the waiver and develop systems improvements.</p> <p><u>Findings 2:</u> Health Care Policy and Financing did not follow the Systems Improvement Process as outlined in the approved waiver application in relation to the incidents that occurred at PRC. Specifically, HCPF did not develop systems improvements or individual remediation strategies to address the on-going incidents at PRC.</p> <p>The failure to follow the Systems Improvement process occurred in part due to the lack of reporting of the incident(s) or the follow-up investigations by PRC or the CDHS to HCPF, CDPHE and Colorado Bluesky.</p> <p><u>Findings 3:</u> The Plan of Correction provided by CDHS/PRC to CDPHE does not comply with the Systems Improvement Process in the approved waiver application. The Plan of Correction approved by the CDPHE continues to allow CDHS to independently handle critical incidents internally and does not follow the approved process in the waiver in which HCPF as the Single State Medicaid Agency takes the lead in investigating, tracking, trending and remediating critical incidents on both the individual and system level.</p>						
<p>Action Steps</p> <p><u>Finding 1:</u> On May 28 and 29, 2015 HCPF conducted on-site monitoring and met with PRC administration to provide direction on the requirements for</p>	<p>Milestones</p>	<p>Deliverables</p>	<p>Target Date</p>	<p>Responsible Entity</p>	<p>Status Updates</p>	<p>Date Completed</p>	<p>CMS Only</p>
<p>N/A</p>	<p>Appendix B</p>	<p>N/A</p>	<p>HCPF</p>	<p>Addressed</p>	<p>May 28 & 29, 2015</p>		

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<p>reporting critical incidents. The on-site review encompassed a review of the 10 allegations of MANE identified during the March 2015 body audits to ensure each incident was reported to law enforcement and Adult Protective Services.</p> <p>HCPF completes on-going reviews of incidents at PRC to ensure compliance with waiver critical incident reporting requirements. The on-going monitoring has not resulted in a finding of deficient practice since April 2015. The final action taken may be found in the table in Appendix G.</p>	N/A	Appendix G	N/A	CDHS	Addressed	On-going	
<p>CDHS identified 18 personnel responsible for failure to report to law enforcement and Adult Protective Services and took corrective action up to and including termination. All 18 personnel identified were suspended from duty April 2015 and did not have contact with residents at PRC until final action was determined and taken.</p>	N/A	Appendix G	N/A	CDHS	Addressed	April 2015-October 2015	
<p>CDHS enhanced the process for internal monitoring of reporting incidents of MANE, including separating Quality Assurance personnel from PRC administration authority who now report</p>	N/A	Appendix G	N/A	CDHS	Addressed	October 2015	

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<p>to the Division of Regional Center Operations Direction.</p> <p>In addition, CDHS established a Quality Assurance unit in the Office of Performance and Strategic Outcomes which will independently review compliance with regulations and other requirements of all direct care facilities, including the three Regional Centers.</p>	N/A	Appendix G	N/A	CDHS	Addressed	April 2015	
<p>Since April 2015 PRC has reported that all allegations of crimes or MANE are reported to law enforcement, Adult Protective Services and Colorado Bluesky as required. This includes that reports to law enforcement are made to dispatch and not directly to one person.</p>	N/A	Appendix J	N/A	CDHS	Addressed	April 29, 2016	
<p>CDHS implemented an electronic incident report management system that automatically notifies key PRC staff and CDHS Executive Management up to an including the Executive Director of serious incidents. This provides CDHS broad visibility to serious incidents and ensures improved follow-up.</p>	N/A	Appendix B and C	N/A	HCPF	Incomplete or incorrect	May 2015	
<p>Finding 2: HCPF has implemented systems improvement through on-going on-site monitoring, training and face-to-face meetings with the PRC</p>	N/A						

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<p>administrative staff and Colorado Bluesky administration and case management to provide direction for waiver compliance. HCPF also has regular communication with PRC and Colorado Bluesky to address technical waiver, statutory and regulatory compliance questions. HCPF completes desk reviews of critical incidents and occurrence reports at PRC.</p>	N/A	Appendix B	N/A	HCPF	Addressed	May 2015	
<p><u>Finding 3:</u> HCPF monitors all incidents and critical incidents at PRC to ensure reporting requirements are met. HCPF conducts on-site review per the waiver for all critical incidents at PRC. HCPF monitors incidents and critical incidents for trends and provides direction to PRC to come into compliance when necessary.</p>	N/A	N/A	N/A	HCPF	Addressed	September 21, 2016.	
<p><u>Finding 3:</u> HCPF required that Colorado Bluesky conduct MANE investigations at PRC. HCPF established on-going reviews of incidents of MANE at PRC to ensure Colorado Bluesky's compliance with investigation requirements.</p>	N/A	N/A	N/A	HCPF	Addressed	September 21, 2016.	

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Objective #1: Appendix A: Waiver Administration and Operations.

Finding 1: HCPF was unaware of the occurrences at PRC being reported only to CDPHE and investigations of PRC occurrences by CDPHE did not cite waiver deficiencies or require Plans of Correction even when incidents were substantiated. Instead, CDPHE investigations of Serious Occurrences usually resulted in no deficiencies and often "found that the facility acted appropriately by reporting the occurrence, notifying the appropriate persons and agencies".

Finding 2: HCPF has allowed PRC to perform administrative and operational functions of the waiver on behalf of the State Medicaid Agency by permitting PRC to, in effect, have internal quality assurance staff, policies and procedures and internal investigations that do not comply with the waiver.

Finding 3: HCPF failed to identify and correct the Administrative deficiencies of Colorado Bluesky and the CDPHE.

Finding 4: Colorado Bluesky did not perform Quality Assurance activities according to the approved waiver application; the Community Centered Board is required to complete at minimum, quarterly individual contact and follow-up on all incident reports that are reported, but this did not happen.

According to the approved waiver application, Colorado Bluesky is required to complete at minimum, quarterly client contact and follow-up on all incident reports that are reported.

After these incidents occurred and HCPF completed a 100% review of these clients' files, HCPF found that, "case managers did not monitor implementation of the Service Plan as required". (See page 17 of Response to Serious Occurrence Questions) Specifically, the findings are:

29% of required quarterly contacts were completed.
6.7% of the incidents identified by the case manager were followed up by the case manager to ensure a satisfactory resolution.

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Action Steps	Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only
<p><u>Finding I:</u> On May 28 and 29, 2015 HCPF conducted on-site monitoring and met with the PRC administration to provide direction on the requirements for reporting incidents to law enforcement, Adult Protective Services and Colorado Bluesky. The on-site review encompassed a review of the 10 allegations of MANE identified during the March 2015 body audits to ensure each incident was reported to law enforcement and Adult Protective Services.</p>	N/A	Appendix B	N/A	HCPF	Addressed	May 28 & 29, 2015	
<p>CDHS identified 18 personnel responsible for failure to report to law enforcement and Adult Protective Services and took corrective action up to and including termination. All 18 personnel identified were suspended from duty April 2015 and did not have contact with residents at PRC until final action was determined and taken. The final action taken may be found in the table in Appendix G.</p>	N/A	Appendix G	N/A	CDHS	Addressed	April 2015- October 2015	
<p>Since April 2015 PRC has reported that all allegations of crimes or MANE are reported to law enforcement, Adult</p>	N/A	Appendix G	N/A	CDHS	Addressed	April 2015	

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Protective Services and Colorado Bluesky as required. This includes that reports to law enforcement are made to dispatch and not directly to one person.									
<u>Finding 2:</u> HCPF monitors all incidents and critical incidents at PRC to ensure reporting requirements are met. HCPF conducts on-site review per the waiver for all critical incidents at the PRC. HCPF monitors incidents and critical incidents for trends and provides direction to PRC to come into compliance when necessary.	N/A	Appendix B	N/A	HCPF	Addressed	May 2015			
<u>Finding 2:</u> HCPF required that Colorado Bluesky conduct MANE investigations at PRC HCPF established on-going reviews of incidents of MANE at PRC to ensure Colorado Bluesky's compliance with investigation requirements.	N/A	N/A	N/A	HCPF	Addressed	September 21, 2016			
<u>Finding 3:</u> HCPF conducts systems improvement through on-going on-site monitoring, training and face to face meetings with PRC administrative staff and Colorado Bluesky administration and case management to provide direction for waiver compliance. HCPF also has regular communication with PRC and	N/A	Appendix B and C	N/A	HCPF	Incorrect or incomplete information	May 2015			

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<p>Colorado Bluesky to address technical waiver, statutory and regulatory compliance questions. HCPF completes desk reviews of critical incidents and occurrence reports at PRC.</p>	<p>N/A</p>	<p>Appendix C</p>	<p>N/A</p>	<p>HCPF</p>	<p>Addressed</p>	<p>May 2015- August 2016</p>	
<p><u>Finding 4:</u> HCPF conducted on-site monitoring, meetings and training with Colorado Bluesky administration and case management regarding their responsibilities per waiver requirements for quality assurance activities.</p> <p>HCPF developed and implemented an on-site performance and quality review of Case Management Agencies for compliance with waiver, statutory, regulatory and contract requirements. HCPF conducted an on-site performance and quality review at Colorado Bluesky the week of August 22, 2016.</p> <p>HCPF is compiling the audit findings and based on preliminary review anticipates a plan of correction will be issued to Colorado Bluesky.</p> <p>HCPF will employ contract provisions with Colorado Bluesky to ensure Colorado Bluesky implements action to correct areas of deficient practice.</p>							

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<p>Objective #13: Appendix D-2 a: Service Plan Implementation and Monitoring.</p>	<p>Finding: Case managers did not monitor implementation of the Service Plan as required by the approved waiver application and monitoring frequency was inadequate. Page 16 and 17, of HCPFs response to the Serious Occurrence questions indicates that; [Case managers did not monitor implementation of the Service Plan as required. Per the HCBS-DD waiver, case managers are required to visit each provider site at least once per year and to complete face-to-face monitoring with each participant at least once per quarter. In review of the documentation in the Benefits Utilization System {BUS} for all 62 residents of PRC, 29% of the quarterly contacts were completed timely. Of the 62 residents, 47% of them had a problem or incident identified during the Service Plan year. Of those, 6. 7% were followed-up by the case manager to ensure satisfactory resolution.</p>						
<p>Action Steps</p> <p>HCPF conducted on-site monitoring, meetings and training with Colorado Bluesky administration and case management regarding their responsibilities per waiver requirements for quality assurance activities. HCPF developed and implemented an on-site performance and quality review of Case Management Agencies for compliance with waiver, statutory, regulatory and contract requirements. HCPF conducted an on-site performance and quality review at Colorado Bluesky the week of August 22, 2016.</p>	<p>Milestones</p>	<p>Deliverables</p>	<p>Target Date</p>	<p>Responsible Entity</p>	<p>Status Updates</p>	<p>Date Completed</p>	<p>CMS Only</p>
	<p>N/A</p>	<p>Appendix C</p>	<p>N/A</p>	<p>HCPF</p>	<p>Addressed</p>	<p>May 2015-August 2016</p>	

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<p>HCPF is compiling the audit findings and based on preliminary review anticipates a plan of correction will be issued to Colorado Bluesky.</p> <p>HCPF will employ contract provisions with Colorado Bluesky to ensure Colorado Bluesky implements action to correct areas of deficient practice.</p>							
<p>Objective #1: Appendix G-1-b: Response to Critical Events or Incidents.</p>	<p>Finding 6: The CDPHE occurrence reporting requirements for licensed group homes is not sufficient for Health Care Policy and Financing to identify and prevent abuse, neglect, and exploitation. In addition, the “elements” required to be present in order to report an occurrence are not in compliance with the waiver that requires all incidents of physical abuse, sexual abuse, verbal abuse, neglect, brain injury, burns, death, diverted drugs, life threatening complications due to anesthesia, transfusions, malfunction or misuse of medical equipment, misappropriation of resident property, missing persons and injuries.</p>						
<p>Action Steps</p> <p>Finding 6: HCPF has processes underway to identify the multiple complex cross system issues in order to develop a plan to align critical incident reporting to occurrence reporting.</p> <p>This issue relates to incident reports that are generated by PRC, which are submitted to Colorado Bluesky, and if they meet CIR criteria, are sent to</p>	<p>Milestones</p> <p>September 2015</p>	<p>Deliverables</p> <p>N/A</p>	<p>Target Date</p> <p>September 2017</p>	<p>Responsible Entity</p> <p>HCPF</p>	<p>Status Updates</p> <p>In process</p>	<p>Date Completed</p>	<p>CMS Only</p>

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<p>CDPHE. Please note, however, that the CIRs are reviewed by a HCPF staff person housed at CDPHE. This person provides follow up, resolution and trend analysis.</p> <p>There are two reporting processes: Occurrences have a statutorily required set of criteria that will not align with all of the waiver requirements. The Critical Incident Report (CIR) is the reporting mechanism that satisfies the waiver requirements and has separate criteria.</p> <p>PRC must submit both as these facilities are both certified and licensed.</p>						
<p>Objective #4: Appendix G-1-d- Monitoring-Community Centered Boards (CCB) and Program Approved Service Agencies (PASA).</p>	<p>Finding 1: Colorado Bluesky's monitoring of incidents at PRC is insufficient. As they did not identify numerous critical incidents occurring at PRC. During the CMS interview with Colorado Bluesky, staff indicated that currently Colorado Bluesky relies on observation of clients and PRC to submit incident reports, rather than reviewing the client records, talking to PRC staff and guardians to confirm that PRC is reporting all of the incidents they are required to report.</p>					
<p>Action Steps</p> <p>Finding 1: Corrective action will be taken with Colorado Bluesky.</p>	<p>Milestones</p> <p>N/A</p>	<p>Deliverables</p> <p>N/A</p>	<p>Target Date</p> <p>November 30, 2016</p>	<p>Responsible Entity</p> <p>HCPF</p>	<p>Status Updates</p> <p>In Process</p>	<p>Date Completed</p> <p>CMS Only</p>

