

Colorado Systemic Assessment Spot Check August 2016

Colorado Statewide Transition Plan 6/30/16

#	HCB Setting Regulation	State Waiver Program	State's Standards and Findings	State's Rationale for Findings and/or Proposed Remediation	Findings
1	The setting is integrated in and supports full access to community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving HCBS.	Adult Day Services Centers	<ul style="list-style-type: none"> • C.R.S. 25.5-6-303(1) <i>Silent</i> • C.R.S. 25.5-6-313(1.5) <i>Compliant (implied)</i> • 10 CCR 2505-10 8.491 <i>Silent</i> • 10 CCR 2505-10 8.515.70 <i>Silent</i> 	<p>Statute: C.R.S. 25.5-6-303(1) generally requires that all federal requirements be met, but does not specifically list integration, etc. C.R.S. 25.5-6-313(1.5) requires the Medical Services Board to regulate restricted environments and restrictive egress alert devices at adult day care centers.</p> <p>Regulations: 10 CCR 2505-10 8.491 and 8.515.70 do not specifically require integration, etc. The Department plans to propose redlines to accomplish this, in addition to adding a reference to new Rule AAA. For this particular setting and federal requirement (integration), the Department also plans to propose redlines that specify concrete, desired outcomes. The Department also plans to propose a rule under C.R.S. 25.5-6-313(1.5) to regulate restricted environments and egress alert devices in a manner consistent with the federal HCBS Settings Rule.</p>	<p>CMS agrees that C.R.S. 25.5-6-303(1) is silent.</p> <p>CMS does not agree that C.R.S. 25.5-6-313(1.5) is compliant. The state determined that C.R.S. 25.5-6-313(1.5), regarding “Adult Day Services Centers,” is compliant with the federal requirement and that the setting is integrated in and supports full access to the community. This regulation allows the use of restrictive egress alert devices to alert staff when certain individuals leave the building. The state will need to explain how these devices are being used, including how they are an individual modification and not setting-wide, and how the state plans to ensure that the use of such devices does not limit an individual’s access to the community.</p> <p>CMS agrees that 10 CCR 2505-10 8.491 and 8.515.70 are silent. The state proposes to remediate the silence by amending the regulations to require integration, add a reference to the new rule, and specify concrete, desired outcomes).</p>

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				Waiver: BI Waiver, EBD Waiver, SCI Waiver, and CMHS Waiver are silent with respect to integration, etc.	
2	The setting is selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and, for residential settings, resources available for room and board.	Alternative Care Facilities (ACFs)/ Assisted living residences (ALF)	<ul style="list-style-type: none"> • C.R.S. 25-27-104 <i>Silent</i> • C.R.S. 25.5-6-303(3) <i>Silent</i> • 10 CCR 2505-10 8.495.2.B <i>Silent</i> • 10 CCR 2505-10 8.495.4.A(1) <i>Partially compliant</i> • Waiver: EBD Waiver and CMHS Waiver at App. B-7 and App. D-1, items b & c 	<p>Statute: See Column A (C C.R.S. 25-27-104 and C.R.S. 25.5-6-303(3) are silent)</p> <p>Regulations: Client chooses to live in an ACF, per 10 CCR 2505-10 8.495.2.B and 8.495.4.A(1). Otherwise silent; the Department plans to propose redlines.</p> <p>Waiver: EBD Waiver and CMHS Waiver at App. B-7 and App. D-1, items b & c confirm that people are informed of feasible service alternatives provided by the waiver and the choices of either institutional or home and community-based services, and that the case manager provides a choice of providers.</p>	<p>CMS agrees that C C.R.S. 25-27-104 and C.R.S. 25.5-6-303(3) are silent. Remediation could be conducted through state policies and guidance.</p> <p>CMS agrees 10 CCR 2505-10 8.495.2.B is silent.</p> <p>CMS agrees that 10 CCR 2505-10 8.495.4.A(1) is partially compliant. Although the regulation provides that the individual can choose to live in an ACF, it does not require that the individual be given a choice from among settings options, including non-disability specific settings.</p> <p>The state has proposed amending the regulations, but does not describe the content of the amendments.</p>
3	Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint	Child Residential Habilitation settings	<ul style="list-style-type: none"> • C.R.S. 25.5-10-216 through -240 <i>Compliant (implied)</i> • C.R.S. 26-6-106(2)(g) and (2)(k) <i>Silent</i> 	<p>Statute: C.R.S. 25.5-10-216 through -240 protect the rights of individuals with IDD in general (-218), and in particular with respect to privacy (-223) and freedom from coercion and restraint (-221). Dignity and respect are protected</p>	<p>High level summary of CMS's findings: The state requires settings to ensure the rights of dignity and privacy for individuals, but with one exception (12 CCR 2509.8 7.714.33B), does not explicitly require settings to ensure the right to respect (only self-respect) in either its statutes or regulations. However, as the state notes, the</p>

