

# STATE OF COLORADO

## OFFICE OF THE GOVERNOR

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John W. Hickenlooper  
Governor

December 6, 2013

Secretary Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Ave., SW  
Washington D.C. 20201

Dear Secretary Sebelius:

We are writing to request that the U.S. Department of Health and Human Services' Centers for Medicare & Medicaid Services ("HHS/CMS") reconsider its decision that Colorado Community Corrections participants are "inmates" of a public institution, and thus not eligible for Federal Financial Participation (FFP). A copy of the correspondence between Colorado Attorney General John Suthers and HHS/CMS on this issue is attached for your reference.

HHS and Colorado share the goal of increased access to health care and an expansion of the population eligible for Medicaid. As you know, Colorado is committed to being a leader in implementing the Affordable Care Act ("ACA") and will expand Medicaid coverage pursuant to the ACA to over 160,000 Colorado citizens in the next few years. As part of that commitment, it is imperative that the approximately 4,000 individuals who participate in the State's Community Corrections program be eligible to participate in Medicaid.

In Colorado, the Community Corrections program is a unique collaboration between state agencies, local officials, and independent organizations that provide services to this vulnerable population. The program provides a variety of services to participants, including case management, life skills training, drug and alcohol education, money management assistance, and educational and vocational guidance. The Community Corrections program manages offender populations that would otherwise be placed in secure facilities, such as county jails or state prisons.

Community Correction facilities are not prisons, nor do they operate as such. Individuals residing in Community Correction facilities are not physically locked-up or confined; they are allowed to leave the facilities every day. The Community Corrections program facilities do not employ law enforcement officers. Furthermore, the facilities are not funded or controlled by the Colorado Department of Corrections.

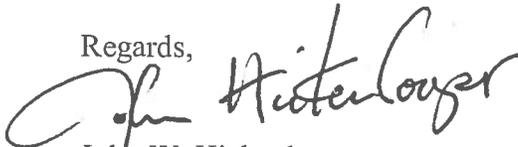
Although the Colorado Department of Corrections pays for health care services for inmates in state prisons, the State does not provide health care funding for those placed in the Community Corrections program. HHS/CMS' conclusion that Community Corrections program participants are "inmates" of a public institution means that these vulnerable individuals are *not* eligible for Medicaid or other programs that use FFP to provide access to health care.

Almost all of the individuals served by Community Corrections have incomes below 133 percent of the Federal Poverty Level. However, when Colorado's Medicaid expansion goes into effect in January 2014, these individuals will remain ineligible for either Medicaid or other types of support through the ACA's Insurance Affordability Programs. As a result, they are left with two bad choices for health care: seek inappropriate medical care at a local emergency room and probably not have the means to pay for rendered services, or for more serious medical needs such as pregnancy or cancer, re-offend so they can return to prison to receive health care.

The Colorado Community Corrections program recently analyzed approximately 200 emergency room referrals for program residents statewide and estimated that program facilities have referred approximately 100 offenders per month to emergency rooms for various health care issues. About 60 percent of those program residents could have been seen by a primary care physician. We have attached the results of this analysis as well as comments by program residents on their inability to access health care. These are undesirable outcomes.

We are very concerned that this decision will continue to prevent a highly vulnerable population from accessing coverage, and instead being forced to seek inappropriate care at a local emergency room. We believe that failing to provide access to Medicaid to this population is inconsistent with the aims of the ACA and inconsistent with our state's commitment to continuing improvement of our health care system. Thus, we ask you to reconsider CMS's position so that this population can obtain timely, consistent, and affordable medical care through Medicaid.

Regards,



John W. Hickenlooper  
Governor

cc: Rep. Diana DeGette  
Attorney General John Suthers

encl: Letter from Attorney General John Suthers  
Letter from HHS/CMS  
ER referral analysis



## **COLORADO LAWYERS COMMITTEE**

**November 12, 2013 Letter to Governor John Hickenlooper**

### **Index of Attachments**

- 1. Emergency Room Visits by Residents of Community Corrections Facilities (November 2013)**
- 2. January 12, 2010 Letter to Kathleen Sebelius from Diana DeGette**
- 3. March 29, 2010 Letter to Diana DeGette from Kathleen Sebelius**
- 4. June 23, 2010 Letter to Kathleen Sebelius from Diana DeGette**
- 5. September 26, 2012 Letter to Richard Allen from John Suthers**
- 6. January 16, 2013 Letter to John Suthers from Richard Allen**

# Attachment 1

**COLORADO LAWYERS COMMITTEE**  
**EMERGENCY ROOM VISITS**  
**BY RESIDENTS OF COMMUNITY CORRECTIONS FACILITIES**  
**November 2013**

Because of the lack of access to Medicaid or Medicare, many residents of Community Corrections Facilities across Colorado frequent the emergency room for their healthcare needs. It is widely agreed that emergency room visits are the most expensive health care delivery system. As a result, for the past few years, Colorado has been making efforts, through Medicaid, to decrease "non-emergent emergency room visits...." However, Community Corrections residents currently do not have access to Medicaid. The following statistics represent a sample of emergency room visits for Colorado Community Corrections residents.

ComCor Community Corrections Facility ("ComCor") conducted an analysis of approximately 200 emergency room referrals for community corrections residents ("Cases"). Of the cases studied statewide, ComCor estimated that community correction facilities have sent approximately 100 offenders per month to emergency rooms for various health care issues (January 2011 through March 2011).

- At least 26% of the total number of community correction residents who visited the emergency room were transported by ambulance (when method of transportation was reported).
- Based on the reported cause of the visit, 60% of community correction residents who visited the emergency room could likely have been seen by a primary care physician.
- 30% of the reported causes for the emergency room visit were likely appropriate for urgent care services.
- 10% of these reported causes for emergency room visits were appropriate for specialists (surgeon, OB/GYN, dental, orthopedic).
- 12% of the patients were seen for symptoms due to cold/flu/general illness.
- 5% of the patients were seen for mental health issues (including medication issues).
- Of the 200 emergency room referrals analyzed, 70% were reported from urban programs and 30% were reported from rural area programs.
- The cases ranged in severity from mild illnesses or injuries to severe illnesses where client was at risk of death or severe disability

Other facilities report similar data regarding emergency room visits. A Colorado Lawyers Committee volunteer reached out to a Metropolitan Community Correction Facility in the Denver metro area and received equally compelling statistics. The facility serves 78 residents at any one time. Of those 78 residents over a three-month period, there were 45 emergency room visits for reasons ranging from depression, to skin rash, to high blood pressure, and dental problems.

Colorado Lawyers Committee volunteers also reached out to directors of several of facilities in Colorado to learn more about the lack of Medicaid/Medicare coverage for their residents and assembled the following anecdotes from facility directors.

- JD 19 (Weld County): Residents with diabetes are probably the most common residents who need long-term health services and are not receiving the access to Medicaid they need.
- JD 9 (Garfield County): When residents of this facility need treatment, they generally are taken to the ER ("even for the sniffles"). There are 10 female beds and generally 8/10 females at any given time suffer from severe mental health issues. Sometimes the facility pays for their medications, but the medication is very expensive. On some occasions the Department of Corrections ("DOC") will pay, depending on the resident's status. If a woman becomes pregnant, she is sent back to DOC so she can receive the medical care she needs. Another major issue is dental care, especially for residents who have used methamphetamine. The drug use causes significant damage to mouth/teeth, and the residents are in serious need of dental care.
- MCC: On several occasions, since 1984, the director has returned DOC inmates back to the DOC so they could receive medical care otherwise unavailable to them in the community. Additionally, medical problems have factored into whether the facility will accept the resident. There have been situations where the only medical care available to some offenders is at the DOC.

# Attachment 2

DIANA DEGETTE  
1ST DISTRICT, COLORADO

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<http://degette.house.gov>

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-4329

January 12, 2010

Secretary Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Ave., SW  
Washington D.C. 20201

CHIEF DEPUTY WHIP  
COMMITTEE ON ENERGY AND  
COMMERCE  
VICE CHAIRMAN  
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SUBCOMMITTEE ON  
COMMUNICATIONS, TECHNOLOGY AND  
THE INTERNET  
SUBCOMMITTEE ON OVERSIGHT AND  
INVESTIGATION  
SUBCOMMITTEE ON COMMERCE, TRADE  
AND CONSUMER PROTECTION  
COMMITTEE ON NATURAL  
RESOURCES  
SUBCOMMITTEE ON NATIONAL PARKS,  
FORESTS AND PUBLIC LANDS  
SUBCOMMITTEE ON INSULAR AFFAIRS,  
OCEANS AND WILDLIFE

Dear Secretary Sebelius:

I am writing to request formal guidance from the Center for Medicare and Medicaid Services (CMS) about whether individuals participating in Colorado's community corrections programs are eligible to receive partially federally-funded health care services through the Colorado Indigent Care Program (CICP). The Colorado Department of Health Care Policy and Financing (HCPF) has been waiting for guidance from the Denver Regional Office of the Centers for Medicare and Medicaid Services (Denver CMS) before instituting a new policy, and Denver CMS is waiting for guidance from the Center for Medicare and Medicaid Services. It is my hope that with your assistance this matter can quickly be resolved so that medically indigent individuals who are working to become productive, non-offending members of their community will be able to access needed health care services.

In 2005, HCPF changed a rule, intending to mirror federal law, barring individuals participating in community corrections from receiving indigent medical care on the grounds that the federal prohibition against funding inmates of public institutions applied to community corrections facilities. In August, 2009 HCPF reversed its policy and declared that most participants in community corrections programs should in fact be permitted to access health care services through the CICP on the basis that "offenders" residing at a private (for-profit or not-for-profit) community corrections facility are not "inmates" at a "public institution."

The community corrections programs in Colorado consist of 59 different facilities that serve as a viable alternative to imprisonment and provide a variety of services to approximately 4,500 offenders, including drug and alcohol education, life skills training, and more. Community corrections facilities are not prisons and most are not public institutions. There are 35 residential community corrections facilities and 24 non-residential facilities in Colorado. Individuals are classified as "offenders" as they are not locked up or in prison, nor do these facilities have any legal authority under the program to physically keep participants from leaving. Furthermore, only three of the 35 residential facilities meet the definition of a public institution—most are operated by private, not-for-profit organizations that contract with local community corrections boards.

In the absence of a response from CMS permitting HCPF to move forward with the new policy, community corrections participants continue to be excluded from access to needed

medical care. Most are medically indigent and unable to afford emergency or basic medical care, yet would ordinarily qualify for publicly funded health care services through the CICP. Many go untreated until they are out of community corrections and can access Medicaid or CICP, by which point their conditions have become more acute and more costly. Some individuals actually opt for a prison sentence instead of participating in the community corrections program or re-offend because they recognize that the state is required to fund their medical needs while in prison.

Please evaluate this policy and provide guidance to the Denver CMS as soon as possible so that medically indigent participants in community corrections programs can finally receive needed medical care. If you or your staff need any additional information from my office, please contact Heather Foster, my Senior Health Policy Advisor, at (202) 225-4431 or [heather.foster@mail.house.gov](mailto:heather.foster@mail.house.gov). Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Diana DeGette". The signature is written in a cursive, flowing style.

Diana DeGette  
Member of Congress

# Attachment 3



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

March 29, 2010

The Honorable Diana DeGette  
House of Representatives  
Washington, DC 20515-3806

Dear Representative DeGette:

Thank you for your letter seeking formal guidance from the Centers for Medicare & Medicaid Services (CMS) concerning Federal financial participation (FFP) for medical care provided to individuals participating in Colorado's community corrections programs. You indicated that in these programs, some or all individuals are incarcerated in community residential corrections placements.

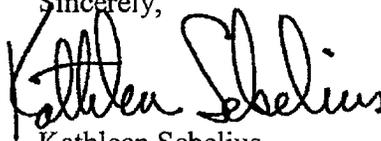
Prior to and since the inception of the Medicaid program, the responsibility for health care for inmates of public institutions has resided with the States. The Social Security Act excludes FFP for medical care provided to inmates of a public institution, except when the inmate is admitted as a patient in a medical institution. In guidance issued in 1997 and 1998, CMS (formerly the Health Care Financing Administration) clarified that public institutions include residential placements other than traditional prisons, including placements obtained through private contractors. This guidance remains in effect today; however, we remain available to engage in a dialogue with States about the need to update this policy and further clarify issues such as the one included in your letter.

To the extent that the individuals in question are not residing in community residential corrections placements, but are participating voluntarily in non-residential programs (in some cases while on probation or home release), FFP may be available for covered medical services. This would not include any periods when the individuals are reporting to a corrections facility for an overnight stay.

CMS is committed to working in partnership with States to ensure that Medicaid-eligible individuals receive covered services under the Medicaid statute, and we will continue to do so for your State through our Central and Regional Offices. The CMS Denver Regional Office is aware of your letter, and we are sending them a copy of this response.

Please do not hesitate to contact me if you have additional comments or would like to discuss this issue further.

Sincerely,



Kathleen Sebelius

# Attachment 4

DIANA DeGETTE  
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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-4329**

June 23, 2010

Secretary Kathleen Sebelius  
U.S. Department of Health and Human Services  
200 Independence Ave., SW  
Washington D.C. 20201

**Re: Availability of Federal Financial Participation for Colorado's Private  
Community Corrections Residents**

Dear Secretary Sebelius:

Thank you for your response dated March 29, 2010, to my letter regarding the availability of Federal financial participation for Colorado's private community corrections. There are significant questions that remain unanswered and I write to request your continued attention to this issue.

In particular, I wanted to draw your attention to the fact that by HHS definition, Colorado's Community Corrections ("CC") are in fact private institutions. I also believe that the classification of the participants is not relevant to the central question being raised. For these reasons and others I expand upon below, I believe that Federal financial participation (FFP) for medical care should be available for all participants (both residents and non-residents) in Community Corrections programs.

In your March 2010 letter you rely on the 1997 and 1998 guidance stating that that public institutions include placements obtained through private contractors. However, the letters focus on private prisons being the contracted agency that qualify as a public institution, and that being run by a private company does not get an institution out from under a "public" classification. Colorado's CCs are not prison facilities, do not contract with the prison facilities or the Colorado Department of Corrections, which runs our prisons, nor in fact are they run by any governmental agency. As described below, Colorado's community corrections programs are unique and may be the only program of its kind in the nation. The State, specifically Colorado's Office of Health Care Policy and Finance, agrees with this analysis, As a result, the Department of Health and Human Services' analysis is confusing, and I hope you can clarify where in the 1997 and 1998 guidance it excludes FFP for the participants of our unique community corrections programs.

It is easy to assume that because Colorado's private community corrections programs appear to be related to the corrections system that they are "public institutions," thereby

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AND CONSUMER PROTECTION  
COMMITTEE ON NATURAL  
RESOURCES  
SUBCOMMITTEE ON NATIONAL PARKS,  
FORESTS AND PUBLIC LANDS  
SUBCOMMITTEE ON INSULAR AFFAIRS,  
OCEANS AND WILDLIFE

disqualifying the residents from FFP. However, significant distinctions exist between our community corrections programs and the type of privatized prisons with which you may be familiar. Colorado's private community corrections programs differ in key aspects from most other states' half-way houses and other privately-contracted public institutions.

Practically speaking, the individuals who sleep at Colorado community corrections facilities are called "residents." The only physical tie the residents have to these private programs is that they sleep there most nights (unless they are sleeping at home because they have home passes) from anywhere from three to six months. At the expiration of their resident status, they sleep in their own homes. While they sleep at these facilities, they must work outside of the facilities to pay rent to the facilities, court costs, and restitution back to their victims. Unlike a prison, there is no paid work inside the facility. The "residents" are never in handcuffs. There are no locks on the doors and no safety towers. There are no guards and there is no fencing to maintain a privacy or safety perimeter. The employees and counselors that work at the CC's are not state employees, and they have no authority to arrest them if they do not return, or prevent a resident from leaving.

Colorado's community correction programs and participants are not related to the state Department of Corrections in any administrative sense. A separate state department oversees the community corrections policies, and no government agency actually administers the programs (discussed below).