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<p>Objective #12: Appendix D 1: d-Service Plan Development: Service Plan Development Process.</p>	<p>Finding: PRC is in violation of §1915(c)(2)(C) of the Act and in 42 CFR §441.302(d), which affords the right of an individual who is determined to be likely to require a level of care specified in a waiver to choose either institutional or home and community-based services. In addition, CMS has determined the state is also in violation of 1902(a) (23) of the Act and 42 CFR 43.51 which require that Medicaid beneficiaries must be allowed to obtain services from any willing and qualified provider of a service.</p>						
<p>Action Steps</p>	<p>Milestones</p>	<p>Deliverables</p>	<p>Target Date</p>	<p>Responsible Entity</p>	<p>Status Updates</p>	<p>Date Completed</p>	<p>CMS Only</p>
<p>Colorado Bluesky's process for client decision-making of institutional vs. community-based services is consistent with § 1915(c)(2)(C) or of the Act. Clients choose whether they wish to receive institutional services or HCBS waiver services.</p>	<p>N/A</p>	<p>Appendix O</p>	<p>N/A</p>	<p>HCPF</p>	<p>Incomplete or incorrect</p>	<p>N/A</p>	
<p>On July 15, September 17 and October 7, 2015 HCPF provided technical assistance to Colorado Bluesky regarding choice of provider for non-residential waiver services for residents at PRC. HCPF will conduct a follow-up meeting with Colorado Bluesky administration and case management staff by November 30, 2016, to ensure</p>	<p>July 15, September 17 and October 7, 2015</p>	<p>Appendix O</p>	<p>November 30, 2016</p>	<p>HCPF</p>	<p>In process</p>		

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<p>full understanding of provider choice and compliance with requirements. HCPF will monitor on-going to ensure compliance.</p>			On-going				
<p>42 CFR 43.51 is an incorrect citation. To the extent that CMS intended to refer to 42 C.F.R. 431.51, Colorado Bluesky's processes meet its requirements. Clients are allowed to obtain services from any qualified and willing Medicaid provider that can provide the services the client needs.</p>	N/A	Appendix O	N/A	HCPF	Incomplete or incorrect	N/A	
<p>Colorado Bluesky's process for client decision-making of choice of service provider is consistent with § 1902(a)(23) of the Act. Clients choose the service provider from whom they wish to receive services.</p>	N/A	Appendix O	N/A	HCPF	Incomplete or incorrect	N/A	

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Objective #14: PRC Staffing issues is putting the health and welfare of PRC residents in jeopardy.	Finding 1: PRC staffing is insufficient to support the level of care needs for the individuals they serve.						
Action Steps	Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only
<p><u>Finding 1:</u> CDHS has developed a staff plan for PRC that addresses hiring, turnover, scheduling, overtime and overstay (double shifts).</p>							
<p><u>Hiring</u></p>							
<p>1. Undertake continuous recruitment and training in order to fill current in-ratio vacancies.</p>	March 2016 and ongoing		On-going	CDHS	In process		
<p>2. Fill the 19 current direct care vacancies: Source, screen and qualify applicants that can fulfill the care needs of those we support.</p>			On-going until complete				
<p>3. Establish weekly accurate monitoring of staff vacancies at PRC and all Regional Centers.</p>			October 1, 2016				
<p>4. Review the quality of staff member training and develop a plan to address identified areas of needed improvement.</p>			January 1, 2017				
<p>5. As resources allow, enhance staff relief pool by adding 10 part time</p>			March 1, 2017				

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<p>staff to respond to intermittent staff time off.</p> <p>6. Standardize employee Licensed Psych Tech/CNA training procedures, following the model at Grand Junction Regional Center.</p> <p>7. As resources allow, add 20.0 new FTE comprised of a mixture of management and direct care staff positions in order to improve management oversight and person centered care.</p>		<p>April 1, 2017</p> <p>June 1, 2017</p>			
<p><u>Turnover</u></p> <p>1. Ensure accurate tracking and monitoring of turnover monthly at each RC.</p> <p>2. Management and HR to conduct exit interviews with staff members to understand employee experience and reasons for leaving.</p> <p>3. Evaluate employee compensation competitiveness and make recommendations for any needed changes as resources are identified and approved.</p>	<p>N/A</p>	<p>Appendix P</p>	<p>October 1, 2016</p> <p>December 1, 2016</p> <p>December 1, 2016</p>	<p>CDHS</p> <p>In process</p>	

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<p>4. Management and HR to conduct stay interviews of a sample of PRC staff members to learn what employees like about their jobs and what they would like to change.</p> <p>5. Develop a formal plan/system of mentoring of new employees.</p> <p>6. Trend the exit and stay interview data to inform and revise this staffing plan.</p>			<p>January 1, 2017</p> <p>March 1, 2017</p> <p>April 1, 2017</p>			
<p><u>Scheduling</u></p> <p>1. Establish an employee/management led scheduling task force at PRC to review and improve schedules.</p> <p>2. Engage a schedule consultant to make recommendations.</p> <p>3. Implement scheduling software to improve employee experience and tracking of schedules.</p> <p>4. Employee/management schedule task force recommendations submitted to the scheduling consultant for review.</p>	<p>September 16, 2016</p> <p>September 16, 2016</p>	<p>Appendix P</p>	<p>CDHS</p>	<p>In process</p>		

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<p>5. Implement a suite of employee recognition strategies.</p> <p>6. Implement recommendations from schedule consultant.</p>			<p>December 1, 2016</p> <p>January 1, 2017</p>			
<p><u>Overtime/Overstays</u></p> <p>1. Temporarily engage management and day program staff members to work in the homes and balance the demand on staff members working overstays and doubles.</p> <p>2. Review and right size staffing levels to meet person specific needs.</p> <p>3. Engage temp staffing agencies to reduce and eliminate the need for overstays in the short term.</p> <p>4. Fill in ratio staff vacancies and FMLA shifts utilizing pool and temporary agency staffing.</p>	<p>July 1, 2016</p>	<p>Appendix P</p>	<p>November 1, 2016</p> <p>November 1, 2016</p> <p>As soon as possible</p>	<p>CDHS</p>	<p>In process</p>	

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<p>Objective #15: Issues with Individual Services provision are putting the health and welfare of PRC residents in jeopardy.</p>	<p><u>Finding 1:</u> PRC is not consistently providing adequate supervision to individuals with one-on-one and line of sight supervision needs. CMS has determined this based upon the number of incidents that occur between residents of PRC, injuries or incidents that have occurred involving individuals that require "within arm's reach, one on one supervision" or injuries to an individual that could have been prevented by closer supervision.</p> <p><u>Finding 2:</u> There is a general lack of knowledge about the availability all of waiver services. For instance, one group home had several specialized beds for clients with significant mobility limitations and medical needs. PRC assisted the clients to use their personal funds to purchase this equipment, rather than evaluating if the waiver could have provided this equipment.</p> <p><u>Finding 3:</u> The CMS review raised questions about whether the services and supports being provided at PRC are adequate to assist individuals at PRC to meet their individualized goals and function in a less restrictive setting in the community.</p>													
	<p>Action Steps</p>	<p><u>Finding 1:</u> CDHS has developed a staff plan for PRC that addresses hiring, turnover, scheduling, overtime and overstay (double shifts). Please see Objective #14 response for Finding 1 for the detailed plan.</p> <p><u>Finding 2:</u> HCPF will investigate and provide training to PRC and Colorado Bluesky on determining what benefits are available through the State Plan and waiver to meet needs.</p>	<p>Milestones</p>	<p>July 1, September 16, 2016</p>	<p>Deliverables</p>	<p>Appendix P</p>	<p>Target Date</p>	<p>January 1, 2017</p>	<p>Responsible Entity</p>	<p>CDHS</p>	<p>Status Updates</p>	<p>In process</p>	<p>Date Completed</p>	<p>CMS Only</p>
			<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>November 30, 2016</p>	<p>HCPF</p>	<p>In process</p>						

**ATTACHMENT 3
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Finding 3: HCPF will investigate and provide training to PRC and Colorado Bluesky on determining what benefits and services are available through the State Plan and waiver to meet needs.	N/A	N/A	November 30, 2016	HCPF	In process				
Objective #16: Person Centered Planning: 42 CFR §441.301(c)(1) and (2)- Person Centered Planning and the Person Centered Service Plan.	<p>Finding: The person centered planning process is intended to place decision making into the hands of participants of the HCBS waiver. CMS believes that requiring individuals to be placed at PRC through the use of an Imposition of Legal Disability is a violation of person centered planning because it strips the individual and/or guardian of the right to choose the services and supports they receive and from whom. In addition, during the course of the site visit, CMS was informed that the state "RFPd" individuals to provider agencies and the provider agencies.</p>								
Action Steps	Milestones	Deliverables	Target Date	Responsible Entity	Status Updates	Date Completed	CMS Only		
Prior to an ILD process, the client or guardian chooses whether to obtain services at a regional center. The ILD process serves to validate the decision already made by the client or guardian to seek services from a regional center.	N/A	Appendix O	N/A	HCPF	Incomplete or incorrect				
The ILD process in a court proceeding fosters supportive decision making by the client, by providing the client with legal counsel and professional staff to assist the client in his or her request for placement at a regional center.	N/A	Appendix O	N/A	HCPF	Incomplete or incorrect				

**ATTACHMENT 3
CORRECTIVE ACTION PLAN**

<p>On July 15, September 17 and October 7, 2015 HCPF provided technical assistance to Colorado Bluesky regarding choice of provider for non-residential waiver services for residents at PRC.</p> <p>HCPF will conduct a follow-up meeting with Colorado Bluesky administration and case management staff by November 30, 2016, to ensure full understanding of provider choice and compliance with requirements.</p> <p>HCPF will monitor on-going to ensure compliance.</p>	<p>July 15, September 17 and October 7, 2015</p>	<p>Appendix O</p>	<p>November 30, 2016</p>	<p>HCPF</p>	<p>Incomplete or incorrect</p>	
<p>Initial CAP Submission</p>	<p>Name, Title</p>	<p>Date</p>				
<p>Final CAP Submission</p>	<p>Name, Title</p>	<p>Date</p>				
<p>SECTION 5: CMS Review – Completed by CMS</p>						
<p>Date submitted by state</p>						
<p>CMS action</p>	<p>Approved/Returned for Revision</p>					
<p>Date of CMS action</p>						
<p>Summary of revisions requested by CMS</p>	<p>Completed by CMS if returned to the State for revisions</p>					
<p>Date re-submitted by State</p>						
<p>CMS action</p>	<p>Approved/Returned for Revision</p>					
<p>Date of CMS action</p>	<p>Completed by CMS if returned to the State for revisions</p>					

**ATTACHMENT 3
CORRECTIVE ACTION PLAN**

Summary of revisions requested by CMS	Completed by CMS if returned to the State for revisions
Date re-submitted by State	
Summary of revisions made by state	
RO Analyst signature	
Date CMS Approved CAP	

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



CO- Pueblo Regional Center (CO 0007.R07.00) (LJ)

August 17, 2016

Gretchen Hammer
State Medicaid Director
Colorado Department of Health Care Policy and Financing
303 East 17th Avenue, 7th Floor
Denver, Co 80203

This letter addresses the Department of Health Care Policy and Financing's (HCPF) noncompliance with the regulations governing Home and Community Based Services (HCBS) Waivers and the provisions set forth in Colorado's Home and Community Based Waiver for Persons with Developmental Disabilities, CO 0007. This noncompliance, which is detailed in the enclosed Center for Medicare & Medicaid Services' (CMS) On-Site Report related to the Serious Occurrences that transpired at the Pueblo Regional Center (PRC), places the health, welfare, and safety of PRC residents at risk and requires immediate action.

On April 22, 2015, the HCPF reported to CMS a number of serious incidents. In response, CMS reviewed information concerning the alleged incidents, discussed concerns with state staff, and ultimately conducted an on-site visit between April 18 and April 22, 2016. CMS also completed an extensive review of the documentation surrounding the alleged incidents. The documentation review substantiated that a number of serious incidents took place at PRC that posed a risk to the health and safety of its residents. In addition, the on-site review revealed that a number of serious incidents continue to occur at PRC.

Based on the results of our review, CMS concluded that PRC has operated in a manner that places the health, welfare, and safety of the residents at risk and deprives them of the benefits, freedoms and rights due to all Medicaid clients in HCBS programs. CMS was also extremely concerned about the failure to notify residents' guardians of incidents of abuse once they became known. Further, CMS was concerned with the failure to involve the network of agencies tasked with caring for and protecting PRC's residents, which resulted in a breakdown of the oversight processes to identify and address these concerns. The results of our review indicate that Colorado is substantively out of compliance with the Home and Community Based Waiver for Persons with Developmental Disabilities, CO 0007. In light of the noncompliance identified, HCPF must submit a Corrective Action Plan (CAP) to CMS as soon as possible, and no later than 30 days of the date of this letter. The CAP must include a detailed plan addressing each of the findings identified in the report. The CAP must also include the milestones and dates specifying when the actions will be fully implemented, their impact on the health, welfare, and

safety of waiver participants, and a strategy for ongoing review and monitoring of the settings impacted by this non-compliance. CMS expects the state agencies responsible for PRC to implement the CAP in an expeditious and transparent manner that removes the threat to individuals' health, welfare, and safety and restores the rights and privileges of the HCBS residents in PRC.

Additionally, pursuant to 42 CFR 441.304 (g), CMS will employ the following strategies to bring the waiver into compliance:

- CMS will issue a disallowance for Federal Financial Participation paid for individuals receiving services from PRC covering the period of November 1, 2014, the month during which the original incident involving abuse of individuals occurred, through at least November 2015 when the PRC corrective action plan was implemented. Further information on the disallowance will be forwarded at a later date. While the state found the PRC corrective action plan was implemented by November 2015, the CMS onsite review found that serious deficiencies and non-compliance with the waiver provisions continue to exist. CMS will review the state's response to this communication, the CAP proposal and the state's progress with its CAP to determine if the state is adequately addressing the areas of non-compliance. This will determine if the disallowance for the November 2014 through November 2015 time period will suffice to ensure compliance with federal requirements or if it needs to be extended.
- CMS will impose a moratorium of new admissions upon PRC. CMS is gravely concerned about PRC's ability to safely meet the needs of the individuals residing at PRC. Therefore, CMS strongly recommends that PRC not accept any additional residents until the health and safety of individuals is ensured and the non-compliance is resolved.