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			<ul style="list-style-type: none"> • C.R.S. 26-20-103 <i>Compliant (implied)</i> • 10 CCR 2505-10 8.604.1 <i>Silent</i> • 10 CCR 2505-10 8.604.2 <i>Compliant (implied)</i> • 10 CCR 2505-10 8.608.3 thru 8.608.5 <i>Compliant (implied)</i> • 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150 <i>Silent</i> • 12 CCR 2509-8 7.708.33 thru -.37 (for foster care) and 7.714.31 thru 7.714.4 & 7.714.52 <i>Compliant (implied)</i> 	<p>through C.R.S. 25.5-10-201 and -216 through -240 as a whole.</p> <p>C.R.S. 26-6-106(2)(g) authorizes child care facility licensing rules to “safeguard the legal rights of children served,” but does not specify which rights. C.R.S. 26-6-106(2)(k) authorizes rules to set standards for short-term confinement of children.</p> <p>C.R.S. 26-20-103 limits the use of restraints by state agencies as well as public or private entities that contract with or are licensed/certified by state agencies.</p> <p>Regulations: The Department plans to work with CDHS to propose redlines to clarify points below.</p> <p>10 CCR 2505-10 8.604.1 (relating to people with IDD) reiterates that people receiving services have the same rights as others; 8.604.2 requires providers to protect rights in C.R.S. 25.5-10-218 through -231 (input requested on whether this should be C.R.S. 25.5-10-216 through -240); and 8.608.3 thru 8.608.5 limit the use of restraints.</p>	<p>right to respect is implied in various standards. Therefore, remediation could be conducted through state policies and guidance. Three of the state’s regulations are not consistent with the state’s restraints policy set forth in section G-2 (Safeguards Concerning Restraints and Restrictive Interventions) of its Children’s Habilitation Residential Program waiver.</p> <p>CMS agrees that C.R.S. 25.5-10-201 and C.R.S. 25.5-10-233 ensure the individual the right to privacy, and C.R.S. 25.5-10-201 ensures the right to dignity. However, CMS does not agree that C.R.S. 25.5-10 ensures the right to respect, only self-respect. CMS suggests that the existing language be modified to ensure an individual’s right to respect.</p> <p>CMS agrees that C.R.S. 26-6-106(2)(g) and C.R.S. 26-6-106(2)(k) are silent. Remediation could be conducted by incorporating the state’s template language on this topic in one or more state policies and guidance.</p> <p>CMS agrees that C.R.S. 26-20-103 is consistent with section G-2 of the state’s Children’s Habilitation Residential Program waiver.</p>