Of the 35 residential community corrections facilities in Colorado, approximately three are non-medical institutions that are an organizational part of a governmental unit (most often a county), and therefore likely meet the definition of public institution. However, most community corrections facilities are operated by private, usually nonprofit organizations that contract with local community corrections boards, which receive funds from the Department of Public Safety (not the Department of Corrections), Office of Community Corrections. No governmental unit exercises final administrative control of Colorado's community correction facilities, including either ownership or control of the physical facilities and grounds used to house participants. These private organizations are responsible for the day-to-day operations of each facility, including the hiring and firing of employees. They, therefore, do not meet the definition of public institution, and FFP should be available for both residents and non-residents.

As you know, under federal law, two factors determine whether an otherwise eligible individual is excluded from FFP: the individual cannot be 1) an inmate or 2) residing involuntarily in a public institution. Therefore, even if you believe all or some of the community corrections participants are inmates, they would still be eligible for FFP funds if he/she is residing in a private institution. The letters you referred to make it clear upon further analysis that the participants in most Colorado CC's programs reside in private institutions, and therefore eligible for FFP. The 1997 and 1998 letters define a public institution as a facility under the responsibility of a governmental unit, or over which a governmental unit exercises administrative control. (Page 2 of both letters.) The letters list the following factors for determining whether a facility is governmentally controlled:

1. Actually an organizational part of a governmental unit, or

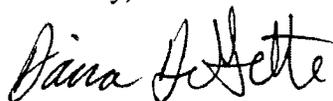
2. When a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates, or

3. When a governmental unit is responsible for the ongoing daily activities of a facility, for example, when facility staff members are government employees or when a governmental unit, board, or officer has final authority to hire and fire employees.

As described above, Colorado's community corrections programs do not meet any of the above factors. They are not organizationally a part of a governmental unit, a governmental unit does not exercise final administrative control of the facilities, and a governmental unit is not responsible for the ongoing daily activities of the facilities.

I believe this issue can be resolved short of a protracted legal battle. The solution is to clarify that if an institution is run similar to Colorado's community corrections programs, then in fact it is a private institution and eligible for FFP. Please feel free to contact my Senior Health Policy Advisor, Heather Foster, at (202) 225-4431 if you have additional questions. I look forward to your continued assistance in resolving this matter.

Sincerely,

A handwritten signature in cursive script that reads "Diana DeGette".

Diana DeGette  
Member of Congress

# Attachment 5



JOHN W. SUTHERS  
Attorney General

CYNTHIA H. COFFMAN  
Chief Deputy Attorney General

DANIEL D. DOMENICO  
Solicitor General

STATE OF COLORADO  
DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING  
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September 26, 2012

Richard C. Allen  
Associate Regional Administrator  
Division of Medicaid & Children's Health Operations  
Centers for Medicare and Medicaid Services  
1600 Broadway, Suite 700  
Denver, Colorado 80202

RE: Medicaid Eligibility for Community Corrections Program Participants

Dear Mr. Allen:

This letter is a continuation of the correspondence related to the May 26, 2009 letter from the Department of Health Care Policy and Financing ("Department") regarding "Suspension of Medicaid Eligibility for Incarcerated Persons." This letter provides further explanation as to why participants in the State's community corrections programs are not inmates of a public institution, and thus are eligible for Federal Financial Participation ("FFP").

**Community Corrections Background**

In Colorado, community corrections programs are a unique collaboration between state agencies, local officials, and organizations that provide community corrections services, with an emphasis on local control. The community corrections program provides a variety of services to offenders, including case management, life skills training, drug and alcohol education, money management assistance, and educational and vocational guidance. In the broadest sense, it is the supervision or treatment of criminal offenders in non-secure settings. Community corrections programs manage offender populations that would otherwise be placed in secure facilities, such as county jails or state prisons.

As will be explained further, community corrections facilities are not private prisons, nor do they operate as such. Individuals residing in community corrections are not physically locked-up or confined. The community corrections facilities do not employ law enforcement officers or peace officers as staff. Furthermore, the facilities are not funded or controlled by the Department of Corrections.

The Colorado Department of Public Safety (specifically the Division of Criminal Justice) has the responsibility to audit and monitor community corrections programs to ensure compliance with state standards and contracts, federal grant requirements, and established operating standards.

See C.R.S. § 17-27-108. These operating standards establish minimum objective criteria that describe how programs should deal with issues related to public safety, offender management, and best practices in offender rehabilitation. Services are designed to promote reintegration of offenders back into the community, including:

- Services for offenders sentenced to community corrections in lieu of prison (diversion clients);
- Services for offenders who are transitioning from prison prior to parole (transition clients);
- Services for parolees released by the Colorado Board of Parole (condition of parole clients);
- Short-term stabilization services for offenders on probation (condition of probation clients);
- Services for adults adjudicated as juveniles and paroling from the juvenile system as adults (condition of juvenile parole clients); and
- Specialized treatment for offenders with a history of substance abuse and mental illness.

*Id.*

Local community corrections boards are responsible for establishing programs within their judicial district. See C.R.S. § 17-27-103. Local community corrections boards vary by size, membership, philosophy, and degree of program control. Citizen board members are typically appointed by locally elected officials. The primary responsibilities of the local community corrections boards are to screen any offenders referred to programs in their communities and monitor program compliance with state and local standards. Many boards provide an array of critical services designed to assist programs to better serve the needs of the offenders.

Local community corrections boards authorize community corrections programs to manage two main types of offenders.

- “Diversion clients” are directly sentenced to community corrections programs by the courts or, in rare instances, have been sentenced as a condition of a probation placement for up to 30 days. In such cases, community corrections programs serves as the step right before, or alternative to, prison. One measure of success in the management of diversion clients is whether they can permanently demonstrate that they do not require time in prison to become safe and productive members of society.
- “Transition clients” have been in a Colorado prison facility, and are preparing for a gradual return to society by participating in a community corrections program. In such cases, the community corrections program serves as the step down from prison and facilitates transition back to the community. One measure of success in the management of these clients is whether they remain crime-free, both during and after their transition from institutional life to freedom.

An offender must receive a referral from either the State judicial branch (diversion) or the

Department of Corrections (transition) to participate in one of the community corrections programs. Referrals for direct sentence (diversion) offenders are made from local judicial districts to local community corrections boards. Referrals for transition, parole, or offenders that need an intensive supervision program upon release from prison are made by the Division of Adult Parole/Community Corrections in the Department of Corrections. Condition of Parole offenders are referred from the parole board as a condition of the offender's period of parole. Please see Attachment A to this letter which depicts the funding and referral process for community corrections programs.

Currently there are 22 local community corrections boards throughout Colorado and 35 separate residential facilities offering community corrections programs. In five communities, units of local government operate the programs. The remaining programs are directly operated by private agencies, either as for-profit or not-for-profit facilities. The not-for-profit facilities operate under a 501(c)(3) tax-exempt status.

Private agencies that contract with local community corrections boards receive funds from the Department of Public Safety, Office of Community Corrections – not the Department of Corrections. No governmental unit exercises final administrative control, including ownership, or any other form of control of the facilities used to house participants. Rather, these private organizations are responsible for the day-to-day operations of each facility, including the hiring and firing of employees.

#### **Placement of Individuals in Community Corrections**

The placement of individuals in community corrections is fairly complex. Community corrections programs consist of residential and nonresidential phases. During the residential phase, participants are expected to find employment, but reside at the facility. The purpose of the residential phase of community corrections programs is to provide participants with the knowledge and skills necessary to be emotionally, cognitively, behaviorally, and financially prepared for their reintegration back into the community. Residential programs strive to accomplish this rehabilitative task by a variety of means. Through assessment-driven individual treatment plans, programs attempt to match participant risks and needs with the most appropriate treatment modality. Participants are assisted in obtaining regular employment and encouraged to participate in educational and vocational services. Community corrections program staff monitor the payment of restitution, court fines, court-ordered child support, and useful community service requirements. Further, program staff carefully monitors participants in the community to enhance accountability and to address public safety concerns.

Once a diversion offender is successfully discharged from the residential phase of community corrections, the remainder of the sentence is typically completed under different types of nonresidential supervision. Most community corrections participants progress through the system to become "nonresidential clients" or "day reporting clients." Typically, these participants have graduated from the more structured part of their programs and are permitted to live with some independence. They check in as often as every day, provide urine samples to detect any substance abuse, and are subject to monitoring at their jobs and elsewhere. Many diversion nonresidential participants continue classes begun while they were in residence at the community

corrections program. The nonresidential phase of community corrections is designed to assist in the transition and stabilization of residential diversion participants back into the community with a gradual decrease in supervision. These participants have conducted themselves well in a highly-structured residential setting. They have obtained a suitable independent living arrangement, managed their finances appropriately, and have progressed in treatment. Participants in nonresidential placement are required to meet with case management staff, retain employment, participate in mandatory treatment, honor their financial responsibilities and remain drug and alcohol free.

The degree of physical confinement in these settings warrants further elaboration, especially regarding how it impacts the ability of participants to seek medical treatment outside the facility. Succinctly put, at every point in the community corrections program residents have freedom to obtain medical care outside the facility. While in residential status, residents are never placed in handcuffs or other physical restraints. Neither are there locks on the doors, patrolling guards, or safety towers. None of the employees who work at community corrections facilities have the authority to detain a resident or otherwise prevent them from leaving. Most importantly, such authority would be irrelevant, as leaving the facility for medical care is not against community corrections policies. When residents progress to nonresidential status, the degree of freedom is even greater. In sum, the residents' freedom to seek medical care in the community mirrors that of the average citizen.

More information on the State's community corrections programs is available at <http://dcj.state.co.us/occ/>. Further, attached as Exhibit B is a listing of the programs by location and ownership.

### Legal Analysis

A person who is an "inmate of a public institution" is not eligible for Medicaid FFP under 42 CFR § 435.1009. When determining whether a person participating in the Colorado community corrections program falls into this category, a two-prong test is used: (1) whether the person is an "inmate," and (2) whether the facility is a "public institution."<sup>1</sup>

Based on the structure of the Colorado community corrections program, participants are not "inmates of a public institution" for the purpose of determining whether the State is entitled to FFP for any Medicaid expenditures.

### **Community Corrections Participants Are Not "Inmates"**

First, residents of community corrections facilities should not be considered "inmates." As an initial matter, it is clear under Colorado law these individuals are not classified as "inmates."<sup>2</sup>

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<sup>1</sup> Memorandum from the Dep't of Health & Human Servs., Clarification of Medicaid Coverage Policy for Inmates of Public Institution, (Dec. 12, 1997) (Ex. C, p. 1). ("1997 Clarification Memo")

<sup>2</sup> Compare the definition of an "inmate" under Department of Corrections programs, defined at C.R.S. § 17-1-102(6.5), which means "any person who is sentenced to a term of imprisonment

The Colorado Supreme Court has expressly distinguished between incarceration and confinement in a community corrections facility, calling the latter “not as harsh as incarceration.” *People ex rel. VanMeveren v. Dist. Ct.*, 575 P.2d 4 (1978); see also *People v. Wilhite*, 817 P.2d 1017, 1019 (Colo. 1991). Residents are not locked up or in prison, and the personnel operating community corrections programs do not have the legal duty or authority to physically keep program participants from leaving the facilities.

In your May 24, 2012 letter to the Department, you cited C.R.S. § 17-27-106 as support for considering community corrections participants “inmates” (highlighting that violations of community corrections policies will be deemed an “escape from custody”). This analysis incorrectly focused on the consequence of violating community corrections policies instead of analyzing the day-to-day operations of the program. None of the applicable statutes, regulations, or guidance directs the analysis towards the consequences of program violations. When the program itself is analyzed, rather than the consequences for violating its terms, it is clear that community corrections residents are not inmates – community corrections policies allow residents unfettered freedom to obtain medical care outside the facility.

Moreover, the wording of C.R.S. § 17-27-106 actually supports the proposition that residents of community corrections facilities are not “inmates.” For the simple purpose of being able to cross-reference a range of penalties already outlined elsewhere, this statute “deems” violations of the community corrections program to be an escape from custody. The meaning of the word “deem” fully supports this interpretation. Black’s Law Dictionary defines “deem” as: “[t]o treat (something) as if (1) it were really something else, or (2) it has qualities that it does not have.” BLACK’S LAW DICTIONARY (9th ed. 2009). That is precisely what is happening in C.R.S. § 17-27-106. Even though those who do not comply with the community corrections program policies have not actually escaped custody (as they are not in custody to begin with), Colorado statute treats those violations “as if it were really something else” – namely, an escape from custody. This is for the sole purpose of being able to apply punishments already spelled out in a different section of statutes. So, instead of supporting the idea that residents of community corrections are “inmates,” the wording of C.R.S. § 17-27-106 indicates the opposite is true.

This conclusion is consistent with the constitutional jurisprudence outlining a state’s obligation to provide medical care for inmates. A prisoner’s right to medical care is rooted in the Eighth Amendment to the United States Constitution. Specifically, denying medical care to prisoners would violate the Eighth Amendment’s prohibition on cruel and unusual punishment. See *Estelle v. Gamble*, 429 U.S. 97 (1976). In *Estelle*, the United States Supreme Court explained why this right exists: “An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met.” *Id.* at 103. In other words, the prison must provide medical care because the prisoner cannot leave to find such care elsewhere. When that is no longer the case – where the individual is free to seek outside medical care – the state’s obligation to provide medical care ceases. See *Deshaney v. Winnebago County Dep’t of Soc.*

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for a violation for the laws of this state, any other state, or the United States” with the definition of an “offender” under community corrections programs, defined at C.R.S. § 17-27-102(6), which means “any person accused of or convicted of a felony or misdemeanor as defined by the laws of the state of Colorado.”

*Servs.*, 489 U.S. 189 (1989). Correspondingly, it also marks where Medicaid coverage (with corresponding FFP) begins, as there should be no uncovered gap between the two.

This is in line with the primary goal of Medicaid – to provide medical assistance, rehabilitation, and other services to individuals so they can "attain or retain capability for independence or self-care." *Myers v. Reagan*, 776 F.2d 241, 243 (8th Cir. 1985) (citing 42 U.S.C. § 1396). The community corrections program exists to provide much the same support. Community corrections participants are no longer incarcerated, and the program is a critical process for helping them attain independence and self-care. Medicaid coverage (with the support of FFP) can and should be a valuable partner, acting in concert with community corrections to aid individuals they are both designed to address. It would violate the intent of the Medicaid program for these individuals to fall through the cracks, and until FFP is available for these individuals, they will continue to do so.

The most recent CMS guidance (the 1997 Clarification Memo) suggests recognition of the principle that where a State's Eighth Amendment obligation ends, Medicaid and FFP begin. The guidance provides several examples where FFP is available. Three of particular relevance are:

- Paroled individuals
- Individuals on probation
- Individuals on home release, unless they must report to a prison for overnight stay

In contrast, the examples when FFP is not available are:

- Individuals (including juveniles) being held involuntarily in a detention center awaiting trial
- Inmates involuntarily residing at a wilderness camp under governmental control
- Inmates involuntarily residing in half-way house under governmental control
- Inmates receiving care as an outpatient
- Inmates receiving medical care on the premises of a prison, jail, detention center, or other penal setting.

1997 Clarification memo, Ex. C, p. 3-4.

Read together, these examples illustrate that the proper focus is providing Medicaid coverage when a state's Eighth Amendment obligation ceases. For example, physical confinement of any sort cannot be the standard, as FFP is available for individuals on home release. Those individuals are given physical boundaries, a type of confinement, and yet FFP is still available. The circumstances for a community corrections resident is much the same, if not even less confining. While in residential status, they are required to report back to the facility. However, with freedom possibly exceeding home release, they are free to leave the facility for education, work, and most importantly, to seek medical care if needed. Residents that progress to nonresidential status have even greater freedom.

Accordingly, the Colorado Department of Corrections has concluded that its Eighth Amendment obligations do not include coverage of medical care for community corrections residents.