Before a disallowance and moratorium are employed HCPF is entitled to appeal the findings of noncompliance pursuant to the procedures set forth at 42 C.F.R. Part 430, Subpart D.

If you have any questions, please contact Richard Allen at 303-844-1370 or via email at Richard.Allen@cms.hhs.gov.

Sincerely,



Michael Nardone

Director

Disabled and Elderly Health Program Group



Richard C. Allen

Associate Regional Administrator

Division of Medicaid and Children's Health Operations



U.S. Department of Health and Human Services

Centers for Medicare & Medicaid Services

Region VIII

On-Site Review of the Colorado Pueblo Regional Center

Waiver Program

Control # CO 0007

August 17, 2016

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EXECUTIVE SUMMARY

On April 22, 2015, CMS was notified by the Colorado Department of Health Care Policy and Financing (HCPF) (the Single State Medicaid Agency) about “body audits” that were conducted by the Colorado Department of Human Services (CDHS) on 62 residents of Pueblo Regional Center (PRC). The body audits were conducted to determine if previous reports of allegations of abuse and neglect by staff could be substantiated. The audits were performed on individuals without their consent and without the consent or knowledge of their guardians. On April 23, 2015, the Centers for Medicare and Medicaid Services (CMS) began a review of the body audits and alleged incidents. Over the next several months, CMS requested information from HCPF to determine the sequence of events and to identify what state and CMS responses were necessitated.

Following review of this information, from April 18 to April 21, 2016, CMS conducted an on-site review of PRC to evaluate whether the health and welfare of individuals residing at PRC is at risk and to determine if the state was operating in compliance with the authorized waiver. CMS also used the on-site review to obtain additional information that confirmed preliminary findings of the review of documentation provided by the HCPF detailing the body audits and reported incidents.

With respect to the review, CMS appreciated the willingness of state staff, PRC residents and staff, parents and guardians of PRC residents, Arc representatives, the Disability Law Center, the Pueblo County Sheriffs’ Office, and Colorado BlueSky staff to meet with CMS. It was apparent to CMS that numerous people place importance on the welfare of the residents of PRC.

Based upon our review, CMS determined a number of incidents that gave rise to the body audits were substantiated or had adequate information for substantiation and clearly posed a risk to the health and safety of the residents at PRC. In addition, the on-site review revealed that a number of serious incidents have continued to occur at PRC. CMS has therefore concluded that the health and welfare of individuals residing at PRC is at risk and the state is substantively out of compliance with the approved Home and Community Based Waiver for Persons with Developmental Disabilities, CO 0007. As a result of HCPF’s noncompliance with the terms of the waiver, pursuant to 42 CFR 441.304 (g), CMS will employ strategies to bring the waiver into compliance.

CMS requests that HCPF submit a corrective action plan (CAP) which addresses the findings specific to PRC and the systemic issues of non-compliance for waiver administration statewide. Moreover, because of the very serious nature of the incidents of abuse and neglect that took place at PRC, CMS will employ additional strategies until compliance is achieved. The impending strategies include a moratorium on new admissions to PRC. CMS is concerned about the current staff’s ability to safely meet the needs of the individuals residing at PRC. In addition, CMS will issue a disallowance of federal financial participation covering the period of

November 1, 2014, the month during which the original incident involving abuse of individuals occurred, through at least November 2015 the month when the PRC CAP was implemented.

While the State found the PRC CAP was implemented in November 2015, the CMS on-site review found that serious deficiencies and non-compliance with the waiver provisions continue to exist. CMS will closely review the state's response to this communication, its CAP proposal, and the progress made on the approved CAP to determine if the state is adequately addressing the issues of concern. This will determine if the disallowance for the November 2014 through November 2015 will suffice to ensure compliance with federal requirements, or if it needs to be extended.

Prior to employing these strategies, HCPF has the opportunity to appeal the findings of non-compliance as described in 42 C.F.R. § 441.304(g). If the state chooses to rebut these findings, the state should consult Subpart D of 42 CFR §430 – Hearings on Conformity of State Medicaid Plans and Practice to Federal Requirements.

BACKGROUND

On April 22, 2015, the Centers for Medicare and Medicaid Services (CMS) was notified by the Colorado Department of Health Care Policy and Financing (HCPF) (the Single State Medicaid Agency) about “body audits” that were conducted by the Colorado Department of Human Services (CDHS) on 62 residents of Pueblo Regional Center (PRC). The body audits were conducted to determine if previous reports of allegations of abuse and neglect by staff could be substantiated. The audits were performed on individuals without their consent and without the consent or knowledge of their guardians. Guardians were informed of body audits only after there was a complaint to the Colorado Department of Public Health and Environment (CDPHE). On April 22, 2015, CDHS held a joint news conference with the Pueblo Sheriff’s Office to publicly discuss dozens of occurrences of alleged incidents of abuse, neglect, and/or exploitation that occurred at PRC. http://www.denverpost.com/news/ci_27967419/state-places-11-leave-at-pueblo-mental-health

Over the last year, CMS requested information from HCPF to determine the sequence of events and to identify what state and CMS responses were necessitated. During this time CMS posed several questions to HCPF and requested several documents pertaining to the incidents and HCPF’s response to the events at PRC. In addition, CMS independently obtained several Pueblo sheriff’s reports and CDPHE occurrence reports pertaining to the incidents and held teleconferences with HCPF to obtain clarifying information about these events.

From April 18 to April 21, 2016, CMS conducted an on-site review of PRC to evaluate whether the health and welfare of individuals residing at PRC is at risk. CMS also used the on-site review to obtain additional information to confirm preliminary findings of the review of documentation provided to us by HCPF detailing the body audits and reported occurrences. A number of incidents that gave rise to the body audits were substantiated or had adequate information for substantiation and clearly posed a risk to the health and safety of the residents at PRC. In addition, the CMS on-site review revealed that a number of serious incidents have continued to occur at PRC.

OVERVIEW OF PUEBLO REGIONAL CENTER

PRC is one of three state owned and operated facilities in Colorado responsible for caring for persons with developmental disabilities. PRC is funded through a 1915 (c) Home and Community Based Services (HCBS) waiver intended to provide adults who meet the level of care required for an Intermediate Care Facility for Individuals with Intellectual and Developmental Disabilities with an alternative to institutional care.

PRC is described by state and case management staff as a placement of “last resort” to care for and habilitate people that have needs that extend beyond those able to be provided by private

providers in the community. The facility consists of a small main campus referred to as the “Core”. The Core houses PRC administrative staff, several PRC day programs and a private swimming pool and locker rooms. In addition, PRC owns 12 group homes that are located within a mile or two from the main campus, but are dispersed throughout the Pueblo West community. Each home has a maximum capacity of eight residents. Presently, 10 of the 12 group homes have residents living in them.

Individuals that reside at PRC have significant needs that generally include multiple co-occurring chronic conditions (including both medical and psychiatric diagnoses). PRC’s residents may require intensive supervision (e.g., such as one on one supervision or line of sight supervision) and/or extensive hands on assistance to complete both Instrumental Activities of Daily Living and Activities of Daily Living. Many of the individuals have limited verbal communication skills and mobility. Given these needs, individuals living at PRC are considered some of the most “at risk” individuals with disabilities in the state.

The majority of the individuals at PRC have an *Imposition of Legal Disability*, which is a removal of a legal right that may affect the PRC residents’ rights to enter into a contract, determine their place of abode, make choices about their provisions of services and supports, and operate a motor vehicle. Several individuals residing at PRC have lived there for decades.

All of the individuals at PRC receive the majority of their HCBS services from PRC and are not offered a choice of another HCBS provider. PRC is currently approved to provide the following services under the 0007 HCBS waiver:

- Day Habilitation
- Prevocational Services
- Residential Habilitation
- Supported Employment
- Behavioral Services
- Non-Medical Transportation

According to the Regional Centers Task Force Report, published on December 23, 2015 and prepared by Regional Centers Task Force Members and Government Performance Solutions, Inc., in State Fiscal Year 2013, PRC was reimbursed \$7,788,365.00 for HCBS services. The average monthly cost for HCBS services at PRC per client in SFY 2013 was \$8,568.00

OVERVIEW OF THE COLORADO WAIVER FOR PERSONS WITH DEVELOPMENTAL DISABILITIES

The Colorado HCBS waiver for Persons with Developmental Disabilities (waiver number 0007) ~~was renewed on July 1, 2014, and expires on June 30, 2019. In State Fiscal Year 2016, the~~ waiver is approved to serve 4868 adults with intellectual and developmental disabilities in need

of services and supports 24 hours a day. Currently, 58 of the people receiving HCBS services under this waiver reside at PRC. Based on the most recently approved 372 report submitted to CMS, (for the period 7/01/2012-6/30/2013), the average annual cost per participant for this waiver is \$71,394.00.

Services are provided to individuals based upon the needs identified in the level of care assessment tool and authorized in the service plan. The service plan is designed to ensure the health, safety and welfare of the individual, and to assist the individual in the acquisition, retention and/or improvement in skills necessary to live in the community. Beyond the services provided by PRC, the waiver is also approved to provide dental, vision and specialized medical equipment and supplies.

The waiver is operated by HCPF (the Single State Medicaid Agency). Colorado BlueSky is a private case management agency that provides Targeted Case Management and Quality Assurance for clients served by PRC. In addition, HCPF has an Interagency Agreement with CDPHE to survey and license waiver providers and investigate serious occurrences.

OVERVIEW OF ALLEGATIONS

CMS reviewed numerous "Occurrence Reports" from the CDPHE, PRC investigations of incidents, and 12 Pueblo County Sheriff's Office Reports to obtain information about the allegations of abuse, neglect and exploitation occurring at PRC. Some of these incidents occurred between individuals residing at PRC, while others occurred between PRC staff members and individuals residing at PRC.

Examples of the Founded Critical Incidents

Some examples of critical incidents from these various reports that were reviewed by CMS include:

- Several male residents having words scratched on their backs and chests. It appears that words were scratched into the individuals using a finger nail. The words included: "die", "kill", "no", "I'm back", and "No J". The individuals who had these scratches on them have significant intellectual disabilities, medical and physical needs, and are unable to communicate verbally. When PRC staff were questioned about the markings, three group home staff indicated that they believed the markings occurred as a result of "paranormal activity". The incident was eventually substantiated by the Pueblo Sheriff's Office.
- PRC staff took pictures of the scratches and posted them on social media. The incident was substantiated by the Pueblo Sheriff's Office.
- An individual was severely burned when staff used a blow dryer on her legs to raise her body temperature. The incident was substantiated by the PRC investigator.

- An individual reported performing a sexual act on a PRC staff member in exchange for a soda. Information in the Sheriff's investigation report indicated that the incident likely occurred but PRC found it unsubstantiated.
- A staff person physically assaulted multiple vulnerable individuals at a day program providing services to individuals who have short attention spans, limited coping skills, and are primarily non-verbal and prone to wander. The staff person assaulted these individuals by hitting their legs and arms, covering one individual's head with a blanket and verbally threatening to "slash the throat" of another individual if he did not move away from her. This incident was substantiated and the county attorney filed formal charges against the staff person.
- A staff person sprayed an individual with water from a spray bottle to wake the individual up. This incident was substantiated by the Sheriff's office and the county attorney filed formal charges against the staff person.
- A staff person locked a resident out of the group home in the cold for two hours as means to punish him. This incident was substantiated by the PRC investigator.
- Two individuals without the ability to independently toilet were found in extremely wet and soiled diapers. In one instance, the client was found shivering and in his bed. In the other incident, the person's diaper was so soiled that it hung below the individual's knees. Although only one of these incidents was substantiated by the PRC investigators witnesses verified both allegations.
- Two individuals that require intensive supervision were able to obtain and swallow inedible objects and had to be taken to the emergency room for care. These incidents were substantiated by the PRC investigator.
- Two PRC residents died due to bowel obstructions. These incidents occurred less than a year apart. Each client had a standing order from the PRC nurse to be provided with "melted butter and prune juice" for constipation, rather than a physician's order for the use of more effective constipation medications. The bowel obstructions were substantiated by coroner's reports.
- One individual collapsed at a group home and died. He was not provided with lifesaving care, because the staff person mistakenly thought he had a "do not resuscitate" order. The incident was substantiated by CDPHE and the PRC investigator.
- One individual with limited verbal communication skills had a bruise on his lip and a loose tooth. Although the evidence indicates that the individual likely sustained an impact to his mouth the incident was unsubstantiated by PRC.
- A PRC staff person who was intoxicated at the time transported a PRC resident to a medical appointment. The incident was substantiated by PRC investigator.

ON-SITE REVIEW

The on-site review consisted of, but was not limited to:

- Interviews with PRC administrative, day program and residential staff, the PRC Psychiatrist, PRC residents, CDHS staff, guardians of PRC residents, Colorado BlueSky (the case management entity and local community centered board for PRC) director and staff, and the Pueblo Sheriff's Department.
- An on-site tour and observation of the main facility including the on-site day programs and six group homes.
- In depth review of documentation pertaining to waiver policies and procedures and information pertaining to the incidents.

DOCUMENTATION REVIEW

CMS reviewed the following documentation:

- The CDPHE Complaint Survey of PRC, dated April 22, 2015.
- The CDHS response to the Complaint Survey.
- HCPF's responses to CMS's follow up questions dated April 28, 2015, June 24, 2015, September 28, 2015, October 8, 2015, and October 13, 2015.
- The CDPHE's Serious Occurrence reports from PRC.
- The CDPHE's, "Occurrence Reporting Manual", (Amended 2011),
- The report issued by Disability Law Colorado on June 27, 2015.
- Copies of site visits by HCPF to PRC and Colorado BlueSky.
- Colorado State regulations pertaining to the waiver.
- Colorado BlueSky contract with HCPF.
- HCPF Communication Brief- Critical Incident Reports and Abuse, Mistreatment, Neglect and Exploitation Investigations.
- List of Year-to-date PRC critical incidents provided by HCPF (for the period dated: 01/01/2016-03/31/2016)
- Colorado BlueSky Service Coordinators position description.
- Colorado BlueSky Service Coordination Guidelines.
- Colorado BlueSky PRC Case Management Notes.
- 78 Occurrence reports from the CDPHE (dated: 12/26/12-5/17/2015).
- 34 PRC investigations of incidents (dated: 04/02/2015-03/25/2016).
- 12 Pueblo County Sheriff's reports.