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				<p>In 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150, add reference to C.R.S. 25.5-10-216 through -240.</p> <p>10 CCR 2505-10 8.508.180 seeks to protect privacy, dignity, and other rights, and makes rights in CDHS Social Services Staff Manual, Section 7.714.50, "CHILDREN'S RIGHTS" (12 CCR 2509-8) applicable. This cross-reference should be updated.</p> <p>12 CCR 2509-8 7.708.33 thru -.37 (for foster care) and 7.714.31 thru 7.714.4 & 7.714.52 (for SGFs and RCCFs) explicitly protect privacy, implicitly protect dignity and respect, and limit coercion & restraint.</p> <p>6 CCR 1011-1 Chapter 02 Part 8 limits the use of restraints in all licensed health care facilities. Also, 12 CCR 2509-8 7.714.53 et seq. sets out conditions under which restraints are allowed in foster care, SGFs, and RCCFs.</p> <p>Waiver: CHRP waiver, App. C-2, refers to CDHS's rules for group homes, including rights protections</p>	<p>CMS does not agree that 10 CCR 2505-10 8.608.3 thru 8.608 ensures an individual's freedom from coercion and restraint. CMS suggests that the language be modified to indicate that individuals are free from restraint. If restraints are allowed, the state must ensure that the modification is based on an assessed need, documented in the person centered plan, and that the use of restraints is in compliance with 1915(c) policy. For example, 10 CCR 2505-10 8.608.3 thru 8.608 permits mechanical restraints, does not prohibit restraints used for punitive form of discipline, and does not address de-escalation or staff training or approval.</p> <p>CMS agrees that 10 CCR 2505-10 8.604.1 is silent with respect to the rights ensured under the federal regulation. CMS does not agree that 10 CCR 2505-10 8.604.2 is compliant; it is partially compliant. CMS requests that the state modify existing language regarding the right to self-respect to ensure the individual's right to respect.</p> <p>CMS does not agree with the state's proposed plan to remediate 10 CCR 2505-10 8.500.15, 8.500.105, and 8.503.150, which are silent, by adding a reference to C.R.S. 25.5-10-216 through -240. The statutory provisions the state plans to reference do not include language that ensures the rights of respect and dignity.</p>

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				<p>as described above. CHRP waiver is silent with respect to rights in other CHRP settings.</p>	<p>CMS suggests state review the above-mentioned reference for accuracy in what the state intended to cite.</p> <p>CMS agrees that 10 CCR 2505-10 8.508.180 ensures the rights to protect privacy and dignity, However, CMS does not agree that this regulation ensures the right to respect. It is silent with regard to the right to respect. The state must propose a remediation plan to add the right of respect to its standards.</p> <p>CMS agrees that 12 CCR 2509-8 7.714.31 ensures the right to privacy.</p> <p>CMS agrees that 12 CCR 2509-8 7.708.33 thru -.37 (for foster care) and 7.714.31 thru 7.714.4 & 7.714.52 (for SGFs and RCCFs) explicitly protect privacy, and implicitly protect dignity and respect. However, CMS does not agree that 12 CCR 2509-8 7.714 is compliant. CMS suggests that the language be modified to indicate that individuals are free from restraint. If restraints are allowed, the state must ensure that the modification is based on an assessed need, documented in the person centered plan, and that the use of restraints is in compliance with 1915(c) policy. For example, 12 CCR 2509-8 7.714.53 permits mechanical restraints and does not prohibit restraints used for punitive form of</p>

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					<p>discipline. The waiver states: Personal restraint must never be used as a punitive form of discipline, as a form of treatment or therapy, or as a threat to control or gain compliance of a child's behavior. The state must remediate 12 CCR 2509-8 7.714.53.</p> <p>CMS agrees that 6 CCR 1011-1 Chapter 02 Part 8 mentions restraints (requires documentation of use of restraints). However, CMS does not agree that 6 CCR 1011-1 Chapter 02 Part 8 or 12 CCR 2509-8 7.714.53 is compliant. CMS suggests that the language be modified to indicate that individuals are free from restraint. If restraints are allowed, the state must ensure that the modification is based on an assessed need, documented in the person centered plan, and that the use of restraints is in compliance with 1915(c) policy. For example, 6 CCR 1011-1 Chapter 02 Part 8 permits chemical restraints and fails to include most of the safeguards in the state's waiver program. The state must remediate 6 CCR 1011-1 Chapter 02 Part 8 and 12 CCR 2509-8 7.714.53.</p> <p>The state indicates that it intends to "propose redlines to address the points below" and "ensure federal criteria are met." Without additional information about what "points" the state will address or what amendments the state will make to the</p>