Because Medicaid coverage starts where the boundary of a State's Eighth Amendment obligations end, community corrections residents must be covered by Medicaid and corresponding FFP. Attached as Exhibit D is a letter from the First Assistant Attorney General on behalf of the Department of Corrections outlining why community corrections residents do not fall within their Eighth Amendment obligations.

In addition to the other public policy arguments, there is a strong argument in favor of allowing pregnant women residing in a community corrections program to receive Medicaid services. Early intervention to provide healthcare to pregnant women results in better health outcomes for both the woman and child as well as reduced future healthcare expenses. Further, as of May, 2012, other individuals who would previously not have received services can now do so under the Medicaid expansion through an 1115 Waiver for adults without dependent children in the household. This expansion means that more community corrections program participants than ever before are potentially eligible for Medicaid benefits in Colorado.

### **Community Corrections Facilities Are Not "Public Institutions"**

Even if community corrections residents are considered "inmates," FFP should still be available for their medical treatment because community corrections facilities are not "public institutions" for the purposes of determining if FFP is available.

First, according to CMS regulations, a facility is a "public institution" only if it is "the responsibility of a governmental unit or over which a governmental unit exercises administrative control." See 42 C.F.R. § 435.1010. The 1997 Clarification memo observes that this control can exist when a facility is:

- Actually an organizational part of a governmental unit, or
- When a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates, or
- When a governmental unit is responsible for the ongoing daily activities of a facility, for example, when facility staff members are government employees or when a government unit, board or officer has final authority to hire and fire employees.

1997 Clarification memo, Ex. C, p. 2.

Based on these criteria, community corrections facilities are not "public institutions" for FFP purposes.

The state standards governing community corrections programs show that programs contracted to private agencies are not under government control. The Colorado Community Corrections Standards (the "CCCS") are attached as Exhibit E. These standards apply to contracts with community corrections programs and form the basis of overseeing these contracts. They also illustrate that each program is responsible for its own day-to-day operations.

For the private community corrections programs, the facilities are controlled by the private organizations that are under contract to the program. There is no final administrative control

exerted by any governmental unit over a private community corrections facility. Although the CCCS prescribes that the facility must formulate and implement a number of policies and procedures governing personnel, management, security, *etc.*, no government entity will participate in this process. *See, e.g.*, CCCS § 3-010. Moreover, with respect to the ongoing daily activities of a private-owned community corrections facility, there is no government involvement in devising or enacting the foregoing policies and procedures, and even *ex post* approval is rarely required. This is consistent with judicial opinions addressing similar types of programs, which generally tend to view such private-owned facilities as something other than a “public institution.” *See, e.g., Dixon v. Stanton*, 466 F. Supp. 335, 339 (D.C. Ind. 1979).

The same conclusion applies to the community corrections facilities that are operated by units of local government. It bears repeating here that analysis of whether FFP is available should always be with an eye towards the Eighth Amendment. While the party who owns and governs a facility might be indicative of “control,” that is not the type of control that matters. The 1997 Clarification Memo states that the requisite “control” can exist when a governmental unit owns the facility, acknowledging that ownership does not always constitute “control.” Rather, “control” in the context of the CMS guidance on public institutions should mirror “control” in the context of the Eighth Amendment – *i.e.*, does a given entity exercise the type of control that prohibits a person from seeking medical care outside the facility. When so analyzed, it becomes clear that even the community corrections facilities that are operated by units of local government are not “public institutions” for purposes of determining whether FFP is available. These facilities operate under the same Colorado Community Corrections Standards as private community corrections programs. Notably, this means that leaving the facility for medical care is not against program policies.

The 1997 Clarification Memo’s examples of when FFP is not available further illustrate why governmentally operated community corrections facilities are not “public institutions.” The closest example of when FFP is not available is for “inmates involuntarily residing in half-way houses under governmental control.” Critically, this definition is modified by the first two words – “inmates” and “involuntarily.” It is not enough that a facility is owned by the government. Rather, it must also exercise sufficient control and restraint over its residents that they are inmates, and reside there involuntarily. If this were the case, the residents would not be able to receive medical care unless the facility provided it. This is further proof that the ultimate question is whether the ownership and operation of a facility makes the medical care of its residents an obligation under the Eighth Amendment. Once again, the Colorado Department of Corrections has concluded that it does not have an Eighth Amendment obligation to provide medical care to community corrections residents, as residents have unfettered access to outside sources of medical care. Therefore, community corrections facilities should not be classified as “public institutions” for the purpose of determining residents’ eligibility for FFP.

In conclusion, residents of community corrections programs are not “inmates of a public institution,” and FFP should be provided for their care under Medicaid. Please reconsider your previous position so that this population that would otherwise go without medical care, other than utilizing emergency rooms, can have access to services and benefits for which they are eligible. The Department notes that a significant number of community corrections participants are already otherwise eligible under the 1115 Demonstration Waiver effective April 1, 2012, as

well as under the Affordable Care Act after January 1, 2014. Both of these programs expand Medicaid eligibility to adults without dependent children. Individuals who are covered under these programs and who are on a waitlist through the Department's 1115 Demonstration Waiver will become eligible for the Colorado Indigent Care Program until January 1, 2014, when the Affordable Care Act provisions take effect. However, because FFP has been considered unavailable to this point, and the Department of Corrections has correctly concluded that they are not obligated to provide coverage, program participants are currently caught in a coverage gap that should not exist. In fact, this gap is the basis of probable litigation in the near future implicating both Colorado and CMS. See Letter from Colo. Lawyer's Comm. to Sebelius (Jan. 14, 2010), attached as Exhibit F. To ensure that these individuals receive necessary coverage as soon as possible, the Department requests and appreciates your timely attention to this important issue.

Sincerely,

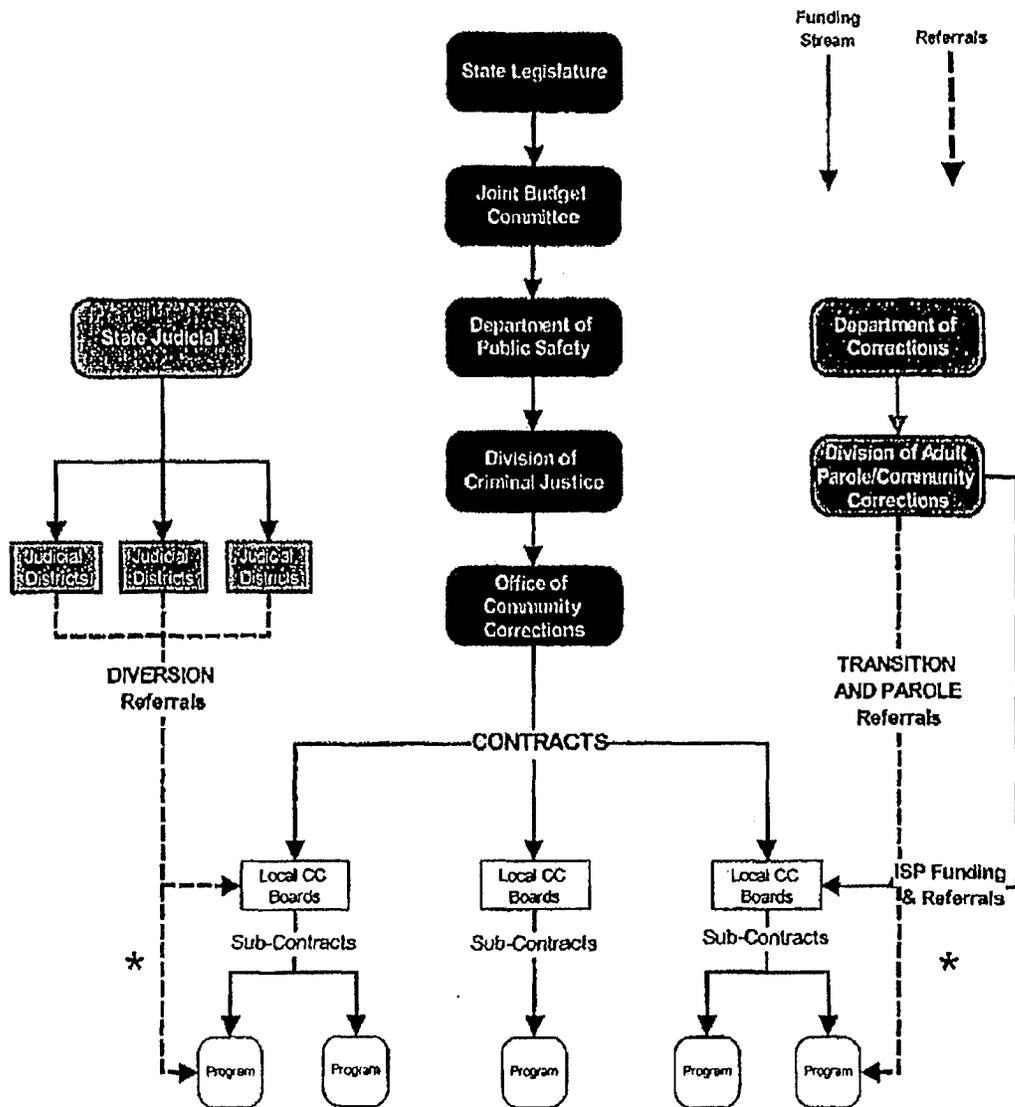


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- cc. Hon. Diana DeGette, United States Congresswoman, Colorado  
Hon. Kathleen Sebelius, Secretary of Health and Human Services  
Susan E. Birch, Executive Director, Colorado Department of Health Care Policy & Financing  
Tom Clements, Executive Director, Colorado Department of Corrections  
Jessica Yates, Colorado Lawyers Committee, Mental Health Task Force  
Iris Eytan, Colorado Lawyers Committee, Mental Health Task Force  
Ed Kahn, Colorado Center on Law and Policy

Enclosures

**Figure 2**  
**COLORADO COMMUNITY CORRECTIONS**  
**Funding and Referral System**



\* Some referrals are made directly to programs where boards have developed automatic acceptance criteria

**Table 1**  
**Community Corrections Program Ownership in Colorado**

<i>Program Name</i>	<i>Program Location</i>	<i>Program Ownership/Sponsorship</i>
Arapahoe County Treatment Center	Sheridan	501(c)(3)
ComCor, Inc.	Colorado Springs	501(c)(3)
Crossroads-Turning Points	Pueblo	501(c)(3)
Hilltop House	Durango	501(c)(3)
ICCS Jefferson	Lakewood	501(c)(3)
JCCS Weld	Greeley	501(c)(3)
Peer I	Denver	University-sponsored not-for profit
San Luis Valley Community Corrections	Alamosa	501(c)(3)
The Haven	Denver	University-sponsored not-for profit
Garfield County Community Corrections	Rifle	County-owned
Gateway: Through the Rockies <sup>1</sup>	Colorado Springs	County-owned
Larimer County Community Corrections	Ft. Collins	County-owned
Mesa County Community Corrections	Grand Junction	County-owned
Phase I <sup>2</sup>	Denver	County-owned
Advantage Treatment Center	Sterling	For-profit ownership
Arapahoe County Residential Center	Englewood	For-profit ownership
CMI-Boulder	Boulder	For-profit ownership
CMI-Centennial	Centennial	For-profit ownership
CMI-Columbine	Denver	For-profit ownership
CMI-Dahlia	Denver	For-profit ownership
CMI-Fox	Denver	For-profit ownership
CMI-Longmont	Longmont	For-profit ownership
CMI-Ulster	Denver	For-profit ownership
Community Alternatives of El Paso	Colorado Springs	For-profit ownership
Correctional Alternative Placement	Craig	For-profit ownership
Independence House-Federal	Denver	For-profit ownership
Independence house-Fillmore	Denver	For-profit ownership
Independence House-Pecos	Denver	For-profit ownership
Minnequa Community Corrections	Pueblo	For-profit ownership
Phoenix Center	Henderson	For-profit ownership
Pueblo Community Corrections	Pueblo	For-profit ownership
Time to Change-Adams	Welby	For-profit ownership
Time to Change-Commerce City	Commerce City	For-profit ownership
Tooley Hall	Denver	For-profit ownership
Williams Street Center	Denver	For-profit ownership

<sup>1</sup> Small, jail-based program with no residential beds

<sup>2</sup> Jail-based program with no residential beds and special mission



DEC 12 1997

**FROM:** Director  
Disabled and Elderly Health Programs Group  
Center for Medicaid and State Operations

**SUBJECT:** Clarification of Medicaid Coverage Policy for Inmates of a Public Institution

**TO:** All Associate Regional Administrators  
Division for Medicaid and State Operations

The purpose of this memorandum is to clarify current Medicaid coverage policy for inmates of a public institution. Recently, central office staff have become aware of a number of inconsistencies in various regional office directives on this subject which have been sent to States. Moreover, the growing influx of inquiries from the internet has prompted us to expand and, in some cases, refine our coverage policy in this area. Therefore, in the interest of insuring consistent and uniform application of Medicaid policy on inmates of a public institution, we believe that this communication is necessary.

#### Statute and Parameters

Section 1905(a)(A) of the Social Security Act specifically excludes Federal Financial Participation (FFP) for medical care provided to inmates of a public institution, except when the inmate is a patient in a medical institution. The first distinction that should be made is that the statute refers only to FFP not being available. It does not specify, nor imply, that Medicaid eligibility is precluded for those individuals who are inmates of a public institution. Accordingly, inmates of a public institution may be eligible for Medicaid if the appropriate eligibility criteria are met.

The next significant distinction is that under current Medicaid coverage policy for inmates there is no difference in the application of this policy to juveniles than the application to adults. For purposes of excluding FFP, for example, a juvenile awaiting trial in a detention center is no different than an adult in a maximum security prison. For application of the statute, both are considered inmates of a public institution.

#### Criteria for Prohibition of FFP

When determining whether FFP is prohibited under the above noted statute, two criteria must be met. First, the individual must be an inmate; and second, the facility in which the individual is residing must be a public institution. An individual is an inmate when serving time for a criminal offense or confined involuntarily in State or Federal prisons, jails, detention facilities, or other penal facilities. An individual who is voluntarily residing in a public institution would not be

considered an inmate, and the statutory prohibition of FFP would not apply. Likewise, an individual, who is voluntarily residing in a public educational or vocational training institution for purposes of securing education or vocational training or who is voluntarily residing in a public institution while other living arrangements appropriate to the individual's needs are being made, would not be considered an inmate. It is important to note that the exception to inmate status based on 'while other living arrangements appropriate to the individual's needs are being made' does not apply when the individual is involuntarily residing in a public institution awaiting criminal proceedings, penal dispositions, or other involuntary detainment determinations. Moreover, the duration of time that an individual is residing in the public institution awaiting these arrangements does not determine inmate status.

Regarding the second criteria necessary for determining whether FFP is prohibited, a facility is a public institution when it is under the responsibility of a governmental unit; or over which a governmental unit exercises administrative control. This control can exist when a facility is actually an organizational part of a governmental unit or when a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates. Administrative control can also exist when a governmental unit is responsible for the ongoing daily activities of a facility, for example, when facility staff members are government employees or when a governmental unit, board, or officer has final authority to hire and fire employees.

#### Privatization of Prisons

Some States have contracted with a private health care entity to provide medical care in the public institution to its inmates. We have determined that FFP would not be available for the medical services provided in this situation. We believe that the inmates are not receiving services as a patient in a medical institution. Rather, they are continuing to receive medical care in a public institution because governmental control continues to exist when the private entity is a contractual agent of a governmental unit.

Some States are also considering the feasibility of selling or transferring ownership rights of the prison's medical unit (including the housing facility and the immediate grounds) to a private health care entity, thereby potentially establishing the unit as a medical institution for which FFP may be available on the greater grounds of the public institution. We do not believe this arrangement is within the intent of the exception specified in the statute. We adhere to the policy that FFP is unavailable for any medical care provided on the greater premises of the prison grounds where security is ultimately maintained by the governmental unit.