ON-SITE OBSERVATIONS

During the on-site review, CMS observed a two person physical restraint on an individual without the prior use of de-escalation or less restrictive techniques. In addition, the physical restraint included pulling up on the individual's head in order to push a "body blocker"

underneath the individual's head. This restraint could have resulted in a serious injury to the individual and/or staff. Further, this restraint may have been avoided with the use of less restrictive techniques. The restraint should have been reported as an allegation of physical abuse through the critical incident reporting system.

The same individual had a baseball size circular wound in his middle of his lower back. When CMS inquired about the wound, PRC staff indicated that it was a burn and the individual "did it to himself", but after further CMS questions staff admitted that the wound was a rug burn that occurred during a physical restraint. PRC Quality Assurance staff were unaware of the serious nature of the injury, stating the nurse said it was healed or better. In fact, although on-site, the Quality staff had not seen the wound on the back of the individual.

FINDINGS OF NON-COMPLIANCE

A waiver's design must provide for continuously and effectively assuring the health and welfare of waiver participants. This includes having processes to periodically monitor the implementation of the service plan and participant health and welfare, identifying and responding to alleged instances of abuse, neglect and exploitation, and instituting appropriate safeguards concerning practices that may cause harm to the participant or restrict participant rights. CMS approved the Colorado 0007 waiver renewal on July 1, 2014, after reviewing the description the state provided to demonstrate that it met these requirements in the waiver application. However, upon our review of incidents of abuse, neglect and exploitation at PRC, CMS found that the state was not following several of the processes as described in the waiver, and the health and welfare of waiver participants at PRC is not continuously and effectively assured.

CMS identified specific areas of non-compliance for HCPF, CDPHE, PRC, and Colorado BlueSky, and also found system wide areas of non-compliance. Below is a list of CMS findings; additional information about the waiver standards, findings and basis for these findings is available in Appendix A.

Health and Welfare Assurance

(Appendix G of waiver; 42 CFR § 441.302 (a))

Critical Incident Reporting

1. Prior to April 2015, PRC failed to report incidents in which a crime may have been committed to Law Enforcement and suspected incidents of abuse and neglect to county departments of social services adult protection according to the process in the approved waiver. In April 2015, upper management at PRC was removed and replaced, and PRC implemented additional critical incident report training and some additional reporting policies. The number of incidents reported internally to PRC has increased since that time. Serious incidents continue to occur. Some recent critical incident reports in the

PRC investigation file provided by the state Quality Team include the death of a client due to a bowel obstruction, a client taken to the ER with a neck injury after a restraint, a client swallowing an inedible object and taken to the ER, and several incidents of client to client physical assaults.

2. The PRC failed to report critical incidents to the designated Community Centered Board prior to April 2015, and there are deficits in the current reporting process.
3. Colorado BlueSky failed to report critical incidents to the HCPF as required by the waiver.
4. The HCPF failed to ensure that the critical incidents at PRC were reported in accordance with Appendix G-1-b of the approved waiver application.
5. There is a gap in the states critical incident reporting system, as HCPF relies on critical incidents to be reported by case managers in a web-based system and the provider to report occurrences to CDPHE through the CDPHE occurrence reporting system, but there is no comparison of information in both of the systems by HCPF or another state entity to ensure all incidents are being reported properly according to the approved waiver.
6. The approved waiver indicates that, “all program approved service agencies (PASA) operating group homes licensed by CDPHE are required to report a specific class of incidents through the CDPHE Occurrence Reporting Program.” The waiver specifies that these incidents include all alleged incidents of physical abuse, sexual abuse, verbal abuse, neglect, brain injury, burns, death, diverted drugs, life threatening complications due to anesthesia, transfusions, malfunction or misuse of medical equipment, misappropriation of resident property, missing persons and injuries. Reporting requirements of CDPHE do not meet these requirements. Specifically, they dictate that occurrences only be reported when certain “elements” are met by the incident. Further, these CDPHE occurrence reporting requirements for licensed group homes are not aligned with the approved waiver requirements and are not sufficient for HCPF to identify and prevent abuse neglect and exploitation.

Participant Training and Education

The information that is provided to waiver recipients and/or guardians is insufficient to inform these individuals about how to recognize and report signs of mistreatment, abuse, neglect and exploitation. When CMS interviewed guardians of residents at PRC, guardians informed CMS that they have never witnessed restraints or witnessed critical incidents and have only recently been informed of one or two incidents which have occurred. This information is inconsistent with information that both PRC and Colorado BlueSky provided to CMS, which indicates that several hundred critical incidents have been reported by PRC just since January 1, 2016.

Monitoring and Investigation of Critical Incidents

1. PRC and Colorado BlueSky did not follow the process described in the approved waiver application to report and investigate incidents. Appendix G-1-d of the approved waiver application states that, “CCBs are required to investigate all allegations of mistreatment, abuse and neglect...” or, “When the Department [HCPF] determines that an investigation by state staff is required the investigation is initiated within 24 hours.” During the CMS on-site review, CMS found that currently PRC houses the Quality Assurance staff investigating all incidents of abuse, neglect and exploitation that involve PRC residents. This arrangement does not align with the approved waiver.

Although PRC’s Quality staff reported they are separate from and operate independently of PRC Administration, CMS did not receive any credible evidence to support this assertion. The current arrangement does not allow for a true separation of PRC administration and the quality assurance oversight, and the Quality Assurance staff act as an adjunct to PRC. They, accept findings in reports with very little questioning of conclusions. The Quality Assurance staff reported they are spending significant time contacting PRC staff to ensure they do their assigned duties as opposed to investigating the allegations and allowing/requiring the PRC managers to follow up with their staff.

By having PRC Quality Assurance staff investigate incidents, CMS is concerned that this internal process may influence the transparency, findings, quality and outcome of investigations. Although PRC Quality Assurance staff have been replaced, the previous PRC quality assurance staff did not properly report and handle the serious incidents of abuse, neglect and exploitation that led to the body audits. CMS is concerned that the current arrangement has not improved the way serious incidents are investigated.

2. Colorado BlueSky did not investigate the allegations of mistreatment, abuse, neglect and exploitation at PRC in accordance with the approved waiver application. As previously noted, Colorado BlueSky is the case management agency and the local community centered board for PRC. In accordance with the waiver, Colorado BlueSky should be investigating, “all allegations of mistreatment, abuse, neglect and exploitation”. During the CMS interview with Colorado BlueSky staff they indicated that PRC has prevented them from investigating and obtaining full information about investigations because PRC staff stated that they are “state employees” who have a right to privacy.
3. HCPF failed to ensure, and continues to fail to ensure, that the critical incidents at PRC are investigated according to Appendix G-1-d of the approved waiver application. During the CMS on-site review CMS determined that PRC is still completing their own investigations of incidents and although HCPF was made aware of this by Colorado BlueSky, HCPF has not taken action to correct this non-compliance.

4. Colorado BlueSky's monitoring of incidents at PRC was insufficient. It did not identify numerous critical incidents occurring at PRC, prior to the body audits. During the CMS interview with Colorado BlueSky, staff indicated that currently Colorado BlueSky only relies on observation of clients and PRC administration to submit incident reports, rather than reviewing the client records and talking to PRC staff and guardians to confirm that PRC is reporting all of the incidents they are required to report.
5. HCPF did not investigate incidents according to the approved process in the waiver application. During the CMS review of PRC, there was no indication that HCPF conducted any investigation of incidents at PRC, even though there have been numerous severe incidents reported and substantiated and PRC has a history of not properly reporting or responding to incidents according to the approved waiver.

Notification of Outcomes of Investigations

Individuals and guardians were not kept apprised of allegations or the progress of the investigations, and no assistance was provided by HCPF, CDPHE or CDHS to put victim supports into place after individuals were subjected to abuse and body audits.

Some guardians reported being told of PRC staff "marking" individuals with their fingers in December, 2014. At that time guardians were assured by the previous PRC Director that the individuals involved had been terminated; however, parents and guardians were not told that the "markings" were actually words scratched into non-verbal and medically fragile individuals, that the staff claimed that the markings came from paranormal activity, and that photos of these clients marked bodies had been posted on the internet. This was substantiated by the Pueblo Sheriff's Department. In addition, PRC staff indicated that they receive 90-150 critical incidents per month, but the parent guardians that CMS interviewed indicated that they had only recently been provided with one or two reports.

Oversight of Critical Incidents and Events

1. HCPF has not provided adequate oversight of the critical incidents or events that occurred at PRC. HCPF did not identify the trends, problematic practices or provide follow-up for the incidents that occurred at PRC. This largely occurred because of the lack of PRC reporting of these incidents to Colorado BlueSky.
2. Colorado BlueSky and PRC have not identified the trends and problematic practices for incidents occurring at PRC. This is likely due, in part, to the number of incidents continuing to occur at PRC being too high for the limited number of quality assurance staff.
3. PRC only provides summaries of investigations to Colorado BlueSky for review by the Colorado BlueSky Human Rights Committee as part of the local Community Centered

Board. By only providing summaries, PRC is preventing Colorado BlueSky from identifying trends in alleged perpetrators and making informed decisions about the incidents and the actions taken in response to the findings. This is problematic because CMS reviewed several alleged incidents of sexual abuse in which various clients identified the same staff person as sexually abusing them, yet this person continued to work with clients until after the body audits occurred. In addition, during the on-site interview with Colorado BlueSky, staff were unable to respond to questions about specific incidents, including these alleged incidents, and expressed surprise at information available in the full incident reports that CMS discussed.

4. HCPF's on-site regulatory survey of incident management practices at PRC and Colorado BlueSky identified by HCPF in the waiver as a component of the Quality Improvement System, failed to identify the lack of appropriate reporting of PRC incidents according to the process in the approved waiver.

Restraints and Restrictive Interventions

1. PRC's use of restraints is not in compliance with the approved waiver. The approved waiver application specifies that "restraints may only be used in an emergency, after alternative procedures have been attempted and failed". During the CMS site visit, CMS observed an individual being placed in a two-person physical restraint. CMS did not observe the staff using any "alternative procedures" prior to using the physical restraint. Rather, CMS observed staff activity that escalated the behaviors. In another home, an individual who was assigned 1:1 staffing as an "alternative procedure" did not have 1:1 staffing and was entering other individuals' bedrooms and provoking them. In addition, from the reports we received, approximately 150 incident reports are filed monthly but when case managers, parents and/or guardians are present on announced and/or unannounced visits, no physical interventions are witnessed.
2. PRC's use of restraints may negatively influence residents' ability to move to less restrictive environments. During an interview a guardian voiced concerns about a failed transition of an individual she provides guardianship services for from PRC to a private provider in the community. The guardian indicated that from her perspective, a major cause of this failure was because the individual did not learn appropriate coping skills while at PRC. When she was placed with a private provider and she had behavioral problems she was conditioned to expect a physical restraint to calm down. Because private providers do not use physical restraints, unless it's an emergency, her private provider declined serving her and she was returned to PRC.

Our observations and documentation review showed that PRC staff are engaging in unreasonable restraints on PRC residents. For instance, the same resident that was involved in the two person restraint described above, had a baseball size circular wound in his middle or lower back. When CMS inquired about the wound, PRC staff indicated

that it was a burn and the individual “did it to himself”. However, staff subsequently admitted that the wound was a rug burn that occurred during a physical restraint. PRC Quality Assurance staff were unaware of the serious nature of the injury stating the nurse said it was healed or was getting better. Although on campus, there was no evidence that the quality team had seen the injury, as opposed to deferring to PRC staff’s assessment. PRC did not investigate the use of this forceful physical restraint. There was also no evidence that the Quality Assurance staff had evidence that determined the wound was the result of a rug burn.

3. Colorado BlueSky did not monitor the use of safety control and emergency control procedures in accordance with the approved process in the waiver. When CMS interviewed Colorado BlueSky staff responsible for reviewing and following up on incidents, they indicated that they did not know when an individual at PRC has an approved safety control procedure versus when PRC was using an emergency control procedure. This lack of knowledge prevents the state’s monitoring of restraints and critical incident safeguards from being implemented appropriately.

The lack of supervision in the group homes is contributing to the unnecessary use of physical restraints used as part of safety control procedures and/or emergency control procedures. CMS was repeatedly told by staff that group homes previously had supervisors located on premises and this was very helpful. Staff expressed feeling previously supported to care for clients and having access to support on-site when they needed to redirect a client or handle an emergency.

Safeguards Concerning Restriction of Rights

1. PRC staff suspended the rights of some clients without following the process in the approved waiver. CMS reviewed incidents reports in which client property was taken from residents of PRC without subsequent review by the interdisciplinary team and by the local Human Rights Committee (HRC) to ensure the suspension was the least restrictive intervention on the participant’s rights as required by the approved waiver.
2. CMS has determined that body audits conducted by CDHS were not in compliance with the approved waiver and federal regulations 42 CFR §441.301 (xiii) (A-H), and 42 CFR §441.301(c) (4) (iii-v). According to the “CDPHE Deficiency List,” dated May 11, 2015, CDHS conducted unclothed body audits that sometimes included inspections of genitals, of all of the 62 residents at PRC without client or guardian consent. This action was taken without regard to residents’ assessed needs or ability to consent and deprived them of their right to privacy, dignity and respect, and freedom from coercion and restraint.
3. Requiring blanket consent restricts individual rights. During the CMS interviews with guardians of residents at PRC, CMS was informed that PRC administration is requiring individuals and guardians to sign “blanket consents”. The consents are for things like

psychotropic medication, restraints and body audits. Consents should be based upon an individual's needs and preferences and afford participants due process.

Administration of Medication Management and Follow-Up

Over 90% of PRC residents are prescribed psychotropic medications. The Medication Management process in the approved waiver requires the use of psychoactive medication to be documented in the service plan, reviewed by the case manager during monitoring visits and referred to the Colorado BlueSky Human Rights Committee (HRC) for review. Yet, PRC, HCPF and Colorado BlueSky failed to follow the process described in Appendix G-3-b of the approved waiver for oversight and management of medications, which includes monitoring the use of these medications by the Colorado BlueSky HRC.