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					regulations listed, CMS cannot evaluate whether the state's remediation actions will be sufficient.
4	Facilitates individual choice regarding services and supports, and who provides them	Day Habilitation/ treatment centers for individuals with IDD – Specialized Habilitation Centers	<ul style="list-style-type: none"> • C.R.S. 25.5-6-409.3 <i>Compliant</i> • Day habilitation regulations <i>Silent</i> 	<p>Statute: C.R.S. 25.5-6-409.3 requires new consolidated adult IDD waiver to provide support to organize resources and achieve key service outcomes.” (N/A to children.)</p> <p>Regulations: Day habilitation regulations are silent with respect to this regulation. The Department plans to propose redlines to conform to federal rule and state statute.</p>	CMS agrees that C.R.S. 25.5-6-409.3 is compliant. It is partially compliant. Section 6-409.3 requires the setting to “utilize existing community-based services programs to the maximum extent possible and shall coordinate all available forms of assistance for the eligible person.”
5	The unit or dwelling is a specific physical place that can be owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of	Group Residential Services and Supports (GRSS) community residential homes for four to eight people	<ul style="list-style-type: none"> • C.R.S. 25.5-10-214 <i>Silent</i> • C.R.S. 13-21-117.5(7) <i>Non-compliant</i> • C.R.S. 13-21-117.5(1) <i>Non-compliant</i> • 6 CCR 1011-1 Chap 08 Section 9.1(B) and (C) and 18.3 10 <i>Silent</i> • 10 CCR 2505-10 8.609.5(B)(8) 	<p>Statute: C.R.S. 25.5-10-214 is silent with respect to landlord/tenant rights, etc.</p> <p>The Department plans to propose redlines to or deletion of C.R.S. 13-21-117.5(7) in order to conform to federal rule (currently provides that “[i]n any civil action brought against a provider, a person with [IDD] who is served in a residential setting owned or leased by a provider shall not be considered a tenant of the provider and statutes regarding landlord-tenant relationships shall not apply. . . . No</p>	<p>CMS agrees that C.R.S. 25.5-10-214 is silent with respect to the requirements of the federal rule.</p> <p>CMS agrees that C.R.S. 13-21-117.5(7) and C.R.S. 13-21-117.5(1) are non-compliant based on the language quoted by the state in the crosswalk (see column to left).</p> <p>CMS does not agree that 6 CCR 1011-1 Chap 08 Section 9.1(B) and (C) and 18.3 are silent with respect to landlord/tenant rights, etc. They are non-compliant because they establish procedures for discharge that</p>

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	the State, county, city, or other designated entity.		<p><i>Silent</i></p> <ul style="list-style-type: none"> 10 CCR 2505-10 8.500.9(A)(4) <i>Non-compliant (implied)</i> 10 CCR 2505-10 8.604.3(B)(5) <i>Non-compliant (implied)</i> 	<p>real property rights shall accrue to a person with [IDD] by virtue of placement in a residential setting.”). The Department seeks input on whether and how to propose modifications to C.R.S. 13-21-117.5(1) (providing that CCBs and service agencies may remove a person with IDD from a residential setting if they believe that the person “may be at risk of exploitation, or other harm in such setting,” and limiting liability for such removals).</p> <p>Regulations: The Department plans to work with CDPHE to propose redlines to address the points below, and to add a reference to new Rule BBB.</p> <p>6 CCR 1011-1 Chap 08 Section 9.1(B) and (C) and 18.3 relating to resident transfers and 10 CCR 2505-10 8.609.5(B)(8) are silent with respect to landlord/tenant rights, etc. The Department plans to work with CDPHE to propose redlines to ensure federal criteria are met.</p> <p>Note that under 10 CCR 2505-10 8.500.9(A)(4), a provider under DD</p>	<p>are may be inconsistent with landlord/tenant law.</p> <p>CMS does not agree that 10 CCR 2505-10 8.609.5(B)(8) is silent. Please demonstrate that the language establishes a procedure for discharge that ensures the same responsibilities and protections afforded under local landlord/tenant law.</p> <p>Although the state did not explicitly state that 10 CCR 2505-10 8.500.9(A)(4) are non-compliant, CMS requests clarification that individuals have the same responsibilities, and rights in a legally enforceable agreement, afforded under local landlord tenant law. 10 CCR 2505-10 8.500.9(A)(4) states that a setting may discontinue services only after documented efforts to resolve the situation.</p> <p>Although the state did not explicitly state that 10 CCR 2505-10 8.604.3(B)(5) is non-compliant, CMS believes that it is. 10 CCR 2505-10 8.604.3(B)(5) states that services may not be suspended if doing so would put person at risk of loss of abode. This implies that an individual can be evicted strictly on the basis of a loss of services and should be remediated to align with the federal rule.</p> <p>The state indicates that it intends to “propose redlines to address the points</p>