#### Exception to Prohibition of FFP

As noted in the above cited statute, an exception to the prohibition of FFP is permitted when an inmate becomes a patient in a medical institution. This occurs when the inmate is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility, or intermediate care facility. Accordingly, FFP is available for any Medicaid covered services provided to an 'inmate' while an inpatient in these facilities provided the services are included under a State's Medicaid plan and

the 'inmate' is Medicaid-eligible. We would note that in those cases where an 'inmate' becomes an inpatient of a long-term care facility, other criteria such as meeting level of care and plan of care assessments would certainly have to be met in order for FFP to be available.

FFP, however, is not available for services provided at any of the above noted medical institutions including clinics and physician offices when provided to the inmate on an outpatient basis. Nor is FFP available for medical care provided to an inmate taken to a prison hospital or dispensary. In these specific situations the inmate would not be considered a patient in a medical institution.

#### Policy Application

As a result of a significant number of recent inquiries from the internet and regional offices, we have provided policy guidance involving issues where inmates receiving medical care in various settings and under unique situations. The following examples will help in determining whether FFP is available or not. Please keep in mind that these are broad and general examples and extenuating circumstances may exist which could effect this determination.

#### Examples when FFP is available:

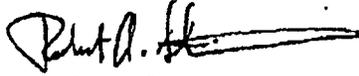
1. Infants living with the inmate in the public institution
2. Paroled individuals
3. Individuals on probation
4. Individuals on home release except during those times when reporting to a prison for overnight stay
5. Individuals living voluntarily in a detention center, jail, or county penal facility after their case has been adjudicated and other living arrangements are being made for them (e.g., transfer to a community residence)
6. Inmates who become inpatients of a hospital, nursing facility, juvenile psychiatric facility or intermediate care facility for the mentally retarded (Note: subject to meeting other requirements of the Medicaid program)

#### Examples when FFP is unavailable:

1. Individuals (including juveniles) who are being held involuntarily in detention centers awaiting trial
2. Inmates involuntarily residing at a wilderness camp under governmental control
3. Inmates involuntarily residing in half-way houses under governmental control

4. Inmates receiving care as an outpatient
5. Inmates receiving care on premises of prison, jail, detention center, or other penal setting

If there are any questions concerning this communication, please contact Thomas Shenk or Verna Tyler on 410 786-3295 or 410 786-8518, respectively.



Robert A. Streiner



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August 29, 2012

Via email: [jennifer.weaver@state.co.us](mailto:jennifer.weaver@state.co.us)

Jennifer Weaver  
First Assistant Attorney General  
Health Care Unit  
1525 Sherman Street  
Denver, Colorado 80203

Re: Health Care for Parolees

Dear Ms. Weaver:

This letter is in response to your inquiry regarding payment of health care expenses for individuals that have been released from incarceration to community corrections or parole.

Once an offender is released on parole or to community corrections, there is no duty to provide medical care. The State has a duty to provide medical care for those whom it is punishing by incarceration. *Estelle v. Gamble*, 429 U.S. 97, 103 (1977); *Purkey v. Simmons* 29 Fed.Appx. 546 (10th Cir. 2002) (unpublished decision). Because the deprivation of his liberty leaves the inmate unable to obtain care for himself, the State must care for him. *Estelle v. Gamble*, 429 U.S. at 104. When a person is institutionalized and is wholly dependent on the State, the State assumes a duty to provide certain services for him, including food, shelter, clothing and medical care. *Youngblood v. Romeo*, 457 U.S. 307, 314-25 (1982). However, once the person is no longer in actual custody, the duty to provide care for his safety and well-being expires. See *DeShaney v. Winnebago County DSS*, 489 U.S. 189, 200 (1989). Whether discharged or paroled, the former prisoner is no longer unable to care for himself. He is free of physical restraint and is physically able

Page 2

to go to a hospital or clinic, without any impairment of his ability to do so by the State.

Sincerely,

FOR THE ATTORNEY GENERAL

s/James X. Quinn  
JAMES X. QUINN  
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Civil Litigation and Employment Law  
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# Colorado Community Corrections Standards



**Revised  
August 2010**

**State of Colorado  
Department of Public Safety  
Division of Criminal Justice  
Office of Community Corrections**

**700 Kipling Street, Suite 1000  
Denver, Colorado 80215  
(303) 239-4548  
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**TABLE OF CONTENTS**

<b>MESSAGE FROM THE DIRECTOR .....</b>	<b>5</b>
<b>1-000 ADMINISTRATION.....</b>	<b>6</b>
1-010 Legal Entity.....	6
1-030 Organizational Chart.....	6
1-040 Fiscal Operations.....	6
1-050 Independent Fiscal Audit .....	7
1-060 Insurance.....	7
<b>2-000 PERSONNEL .....</b>	<b>8</b>
2-010 Personnel Policies .....	8
2-020 Job Descriptions.....	8
2-030 Equal Employment.....	8
2-040 Background Check.....	8
2-050 Personnel File.....	9
2-051 Employee Medical Records .....	9
2-060 Performance Appraisals .....	9
2-070 Ethical Relationships.....	9
2-080 Staff Criminal Conduct .....	9
2-100 Staff Orientation Training.....	10
2-101 PREA Training.....	10
2-110 Staff Annual Training .....	10
2-111 Sex Offender Supervision Training.....	10
2-120 Ancillary and Administrative Training .....	10
2-130 Training Events.....	11
2-140 Case Manager Education .....	11
2-150 Program Administrator Education .....	11
2-151 Security Staff Education .....	11
2-152 Staff Age Requirement.....	11
2-160 Volunteers.....	11
<b>3-000 MANAGEMENT CONTROLS .....</b>	<b>13</b>
3-010 Policy and Procedure Manual .....	13
3-020 Monthly Staff Meetings .....	13
3-030 Acceptance Criteria.....	13
3-040 Written Response To Referral Agencies.....	14
3-060 Program Compliance.....	14
3-070 Receiving Offenders .....	14
3-080 Supervision of Sex Offenders .....	14
3-090 Victim Notification .....	15
3-100 DNA Testing.....	15
3-110 Family/Community Activities.....	15
3-120 Disciplinary Hearings .....	15
3-130 Grievance/Appeals Procedure .....	15
3-140 CCIB Compliance .....	16
3-150 Referral Agency Reports.....	16
3-160 Offender Time Credits .....	16
3-170 Incident Notification .....	16
3-171 PREA Notification .....	17
3-180 Systematic File Review.....	17
3-190 Self-Audits of Operations and Programming.....	17

3-191 Unannounced Facility Checks.....	18
3-200 Organized Information Collection .....	18
3-210 Documentation.....	18
3-220 Non-Residential Level of Supervision .....	18
3-230 Administrative Review .....	19
<b>4-000 SECURITY .....</b>	<b>20</b>
4-010 Offender Advisement.....	20
4-011 PREA Advisement.....	20
4-020 Intake Interview .....	21
4-030 Health Inventory .....	21
4-040 Medication .....	21
4-050 Staff Response to Medical Emergencies.....	21
4-060 First Aid/CPR Certification.....	21
4-070 Offender Property .....	22
4-080 Substance Abuse Testing .....	22
4-090 Confirming Positive Test Results.....	23
4-100 Entry Urine Samples .....	23
4-110 Interim Urine Samples .....	23
4-120 Exit Urine Samples .....	24
4-130 BAs and UAs for Alcohol.....	24
4-150 Isolation/Observation of Offenders.....	24
4-160 Random Off-Site Monitoring.....	24
4-161 Job Search Accountability.....	25
4-170 Passes .....	25
4-171 Furloughs .....	26
4-180 Law Enforcement Contact.....	26
4-181 On-Grounds Surveillance.....	26
4-182 Off-Grounds Surveillance .....	26
4-190 Use of Physical Force .....	26
4-200 Random Headcounts .....	26
4-210 Recording Authorized Absences.....	26
4-220 Contraband .....	27
4-230 Work Stoppages .....	27
4-240 Security Staff Staffing Pattern .....	27
4-250 Transportation of Offenders by Staff .....	27
4-260 Escape .....	28
4-261 Non-Residential Absconders.....	28
<b>5-000 FACILITIES.....</b>	<b>30</b>
5-010 Building/Zoning Codes .....	30
5-020 Compliance with Fire Authority .....	30
5-030 Flame Retardant Mattress and Pillow .....	30
5-040 Automatic Sprinkler System .....	30
5-050 Fire Alarm and Detection System.....	30
5-060 Storage of Hazardous Materials .....	30
5-070 Conducting Fire Drills .....	30
5-080 First Aid Manual and Medical Supplies.....	30
5-090 Minimum Floor Space .....	31
5-100 Separate Space .....	31
5-110 Visitation Space .....	31
5-120 Toilets, Basins, Showers .....	31
5-130 Health and Sanitation Codes .....	31
5-140 Access to Nutritious Meals .....	31
5-150 Property and Safety.....	32

5-160 Housecleaning Assignments .....	32
5-170 Offender Bedding.....	32
<b>6-000 CASE MANAGEMENT .....</b>	<b>33</b>
6-010 Case Record .....	33
6-020 Separate Medical Files.....	33
6-030 Confidentiality of Case Records .....	33
6-040 Release of Information.....	33
6-050 Storage of Case Records .....	34
6-060 Assignment of Case Manager .....	34
6-070 Weekly Meetings .....	34
6-080 Chronological or Progress Notes.....	34
6-090 Assessments .....	35
6-100 Supervision Plan .....	35
6-110 Structured Progress Feedback .....	36
6-120 Movement of Offenders .....	36
6-130 Employment Services .....	36
6-140 Educational Review .....	36
6-150 Offender Treatment .....	37
6-160 Offender Treatment Monitoring.....	37
6-161 Treatment Services for DOC Clients .....	37
6-162 Treatment Services for Sex Offenders .....	37
6-163 Treatment Services for Domestic Violence.....	37
6-164 Treatment Services for Mental Illness .....	37
6-165 Treatment Services for Substance Abuse.....	37
6-170 Termination/Transfer Summary.....	37
6-180 Offender Budget.....	38
6-190 Financial Transactions .....	38
6-191 Limited Power of Attorney .....	38
6-202 Child Support Enforcement.....	38
6-210 Contract Approval.....	39
6-220 Driving Privileges .....	39
<b>GLOSSARY .....</b>	<b>40</b>
<b>APPENDIX .....</b>	<b>45</b>
Audits .....	45
Audit Reports.....	46
Audit Appeals .....	47
Variations from the <i>Standards</i> (including Waivers).....	48
Technical Assistance from DCJ.....	49

## MESSAGE FROM THE DIRECTOR

The Division of Criminal Justice is pleased to present the *Colorado Community Corrections Standards, 2010 Edition*.

As in the past, these revisions to the *Standards* are the product of close collaboration between members of the Governor's Community Corrections Advisory Council, representatives of the Colorado Association of Community Corrections Boards and members of the Colorado Community Corrections Coalition. These stakeholders joined with representatives from the Division of Criminal Justice, the Department of Corrections, the Division of Behavioral Health and the Colorado Judicial Branch to create minimum standards reflective of our system's unwavering commitment to public safety and to the humane and evidence-based treatment of offenders assigned to community corrections programs.

Special thanks are owed to the *Standards* subcommittee of the Governor's Advisory Council, chaired by Judge Christopher Cross. Its membership included Judge Frank Dubofsky, Cindy Talkington, Brad Kamby, Sally Skiver, Kevin Duckworth, Doug Carrigan, Shannon Carst, Scott Wood, Matt Sullivan, Dennis Berry, Gary Morretti, Sharon Detter, Paul Isenstadt, Greg Mauro, Carl Blesch, Valarie Schamper, Christine Schmid and Glenn Tapia.

The new edition contains many minor modifications and a few major additions. Some changes arose from the audit process, which continues to help programs identify specific areas of performance that might benefit from new policies, procedures or practices; changes in the law or in evidence-based practice led to other revisions.

The *Standards* continue to guide and support a strong community corrections system. As the data clearly demonstrates, community corrections in Colorado is a safe and cost-effective alternative to prison for appropriate offenders. Perhaps more than at any other time, the citizens of Colorado need such options.

Local community corrections boards continue to have a critical role in the application and enforcement of the *Standards*. For example, local boards have the statutory authority to impose more restrictive or comprehensive regulations than are provided by these *Standards*. Further, any program that seeks an exemption from an individual *Standard* must first submit a written waiver request to its local board for approval. The Division of Criminal Justice will review waiver requests for approval or denial only after such requests have been approved in writing by the local board.

As always, however, the most difficult job in community corrections belongs to the providers themselves. This edition of the *Colorado Community Corrections Standards* is dedicated to the men and women of the individual community corrections programs across Colorado who have pledged themselves to the attentive and ethical supervision and treatment of the offenders committed to their charge. For their continued devotion to duty, we are most grateful.

*Jeanne Smith, Director  
Division of Criminal Justice  
Colorado Department of Public Safety*

## 1-000 ADMINISTRATION

The *Standards* in this section address the broad organizational purpose and structure of the community corrections program. By meeting these *Standards*, the program assists local communities, local and state government and other criminal justice agencies to understand its philosophy, values, legal structure, resource allocation, fiscal policy and controls, and achievements in serving community corrections clients.

**1-010:** The public or private agency operating a community corrections program shall be a legal entity or part of a legal entity. The administrators shall maintain a file at the local headquarters of the agency that includes current documentation as follows:

(a) Public Agencies

- (1) The executive or legislative order of the unit of local government designating the agency as a community corrections program.
- (2) An organizational chart indicating the agency's position within the local government and a listing of the administrative officer(s) authorized to act as the legal agent(s) of the agency.

(b) Private Agencies

- (1) Certificate and articles of incorporation
- (2) List of the Board of Directors
- (3) Corporate bylaws and names of officers authorized to sign contracts or authorize expenditures
- (4) All documentation pertaining to the *Standards*

**1-030:** The administrators shall maintain a current internal organizational chart at each program location that accurately lists all positions involved in the community corrections program and displays the lines of authority and agency structure. The organizational chart shall be reviewed annually and updated as needed.

**1-040:** The administrators shall manage the program's fiscal affairs with:

- (a) An annual budget, prepared at the beginning of the contract period or organization's fiscal year, that anticipates revenue from individual sources and outlines projected expenditures by operational categories and line items. The budget shall be reviewed and updated throughout the year as required by the governing authority of the program.
- (b) Written policies and procedures and established practices that employ recognized accounting procedures to control and record the receipt, maintenance and dispersal of funds associated with operation of the program.
- (c) A system to regularly compare the actual revenues and expenditures associated with the operation of the program and the categories and line items of the annual budget.

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**1-050:** Programs shall submit to the DCJ a complete independent financial audit report conducted by a Certified Public Accountant licensed to practice in Colorado. These reports shall be submitted every third year, on the schedule established by the DCJ. New programs shall submit a complete independent financial audit report after the first year of operation and shall then follow the financial audit schedule established for all programs. New programs may request a waiver of the second financial audit if such audit would be due in less than eighteen months from the completion of the first audit. Offender funds, if maintained by the program, shall be included in the scope of the independent financial audit.

Independent financial audits may be required more frequently by individual contracts between the DCJ and programs and/or if otherwise requested by the DCJ. Such audits may be required more frequently by subcontract between programs and their local community corrections board.

Independent financial audits shall include any auditors' findings or recommendations communicated to the program or its parent corporate entity as the result of such audits.

*Discussion/Definitions: Beginning in the year 2011, programs shall submit independent fiscal audits in that year, in 2014 and in every third year thereafter. The DCJ shall not request such audits more frequently than once per year.*

*While DCJ generally does not require submission of any management letter provided to the program in conjunction with the independent financial audit, programs are expected to provide to DCJ any portion of this letter relevant to DCJ funding. However, DCJ reserves the right to request the management letter in its entirety at its discretion.*

*If the community corrections program is operated as a unit of government or by a larger corporate entity, a segment audit or review may be required by the DCJ and/or local community corrections board.*

*A compilation of internally prepared financial statements will not be considered to be in compliance with this Standard.*

**1-060:** The administrators shall maintain proof of insurance coverage at levels no less than those required in state contracts at the local program or agency headquarters.