Colorado BlueSky HRC was unable to review medications as required prior to June of 2015 as PRC was operating an internal HRC and not following waiver procedures which required that it share this information with Colorado BlueSky. In addition, according to HCPF, Colorado BlueSky case managers did not monitor implementation of the Service Plan as required. Per the HCBS-DD waiver, case managers are required to visit each provider site at least once per year and to complete face-to-face monitoring with each participant at least once per quarter. HCPF's review of the documentation found that only 29% of the quarterly monitoring visits were completed according to the process approved in the waiver.

On March 24, 2016, the CDPHE found that PRC failed to ensure residents receiving psychotropic medications and/or their guardians, received the information required for informed consent. The associated PRC March Survey-Medication tag report states, "This failure created the potential for the individual and guardian to make decisions regarding the use of psychotropic medications without having adequate knowledge in which to base the decision."

CMS notes one agency guardian expressed concern with Colorado BlueSky's HRC's ability to monitor psychotropic medication appropriately. The guardian indicated that Colorado BlueSky does not have anyone on the committee with an understanding of psychotropic medications.

Systems Improvement (Appendix H of waiver)

1. PRC and Colorado BlueSky failed to follow the critical incident reporting process in the approved waiver. As such, HCPF lacked access to correct data in order to properly monitor the waiver and develop systems improvements.
2. HCPF did not follow the Systems Improvement Process as outlined in the approved waiver application in relation to the incidents that occurred at PRC. Specifically, HCPF did not develop systems improvements or individual remediation strategies to address the on-going incidents at PRC, once they were made aware of them.

3. The Plan of Correction provided by CDHS/PRC to CDPHE does not comply with the Systems Improvement Process in the approved waiver application. The Plan of Correction approved by the CDPHE continues to allow CDHS to independently handle critical incidents internally and does not follow the approved process in the waiver in which HCPF, as the Single State Medicaid Agency, takes the lead in investigating, tracking, trending and remediating critical incidents on both the individual and system level.

***Waiver Administration and Operations
(Appendix A of waiver)***

1. Prior to the body audits, HCPF and Colorado BlueSky stated they were unaware of the incidents of abuse, neglect and exploitation at PRC being reported only to CDPHE.
2. CDPHE investigations of PRC occurrences did not cite waiver deficiencies or require Plans of Correction even when incidents were substantiated. Instead, CDPHE investigations of Serious Occurrences usually resulted in no deficiencies and often “found that the facility acted appropriately by reporting the occurrence, notifying the appropriate persons and agencies.” For instance, the two deaths caused by bowel obstructions did not result in citations of deficient practices, even though PRC’s bowel tracking protocols were not followed or were insufficient to protect the health and safety of the individual; and PRC had a standing nursing protocol to give the person “melted butter and prune juice” for constipation rather than having a physician’s order for a more effective regime for constipation.
3. HCPF has allowed PRC to perform administrative and operational functions of the waiver on behalf of the State Medicaid Agency by permitting PRC to have internal quality assurance policies and procedures that do not comply with the waiver.
4. Colorado BlueSky did not perform Quality Assurance activities according to the approved waiver application. The Community Centered Board is required to complete, at minimum, quarterly individual contact and follow-up on all reported incidents. This did not happen.
5. As the State Medicaid Agency, HCPF failed to identify and correct the administrative deficiencies of Colorado BlueSky and the CDPHE.

Service Plan Development, Implementation and Monitoring (Appendix D of waiver)

1. The service plans for clients at PRC did not comply with the approved waiver. Page 15 and 16 of HCPF's response to the Serious Occurrence questions indicates that the service plans for the clients did not include all of the clients' risks (i.e.: special diets, serious illnesses, and serious mobility issues, etc.), as required in the waiver.
2. Page 16, of HCPF's response to the Serious Occurrence questions indicates that, prior to the body audits:

Community Centered Board case managers did not complete on-site case management visits to PRC as required by the approved waiver application. Case managers did not monitor implementation of the Service Plan as required. Per the HCBS-DD waiver, case managers are required to visit each provider site at least once per year and to complete face-to-face monitoring with each participant at least once per quarter. In review of the documentation in the Benefits Utilization System (BUS) for all 62 residents of PRC, 29% of the quarterly contacts were completed timely.

Of the 62 residents, 47% of them had a problem or incident identified during the Service Plan year. Of those, 6.7% were followed-up by the case manager to ensure satisfactory resolution.

3. HCPF did not follow the approved process for monitoring safeguards in Appendix D-2-b of the waiver. The waiver application does not approve PRC, a Program Approved Service Agency, to operate an internal Human Right Committee, and HCPF did not intervene to correct this structure. PRC operated its independent Human Rights Committee up until July 2015. Since that time PRC has not provided the appropriate Human Rights Committee the information necessary to fulfill their role.

Choice of Provider

PRC is in violation of §1915(c)(2)(C) of the Act and 42 CFR §441.302(d), which affords the right of an individual who is determined to be likely to require a level of care specified in a waiver to choose either institutional or home and community-based services. In addition, CMS has determined the state is also in violation of 1902(a) (23) of the Act and 42 CFR 431.51 which require that Medicaid beneficiaries must be allowed to obtain services from any willing and qualified provider of a service.

When CMS interviewed PRC staff, they indicated that all residents at PRC receive services from PRC because they have an Imposition of Legal Disability. In order for the court to impose an Imposition of Legal Disability the person must have:

1. a developmental disability;

2. removal of legal right determined to be both necessary and desirable to implement the individualized plan; and
3. when seeking to impose a “legal disability” regarding the individual’s right to determine place of abode the court must also find:
 - a. That, based on the recent overt actions or omissions of the individual and because of their presence, individuals pose a probable threat of serious physical harm to themselves or others or are unable to care for themselves to the extent that their own life or safety is seriously threatened, and
 - b. The place of abode being proposed is appropriate and the least restrictive setting.

In the case of an Imposition of Legal Disability, if the person chooses to use a community-based provider for their HCBS services, their right to choose is superseded by the court. During the course of the site visit, CMS was informed by case guardians and PRC staff that the state “RFP’d” individuals to provider agencies and the provider agencies selected the individuals they wished to serve. The process of “RFP for an individual” was described as the state submitting a profile to agencies for the purpose of allowing the agency to determine whether or not they would serve the individual. This process is in direct conflict with the regulation and must be corrected as it allows the provider to choose the client rather than the client choosing the provider. (Note: CMS did receive anecdotal information subsequent to the site visit that this practice has been stopped.) If this is not an accurate depiction of the state process for placement, the state will need to inform guardians and other stakeholders of the accurate process in the state.

In addition, during the course of the CMS review it was discovered that PRC residents have limited access to psychiatric care. PRC indicated that finding a provider qualified to provide services in Pueblo is difficult. Note: CMS does not limit these services to geographic areas; residents of PRC should be supported to travel to any qualified medical or psychiatric provider they need regardless of location.

PRC Staffing

PRC staffing is insufficient to support the level of care needs for the individuals they serve.

1. The current staff turnover rate for PRC is currently 39.89%.
2. PRC staff reported to CMS that they frequently have to complete two eight hour shifts back to back to fill in for missing staff.
3. Staff reported being burned-out and exhausted and expressed serious concerns about their ability to provide appropriate care to the individuals they serve.
4. PRC group home staff reported a lack of adequate supervision as their supervisors are no longer in the homes providing daily training and support to the staff.
5. PRC staff reported concerns about other staff and/or administration retaliating against them for reporting incidents.
6. Based upon CMS review of training materials for staff, PRC re-training of staff largely consists of re-reviewing and signing written policies and procedures rather than providing

on-site training, or supervision and verbal coaching and feedback. Given the number of repeat incidents, the current method is ineffective.

Individual Services

1. PRC is not consistently providing adequate supervision to individuals with one-on-one and line of sight supervision needs. During the on-site visit CMS observed a client who requires one-on-one “within arm’s reach” supervision to be without his staff person. The client followed CMS into the room of another client and began provoking the other client. PRC staff were not with the client for several minutes.

In addition, there have been a number of incidents that occurred between residents of PRC, injuries or incidents that have occurred involving individuals that require intensive supervision labeled as; “within arm’s reach, one on one supervision” and “line of sight supervision”. One guardian shared an incident that happened between her brother and another client while he was using the bathroom. She indicated that her brother had been “perpetrated on” by another client while in the bathroom, even though both individuals’ service plans included line of sight supervision.

2. There is a general lack of knowledge about the availability of all waiver services. CMS observed several specialized beds for clients with significant mobility limitations and medical needs in one of the homes. PRC staff assisted the clients in this home to use their personal funds to purchase this equipment, rather than evaluating if the waiver would have authorized that equipment through the services defined in the waiver.
3. The CMS review raised questions about whether the services and supports being provided at PRC are adequate to assist individuals at PRC to meet their individualized goals and function in a less restrictive setting in the community. Most of the individuals at PRC have mental health diagnosis and yet, other than being prescribed psychotropic medication, clients are not receiving other mental health services such as psychotherapy.

Person Centered Planning

(42 CFR §441.301(c) (1) and (2) - Person Centered Planning and the Person Centered Service Plan)

In March, 2014 new federal regulations pertaining to person centered planning and service planning became effective. The person centered planning process is intended to place decision making into the hands of participants of HCBS waivers. Requiring individuals to be placed at PRC through the use of an Imposition of Legal Disability - is a violation of person centered planning process because it strips the individual and/or guardian or the right to choose the services and supports they receive and from whom and gives this right to the court.

COMPLIANCE ACTIONS

Based upon the CMS review of documentation and the on-site visit CMS has determined that the state is substantively out of compliance with CO 0007. As such, CMS has developed several compliance actions necessary to address our specific findings. Full implementation of these actions is necessary to protect the health and welfare of individuals at PRC and to bring this provider and the state into compliance with the approved wavier CO 0007.

Required Elements for the Corrective Action Plan

The state must develop and implement a systematic CAP with date specific milestones with full implementation within 12 months. The plan must include steps that HCPF and other state agencies must take to address all deficiencies.

Specifically, the CAP must at a minimum include provisions for the following:

1. Addressing the findings specific to PRC and the systemic issues of non-compliance with the waiver.
2. Procuring an independent monitor of PRC that will report to HCPF and CMS that PRC is taking the necessary actions to protect the health and welfare of individuals residing at PRC and bring PRC into compliance with the approved waiver.

Based upon the CMS on-site visit and interviews with PRC staff, CMS does not have confidence that the abilities of the current PRC management will suffice to address and eliminate the on-going issues at PRC. As such, the state must secure PRC management support by utilizing independent consultation from an expert in providing services and supports to people with high needs, improving HCBS entities in crisis, addressing and decreasing critical incidents and decreasing the use of physical restraints.

3. Effectively separating Quality Assurance from PRC and CDHS to eliminate the risk of conflict of interest when an entity oversees itself.
4. Providing complete incident and investigation reports to the applicable Human Rights Committee, case management agency and guardian(s).
5. A PRC staffing plan which addresses staff turnover, staff working double shifts, staff supervision and training. The plan shall include milestones and timelines to implement these actions and a reduction in the use of 'doubles' and the turnover rate.
6. The state's strategy for conducting a thorough review of the waiver statewide to determine if similar issues are occurring elsewhere and developing a plan to address and remediate any state findings prior to the renewal of the waiver.

7. A plan to implement the Regional Center Task Force Report¹ with milestones and timelines. The CMS on-site visit confirmed much of the information contained in the report and CMS is supportive of the recommendations that could help address the findings of our investigations.

Additional Strategies to Achieve Compliance Subject to 42 CFR §430.304 (g) (1)

Prior to employing these strategies CMS is required to offer a chance the state the opportunity to rebut and appeal the findings of non-compliance identified by CMS, as outlined in 42 C.F.R. § 441.304(g). If the state chooses to rebut these findings the state should consult Subpart D of 42 CFR §430 – Hearings on Conformity of State Medicaid Plans and Practice to Federal Requirements.

Moratorium

Based upon CMS observations and interviews with PRC staff, the current staffing for PRC is not adequate to serve additional clients. PRC must not accept any new admissions until PRC decreases the annual staff turnover rate to 20%, eliminates the use of double shifts on a routine basis and implements the relevant components of the state's CAP fully as verified by an independent monitor.

CMS is gravely concerned about the current staff's ability to safely meet the needs of the individuals currently residing at PRC. Therefore, CMS strongly recommends that PRC not accept any additional residents until the health and safety of individuals is ensured and the non-compliance is resolved.

Disallowance

CMS will issue a disallowance for the Federal Financial Participation paid for individuals receiving services from PRC covering the period of November 1, 2014, the month during which the original incident involving abuse of individuals occurred, through at least November 2015, the month when the PRC CAP was implemented. Further information on the disallowance will be forwarded at a later date. While the State found the PRC corrective action plan CAP was implemented by November 2015, the CMS on-site review found that serious deficiencies and non-compliance with the waiver provisions continue to exist. CMS will closely review the state's response to this communication, the CAP proposal and the progress made on the

¹ The Regional Center Task Force was created by Colorado House Bill 14-1338. The legislation directed the task force to develop recommendations regarding the future size, scope, and role of Colorado's three Regional Centers serving people with intellectual and developmental disabilities (I/DD). The task force was comprised of fifteen people representing a broad spectrum of Regional Center stakeholders, including legislators, families and guardians of persons residing at the Regional Centers, advocates, service providers, mental health specialists, and executives from key state agencies, including HCPF and CDHS.

approved CAP to determine if the state is adequately addressing areas of non-compliance. This will determine if the disallowance for the November 2014 through November 2015 will suffice to ensure compliance with federal requirements or if it needs to be extended.

CONCLUSION

CMS has determined that HCPF is substantively out of compliance with the approved waiver, CO 0007. This non-compliance has prevented the HCPF from protecting the health and welfare of individuals residing at PRC and identifying, addressing, and preventing occurrences of abuse, neglect and exploitation for residents of PRC.