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				<p>waiver may discontinue services only after documented efforts to resolve the situation. And under 10 CCR 2505-10 8.604.3(B)(5) (relating to people with IDD), services may not be suspended if doing so would put person at risk of loss of abode.</p> <p>Waiver: DD Waiver is silent with respect to landlord/tenant rights, etc.</p>	<p>below” and “ensure federal criteria are met.” Without additional information about what “points” the state will address or what amendments the state will make to the regulations listed, CMS cannot evaluate whether the state’s remediation actions will be sufficient.</p>
6	Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors	Alternative Care Facilities (ACFs)/ Assisted living residences (ALF)	<ul style="list-style-type: none"> • C.R.S. 25-27-104 and 25-27-104.5 <i>Silent</i> • 10 CCR 2505-10 8.495.4 <i>Compliant</i> • 10 CCR 2505-10 8.495.6.H <i>Compliant</i> 	<p>Statute: C.R.S. 25-27-104 and 25-27-104.5 are silent with respect to privacy in unit.</p> <p>Regs: No redlines needed. Under 10 CCR 2505-10 8.495.4, the ACF must allow capable clients to lock their doors and control access to their quarters, accommodate roommate choices within reason, and allow clients to decorate and use personal furnishings in their bedrooms. Note that under 10 CCR 2505-10 8.495.6.H, doors to bedrooms in secured ACFs shall not be locked unless the resident is able to manage the key independently.</p> <p>Waiver: EBD Waiver at App. G-2, item b requires ACF to be homelike and provide privacy. CMHS Waiver</p>	<p>CMS agrees that C.R.S. 25-27-104 and 25-27-104.5 are silent with respect to lockable resident unit doors.</p> <p>CMS does not agree that 10 CCR 2505-10 8.495.4 is compliant. It is non-compliant. 10 CCR 2505-10 8.495.4.G states, “Clients and their roommates determined capable to control access to private personal quarters, shall be allowed to lock their doors and control access to their quarters.” This conflicts with the federal rule because (1) it implies that only those individuals “determined capable to control access to private personal quarters” may have lockable doors and (2) it does not state that only appropriate staff may have keys. A modification of an individual’s right to have a lockable unit door is permitted only if the provider has complied with the</p>