## 2-000 PERSONNEL

The *Standards* in this section emphasize the value of program staff who are involved daily with the monitoring, supervision, treatment and service delivery essential to effective management of offenders within Colorado communities. People are the key elements of any organization, and community corrections programs are expected to place high priority on the support and management of program personnel. Selection and hiring practices must be fair and thorough. Once hired, employees must be adequately trained, supported and supervised. Job roles and responsibilities must be well defined and carefully communicated, and program staff must clearly understand how to maintain professional relationships with offenders assigned to community corrections programs.

- 2-010: The program shall maintain written personnel policies that are available to all staff and accessible by employees at their work sites. The policies shall include hiring practices, promotions, grievance procedures, staff development, performance appraisals, benefits, disciplinary procedures, terminations and other requirements more fully described in this section.
- 2-020: The program shall maintain written job descriptions and salary ranges for all positions. The job descriptions shall include job titles, minimum qualifications, responsibilities and duties.
- 2-030: The program shall maintain and implement hiring and promotion policies that provide equal employment opportunities and prohibit discrimination in accordance with state and federal law.
- 2-040: After applicants have been offered a conditional position, and prior to performing job duties, the program shall assure that an initial background investigation is conducted and the results are documented in the applicant's personnel file. The initial background investigation shall include a CCIC/NCIC criminal history and warrants check and documented verification of compliance with job qualifications.

In addition, the program shall submit a fingerprint card to the appropriate screening agency within 15 working days of the applicant's conditional hire. If the fingerprint card is rejected, the program must submit a new card within 15 working days of notification. Until such time as a fingerprint record check is returned, the employee shall not work without direct supervision except under the following circumstances:

- (a) The fingerprint-based records check from the Federal Bureau of Investigation has not been returned within 30 days, AND,
- (b) The employee has lived in Colorado continuously for no less than three years, AND,
- (c) The employee has no disqualifying criminal record in Colorado, as demonstrated by a completed check for fingerprints within the state of Colorado.

This authorization to work without supervision shall not apply if the employee's fingerprints are unclassifiable by the Colorado Bureau of Investigation. Conditional approval to begin work without direct supervision 30 days after the submission of the fingerprint card may be withdrawn at any time within the discretion of the DCJ if records returned by the Federal Bureau of Investigation reflect that the employee does have or may have a disqualifying conviction.

A completed fingerprint record check is required prior to receiving CCIB user access.

The program shall obtain approval from the local community corrections board, referral agencies and the DCJ before employing anyone who has a history of a felony conviction or is under

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current jurisdiction for probation, parole, or other conditional release for a felony or misdemeanor offense (including driving under restraint, and driving under the influence or while impaired by alcohol or drugs).

The program shall notify DCJ within 5 working days when an individual's employment is terminated for any reason.

- 2-050:** The program shall maintain a confidential personnel file for each employee that is accessible to the individual employee. The file shall be maintained in a standardized and indexed format and shall contain records of the background investigations, dates of employment, training records, performance appraisals, commendations, disciplinary actions, and related records. Information from the files shall be available to the local community corrections board and/or state oversight agencies only for the purpose of verifying compliance with *Standards* or contractual requirements. It shall be the responsibility of the local community corrections board and oversight agencies to maintain the confidentiality of the information.
- 2-051:** Employee medical records shall be maintained in a separate individual file. Written policies and procedures shall govern the confidentiality of these medical records in accordance with current state and federal law.
- 2-060:** The program shall conduct employee performance appraisals at least annually. Such appraisals shall be based upon defined criteria as established by the program. The results of the evaluation are to be discussed with the employee, the review signed by the employee and the evaluator, and a copy placed in the employee's personnel file.
- 2-070:** The program shall maintain current personnel policies and practices that ensure ethical and professional conduct between staff or agents and offenders under supervision. The following shall be prohibited:
- (a) The use of official positions to secure or receive advantages, gifts or favors
  - (b) The display of favoritism or preferential treatment for individual offenders or groups of offenders
  - (c) Any personal or business relationship with offenders or offenders' family or associates

Program personnel shall report any attempt to violate these relationship guidelines immediately to the program director.

*Discussion/Definitions: Also reference Standard 5-160.*

- 2-080:** The program shall obtain approval from the local community corrections board, referral agencies and the DCJ if it wishes to retain a current employee who has been formally charged with or convicted of a crime. Minor offenses are generally excluded from this requirement with the following exceptions:
- (a) Any offense involving alcohol or drug use or abuse, including Driving under the Influence or Driving While Ability Impaired, Minor in Possession or petty offenses related to the possession of drug paraphernalia or small amounts of marijuana;
  - (b) Any offense related to the denial, revocation or suspension of a driver's license; or,
  - (c) The offenses of Careless Driving Involving Death, Child Abuse and any offense relating to domestic violence.

*Discussion/Definitions: This Standard is applicable to any charge or conviction that occurs on*

or after August 1, 2010.

- 2-100:** Before receiving an unsupervised work assignment and within 90 days of the staff member's first working day, all full-time and part-time program and security staff shall receive twenty hours of formal orientation training. This orientation shall include a review of program policies and procedures relevant to the performance of their duties. The completion of this orientation shall be documented in training or personnel files.

*Discussion/Definitions:* Orientation may include on-the-job training and/or classroom training in addition to a review of policies and procedures.

- 2-101:** All staff members who may have any contact with offenders shall receive training appropriate to their assignments regarding the prevention of sexual conduct and the management of complaints or reports of sexual conduct within the context of community corrections. Training materials utilized shall be approved in advance by the DCJ.

- 2-110:** All full-time program and security staff shall receive a minimum of sixty hours of job-related training every two years, with no less than 20 hours in any given year. In the first year of employment, twenty hours may be the formal orientation training addressed in *Standard 2-100*.

College courses may account for no more than one-half of any person's job-related training hours during every two year period, and coursework must be relevant to the individual's job duties. Each classroom hour is equivalent to one training hour.

Part-time program and security staff shall receive a prorated amount of training equivalent to that provided to full-time staff.

- 2-111:** Case managers supervising sex offenders must complete training on the following topics as described in the Sex Offender Management Board (SOMB) *Standards and Guidelines for the Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders*:

- |  |   |
|--|---|
| (a) Prevalence of sexual assault           | (i) Choosing evaluators and treatment providers |
| (b) Offender characteristics               | (j) Relapse prevention                          |
| (c) Assessment/evaluation of sex offenders | (k) Physiological procedures                    |
| (d) Current research                       | (l) Determining progress                        |
| (e) Community management of sex offenders  | (m) Offender denial                             |
| (f) Interviewing skills                    | (n) Special populations of sex offenders        |
| (g) Victim issues                          | (o) Cultural and ethnic awareness               |
| (h) Sex offender treatment                 |   |

Individuals directly supervising case managers with a sex offender caseload must also complete this training. For case managers and supervisors managing sex offenders, half of the annual training hours required by *Standard 2-110* must be comprised of continuing education/training specific to sex offenders.

*Discussion/Definitions:* Case managers should complete training on the above topics prior to supervising sex offenders.

- 2-120:** Ancillary and administrative staff shall receive a minimum of thirty hours of job-related training every two years, with no less than 10 hours in any given year. Within 90 days of the staff

member's first working day a documented review of the program policies and procedures relevant to the performance of their job and a general orientation to the program must be completed. Part-time ancillary and administrative staff shall receive a prorated amount of training equivalent to that provided to full-time staff.

College courses may account for no more than one-half of any person's job-related training hours during every two year period, and coursework must be relevant to the individual's job duties. Each classroom hour is equivalent to one training hour.

*Discussion/Definitions: The general orientation to the program, although not as comprehensive as that required for program and security staff in Standard 2-100, should include an overview of the various services provided to offenders by the program, a safety presentation, an informal tour and other features which will give the ancillary and administrative staff a general understanding of how the program operates.*

**2-130:** Training events shall be documented in personnel or training files with topic, date, duration, trainer and participants, and shall include the employee's and the supervisor's signature. Training events must be:

- (a) Sanctioned by the agency
- (b) Based on pre-determined training objectives or goals
- (c) Related to the job
- (d) Scheduled in advance of the event
- (e) Delivered by a qualified trainer

*Discussion/Definitions: Examples of acceptable trainings include first aid/CPR courses, training videos or workshops by qualified instructors, and "on the job" training with specific objectives that meet the qualifications detailed in the Standard. Activities such as performance evaluations, supervision or staff meetings without pre-determined training objectives, or informal tours, do not qualify as training.*

**2-140:** Program case managers shall have a baccalaureate degree in social or behavioral sciences, criminal justice or related fields. Related education or experience may be substituted on a year for year basis. Verification of education and/or experience shall be documented in personnel files.

**2-150:** The program administrator shall have, at a minimum, a baccalaureate degree in social or behavioral sciences, criminal justice, business or public administration or a related field, or four years of related administrative or management experience. Verification of education and/or experience shall be documented in personnel files.

**2-151:** All security staff shall have, at a minimum, a GED or high school diploma. Verification of education shall be documented in personnel files.

**2-152:** Any staff member or volunteer who has contact with offenders must be at least 18 years old.

*Discussion/Definitions: All such persons should be of sufficient maturity to properly interact with offenders.*

**2-160:** All volunteers/interns shall be subject to all *Standards* related to their assigned duties. Prior to direct contact with offenders, the program shall ensure that a CCIC/NCIC criminal history and warrants check is conducted for all volunteers. The submission of a fingerprint card is not required.

*Discussion/Definitions: Volunteers/interns who have experienced the criminal justice system as offenders can have a beneficial perspective to share with community corrections clients. Such volunteers may have criminal histories that include felony convictions. A central purpose of this section is to ensure that such volunteers/interns do not have current warrants and that they have properly and accurately disclosed any criminal history before they are permitted to have contact with community corrections offenders.*

### 3-000 MANAGEMENT CONTROLS

The *Standards* in this section describe the activities and approaches that program directors are expected to use to monitor and direct the daily operation of the program. Management controls guide the activities within the program, assuring that the program achieves its objectives and demonstrates the level of quality expected by the community, criminal justice agencies and its own administration. Controls are implemented by measuring and analyzing the following:

- System inputs, such as funding and offender referrals and placements;
- System processes, such as offender monitoring and treatment;
- System outputs, such as restitution payments to victims, and;
- System outcomes, such as positive completion rates.

Measurements are developed through data collection and documentation of activities, so that managers are aware of critical inputs and processes that may be affecting outputs and outcomes.

**3-010:** The program shall maintain a current policy and procedure manual, readily accessible to all staff, that describes the purpose, philosophy, programs, services and operating procedures of the program. The manual shall address all requirements, programs or services delineated by these *Standards*. The program shall operate in accordance with this manual and all staff shall be familiar with its contents. The manual shall be reviewed at least annually by the governing authority or program administrator, and updated when necessary. The program shall outline a system to ensure that changes in program policies and procedures are reviewed prior to their implementation with any state agency or local community corrections board that will be affected by the change.

*Discussion/Definitions:* Policies articulate the organization's position and direction on operational issues, and must be current. Procedures define and describe the activities and methods to implement the policies. Procedures should be developed on all operational functions, including, but not limited to, intake, orientation, evaluation, assessment, sign in/out, case processing plans, facility searches, U/As, terminations and escapes. Changes to the program's policy and procedure manual must be made available to applicable staff and state oversight agencies. Both local and state oversight agencies must be provided with current copies of the policy and procedure manual, if requested.

**3-020:** The program shall have a written policy and established practices requiring monthly staff meetings that include security and program staff. Documentation of the meetings shall include dates, issues discussed and staff attendance.

*Discussion/Definitions:* Staff meetings are essential to program cohesiveness. Security staff, program staff and program administrators need to have regular opportunities to communicate about issues regarding offenders in the program, including but not limited to such issues as criminal histories, attitudes, program adjustment, responses to sanctions and other issues related to offender management and risk reduction. Staff meetings are also an opportunity to review policies and procedures to ensure consistency and compliance by all staff, as well as possible improvements. Programs should develop a method by which to disseminate information discussed in staff meetings to those employees unable to attend.

**3-030:** The program shall establish written screening criteria or guidelines for the acceptance or rejection of offenders referred by state criminal justice agencies and for the transfer of offenders between residential and non-residential supervision. Screening criteria shall prohibit discrimination on the basis of ethnicity, primary language, color, religion, creed, disability, sexual preference or

national origin. Offenders not eligible to work in the United States under the statutes and regulations enforced by the United States Bureau of Citizenship and Immigration Services ([www.uscis.gov](http://www.uscis.gov)) may be accepted only if the program is willing to waive the subsistence requirement and if there is no detainer for the offender placed by any agency of the United States government. Copies of the criteria or guidelines shall be provided to the local community corrections board, the Department of Corrections, the Division of Criminal Justice, the Chief Probation Officer for each Judicial District referring offenders to the program, and the Chair of the State Parole Board. Subsequent changes to those criteria or guidelines shall be provided, in writing, to all agencies affected by the change within thirty days of such issuance.

***Discussion/Definitions:** The criteria or guidelines provide referral agencies with information regarding offenders acceptable for placement. The criteria also more clearly define a program's target population, providing opportunities to specialize programming to supervise and serve that population. The criteria or guidelines governing acceptance should include, but not be limited to: types of information to be gathered and reviewed prior to admission; specific criteria for acceptance; and, procedures to be followed when accepting or not accepting referrals. Because all persons seeking employment are subject to the statutory requirements of the federal government regarding proof of eligibility to work, programs must recognize that clients who cannot produce the required legitimate documentation to properly complete USCIS form I-9 cannot legally be employed, and therefore cannot be permitted to be employed while serving a sentence as a client in community corrections.*

- 3-040:** The program shall provide a written response to the referring agency within two weeks of the receipt of the referral indicating acceptance, rejection or need for additional information, based on criteria established in *Standard 3-030*.
- 3-060:** The program shall comply with special conditions as required by the referring agency or local community corrections board.
- 3-070:** The program shall receive an offender only if:
- (a) The local community corrections board has approved the placement or the offender meets board eligibility requirements; and
  - (b) A court order has been issued specifying the offender's sentence to community corrections; or
  - (c) An Executive Assignment Order (EAO) has been issued from the Department of Corrections; or
  - (d) A copy of the Parole Agreement/Order (PAO) or modification specifying the placement in community corrections has been issued.
- 3-080:** Any program supervising sex offenders must comply with the requirements of the Colorado Revised Statutes, as amended, and the Sex Offender Management Board (SOMB) *Standards and Guidelines for the Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders*.

Sex-offender specific case file documentation shall include, but not be limited to:

- (a) Sex offense-specific evaluation
- (b) Recent sex offense-specific risk assessment (e.g. Oregon, Static 99)
- (c) Parental Risk Assessment (PRA) – if applicable
- (d) Releases of Information (e.g. treatment provider, polygraph examiner)
- (e) Polygraph Reports that examine:

- (1) Instant offense and/or event-specific – if applicable
- (2) Sexual history (within 9-18 months of treatment start date)
- (3) Maintenance (within 90 days of treatment start date and every 4-6 months thereafter)
- (4) Follow-up examinations within 60 days of deceptive or inconclusive polygraphs
  
- (f) Relapse prevention plan – when available
- (g) Monthly progress reports from treatment provider(s)
- (h) Community Supervision Team (CST) communication
- (i) Conditions of supervision as described by the *SOMB Standards*
- (j) Documentation of registration within required time frames
- (k) Safety plans for movement within the facility and community (e.g. public transportation, job search/employment, pass locations, and facility visitation)

*Discussion/Definitions: Programs should be especially mindful of compliance with section 5.000 of the SOMB Standards. Untreated sex offenders in the community pose a significant risk. Timely enrollment in offense-specific treatment should be considered a priority.*

**3-090:** Any program supervising offenders serving a sentence for any of the offenses listed within the Victim Rights Act (VRA) must conform to the requirements of the Colorado Revised Statutes, as amended, on victim notification requirements. The program shall determine whether any victims have requested notification under the VRA.