PRC Quality Assurance staff has substantiated many allegations of sexual, physical and verbal abuse, and neglect at PRC, and in some cases PRC staff have been terminated from PRC employment. In addition, the Pueblo Sheriff's office has recommended criminal charges be filed on eleven previous PRC staff. Currently, PRC Quality Assurance staff report that they review and follow-up on up to 150 critical incident reports each month, though guardians report rarely being notified of incidents or restraints. Although, PRC and HCPF have taken some actions to resolve the critical incidents occurring at PRC, these actions are not sufficient to resolve the risk to individual health and welfare, and in some cases these actions have exacerbated the problems at PRC.

CMS recognizes that there are dedicated PRC staff members who provide quality support and services to residents of PRC even through very stressful and trying times. Some PRC staff report providing this support while sacrificing their personal time and experiencing intimidation and abuse by people living in the greater Pueblo Community. In addition, several PRC staff shared stories of using their private funds to buy clothing for residents or have used their private funds or donated items to decorate the group homes or resident rooms.

While this CMS on-site review was contained to the incidents occurring at PRC, CMS has identified gaps or issues of non-compliance that may be statewide. In addition to the gaps in the critical incident reporting system, CMS is concerned about HCPF's monitoring efforts to ensure the overall health and safety of all individuals on the waiver, case management monitoring of services and supports, services plans adequately addressing client needs and goals, access to and appropriate use of non-waiver services and supports and due process.

Attachment A: Findings of Non-Compliance for Colorado 0007- Pueblo Regional Center

Waiver Requirements	Findings of Non-Compliance
<p>42 CFR § 441.302 State assurances and Appendix G-1-b: Response to Critical Events or Incidents</p>	<p>Standards: The Medicaid agency is responsible for ensuring that a waiver is operated in accordance with applicable Federal regulations and the provisions of the waiver itself and to provide satisfactory assurances to CMS. 42 CFR § 441.302 (a) Health and Welfare, specifies that the state provide an "assurance that necessary safeguards have been taken to protect the health and welfare of the recipients of the services."</p> <p>Appendix G-1-b: State Critical Event or Incident Reporting Requirements- indicates the following process is required to be reported for review and follow-up action by an appropriate authority, and the individuals that are required to report such incidents.</p> <p><i>Reporting to Law Enforcement and Adult Protection- All Program Approved Service Agencies (PASA) and Community Centered Boards (CCB) are required to report any incident in which a crime may have been committed to local law enforcement pursuant to Title 18-8-115, C.R.S. (Colorado Criminal Code -Duty To Report A Crime). The PASA and CCB also shall report any suspected incidents of abuse, neglect or self-neglect to county departments of social services adult protection units pursuant to Title 26-3.1-101, C.R.S. (At-Risk Adult Statute. Requirements for such reporting are included in DHS/DDD Rules located at 2 CCR 503-1 16.580 C.</i></p> <p><i>Provider Reporting- The HCPF requires all Program Approved Service Agencies (PASAs) to report specific types of incidents to the Community Centered Board (CCB) immediately upon detection via telephone, e-mail or facsimile but no more than 24 hours after the incident occurrence. These incidents include allegations of mistreatment, abuse, neglect and exploitation, medical crises requiring emergency treatment, death, victimization as a result of a serious crime, alleged perpetration of a serious crime and missing persons. Requirements for such reporting are located at 2 CCR 503-1 16.580. Subsequent to initial reporting, the agency must submit a written incident report to the CCB within 24 hours of discovery of the incident.</i></p> <p><i>CCB Reporting- The Department operates a web-based critical incident reporting system and requires all CCBs to report a specific class of incidents, termed critical incidents, to the Department, as soon as possible after discovering the incident but no later than noon of the next business day. Critical incidents that require such reporting include allegations of mistreatment, abuse, neglect and exploitation that involve injury, death, adverse medical outcome, crime committed against a participant or by a participant, exploitation in excess of \$300, police involvement, and allegations identified through trend analysis of incident data (e.g., pattern of suspicious bruising, multiple medication errors, etc.) Critical incidents are reported to the Department via the web-based Critical Incident Reporting System (CIRS) through a secure web portal. CCBs and waiver service providers may also fax a critical incident report to the Department when necessary. The definitions of critical incident categories are available in the Quick Guide to Critical Incidents (May</i></p>

2007).

Licensed Community Group Home Reporting- All PASAs operating group homes licensed by the CDPHE are required to report a specific class of incidents through the CDPHE Occurrence Reporting Program no later than the end of the next business day after discovery. A list and definition of critical incidents that must be reported to CDPHE through the Occurrence Reporting Program are included in the Occurrence Reporting Manual (Amended August 2011) and include the following types of incidents: Physical abuse, sexual abuse, verbal abuse, neglect, brain injuries, burns, death, diverted drugs, life threatening complications due to anesthesia, transfusions, malfunction or misuse of medical equipment, misappropriation of resident property, missing persons and spinal cord injuries.

Finding 1: The PRC failed to report incidents in which a crime may have been committed to Law Enforcement and suspected incidents of abuse and neglect to county departments of social services adult protection according to the process in the approved waiver.

Finding 2: The PRC failed to report critical incidents to the designated Community Centered Board.

Finding 3: Colorado BlueSky failed to report critical incidents to the HCPF.

Finding 4: The Department of Health Care Policy and Financing failed to ensure that the critical incidents at PRC were reported in accordance with Appendix G-1-b of the approved waiver application.

Finding 5: There is a gap in the states critical incident reporting system, as HCPF relies on the CIRS in a web-based system and the CDPHE to be informed of incidents, but there is no monitoring or oversight by HCPF staff to ensure all incidents are being reported according to the approved waiver.

Finding 6: The CDPHE occurrence reporting requirements for licensed group homes is not sufficient for Health Care Policy and Financing to identify and prevent abuse, neglect, and exploitation. In addition, the "elements" required to be present in order to report an occurrence are not in compliance with the waiver that requires all incidents of physical abuse, sexual abuse, verbal abuse, neglect, brain injury, burns, death, diverted drugs, life threatening complications due to anesthesia, transfusions, malfunction or misuse of medical equipment, misappropriation of resident property missing persons and injuries.

For instance, according to the CDPHE's "Occurrence Reporting Manual", in order for a burn to be reported as an occurrence, the burn must be a second or third degree burn AND cover more than 20% or the body surface in an adult or 15% in a child.

In addition, based upon review of the state's waivers it appears that a gap may be present in all waivers that rely on providers reporting incidents to CDPHE and case managers to report incidents in the web based critical incident reporting system.

	<p>CMS has completed a review of CDPHE Serious Occurrence Reports for PRC. This review found over 80 occurrence reports since 12/2012. The majority of these did not provide any indication that the incident had been reported to Colorado BlueSky or Health Care Policy and Financing according to the approved waiver and although some occurrences were substantiated, CDPHE cited no deficiencies and did not require PRC to submit plans of correction. This number is difficult to reconcile with a report of approximately 150 occurrences being reviewed by the Quality Assurance staff on a monthly basis.</p> <p>Basis for Findings: The PRC is a program approved service agency (PASA) as defined by the waiver. PRC is owned and operated by the CDHS. As a PASA, PRC must adhere to designated roles and responsibilities defined in the approved waiver application.</p> <p>CMS reviewed HCPFs responses to the Serious Occurrence Questions, Pueblo Sheriff's Office Reports, Serious Occurrence Reports from CDPHE, the CDPHE Deficiency List and the Plan of Correction by CDHS and found a number of incidents in which PRC and the CCB failed to report critical instances according to the approved waiver application. Some additional details contained in the documentation include:</p> <ul style="list-style-type: none"> • Page 5 of HCPFs responses to the Serious Occurrence questions indicates that the Pueblo sheriff's office is investigating "19 complaints of abuse, maltreatment and unlawful sexual contact." • Page 20 of HCPFs responses to the Serious Occurrence questions indicates that ten reportable incidents were found during the unclothed body assessments. But these were never reported according to the process in the approved waiver. • Page 21 of HCPFs responses to the Serious Occurrence questions indicates that 63 incidents occurred from 1/1/13-3/31/15 (See Appendix 9: DHS Incident Report Data) • DHS/Regional Center staff conducted 62 non-consensual unclothed body checks of PRC residents to substantiate allegations of abuse (See Appendix 5: CDPHE Deficiency List). • On pages 5-6 of the Plan of Correction by CDHS, the CDHS indicated that they knew of several other incidents including: <ul style="list-style-type: none"> ○ "threatening words scratched into the backs and stomachs of non-verbal residents" ○ "two residents stole a staff vehicle and eloped from PRC" ○ "staff appeared to have dressed the resident in inappropriately heavy, long sleeved clothing in order to cover up markings or bruises, and the resident appeared scared to talk to the agency's investigator." ○ "staff reportedly threatening to kill a resident" ○ "PRC staff verbally and physically abused residents by striking, choking, shoving, or humiliating residents refusing to clean or provide water to residents and theft of resident medication." ○ "alleged retaliation by PRC management against staff who reported mistreatment, abuse, neglect and exploitation"
Appendix G-1-c: Participant Training and Education	<p>Standard: Appendix G-1-c: Participant Training and Education- describes how training and/or information is provided to participants (and/or families or legal representatives, as appropriate) concerning protections from abuse, neglect, and exploitation, including how participants (and/or families or legal representatives, as appropriate) can notify appropriate authorities or entities when the participant may have experienced abuse, neglect or exploitation.</p>

	<p><i>The Case Management Agency (CMA) provides information about mistreatment, abuse, neglect and exploitation to the participants, guardians, involved family members and authorized representatives at initial enrollment and annually thereafter. This will include information on the right to be free from mistreatment, abuse, neglect and exploitation, how to recognize signs of mistreatment, abuse, neglect and exploitation, and how to report mistreatment, abuse, neglect and exploitation.</i></p> <p><i>Additionally, the information will include the requirements of service provider agencies and Targeted Case Management agencies for detecting and follow-up to suspicions and allegations of mistreatment, abuse, neglect and exploitation.</i></p> <p>Finding: The information that is provided to waiver recipients and/or guardians is insufficient to assist waiver participant and guardians to recognize signs of mistreatment, abuse, neglect and exploitation, and report mistreatment, abuse, neglect and exploitation. When CMS interviewed guardians of residents are PRC, guardians informed CMS that they have never witnessed restraints, never witnessed critical incidents and have only recently been informed of one or two incidents which have occurred. This information is inconsistent with information that both PRC and Colorado BlueSky provided to CMS which indicates that several hundred critical incidents have occurred at PRC just since January 1, 2016.</p>
<p>Appendix G-1-d: Response to Critical Events or Incidents-Responsibility for Review of and Response to Critical Events or Incidents</p>	<p>Standard: Appendix G-1-d: State Critical Event or Incident Reporting Requirements - indicates the following types of critical events or incidents (including alleged abuse, neglect and exploitation) that the State requires to be reported for review and follow-up action by an appropriate authority, the individuals and/or entities that are required to report such events and incidents and the timelines for reporting.</p> <p><i>Response to Critical Incidents by CCBs - CCBs are to ensure the health and safety of waiver participants in all critical incidents and to complete follow-up actions to prevent future critical incidents. CCBs are required to investigate all allegations of mistreatment, abuse, neglect and exploitation pursuant to DHS/DDD Rule 2 CCR 503-1 16.580. All investigations completed by CCBs are to comply with the requirements and standards specified in The Investigations Manual (October 2006) and within the recommended standards of practice specified in the Conducting Serious Incident Investigations (2003) manual developed by Labor Relations Alternatives, Inc. The local Human Rights Committee (HRC) reviews all written investigation reports and, where appropriate, issues recommendations for follow-up actions by the provider agency and or the CCB...</i></p> <p><i>Response to Critical Incidents Reportable To Law Enforcement and Adult Protection- In general, all investigations by law enforcement agencies and county departments of Adult Protective Services (APS) take precedence over investigations conducted by the Department and/or Case Management Agencies (CMA). Such critical incidents include those in which a crime may have been committed against or by a waiver participant, and allegations of abuse, neglect or self-neglect of a waiver participant. However, when law enforcement or county APS has determined that additional follow-up to a reported critical incident under the agency purview does not require follow-up or investigation by law enforcement or county APS, the CMA agency is responsible for follow-up action. Where appropriate, the CMA agency must conduct an investigation on any questions not resolved by a law enforcement or county APS investigation (e.g., provider training, program management supervision, etc.).</i></p>

Finding 1: PRC and Colorado BlueSky did not follow the process described in the approved waiver application to report and investigate incidents. Currently, PRC is investigating all incidents of abuse, neglect and exploitation and Colorado BlueSky is only receiving a summary document.

Finding 2: Colorado BlueSky did not and does not now investigate the allegations of mistreatment, abuse, neglect and exploitation at PRC in accordance with the approved waiver application. As described above, Colorado BlueSky is the case management agency (CMA) and the local community centered board (CCB) for PRC and in accordance with the waiver should be conducting investigations of, "all allegations of mistreatment, abuse, neglect and exploitation". During the CMS interview of PRC staff, Colorado BlueSky indicated that PRC has prevented them from investigating and obtaining full information about investigations because state staff are involved and state staff have a right to privacy.

Finding 3: The HCPF failed to ensure, and continues to fail to ensure, that the critical incidents at PRC are investigated according to Appendix G-1-d of the approved waiver application. During the CMS on-site review CMS determined that PRC is still completing their own investigations of incidents and the HCPF has not taken action to correct this non-compliance.

Standard: Appendix G-1-d of the approved waiver applications indicates;

Monitoring - Community Centered Boards (CCB) and Program Approved Service Agencies (PASA) monitor services (e.g., incident reports, anecdotal data, interview, etc.) and are required to identify and report all critical incidents. The HCPF (The Department) identifies incidents of non-compliance through Program Quality on-site surveys, stakeholder complaints and review of the critical incident reporting system...