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				at App. G-2, item b-i refers to regulatory protections for privacy in general (see Table 1, cell C-2 above).	requirements under 42 CFR 441.301(c)(4)(vi)(F). CMS does not agree that 10 CCR 2505-10 8.495.6.H is compliant. It is non-compliant. 10 CCR 2505-10 8.495.6.H states, "Doors to bedrooms shall not be locked unless the resident is able to manage the key independently." A modification of an individual's right to have a lockable unit door is permitted only if the provider has complied with the requirements under 42 CFR 441.301(c)(4)(vi)(F).
7	Individuals sharing units have a choice of roommates in that setting.	Individual Residential Services and Supports (IRSS) homes for up to three people	<ul style="list-style-type: none"> • CRS 25-5-10-214 <i>Silent</i> • 10 CCR 2505-10 8.609.5(B)(8) <i>Silent</i> • 10 CCR 2505-10 8.500.9(A)(4) <i>Silent</i> • 10 CCR 2505-10 8.604.3(B)(5) <i>Silent</i> 	<p>Statute: Statute is silent with respect to privacy in sleeping/living unit, etc.</p> <p>Regulations: See Column A; the Department plans to propose redlines.</p> <p>Waiver: DD Waiver is silent with respect to privacy in sleeping/living unit.</p>	<p>CMS agrees that the statute, CRS 25-5-10-214, is silent.</p> <p>CMS agrees that the regulations referenced by the state - 10 CCR 2505-10 8.609.5(B)(8), 10 CCR 2505-10 8.500.9(A)(4), and 10 CCR 2505-10 8.604.3(B)(5) - are silent. The state has proposed redlines to its regulations to remediate the silence.</p>
8	Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.	Supported Living Program (SLP) facilities under BI waiver (note that SLP providers	<ul style="list-style-type: none"> • CRS 25.5-6-703(9) <i>Silent</i> • 10 CCR 2505-10 8.515.85.F <i>Compliant</i> 	<p>Statute: Silent</p> <p>Regulations: No redlines needed. Under 10 CCR 2505-10 8.515.85.F, SLP must ensure privacy in the client's unit including lockable doors, choice of roommates, and freedom to furnish or decorate the unit.</p>	<p>CMS agrees that the statute, CRS 25.5-6-703(9), is silent.</p> <p>CMS agrees that 10 CCR 2505-10 8.515.85.F is compliant. 10 CCR 2505-10 8.515.85.F.1.g states that the setting must, "Ensure privacy in the client's unit including lockable doors, choice of roommates, and freedom to furnish or</p>

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		must be licensed as an ALR (see Row 2 above) or a Home Care Agency (HCA) Class A (see 6 CCR 1011-1, Ch. 26), but the latter option is being removed from the regulation)		Waiver: BI Waiver at App. C-2, item c(ii) requires SLP facility to be homelike and provide privacy.	decorate the unit.”
9	Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time	Transitional Living Program (TLP) facilities under BI waiver (note that TLP providers must be licensed as an ALR (see Row 2 above))	<ul style="list-style-type: none"> • C.R.S. 25.5-6-703(10) <i>Silent</i> • 10 CCR 2505-10 8.516.30 <i>Silent</i> 	<p>Statute: C.R.S. 25.5-6-703(10) is silent.</p> <p>Regulations: 10 CCR 2505-10 8.516.30 is silent. See Column A; the Department plans to propose redlines.</p> <p>Waiver: BI Waiver at App. C-2, item c(ii) requires TLP facility to be homelike and provide access to food and kitchen facilities.</p>	<p>CMS agrees that the statute, CRS 25.5-6-703(10) is silent.</p> <p>CMS agrees that the regulation, 10 CCR 2505-10 8.516.30, is silent concerning the requirements in this federal regulation. The state has proposed remediation, but has not described how it will amend the regulation.</p>

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10	Individuals are able to have visitors of their choosing at any time	Group Residential Services and Supports (GRSS) community residential homes for four to eight people	<ul style="list-style-type: none"> • C.R.S. 25.5-10-223 <i>Compliant</i> • 6 CCR 1011-1 <i>Silent (implied)</i> 	<p>Statute: Under C.R.S. 25.5-10-223, person has right to reasonable and frequent (but not unlimited) opportunities to meet with visitors.</p> <p>Regulations: See Column B (6 CCR 1011-1 Chapter 8); the Department plans to work with CDPHE to propose redlines.</p> <p>Waiver: DD Waiver is silent with respect to right to visitors at any time.</p>	<p>CMS believes C.R.S. 25.5-10-223 is partially compliant. C.R.S. 25.5-10-223 states, "Each person receiving services has the right to communicate freely and privately with others of the person's own choosing" and "All service agencies shall ensure that persons receiving services have suitable opportunities for interaction with persons of their choice." This language demonstrates compliance with the requirement that individuals be able to have visitors of their choosing. However, the statute is silent as to the requirement that individuals be able to have visitors at any time.</p> <p>CMS agrees 6 CCR 1011-1 Chapter 8 is silent and should be amended. The state should specify how it will amend the regulation.</p>