All victim-related documentation shall be kept in a separate confidential file.

**3-100:** The program shall comply with the DNA testing requirements as specified by Colorado Revised Statutes, as amended.

**3-110:** The program shall have written policies and procedures and established practices that provide increasing opportunities and privileges for offender involvement with family and community activities prior to final release.

**3-120:** The program shall have written policies and procedures and established practices that allow for timely arrangements and appropriate processes for offender disciplinary hearings and decisions. Disciplinary hearings for rule violations by Transition offenders and Parolees shall be conducted in a manner approved by the Department of Corrections. Disciplinary hearings for court-referred offenders shall be conducted in a manner approved by the local community corrections board. These procedures shall be provided to the offender in writing in accordance with time frames established in *Standard 4-010*.

**3-130:** The program shall have written policies and procedures and established practices for the handling of offender grievances or complaints, including an appeal procedure. This process must ensure that each offender in the program has the right to file a grievance and include the following elements:

- (a) Various levels of appeal;
- (b) Time guidelines and policy for response to the grievance shall be provided to offenders in writing;
- (c) The grievance shall be transmitted without alteration, interference or delay to the party responsible for receiving and investigating grievances;
- (d) The person reporting the grievance should not be subject to any adverse action as a result of filing the report;
- (e) Final dispositions shall be signed and dated by the offender.

Records of all grievances or complaints, and the final disposition, shall be maintained in offender case records as well as a centralized administrative file.

- 3-140:** The program is responsible for entering complete and accurate offender information into the Community Corrections Information and Billing (CCIB) system. All data shall be entered in accordance with contract and sub-contract requirements. Data must be entered into CCIB within 5 weekdays (including holidays) of the offender's arrival at the facility. Offender movements (e.g., jail, hospital, etc.) must be entered into CCIB within 5 weekdays (including holidays) of the movement. The offender record must be terminated and completed within 5 weekdays (including holidays) of the discharge date. Corrections to offender records impacting bills already processed must be approved in writing by the appropriate community corrections board and the DCJ Office of Community Corrections.

*Discussion/Definitions: Data entered into CCIB is used to inform policy makers at various levels of government, and therefore must be as accurate as possible. Offender records are considered to be terminated when a termination date has been entered for that record. Offender records are considered to be completed when all data fields for that record have been entered and the system has identified the record as having been completed.*

- 3-150:** The program shall have written policies and procedures and established practices for the dissemination of routine documentation, such as: supervision plans, supervision plan modifications, termination summaries and quarterly and monthly reports, as requested by referring or oversight agencies.

- 3-160:** The program shall have written policies and procedures and established practices for the calculation of time credit or sentence reduction for offenders in accordance with procedures outlined by the Department of Corrections for Transition offenders, or as specified in Colorado Revised Statutes, as amended, for directly-sentenced offenders. A current copy of this calculation shall be maintained in the offender's individual case file.

*Discussion/Definitions: Procedures and forms to meet this Standard have been distributed to programs and are available upon request from the DCJ or at the DCJ website. Forms and procedures are subject to revision and must be used and followed.*

- 3-170:** The types of incidents regarding offenders and/or staff members that require written notification to referral and oversight agencies shall include, but are not limited to:

- (a) Any occurrence in which an offender or visitor to a community corrections facility is removed by ambulance, treated in an emergency department or admitted to a hospital;
- (b) The occurrence of any communicable disease that poses a significant threat to staff or offenders;
- (c) Any criminal offense alleged to have been committed by an offender or staff member, on or off grounds;
- (d) Any altercation, on or off grounds, involving an offender resulting in injury or law enforcement involvement;
- (e) The death of an offender;
- (f) Use of force by a staff member;
- (g) Any event that has compromised or may compromise the provision of supervision and safe care, including but not limited to: damage to the facility, employee strike, interruption in food service, and/or protracted interruption in utilities;
- (h) Any event that has the potential for media coverage.

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The program shall notify the local community corrections board, referral agencies and the DCJ immediately by phone and by follow-up email within 24 hours of the incident. Notification must clarify the status of the incident and any action(s) being taken to resolve the situation.

- 3-171:** The program shall have written policies and procedures and established practices which reflect that the program does not tolerate sexual conduct of any type among offenders or between offenders and staff members, regardless of whether such conduct is consensual.

The program shall immediately report allegations or reasonable suspicions of sexual conduct between staff members and offenders to law-enforcement authorities, the referral agency of any involved offender(s), the local community corrections board, and DCJ. The program shall take appropriate disciplinary action against any offenders who engage in sexual conduct. Any such allegations or reasonable suspicions of sexual conduct that involve staff members and offenders referred by the Department of Corrections or the Colorado Parole Board shall also be reported to the Office of the Inspector General of the Department of Corrections.

Staff members or offenders who have a reasonable basis to suspect that sexual conduct among offenders or between offenders and staff members has occurred must be provided with a confidential method by which to report such suspected conduct.

*Discussions/Definitions: This Standard and similar Standards are intended to reflect the zero tolerance policies required of federal correctional facilities, including community corrections facilities that house federal offenders, in the Prison Rape Elimination Act, PL 108-79. Programs may contact the DCJ for free training materials. Programs may use a telephone number officially provided by the Office of the Inspector General of the Department of Corrections as a confidential reporting number for incidents involving any offender in community corrections, including those not referred by the Department of Corrections.*

- 3-180:** All active individual offender case records shall be audited no earlier than 15 days after admission, but within the first 45 days of admission. At a minimum, the records shall be audited to assure all documentation required by *Standards* is present, including admission documents, assessments, supervision plans and revisions and chronological notes, in the appropriate order prescribed by agency policy and procedures. A similar audit of the file shall be completed within 30 days after termination. Review shall be documented in each case record.

*Discussions/Definitions: Review of case files should include an assessment of documentation quality. Such reviews should be conducted periodically throughout the offender's stay.*

- 3-190:** The program shall have written policies and procedures that provide for a well-documented system of regular internal auditing and self-monitoring of operations and programming. The following functions shall have a documented review or audit by program staff at least once per month:

- (a) Drug and alcohol testing systems
- (b) Sign-in/out records
- (c) Off-site monitoring records
- (d) Contraband inspections and storage
- (e) Headcounts

Audit documentation for each of these functions shall be maintained by the program.

The audit documentation shall include recommendations by staff auditor(s) for enhancements

and/or modifications to existing program policies, procedures, and practices based on internal audit outcomes to ensure compliance with *Standards*.

**Discussion/Definitions:** *Internal audits may discover errors of commission as well as omission and serve a quality control function for program operations.*

- 3-191:** Supervisory staff shall conduct random, unannounced facility checks. Such checks shall be conducted on weekends and between the hours of 9:00 PM and 5:00 AM during the week. Such checks shall be conducted at least once per calendar quarter.

Documentation of such checks shall be maintained in facility records and shall include at a minimum:

- (a) The date and time the check was conducted;
- (b) The name(s) of personnel performing the check;
- (c) The names of personnel on duty;
- (d) A verification of the offender headcount;
- (e) A description of all observations made; and,
- (f) Any steps taken to remedy improper or inappropriate conditions.

**Discussion/Definitions:** *Unannounced facility checks help to ensure the effective and efficient operation of programs during traditionally unsupervised hours, and may include randomized BAs and/or a review of general operational practices.*

- 3-200:** The program shall have access to and use an organized system of information collection, retrieval and review. All records, printed or electronic, shall be available upon request, for review by referral and oversight agencies. The Information Technology System (ITS) shall have a backup system to ensure data retention and availability in accordance with contract requirements.

**Discussion/Definitions:** *It is recommended that the program establish an ITS for collecting statistical data to review for current information and planning purposes. An organized system of data collection will provide the program with information to determine the type of offender best served by the program and any trends in its referral and intake system. Program staff should participate in identification of information need and guidelines should be established concerning the security of all information on offenders.*

- 3-210:** The program shall have policies, procedures and established practices that ensure all program documentation is legible, accurate and systematically filed. Program documentation shall be signed and dated in accordance with relevant *Standards*. The signature can be original or documented via electronic means (electronic signature and/or biometric verification). Electronic signatures and biometric verification methods must be secure and auditable.

- 3-220:** Each non-residential offender shall be assigned to one of the following levels of supervision based on the offender's risk of re-offending, need for services (as determined by the standardized offender assessment process), and adjustment to supervision:

- (1) Intensive
- (2) Regular
- (3) Minimum
- (4) Administrative

Monthly service standards for the levels shall be:

Frequency of Services each Month by Level				
Service	LEVEL			
	1	2	3	4
Case Management Meetings	4	3	2	1
Phone Contacts	3	2	1	1
Employment Verifications	2	2	1	1
Home Visits	Before an offender begins or resumes a non-residential placement; at least one per calendar quarter thereafter			
Drug Testing	2	2	1	quarterly
Breathalyzer Testing	2	1	1	1

Drug testing on level 4 must be full panel urinalyses.

The above services shall have a documented review or audit by program staff at least once every calendar quarter.

*Discussion/Definitions: PassPoint® technology may be used in addition to the above stated drug testing requirements, though all high risk PassPoint® results should be followed up with confirmatory urinalyses.*

**3-230:** In the event that an offender is rejected after acceptance or negatively terminated, the program shall provide for a review pursuant to Colorado Revised Statutes.

#### 4-000 SECURITY

The *Standards* in this section address the security of the community, staff and offenders in community corrections programs. Public safety is a primary concern and agencies must have well-structured environments and security programs designed to reduce risk and liability and increase public acceptance and support for the programs.

These *Standards* define the **minimum** procedures that program staff are expected to use to monitor offenders in the program and during periods of authorized release in the community. Key security issues addressed by these *Standards* include escapes, offender sign-outs and furloughs. Special attention is also given to testing for drug and alcohol abuse, a significant contributing factor to criminal behavior and unsuccessful outcomes in community corrections programs.

*Discussion/Definitions: Many new technologies are being utilized to assist in the monitoring of offenders in the community and within the program. The use of these technologies in lieu of existing monitoring requires pre-approval from the DCJ in the form of a waiver request. Generalized waiver requests for a particular technology that has been demonstrated to be safe and effective may be granted to all programs from time to time.*

4-010: Within 12 hours of admission each offender shall be advised in writing of the following:

- (a) Program rules and regulations
- (b) Disciplinary actions
- (c) Grievance procedures
- (d) Program orientation
- (e) Facility emergency equipment and exits
- (f) Location of community legal services
- (g) Services provided by the program
- (h) Personal responsibility for medical and dental services/expenses
- (i) Location of emergency medical and other health care services

The staff and the offender shall sign and record the date and time of the notification, and a copy shall be maintained in the offender's case record.

4-011: Within 12 hours of admission to the facility, the program shall provide the offender with materials related to the prevention of sexual assault and inappropriate intimate relationships while in the program. Such materials shall be available in English and in Spanish. If the offender's primary language is not English or Spanish, within one business day, the program shall arrange for a translation service to read the information to the offender in his/her principal language.

Such materials shall include, at a minimum, the following information:

- (a) Sexual conduct of any type among offenders or between offenders and staff members will not be tolerated, regardless of whether such conduct is consensual;
- (b) The program will immediately report allegations or reasonable suspicions of such conduct to the referral agency of any involved offender(s);
- (c) The program shall take disciplinary action against any offender engaged in sexual conduct;
- (d) A confidential method by which to report suspected sexual conduct.

The staff and the offender shall sign and record the date and time of the notification and a copy shall be maintained in the offender's case record.

*Discussion/Definitions: Programs may contact the DCJ to arrange for LanguageLine™ telephonic translation services.*

**4-020:** An intake interview shall be completed with each incoming offender within 12 hours of admission. Each offender shall be interviewed to record, at a minimum, the following basic information:

- (a) Name
- (b) Address
- (c) Date of Birth
- (d) Gender
- (e) Race/Ethnicity
- (f) Social Security number
- (g) Contact person in case of emergency
- (h) Person authorized to claim property if not claimed by the offender (residential only)
- (i) Photograph of the offender
- (j) Entry date and time

A copy shall be maintained in the offender's case record.

**4-030:** Within 12 hours of admission a health inventory of the offender shall be conducted. The inventory shall, at a minimum, include the following items: special dietary needs, current medications, current medical needs/concerns, dental and other health problems, as reported by the offender. The inventory shall be documented by date, time and signature of the offender and the staff conducting the interview and shall be maintained in the offender's case record.

**4-040:** All prescribed medications for offenders shall be secured. Medications shall be self-administered by offenders. Records shall be kept to document this self-administration. These records and medications shall be audited at least twice each month. Policies and procedures shall govern the disposal of unused medications. Policies and procedures shall address the circumstances under which the offender may take non-controlled, prescribed medication off grounds.

*Discussion/Definitions: The Colorado Department of Public Health and Environment has established regulations for the self-administration of offender medications ([www.cdphe.state.co.us](http://www.cdphe.state.co.us)). Programs should contact the prescribing medical authority if an offender fails to take medication as prescribed whenever it is reasonable to suspect that this failure may negatively impact the offender's health. Efforts should be made to utilize environmentally friendly methods for medication disposal.*

**4-050:** The program shall have written policies and procedures and established practices that direct staff response to offender medical emergencies.

**4-060:** All security staff shall be certified in emergency first aid and CPR within the first 90 days of employment and shall maintain certification throughout the term of their employment. The program shall have at least one staff member on duty at all times who is certified in emergency first aid and CPR.

4-070: The residential program shall have policies and procedures and an established system to inventory and secure incoming offender property within 12 hours of admission. Procedures shall specify which items are allowable for offender possession or storage at the facility. A copy of the inventory, signed and dated by both staff member and offender, shall be provided to the offender at intake. Policies and procedures and established practices shall also address the maintenance of the inventory after admission, and shall dictate proper disposal of property upon the offender's departure if not claimed by the offender.

4-080: The program shall have written policies and procedures and established practices that govern the substance abuse testing of all offenders and shall address, at a minimum, the following areas:

- (a) The time lapse between offender notification of testing and the collection of urinalysis samples shall be no more than 2 hours for residential offenders and no more than 12 hours for non-residential offenders. Notification shall be documented.
- (b) Chain of custody and testing of samples shall be designed to meet acceptable evidentiary standards.
- (c) Urinalysis samples shall be stored in a manner that is consistent with standard urinalysis practices.
- (d) Programs utilizing in-house substance abuse testing equipment, to include breath testing equipment, shall operate in accordance with the manufacturer's guidelines, including collection, storage and testing. Certification documentation shall be maintained within the personnel files of all operators.
- (e) Programs utilizing drug screening kits shall ensure that the kits meet Food and Drug Administration standards and are used in strict compliance with the manufacturer's instructions.
- (f) Programs shall conduct urinalysis and other testing for alcohol and controlled substances using basic safety precautions.
- (g) Programs shall visually monitor urinalysis collection using staff of the same gender as the person being tested.
- (h) Programs utilizing outside testing shall ensure that the laboratory is properly licensed and/or certified.
- (i) Offenders shall not be charged an additional fee for substance abuse testing except as noted in *Standard 4-090*, or without written approval of the DCJ.
- (j) Substance abuse testing documentation shall be maintained in individual case records to include, the date and time of tests, substances tested, staff and offender identification and test results.
- (k) Response to dilute urinalysis samples requiring the immediate collection of a new sample and possible disciplinary sanctions.

***Discussion/Definitions:*** Due to the serious consequences for offenders with positive urinalysis results, precautions must be taken to ensure the proper collection, supervision, handling, storage, transportation and testing of urine samples.

*Sensible sanitary practices should be followed. No smoking, eating or drinking shall be allowed at the testing site. Gloves should be used by all staff during the handling of samples. No food or medications should be stored in the immediate vicinity where urine samples or test chemicals are stored.*

**4-090:** All positive test results that the program intends to use to transfer an offender to a higher level of custody shall be confirmed by gas chromatography/mass spectrometry (GC/MS) at an outside laboratory, except when an offender admits to use.