When the Department determines that an investigation by state staff is required the investigation is initiated within 24 hours. The Department determines the need for state level investigation based on:

- 1) The severity of the critical incident (e.g., hospitalization due to pneumonia versus physical abuse resulting in an injury, etc.);*
- 2) The critical incident history of the waiver participant; and*
- 3) The history of the CCB and PASAs regarding reporting and response to critical incidents...*

Finding 1: Colorado BlueSky's monitoring of incidents at PRC is insufficient. As they did not identify numerous critical incidents occurring at PRC. During the CMS interview with Colorado BlueSky, staff indicated that currently Colorado BlueSky relies on observation of clients and PRC to submit incident reports, rather than reviewing the client records, talking to PRC staff and guardians to confirm that PRC is reporting all of the incidents they are required to report.

Finding 2: The HCPF did not and does not now investigate incidents according to the approved process in the approved waiver application. During the CMS review of PRC, there was no indication that the HCPF conducted any investigation of incidents at PRC, even though there have been numerous incidents and the PRC has a history of not reporting or responding to incidents according to the approved waiver.

Standard: Appendix G-1-d of the approved waiver applications indicates;

	<p><i>Notification of Outcomes of Investigations - All investigations completed by the Department are documented in a written investigation report. When the target of the investigation is a staff person/host home provider or a PASA to which the allegations are against, the written investigation report is not shared with the target(s) of the investigation. When the CCB is not the target of the investigation, a summary is provided to inform them whether the allegation was substantiated, and any recommendations or directives including deficiencies requiring plans of correction. The Department will notify the participant, legal representative and/or his/her guardian of the findings of the investigation and any follow-up action required, within 5 working days of completing the written investigation report. Investigators are encouraged to keep participants, authorized representatives and guardians advised of the progress of the investigation, and to assist providers with putting victim supports into place.</i></p> <p>Finding: Individuals and guardians were not kept apprised of the progress of the investigations, and no assistance was provided by HCPF, CDPHE or CDHS to put victim supports into place.</p>
<p>Appendix G-1-e: Responsibility for Oversight of Critical Incidents and Events</p>	<p>Standard: Appendix G-1-e: Responsibility for Oversight of Critical Incidents and Events- describes the following process for the State agency overseeing the reporting of and response to critical incidents or events that affect waiver participants, how this oversight is conducted, and how frequently.</p> <p><i>Ongoing oversight of critical incidents is the responsibility of the HCPF (the Department). The Department reviews and evaluates each reported critical incident as soon as possible but no later than noon the next business day. Data on the total and type of critical incidents by service type, provider and Community Centered Board (CCB) are reviewed monthly by the Department to identify incident trends, problematic practices, and to follow-up with specific provider and/or CCBs. Reviews are conducted of any participant who has had more than one incident in 30 days, more than three incidents in six months, and more than five incidents in 12 months. All current sentinel events are reviewed during the monthly Incident Review Team (IRT) meetings to determine if the Department needs to take additional follow-up action or if additional directives need to be issued to service provider or CCBs.</i></p> <p><i>Program Quality On-site Surveys- The Department conducts on-site regulatory surveys of incident management practices of Program Approved Service Agencies (PASA) and CCBs. Program Quality on-site surveys are completed of PASAs at least every three years. Administrative review of CCBs will be conducted on an annual basis, as specified in the Global QIS.</i></p> <p>Finding 1: Health Care Policy and Financing has not provided adequate oversight of the critical incidents or events that occurred at PRC. Health Care Policy and Financing did not identify the trend of problematic practices or provide follow-up for the incidents that occurred at PRC. This largely occurred because of the lack of PRC reporting these incidents to Colorado BlueSky and continues due to the insufficient documentation submitted in the summary reports. CMS further notes that the number of incidents reported by PRC staff is significantly higher than the number of incidents Colorado BlueSky reports receiving.</p> <p>Finding 2: Health Care Policy and Financing's on-site regulatory survey of incident management</p>

	practices at PRC and Colorado BlueSky failed to identify the lack of appropriate reporting of PRC incidents according to the process in the approved waiver.
Appendix G-2-a-i: Safeguards Concerning Restraints and Restrictive Interventions:	<p>Standard: Appendix G-2-a-i: Safeguards Concerning Restraints and Restrictive Interventions- specifies the safeguards that the State has established concerning the use of each type of restraint (i.e., personal restraints, drugs used as restraints, mechanical restraints). The applicable information is described below:</p> <p><i>Restraints may be used only in an emergency, after alternative procedures have been attempted and failed, and to protect the participant and others from injury. An "emergency" is defined as a serious, probable, imminent threat of bodily harm to self or others where there is the present ability to effect such bodily harm. Only trained Program Approved Service Agency (PASA) direct care service providers may use mechanical or physical restraints. PASAs are to use alternative methods of positive behavior support (e.g., de-escalation techniques, positive reinforcement, verbal counseling, etc.) and/or the least restrictive alternative to bring the participant's behavior into control prior to the use of mechanical or physical restraints. PASAs and Community Centered Boards (CCBs) must ensure that all direct care service providers are trained in the use of restraints prior to use of restraint utilizing an approved technique. Approved techniques involve the use of positive behavioral interventions (e.g., de-escalation, redirection, and blocking techniques) and/or the least restrictive alternative to bring the participant's behavior into control prior to the use of mechanical or physical restraints...</i></p> <p><i>Monitoring- CCB and PASA staff and direct care service providers are responsible for monitoring incident reports to identify when restraints are not used in accordance with statutory and regulatory requirements. Use of restraints not conforming to those requirements meets the definition of abuse (unreasonable restraint), is required to be reported as an allegation of abuse, and is subject to the investigation of abuse requirements specified in DHS/DDD Rule 2-CCR 503-1 16.580. The use of physical, mechanical and chemical restraints is reviewed by a local Human Rights Committee, pursuant to DHS/DDD Rule 2-CCR 503-1 16.550 I, either prior to the planned use of restraints or after each incident in which restraint was used.</i></p> <p><i>Emergency Control Procedures- Emergency Control Procedures are defined as the unanticipated use of a restrictive procedure or restraint in order to keep the participant and others safe. Each PASA is required to have written policies on the use of Emergency Control Procedures, the types of procedures that may be used, and requirements for direct care service provider training. Behaviors requiring Emergency Control Procedures are those that are infrequent and unpredictable. Emergency Control Procedures may not be employed as punishment, for the convenience of direct care service providers, or as a substitute for services, supports or instruction.</i></p> <p><i>Within 24 hours after the use of an Emergency Control Procedure, the responsible direct support service provider must file a written incident report. The incident report must include the following information:</i></p>
	1) A description of the Emergency Control Procedure employed, including beginning and ending times;

- 2) An explanation of why the procedure was judged necessary; and,
- 3) An assessment of the likelihood that the behavior that prompted the use of the Emergency Control Procedure will recur.

Within three days after use of an Emergency Control Procedure, the CCB/case manager, guardian, and authorized representative if within the scope of his or her duties, must be notified of the use of the mechanical or physical restraint.

Safety Control Procedure- Safety Control Procedure is defined as a written plan describing what procedures will be used to address emergencies that are anticipated and stating that physical or mechanical restraints are to be used to ensure safety of the participant or others when previously exhibited behavior is likely to occur again. The use of Safety Control Procedures must comply with the following:

Each CCB and PASA must have written policies on the use of Safety Control Procedures, the types of procedures that may be used, and requirements for staff training. When a Safety Control Procedure is used, the PASA must file an incident report within three days with the CCB/case manager for each use of a Safety Control Procedure. If the Safety Control Procedure is used more than three times within the previous 30 days, the participant's interdisciplinary team must meet to review the situation and to endorse the current plans or to prepare other strategies.

Finding 1: PRC's use of restraints is not in compliance with the approved waiver. The approved waiver application specifies that "restraints may only be used in an emergency, after alternative procedures have been attempted and failed". During the CMS site visit, CMS observed an individual being placed in a two-person physical restraint. CMS did not observe the staff using any "alternative procedures" prior to using the physical restraint. In addition, as reported by guardians, restraints are never used when family and guardians are present, possibly indicating that staff are aware of and use alternative procedures when these individuals are present.

Finding 2: PRC use of restraints may negatively influence residents' ability to move to less restrictive environments. During a guardian interview with CMS, the guardian voiced concerns about a failed transition from the person she is guardian for to a private provider. She indicated that from her perspective, a major cause of this failure was because the person that she is guardian for did not learn appropriate coping skills while at PRC. When she had a behavior problem, she was used to being placed in a physical restraint and had learned no other coping mechanisms; because private providers do not use restraints she was returned to PRC.

Finding 3: Based on the CMS review of documentation and our observations, it appears that some PRC staff are engaging in unreasonable restraints of PRC residents. For instance, the same resident that was involved in the two person restraint described above, had a baseball size circular wound in his middle or lower back. When CMS inquired about the wound, PRC staff indicated that it was a burn, the individual "did it to himself", but after further questions staff admitted that the wound was a rug burn that occurred during a physical restraint. PRC Quality Assurance staff were unaware of the serious nature of the injury stating the nurse said it was healed or was better. PRC did not investigate the use of this forceful physical restraint. There

	<p>also did not appear to be any evidence that the wound was consistent or inconsistent with the staff account of the injury.</p> <p>In addition, the restraint CMS witnessed included the use of a "body blocker". PRC staff pushed the blocker underneath the resident's head, by forcing his head up off the table. The blocker was very large and hard, and PRC Quality Assurance staff told CMS that the blocker was not intended to be used on clients, instead it was to be used by staff to block aggression by clients.</p> <p>Finding 4: Colorado BlueSky is not monitoring the use of safety control and emergency control procedures in accordance with the approved process in the waiver. When CMS interviewed Colorado BlueSky, staff responsible for reviewing and following up on incidents, indicated that they did not know when an individual at PRC has an approved safety control procedure vs. when PRC was using an Emergency Control procedure. This lack of knowledge prevents the state's critical incident safeguards from being implemented appropriately and also indicates that the staff are unaware of critical information that should be documented in the service plan.</p>
<p>Appendix G-2-b-i: Safeguards Concerning the Use of Restrictive Interventions</p>	<p>Standard: Appendix G-2-b-i: Safeguards Concerning the Use of Restrictive Interventions specifies the safeguards that the State has in effect concerning the use of interventions that restrict participant movement, participant access to other individuals, locations or activities, restrict participant rights or employ aversive methods (not including restraints or seclusion) to modify behavior. The applicable information is described below:</p> <p><i>The rights of participants may be removed or suspended only in accordance with state law Title 27-10.5 and DHS/DDD rules. A suspension of rights is authorized under the two following processes:</i></p> <p><i>Legal Imposition of Disability- Pursuant to state law Title 27-10.5-110 any individual, including a case manager for a waiver participant, may petition the district court to issue an imposition of legal disability to remove a participant's legal right. Articles of this state law provide specific requirements for when such an imposition may be granted and that the imposition must be reviewed by the court every six months. All actions to remove a legal right require a court order.</i></p> <p><i>Suspension of Rights- Pursuant to state law Title 27-10.5-112 the rights of a participant may be suspended only to protect the participant from endangering themselves, others, or property. Such rights may be suspended only by a Developmental Disabilities Professional, with subsequent review by the interdisciplinary team (IDT) and by the local Human Rights Committee (HRC) to ensure the suspension which will promote the least restriction on the participant's rights.</i></p> <p><i>Safeguards in place to protect participant's rights are included in 2 CCR 503-1 16.311 and include the following:</i></p> <p><i>All participants, guardians and authorized representatives must be provided a written and verbal explanation of the participant's rights at the time the person is determined eligible to receive developmental disability services, at the time of enrollment, and when substantive changes to services and supports are considered through the Service Plan development process. The information must be provided in an easy to understand</i></p>

format and in the participant's native language, or through other modes of communication as may be necessary to enhance understanding. Community Centered Board (CCB) and Program Approved Service Agencies (PASA) are required to provide assistance and ongoing instruction to participants in exercising their rights. No participant, his/her family members, guardian or authorized representatives, may be retaliated against in their receipt of services or supports or otherwise as a result of attempts to advocate on their own behalf. Direct care service providers are required to successfully complete training on and be knowledgeable of participant's rights and the procedural safeguards for protecting those rights.

When suspension of a participant's rights is under consideration, the rights must be specifically explained to the individual, with written notice of the proposed suspension given to the participant, and when appropriate his/her guardian.

At the time a right is suspended, such action shall be referred to the local HRC for review and recommendation. This review must include an opportunity for the participant, guardian or authorized representative to present relevant information to the local HRC. If suspended, the suspension is documented in the participant's Service Plan. The participant's Service Plan must specify the services and supports required in order to assist the person to the point that suspension of rights is no longer needed.

When a right has been suspended, the continuing need for such suspension must be reviewed by the participant's IDT at a frequency decided by the team, but not less than every six months. The review must include the original reason for suspension, the participant's current circumstances, success or failure of programmatic intervention, and the need for continued suspension or modification. Affected rights must be restored as soon as circumstances justify. Case managers are responsible for monitoring that restrictive procedures and a suspension of rights are used only in compliance with these requirements. Additionally, local HRCs are responsible to ensure restrictive procedures and procedures to suspend rights are used only in compliance with the requirements of state law and DHS/DDD rules.

Some of the rights set forth in, Colorado Revisited Statutes, 27-10.5-110, include:

- 1. To receive appropriate services and supports throughout their lifetimes regardless of their age or degree of disability;*
- 2. To be free from deprivation of liberty, except when such deprivation is for the purpose of providing services and supports which constitute the least restrictive available alternative adequate to meet the person's needs, and to ensure that these services and supports afford due process protections;*
- 3. To experience the fullest measure of privacy, dignity, rights, and privileges to persons with developmental disabilities;*

Finding 1: PRC staff are suspending the rights of some clients without following the process in the approved waiver. CMS reviewed incidents reports in which client property was taken from them without subsequent review by the interdisciplinary team (IDT) and by the local Human Rights Committee (HRC) to ensure the suspension was the least restrictive on the participant's rights as required by the approved waiver.