The program shall not pass along the costs of confirmatory tests to the offender if the initial test result proves to have been a false positive, unless it can be shown that the false positive was likely caused by use of an adulterant, masking agent or other attempted manipulation of the test result by the offender.

**4-100:** A urine sample shall be taken within 12 hours of the offender's admission into the program. This initial sample shall be tested for the following controlled substances:

- (a) Cocaine metabolite
- (b) THC
- (c) Amphetamines
- (d) Opiates
- (e) Barbiturates

All entry urine samples shall be tested, using any private clinical laboratory, or by using in-house substance abuse testing equipment. Drug screening kits may not be used for this purpose. An entrance urinalysis test is not required if an offender changes service types within the same facility during a continuous residential stay or transfers from residential to non-residential when both programs are operated by the same community corrections agency.

*Discussion/Definitions: Timely initial substance testing can provide the program with valuable information concerning the offender's substance use and condition at time of admission. The information can be used to direct future substance testing as well as programming.*

**4-110:** Interim urinalysis testing shall be conducted randomly on each offender. For offenders in a residential program these interim tests shall be conducted at least twice during each full calendar month. For offenders under non-residential supervision the interim testing shall be conducted in accordance with *Standard 3-220*. Each interim sample shall be tested for at least two of the following controlled substances:

- (a) Cocaine metabolite
- (b) THC
- (c) Amphetamines
- (d) Opiates
- (e) Barbiturates

Offenders shall be tested for their drug of choice at least once a month. Gaps between urine tests shall not exceed 30 days.

*Discussion/Definitions: Alcohol is not considered a controlled substance and is not tested under this Standard. The above testing rates represent minimum testing requirements. More frequent testing may be indicated for some offenders based on case assessment or requests by referring agencies. PassPoint® technology may be used in addition to the above stated urinalyses requirements, though all high risk PassPoint® results should be followed up with confirmatory urinalyses.*

*The offender's drug of choice should be determined by reference to the Pre-Sentence Investigation Report (PSIR), the Inmate Assessment and Treatment Form (IATF) or the*

*Standardized Offender Assessment-Revised (SOA-R).*

**4-120:** A urine sample shall be taken within 12 hours prior to the offender's successful discharge or transfer from the residential program. At a minimum, this sample shall be tested for the following controlled substances:

- (a) Cocaine metabolite
- (b) THC
- (c) Amphetamines
- (d) Opiates
- (e) Barbiturates

Documentation of this exit urine test shall be maintained in the offender's case record. All exit urine samples shall be tested, using any private clinical laboratory, or by using in-house substance abuse testing equipment. Drug screening kits may not be used for this purpose.

**4-130:** A breath test or urinalysis test for alcohol shall be conducted on each offender within 12 hours of admission and positive termination.

A random breath test or urinalysis test for alcohol shall be conducted on each offender in a residential program at a rate of no less than one (1) per seven (7) day period. Gaps between testing may not exceed seven days. See *Standard 3-220* for acceptable non-residential interim testing requirements. An entrance alcohol test is not required if an offender changes service types within the same facility during a continuous residential stay or transfers from residential to non-residential when both programs are operated by the same community corrections agency.

**4-150:** The program shall have written policies and procedures and established practices that direct the isolation and observation of offenders who are intoxicated or under the influence of controlled substance(s).

**4-160:** The program shall have written policies and procedures that provide for the random monitoring of each residential offender's off-site location. Offenders shall be randomly monitored at least once in each calendar week, exclusive of job search and furlough monitoring. The offender's off-site location shall be monitored with at least two (2) work and two (2) pass verifications each month. Monitors shall occur while the offender is signed out to the monitored location unless otherwise specified below.

Acceptable monitoring methods include the following:

- (a) Personal contact;
- (b) Staff initiated telephone contact with the offender, a known supervisor, treatment provider or other approved person;
- (c) Staff initiated monitors via active GPS enabled ankle monitors;
- (d) Staff initiated monitors via active GPS enabled cellular phones including verification of the offender's voice;
- (e) For those locations without reasonable use of a telephone, pagers may be used. Upon being paged, offenders must immediately contact program staff and staff must verify the offender's location via caller ID;
- (f) Any document that can be easily verifiable as connected to a specific offender and issued by a person of authority such as medical personnel, government agencies, legal representatives, etc. Documents must include a legible date and time, and must be provided to program staff

immediately upon return to the facility.

All monitoring documentation shall include the monitoring method, time of the monitor, date, offender location, signature of the staff, and results of the verification.

All negative monitors shall result in continued documented efforts to contact the offender until such time that the offender's whereabouts are determined or escape procedures are initiated.

- 4-161:** The program shall have written policies and procedures that provide for a system of offender accountability while offenders are on job search status.

Job search locations must be pre-approved by program staff; policies and procedures may provide flexibility for offenders to pursue unexpected employment opportunities. Upon return to the facility, offenders must provide proof of contact and efforts made for each job search location. Each time an offender is signed out on job search status, program staff must verify the offender's whereabouts with at least one (1) potential employer. This verification must be completed within two working days of the offender's sign out to that location.

Acceptable verification methods include the following:

- (a) Personal contact;
- (b) Telephone contact with a potential employer;
- (c) Verifiable correspondence with partner agencies (e.g., Workforce Center);
- (d) Documented verifications via GPS enabled ankle monitors (active or passive);
- (e) Staff initiated verifications via active GPS enabled cellular phones including verification of the offender's voice.

Documentation of verifications shall include the verification method, the date and time of the verification, date of the corresponding sign-out, location, signature of the staff, and results of the verification.

*Discussion/Definitions: As used in this section, "proof of contact" may include such items as a contact person's signature, business cards, menus, brochures or other documentation that reasonably identifies the potential employer or business visited by the offender.*

*DCJ recognizes that the verification of job search whereabouts can be time-consuming for both program staff and prospective employers. That burden must be balanced against the demonstrated need to carefully monitor offenders who are typically new to community corrections and at a vulnerable time in their placements.*

*To mitigate the impact of this monitoring, DCJ recommends the use of GPS technologies, which can obviate the need for most employer calls.*

- 4-170:** The program shall have written policies and procedures that govern the practice of issuing all passes. Specific pass locations shall be approved for individual offenders.

*Discussion/Definitions: Due to the potential need of such documentation during legal proceedings, proper approval documentation relating to time and place must be maintained.*

**4-171:** The program shall have written policies and procedures that govern the practice of issuing all furloughs whenever the absence exceeds 12 hours exclusive of work passes. While on furlough, the offender's location will be regularly verified with gaps not to exceed 12 hours. Verifications shall be staff-initiated contact with the offender. Documentation of verifications shall include offender name, method of verification, date, time, location and staff signature.

*Discussion/Definitions: Due to the potential need of such documentation during legal proceedings, proper documentation relating to time and place must be maintained. As with regular monitoring, furlough verifications are meant to establish accountability.*

**4-180:** The program shall have written policies and procedures and established practices for the assistance of law enforcement by staff, pursuant to current state statutes and standard rules of evidence. Policies and procedures shall also establish the requirement to contact law enforcement agencies in case of an emergency and/or upon discovery of criminal conduct.

*Discussion/Definitions: Most community corrections staff members are not peace officers and therefore are not vested with the same authority to take actions as law enforcement officers.*

**4-181:** The program shall have written policies and procedures and established practices for the observation of offenders on grounds. This may include the use of camera systems, mirrors or other processes. Policies and procedures shall establish the limits of staff observation activities and interaction with offenders including confrontation.

**4-182:** The program shall have written policies and procedures and established practices for incidental and/or staff initiated contact with offenders off grounds. Policies and procedures shall establish the limits for staff interaction with offenders including confrontation.

**4-190:** The program shall have written policies and procedures and established practices restricting the use of physical force by staff. If physical force is used by program staff, the incident shall be fully documented.

*Discussion/Definitions: Staff of community corrections programs are not usually peace officers or staff of a secure correctional facility. Use of or possession of deadly weapons is prohibited. Use of force shall be limited to force that would reasonably be used by citizens to protect persons, property, premises or to assist law enforcement officers (Refer to 18-1-704 through 707, C.R.S.). If physical force is used, the situation must be thoroughly documented with names, dates, circumstances, and justifications.*

**4-200:** There shall be at least 4 random headcounts conducted during each 8-hour period at residential programs, during which each offender's physical presence or itinerary will be observed. A record shall be made of the time and date of such counts and signed by the staff member conducting the count. The expected return time of offenders off facility grounds at the time of the count shall be included in headcount documentation.

**4-210:** A log shall be kept for each residential offender for the purpose of recording all authorized absences from the facility. Documentation within each entry shall be legible and include, at a minimum, offender name, date, time of departure, destination by street address, expected return time, actual return time and offender signature. Logs must also identify the authorized purpose to include, at a minimum, work, pass, furlough and job search. Staff and offender signatures prior to the offender's departure and following arrival will verify all entries. Authorizations for location changes shall be clearly and consistently documented on the sign-out log and shall adhere to all

the documentation elements with the exception of offender signature. Signatures can be original or documented via electronic means (electronic signature and/or biometric verification). Electronic and biometric verification methods must be secure and auditable.

- 4-220: The program shall have written policies and procedures that define contraband and have a detailed procedure and practice for its detection, confiscation, storage and disposal. Records of all confiscated contraband, to include disposal methods and dates, shall be maintained in a centralized file.

Disciplinary actions that could result from the possession of contraband shall be defined and made known to the offender.

Pat searches shall be conducted at a rate of no less than one (1) per seven (7) day period for each offender, with gaps between searches not to exceed seven days. Room searches shall be conducted at a rate of no less than one (1) per calendar month for each room. Facility searches shall be conducted at a rate of no less than one (1) per calendar month. Vehicle, canine and limited visitor searches may be conducted. Records of all offender searches must be maintained in offender case records. Records of all other searches must be maintained in a centralized file.

*Discussion/Definitions: Dates and times of searches should be randomized to increase contraband detection.*

- 4-230: The program shall have written policies and procedures and established practices that govern program response to work stoppages, natural disasters, or other disruptions of normal work routines. For programs with single coverage shifts, "on-call" staff must be able to respond to the facility within 30 minutes.

*Discussion/Definitions: Pre-determined back-up procedures are imperative, particularly when the program schedules single coverage shifts. It is advisable to have administrative or supervisory staff on-call or at the facility at all times.*

- 4-240: Residential programs shall provide an acceptable staffing pattern that ensures adequate offender supervision and provision of services. At a minimum, programs with a residential population of 50 or more shall be covered by at least two security staff members at all times.

Security staff shall be on-site and trained in security policies and procedures. Non-security staff used to provide backup to security staff shall be trained in applicable security policies and procedures and their primary responsibility shall be security duties during this coverage period.

- 4-250: The program shall have written policies and procedures and established practices that govern the transportation of offenders by program staff. The transportation of offenders in personal vehicles is prohibited unless the program provides insurance for such transportation.

*Discussion/Definitions: The uninsured transport of offenders raises serious liability issues. Unless the insurance policy(s) includes "non-owner" coverage, such transport should not occur. Other safety and liability issues that should be considered include staff, offender and public safety. Staff who lack proper credentials or have unacceptable driving histories should not be permitted to transport offenders.*

4-260: The program shall have written policies and procedures and established practices that specify the conditions under which an offender is placed on escape status. Program policy and practice shall conform to the requirements of the Colorado Revised Statutes, as amended.

At a minimum, and within two hours after a residential offender's unauthorized absence is discovered, prompt notification shall be provided to:

**Direct Sentence and Condition of Probation Offenders**

- (a) Appropriate referral agency and the local community corrections board (if required)
- (b) Law enforcement agencies
- (c) Victim(s) who has/have requested notification (reference *Standard 3-090*)

Notification shall include the submission of all documentation required by the Fugitive Reporting System, as revised.

**Transition and Condition of Parole Offenders**

- (a) Department of Corrections
- (b) Local community corrections board (if required)

Notification shall include all documentation necessary for the Department of Corrections to initiate a temporary fugitive escape warrant.

Within one business day of initial escape notification, all evidentiary documentation necessary to initiate a permanent escape warrant must be forwarded to the appropriate agency.

*Discussion/Definitions: Currently the Department of Corrections has established policies for reporting escapes of offenders under its jurisdiction. These policies do not supersede the program's responsibility to notify DOC within two hours of discovery as outlined above. Nothing prohibits programs from initiating escape proceedings earlier than two hours if circumstances dictate a more immediate response.*

4-261: The program shall have policies, procedures and established practices for the prompt and documented notification of the referring agency whenever a non-residential Diversion offender falls out of contact with the program.

Such policies, procedures and practices shall include provisions that:

- (a) If a non-residential offender fails to appear for a scheduled event, or if such offender is not located as expected during a whereabouts monitor, the program shall promptly endeavor to determine the whereabouts and status of the offender.
- (b) Determination of whereabouts and status shall be made only by direct contact with the offender or through contact with professional parties, such as law enforcement officials or health care providers.
- (c) If the whereabouts and status of the offender cannot be established within seventy-two hours of discovery, the offender shall be reported to the referring agency no later than at the end of that seventy-two hour period.

- (d) Clearly provide for the notification of victims in compliance with *Standard 3-090* and the Victims Rights Act (VRA), without waiting for additional time to locate the offender.

***Discussion/Definitions:*** *While programs are encouraged to adapt their policies, procedures and practices to the needs of local officials, the interests of public safety require that a report be made to the referring agency within the time frames described. Nothing in this Standard is intended to lengthen the time before victims receive at least preliminary notification pursuant to the Victim Rights Act that an offender's whereabouts are unknown.*

## 5-000 FACILITIES

The *Standards* in this section address the quality and safety of the living and working environment for program staff and offenders. Facilities must be in compliance with applicable zoning, building, fire and health codes. In addition, facilities must meet space requirements, providing adequate living space for resident offenders, as well as providing sufficient space for staff and for offender services.

**5-010:** The program shall remain in compliance with all applicable building codes and zoning requirements. Proof of compliance shall be kept on file at each program location.

**5-020:** The program shall comply with the regulations of the fire authority having jurisdiction. Compliance shall be verified by an annual inspection by the local fire department that provides suppression services. In the event the local authority having jurisdiction does not provide fire code inspection services, the program shall obtain an annual fire safety inspection from a Colorado certified fire safety inspector. Proof of compliance shall be kept on file at each program location.

*Discussion/Definitions: Many areas of the state are protected by volunteer fire departments that may not have qualified fire inspectors. In areas of the state where there are not certified inspectors, the Colorado Department of Public Safety's Division of Fire Safety can conduct fire safety inspections at the request of the local authority having jurisdiction on a fee for service basis. The Division of Fire Safety also maintains a listing of Colorado certified fire safety inspectors.*

**5-030:** The residential program shall provide flame-retardant mattresses and pillows in good condition. Documentation indicating compliance with fire and safety requirements must be maintained.

**5-040:** The residential program shall maintain an automatic sprinkler system, where required by the local building code.

**5-050:** The residential program shall have a fire protection alarm system and an automatic smoke detection system that is approved by the authority having jurisdiction. All system elements shall be tested on a quarterly basis; adequacy and operation of the systems are to be approved by a state fire official or other qualified authority annually. Written documentation shall be maintained at the facility.

**5-060:** The program shall store all flammable liquids and hazardous materials, including but not limited to paint, cleaners and adhesives) in their original containers and away from kitchen and dining areas, furnaces, heaters, sleeping areas and high traffic areas.

**5-070:** All program locations shall conduct random emergency evacuation fire drills at least once quarterly. Documentation of these drills shall be maintained at each program location. Documentation shall include the following: time, date, staff initials, number of participants, response time and comments.

**5-080:** Program staff shall have immediate access to a first aid manual and appropriate medical supplies.

*Discussion/Definitions: For a list of appropriate medical supplies, refer to the American Red Cross or American Medical Association.*

5-090: A minimum of 40 square feet of floor space shall be provided per offender in sleeping areas of the residential program, of which no more than 4 square feet shall be closet or wardrobe space.