	<p>Finding 2: CMS has determined that body audits conducted by CDHS were not in compliance with the approved waiver and federal regulations §441.301(c) (2) (vi) and (xiii) (A-H), and §441.301(c) (4) (iii-v). According to the, "CDPHE Deficiency List," dated May 11, 2015, CDHS conducted unclothed body audits that sometimes included inspections of genitals, of all of the 62 residents at PRC without client or guardian consent. This action was taken without regard to residents' assessed needs or ability to consent and deprived them of their right to privacy, dignity and respect, and freedom from coercion and restraint.</p> <p>Finding 3: Requiring blanket consent restricts individual rights and is inconsistent with person-centered planning and informed consent. During the CMS interviews with guardians of residents at PRC, CMS was informed that PRC administration is requiring individuals and guardians to sign blanket consents. The consents are for things like psychotropic medication, restraints and body audits. Consents should be based upon individual's needs and preferences and afford participants due process.</p>
<p>Appendix G-3-b: Medication Management and Follow-up</p>	<p>Standard: Appendix G-3-b: Medication Management and Follow-up specifies the entity (or entities) that have ongoing responsibility for monitoring participant medication regimens, the methods for conducting monitoring, and the frequency of monitoring.</p> <p><i>Psychoactive Medication- When PASA direct care service providers assist participants in the administration of medications to change or modify a participant's behavior or to treat his/her psychiatric symptoms the agency is subject to additional requirements. Specifically, the participant's Service Plan must document the use of psychoactive medications and the agency staff must document the effects of the medication. The participant's case manager is responsible for monitoring that such required actions are completed. When the PASA or case manager have concerns about the participant's use of psychoactive medications the service provider is required to make a referral to the local Human Rights Committee.</i></p> <p>Finding: Over 90% of the residents are prescribed psychotropic medications. Yet, PRC, HCPF and Colorado BlueSky failed to follow the process described in Appendix G-3-b of the approved waiver for oversight and management of medications, which includes monitoring the use of these medications by the Colorado BlueSky HRC because PRC was using an internal process, including an internal HRC as opposed to using Colorado BlueSky HRC as required in the approved waiver.</p>
<p>Appendix H-1-a: Systems Improvement</p>	<p>Standard: Appendix H-1-a: Systems Improvement describes (1) the <i>system improvement</i> activities followed in response to aggregated, analyzed discovery and remediation information collected on each of the assurances; (2) the correspondent roles/<i>responsibilities</i> of those conducting assessing and prioritizing improving system corrections and improvements; and (3) the processes the state will follow to continuously <i>assess the effectiveness of the OIS</i> and revise it as necessary and appropriate. The approved waiver applications indicates:</p> <p><i>The Department (HCPF) also uses standardized tools for critical incident reporting, service planning, and level of care (LOC) assessments for its HCBS waiver populations. Through use of the BUS, data that are generated from assessments, service plans, and critical incident reporting and concomitant follow-up, are electronically available at both the Case Management Agencies (CMA) and State level, allowing for effective access and use for clinical and administrative functions as well as for system improvement activities.</i></p>

	<p><i>This standardization and electronic availability provide for comparability across CMAs, waiver programs, and allow for on-going analysis.</i></p> <p>Finding 1: PRC and Colorado BlueSky failed to follow the critical incident reporting process in the approved waiver. As such, HCPF lacked access to correct data in order to properly monitor the waiver and develop systems improvements.</p> <p>Findings 2: Health Care Policy and Financing did not follow the Systems Improvement Process as outlined in the approved waiver application in relation to the incidents that occurred at PRC. Specifically, HCPF did not develop systems improvements or individual remediation strategies to address the on-going incidents at PRC.</p> <p>The failure to follow the Systems Improvement process occurred in part due to the lack of reporting of the incident(s) or the follow-up investigations by PRC or the CDHS to HCPF, CDPHE and Colorado BlueSky.</p> <p>Findings 3: The Plan of Correction provided by CDHS/PRC to CDPHE does not comply with the Systems Improvement Process in the approved waiver application. The Plan of Correction approved by the CDPHE continues to allow CDHS to independently handle critical incidents internally and does not follow the approved process in the waiver in which HCPF as the Single State Medicaid Agency takes the lead in investigating, tracking, trending and remediating critical incidents on both the individual and system level.</p>
<p>Appendix A: Waiver Administration and Operations</p>	<p>Standard: Appendix A: Waiver Administration and Operations- CMS requires the State Medicaid Agency to identify the entities that perform waiver operational and administrative functions in Appendix A: Item A-7 of the waiver application. Item A-7 lists specific functions that such entities might perform. The approved waiver indicates that Quality Assurance and policies, procedures and information development governing the waiver program, which is an Administrative activity, has been delegated partially to the Community Centered Boards (Colorado BlueSky) and to the Department of Public Health and Environment (CDPHE).</p> <p>The approved waiver application does not approve "Regional Center Quality Assurance staff" to provide quality assurance and improvement nor does the waiver allow for PRC to operate a critical incident system or critical incident reporting procedures outside of those approved in the waiver.</p> <p>Finding 1: HCPF was unaware of the occurrences at PRC being reported only to CDPHE and investigations of PRC occurrences by CDPHE did not cite waiver deficiencies or require Plans of Correction even when incidents were substantiated. Instead, CDPHE investigations of Serious Occurrences usually resulted in no deficiencies and often "found that the facility acted appropriately by reporting the occurrence, notifying the appropriate persons and agencies".</p> <p>Finding 2: HCPF has allowed PRC to perform administrative and operational functions of the waiver on behalf of the State Medicaid Agency by permitting PRC to, in effect, have internal quality assurance staff, policies and procedures and internal investigations that do not comply with the waiver.</p> <p>Finding 3: HCPF failed to identify and correct the Administrative deficiencies of Colorado BlueSky</p>

	<p>and the CDPHE.</p> <p>Finding 4: Colorado BlueSky did not perform Quality Assurance activities according to the approved waiver application; the Community Centered Board is required to complete at minimum, quarterly individual contact and follow-up on all incident reports that are reported, but this did not happen.</p> <p>According to the approved waiver application, Colorado BlueSky is required to complete at minimum, quarterly client contact and follow-up on all incident reports that are reported.</p> <p>After these incidents occurred and HCPF completed a 100% review of these clients' files, HCPF found that, "case managers did not monitor implementation of the Service Plan as required". (See page 17 of Response to Serious Occurrence Questions) Specifically, the findings are: 29% of required quarterly contacts were completed.</p> <ul style="list-style-type: none"> • 6.7% of the incidents identified by the case manager were followed up by the case manager to ensure a satisfactory resolution.
<p>Appendix D 1: d-Service Plan Development: Service Plan Development Process</p>	<p>Standard: Appendix D-1-d: Service Plan Development: describes the process that is used to develop the participant-centered service plan, including: (a) who develops the plan, who participates in the process, and the timing of the plan; (b) the types of assessments that are conducted to support the service plan development process, including securing information about participant needs, preferences and goals, and health status; (c) how the participant is informed of the services that are available under the waiver; (d) how the plan development process ensures that the service plan addresses participant goals, needs (including health care needs), and preferences; (e) how waiver and other services are coordinated; (f) how the plan development process provides for the assignment of responsibilities to implement and monitor the plan; and, (g) how and when the plan is updated, including when the participant's needs change. The approved waiver applications indicates:</p> <p><i>(c) Informing Participants on Service and Provider Availability- At the time of Service Plan development each participant is asked about the types of services he or she needs. The Service Plan document lists each long-term care service available in the waiver. Additionally, the brochure entitled "Developmental Disabilities General Comparison Guide" includes a listing of services available under the waiver. At the time of plan development, the case manager also reviews the preferences and needs for change with the participant and the case manager documents the participant's preferences and needs for change in BUS. Needs for change includes specific areas of participant need (e.g., needs a job, etc.) and includes a data field stating "Wants a new provider". The participant or his/her guardian are offered free choice from among qualified providers at the time of initial Service Plan development. When a participant or his/her guardian state that they want a new service or provider it is documented in this section of the BUS and the participant's right to have free choice from among qualified providers is discussed. The case manager will then make available a listing of qualified providers available in the participant's geographic area and assist the participant as needed or requested. When the participant has not already selected a new provider, or if he/she requests, the case manager arranges for a request for proposal (RFP) to provide services to the participant to be developed and released to either specific qualified providers selected by the participant or to all available qualified providers in the person's</i></p>

	<p><i>geographic area. If there is no available provider meeting the participant's requirements and the participant requests additional assistance, the case manager will also send the RFP qualified providers in other geographic areas of the state. When proposals for services are received in response to the RFP, the case manager reviews the proposals with the participant and supports the participant in selecting from those proposals.</i></p> <p>Finding: PRC is in violation of §1915(c)(2)(C) of the Act and in 42 CFR §441.302(d), which affords the right of an individual who is determined to be likely to require a level of care specified in a waiver to choose either institutional or home and community-based services. In addition, CMS has determined the state is also in violation of 1902(a) (23) of the Act and 42 CFR 43.51 which require that Medicaid beneficiaries must be allowed to obtain services from any willing and qualified provider of a service.</p>
<p>Appendix D-2 a: Service Plan Implementation and Monitoring</p>	<p>Standard: Appendix D-2-a: Service Plan Implementation and Monitoring- specifies the entity (entities) responsible for monitoring the implementation of the service plan and participant health and welfare, the monitoring and follow-up method(s) that are used and, the frequency with which monitoring is performed. The waiver indicates that:</p> <p><i>...(b) Case managers are required to complete monitoring visits to all of the participant's provider sites (i.e., residence, day habilitation, or supported employment site, etc.), complete face-to-face visits, review written incident reports, written review of periodic (i.e. quarterly) progress reports from residential, day habilitation and supported employment providers, and document medical and dental exams and services. Case managers are required to document case management activities on the Benefits Utilization System (BUS). BUS documentation includes recording case management follow-up activities</i></p> <p><i>(c) Case Managers are required to visit each provider site at least once per year and to complete face-to-face monitoring with the participant at least once per quarter. Monitoring of other information related to health and welfare, and implementation of the Service Plan, is expected to be ongoing and commensurate to the needs of the participant. Such monitoring is also used to determine the effectiveness of back-up plans identified in the participant's service plan.</i></p> <p>Finding: Case managers did not monitor implementation of the Service Plan as required by the approved waiver application and monitoring frequency was inadequate.</p> <p>Page 16 and 17, of HCPFs response to the Serious Occurrence questions indicates that; <i>[C]ase managers did not monitor implementation of the Service Plan as required. Per the HCBS-DD waiver, case managers are required to visit each provider site at least once per year and to complete face-to-face monitoring with each participant at least once per quarter. In review of the documentation in the Benefits Utilization System (BUS) for all 62 residents of PRC, 29% of the quarterly contacts were completed timely.</i></p> <p><i>Of the 62 residents, 47% of them had a problem or incident identified during the Service Plan year. Of those, 6.7% were followed-up by the case manager to ensure satisfactory resolution.</i></p>
General Findings:	
<p>PRC Staffing</p>	<p>Finding: PRC staffing is insufficient to support the level of care needs for the individuals they</p>

<p>issues is putting the health and welfare of PRC residents in jeopardy</p>	<p>serve. CMS basis for this finding is:</p> <ol style="list-style-type: none"> 1. The staff turnover rate for PRC is currently 39.89%. 2. PRC staff reported to CMS that they frequently have to complete two eight hour shifts back to back to fill in for missing staff. 3. Staff reported being burned-out and exhausted and expressed serious concerns about their ability to provide appropriate care to the individuals they serve. 4. PRC group home staff reported a lack of adequate supervision as their supervisors are no longer in the homes providing daily training and support to the staff. 5. PRC staff reported concerns about other staff and/or administration retaliating against them for reporting incidents. 6. Based upon CMS review of training materials for staff, PRC re-training of staff largely consists of re-reviewing and signing written policies and procedures rather than providing on-site training, or supervision and verbal coaching and feedback. Given the number of repeat incidents, this method appears to be ineffective.
<p>Issues with Individual Services provision are putting the health and welfare of PRC residents in jeopardy</p>	<p>Finding 1: PRC is not consistently providing adequate supervision to individuals with one-on-one and line of sight supervision needs. CMS has determined this based upon the number of incidents that occur between residents of PRC, injuries or incidents that have occurred involving individuals that require "within arm's reach, one on one supervision" or injuries to an individual that could have been prevented by closer supervision.</p> <p>Finding 2: There is a general lack of knowledge about the availability all of waiver services. For instance, one group home had several specialized beds for clients with significant mobility limitations and medical needs. PRC assisted the clients to use their personal funds to purchase this equipment, rather than evaluating if the waiver could have provided this equipment.</p> <p>Finding 3: The CMS review raised questions about whether the services and supports being provided at PRC are adequate to assist individuals at PRC to meet their individualized goals and function in a less restrictive setting in the community.</p>
<p>Person Centered Planning: 42 CFR §441.301(c)(1) and (2)- Person Centered Planning and the Person Centered Service Plan</p>	<p>Standard: Person Centered Planning Process: 42 CFR §441.301(c) (1) (vii) and (ix). 42 CFR §441.301(c) (1) (vii) - <i>Offers informed choices to the individual regarding the services and supports they receive and from whom.</i> And 42 CFR §441.301(c) (1) (ix) - <i>Records the alternative home and community-based settings that were considered by the individual.</i> 42 CFR §441.301(c) (2)- <i>The Person-Centered Service: Plan The person-centered service plan must reflect the services and supports that are important for the individual to meet the needs identified through an assessment of functional need, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. Commensurate with the level of need of the individual, and the scope of services and supports available under the State's 1915(c) HCBS waiver, the written plan must: (i) Reflect that the setting in which the individual resides is chosen by the individual.</i></p> <p>Finding: The person centered planning process is intended to place decision making into the hands of participants of the HCBS waiver. CMS believes that requiring individuals to be placed at PRC through the use of an Imposition of Legal Disability is a violation of person centered planning because it strips the individual and/or guardian of the right to choose the services and supports they receive and from whom. In addition, during the course of the site visit, CMS was informed that the state "RFPd" individuals to provider agencies and the provider agencies</p>

selected the individuals they wished to serve. The process of "RFP for an individual" was described as the state submitting a profile to agencies for the purpose of allowing the agency to determine whether or not they would serve the individual. This process is in direct conflict with the regulation and must be corrected as it allows the provider to choose the client rather than the client choosing the provider. If this is not an accurate depiction of the state process for placement the state will need to inform guardians and other stakeholders of the accurate process in the state.