*Discussion/Definitions: Waivers generally cannot be granted for this Standard.*

5-100: The program shall provide separate space for each of the following:

- (a) Private individual counseling
- (b) Group meetings
- (c) Monitored visitation (residential only)
- (d) Dining (residential only)
- (e) Food preparation (residential only)

*Discussion/Definition: Multi-purpose areas shall only be used for one of the events listed above, at any given time.*

5-110: The residential program shall provide space for visits by family members, attorneys, criminal justice officials and other appropriate visitors, and maintain policies and procedures and established practices to monitor and control such visits.

5-120: The residential program shall maintain, at a minimum:

- (a) One operable toilet for every 10 offenders, or combination of toilet and urinals for every 10 offenders.
- (b) One operable wash basin for every 6 offenders (hot water not to exceed 130 degrees).
- (c) One operable shower or bath for every 8 offenders (hot water not to exceed 130 degrees).
- (d) One operable washer and dryer for every 12 offenders, or access to commercial laundry machines within 2 miles of the residential program.

*Discussion/Definitions: The hot water supply shall be sufficient to meet the reasonable needs of each residential offender on a daily basis.*

5-130: The program shall comply with all health and sanitation codes of the jurisdiction having authority. Written reports of inspections by state and local authorities shall be maintained at each program location. In the event there are no local city and/or county codes applicable, state codes will prevail. In the event that no local or state codes are applicable, appropriate national codes shall be applied.

5-140: Residential offenders shall have access to meals meeting nutritional requirements established as U.S. Required Daily Averages. Food shall be stored, prepared and served in compliance with all state and local codes, laws and regulations. Any food service that includes extensive preparation by offenders, subcontracts with restaurants, or service by outside vendors must be approved by the local community corrections board.

Meals and menus:

- (a) Menus shall be approved and reviewed annually by a registered dietician.
- (b) Meals shall be specially prepared if required for documented medical reasons.
- (c) A weekly menu for all meals shall be posted.

**5-150:** The program and surrounding property shall be kept in safe repair and in clean and sanitary condition at all times. Written policies and procedures and established practices shall define regular housekeeping and maintenance routines, with daily documented inspections.

*Discussion/Definitions: Compliance with health and sanitation codes is vital to the safety and wellbeing of the offenders.*

**5-160:** Resident offenders may be assigned house-cleaning chores and duties following written policies and procedures that provide for the fair and equal distribution of such assignments. The following shall be prohibited:

- (a) The assignment of work duties that result in offenders having supervisory control over other offenders;
- (b) The assignment of work duties to offenders that improve the value of the facility or provide personal benefit to any staff or agent of the program;
- (c) The assignment of specialized chores, including but not limited to, plumbing and electrical tasks, and generalized construction

*Discussion/Definitions: The distribution of daily offender chores requires impartiality and consistency by staff. This includes the monitoring and supervision of all offender chores. Clear written guidelines should exist concerning the distribution of additional chores as a result of disciplinary action. Also reference Standard 2-070.*

*Painting is not considered a specialized chore if it is voluntary, occurs in common areas, offenders' feet remain on the ground and all standard safety precautions are taken.*

**5-170:** The program shall have written policies and procedures and established practices that provide for regular inspections to ensure that each offender's bedding is clean.

## 6-000 CASE MANAGEMENT

The *Standards* in this section address offender assessment, the development and revision of case supervision/treatment plans and the tracking and recording of offender progress while in community corrections programs. These *Standards* are intended to prioritize services to offenders by concentrating on those problems most related to criminal behavior and by making the most efficient and effective use of limited resources to increase public safety.

**6-010:** A separate case record shall be maintained for each offender in the program. Each individual case record shall include, at a minimum, the following information that is uniformly filed and kept current:

- (a) Commitment documents from referring agencies, including background information
- (b) Proof of eligibility or acceptance by the local community corrections board
- (c) Intake and admission information forms (see *Standards* 4-010 and 4-020)
- (d) Individual case assessment and supervision plans, documentation and review
- (e) Release of information and other consent forms
- (f) Chronological entries and progress reports documenting developments of the case, including compliance with special conditions
- (g) Documentation of treatment attendance and progress
- (h) Financial information including: employment, earnings, taxes paid, court-ordered payment and collections
- (i) Copies of incident reports, disciplinary actions, disciplinary appeals and grievances
- (j) Copies of correspondence, referral forms or other documents related to the case
- (k) Termination forms, summaries and notices
- (l) Case record map

**6-020:** Offender medical records developed by licensed health care professionals while the offender is in the program shall be maintained in a separate individual file. Written policies and procedures shall govern the confidentiality of these medical records in accordance with current state and federal law.

**6-030:** The program shall have written policies and procedures and established practices that govern the confidentiality of case records and shall address, at a minimum, offender access to records, staff access and release of information to third parties. Offender records shall be maintained in accordance with federal and state laws.

**6-040:** The program shall have written policies and procedures that govern the release of information to third parties. The program's "Release of Information Form" shall address circumstances under which releases are permitted and restrictions on the type of information to be released. Staff and agents of the program shall have clear instructions on the release of information to third parties.

The structure and identification of information to be placed on the form must include, but is not limited to:

- (a) Name of person, agency or organization requesting information
- (b) Name of person, agency or organization releasing information
- (c) The specific information to be disclosed
- (d) The purpose or need for the information
- (e) Expiration date
- (f) Date consent form is signed

- (g) Signature of the offender
- (h) Signature of individual witnessing offender's signature

Copies of the consent form shall be maintained in the offender's file.

*Discussion/Definitions: It is important that the confidentiality of records be respected and maintained at all times. Program policies must specify what information will be available to the offender, particularly when his/her mental and social adjustment might be affected; when a co-defendant is involved; when informants' names are recorded; or, when victim information is included.*

- 6-050: The program shall have written policies and procedures and established practices that provide for secure storage of all case records, logs and records in accordance with contract requirements. Records must subsequently be disposed of in a manner ensuring complete confidentiality.
- 6-060: The program shall have written policies and procedures and established practices for assigning each offender to a case manager within one working day after the offender's admission to the program.

*Discussion/Definitions: Program staff must be accessible to offenders for advice, counseling and supervision. Every effort shall be made to match case managers and offenders based on risk, need and responsivity. Caseloads shall be set at a level reasonable enough to ensure compliance with all Standards and referral agency requirements. Consideration of lower caseloads should be given to case managers supervising specialized offender populations such as: sex offenders, seriously mentally ill offenders and female offenders.*

- 6-070: Case managers shall meet individually at least once each week with each residential offender on their caseload. Gaps between meetings shall not exceed 10 calendar days. For offenders under non-residential supervision, case management meetings shall be conducted in accordance with Standard 3-220. The purpose of the meeting is to discuss the offender's identified criminogenic needs and progress toward achieving objectives identified in the supervision plan. The sessions shall be structured so that a majority of the time is spent discussing criminogenic needs and behavioral or therapeutic progress. Sessions shall be documented in the chronological notes in the offender's file.

*Discussion/Definitions: Case management meetings should be scheduled in advance to allow both parties to prepare and identify topics for discussion. Adequate time should be allowed to fully discuss case progress and problems.*

- 6-080: Chronological or progress notes shall be entered into an offender's case record each time there is a scheduled meeting, an event or information potentially affecting the direction or progress of the case; any interagency communication regarding the case shall adequately document the content of the event. All entries shall be legible, accurate and systematically filed in the offender's case record, and shall properly identify the staff member making the entry.

*Discussion/Definitions: A consistent coding system and format should be used to identify the type of event being recorded (individual, collateral, staffing, etc.). Because such documentation is often used for disciplinary hearings or other important case decisions, legibility and accuracy are critical.*

6-090: The program shall have written policies and procedures for systematically assessing all incoming offenders for their individual criminal risks, criminogenic needs and responsivity to various intervention strategies. The assessments shall be completed and documented in the offender case record within 10 working days of the offender's admission. Programs may use assessments that were completed within six months prior to placement. Assessments shall include:

- (a) The Level of Supervision Inventory (LSI)
- (b) Simple Screening Instrument - Revised (SSI-R)
- (c) Adult Substance Use Survey - Revised (ASUS-R)
- (d) Service/Treatment Recommendation Worksheet (TxRW)

If the program elects to screen for mental illness, the screening process shall include the Colorado Criminal Justice Mental Health Screen for Offenders - Adult (CCJMHS-A)

The Level of Supervision Inventory (LSI) shall be re-scored every six months and when significant events occur in the offender's placement (for example, new drug use). The ASUS-R and TxRW shall be re-scored when the program intends to change the offender's status in supervision and/or intensity in treatment due to new substance abuse.

*Discussion/Definitions: The assessment of offender criminal risk, criminogenic need and individual responsivity should include (1) a careful consideration of referral information and offender behavior in the program and (2) a systematic application of assessment instruments that have established validity and reliability. This assessment process serves as the basis for subsequent case analysis and supervision plan development.*

*State criminal justice agencies and treatment agencies have implemented a system-wide substance abuse screening and assessment process (16-11.5-101, et. seq., C.R.S. as amended). This mandated assessment process supplements these Standards.*

6-100: Case managers shall formulate a personalized supervision plan for each offender that specifies supervision approaches. The case manager and the offender shall plan the interventions targeted to address particular criminogenic needs and referral agency treatment requests. Supervision plans shall include measurable criteria of expected positive behavior and accomplishments and a time schedule for achievement. Both residential and non residential original supervision plans shall be completed, signed, and dated by both the case manager and the offender within 15 working days of the offender's program entry date.

The supervision plan must be tied to the Standardized Offender Assessment - Revised (SOA-R) and to evaluation outcome. The recommended type of supervision plan is a problem-oriented format that separately identifies each of:

- (a) The offender's key behavioral problems
- (b) Short-range behavioral objectives that address the above problem
- (c) Specific steps the offender needs to take in the immediate future to accomplish the established objectives
- (d) The specific steps the case manager will take to assist and/or hold the offender accountable for accomplishment of identified objectives

Staff must document reasons why supervision plans vary from identified needs.

Supervision plans shall be revised, if indicated, by case developments including, but not limited

to, a significant delay in treatment attendance and a change in treatment intensity and/or treatment type. Any modifications to the supervision plan or expectations of the offender shall be personally reviewed with the offender and a written record of the modifications shall be made in the case record, and signed and dated by the offender and case manager.

*Discussion/Definitions: Responsivity to an offender's individual characteristics is essential to positive outcomes. Supervision plans must be updated/modified as an offender's needs and circumstances change.*

**6-110:** The program shall have a structured interactive process that provides written feedback to offenders on a monthly basis. Positive and negative feedback shall be provided on the following:

- (a) Changes in areas that have been identified as criminogenic needs by risk/needs assessments
- (b) Utilization of strengths to mitigate offender risk
- (c) Attitudes toward supervision and community reintegration
- (d) Progress in treatment and compliance with treatment provider requirements
- (e) Compliance with court ordered requirements

A copy, signed and dated by the offender and case manager, shall be maintained in the case record.

*Discussion/Definitions: Providing feedback to offenders regarding their progress builds accountability and is associated with enhanced motivation for change, lower treatment attrition and improved outcomes. The achievement of objectives should be reinforced soon after the desired behavior occurs. Positive reinforcement accelerates behavior changes and should be meaningful to the offender.*

**6-120:** The program shall have written policies and procedures and established practices governing the movement of offenders through various levels of supervision. Areas such as time frames and completion of program expectations must be addressed.

**6-130:** Offenders shall receive basic employment/job readiness services when needed. These services may include resume writing, interview techniques and job referral resources. Those offenders demonstrating a greater need shall receive more extensive employment services (e.g. vocational skills training). All above services may be provided in-house or by referral to a community agency. Evidence of the provision of such services shall be documented and described in the case record.

*Discussion/Definitions: Individuals in need of more extensive employment services may include those with continued/chronic unemployment or significant underemployment, as well as those low-functioning individuals who require more structured assistance.*

**6-140:** The program shall review each offender's educational needs to determine if attendance in Adult Basic Education (ABE) or General Equivalency Degree (GED) program is indicated. If ABE needs are identified, offenders shall be referred for education services. The program shall document justification for exceptions to this requirement in the case record. Information regarding GED services shall be made available to appropriate offenders.

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**6-150:** The program shall develop a written plan to address offender treatment, to include procedures for assessment, referral, treatment and monitoring. Treatment resources shall be described in detail and be supported by written curricula. The plan shall be revised or updated as needed.

*Discussion/Definitions: Programs are required to maintain listings of other treatment resources and refer offenders to the most appropriate service based on assessment conclusions.*

**6-160:** At least once each month, the program shall monitor offenders' attendance, participation and progress in treatment. Such monitoring may include documented telephone contact, written reports or other monitoring techniques.

**6-161:** For all DOC clients, clinical services delivered by an agency or person not employed by the community corrections program shall be delivered by a DOC Approved Treatment Provider. Exceptions shall be approved by the supervising Community Parole Officer prior to treatment service delivery.

**6-162:** For all offenders required to complete sex offense-specific treatment under Colorado Revised Statutes, services shall be delivered according to the Sex Offender Management Board (SOMB) *Standards and Guidelines for the Assessment, Evaluation, Treatment, and Behavioral Monitoring of Adult Sex Offenders*. Treatment services shall also be delivered by an SOMB-Approved Provider. This may include providers who have formally submitted intent to apply for SOMB approval and who are in good standing with the Division of Criminal Justice Offices of Domestic Violence and Sex Offender Management, based on the application process.

**6-163:** For offenders with domestic violence offenses, or for those who have been court-ordered to complete domestic violence offender treatment, treatment services shall be delivered according to the Domestic Violence Offender Management Board (DVOMB) *Standards for Treatment with Court Ordered Domestic Violence Offenders* and shall be delivered by a DVOMB-Approved Provider.

**6-164:** For offenders with mental health treatment needs, clinical services shall be provided by a licensed mental health professional or a person under the supervision of a licensed mental health professional.

**6-165:** For offenders with substance abuse treatment needs, including DUI education and therapy, treatment services shall be delivered by a provider that is appropriately licensed by the Division of Behavioral Health (DBH). All treatment providers used shall be appropriately credentialed and specifically licensed for offender treatment at the modalities for which they provide services, including DUI Education or Therapy. Services may be delivered by a provider who is under a provisional license by DBH. Services shall not be delivered by a provider whose license has been put on probationary status by the DBH.

**6-170:** At termination, a discharge summary shall be prepared that reviews the offender's performance in the program. If the offender is to transfer to a non-residential program, probation or parole, the summary shall also include recommendations to assist with continuity and transition of supervision. The discharge summary shall be signed and dated by the case manager upon completion and a copy shall be maintained in the offender's case record.

*Discussion/Definitions: At a minimum, this report summarizes in narrative form activities that occurred during the program, unusual occurrences, treatment during supervision that affected the outcome of supervision and the staff's assessment of the reasons for the successful or*

*unsuccessful outcome.*

- 6-180:** As the offender receives funds (for example, earnings, gifts or tax refunds) the program must assist the offender in developing a budget to distribute monies properly among financial obligations.

Essential expenses shall be paid first and include:

- (a) Court ordered child support
- (b) Subsistence (rent)
- (c) Treatment (group or individual treatment fees, polygraphs)
- (d) Medical expenses (doctor appointments, medication)
- (e) Transportation (bus tokens or passes, bicycle maintenance)
- (f) Employment expenses (equipment and clothing)

The remainder of the offender's income after the "essential expenses" have been paid shall be divided among the listed obligations by approximately the listed percentages:

- (a) Restitution – 40% (restitution and court costs)
- (b) Savings – 40% (for savings for independent living)
- (c) Personal expenses – 20% (leisure, family, clothing)

The program shall document justification for exceptions in the client's budget. The written budget shall be signed and dated by the offender and case manager and maintained in the case record. To ensure offender accountability, receipts and bank statements must be reviewed by program staff as necessary.

*Discussion/Definitions: Financial stability is critical to offenders' successful community re-entry. However, once stability is obtained, the inclusion of restitution in the budgeting process is imperative.*

- 6-190:** The program shall have policies and procedures and established practices for the individual recording of financial transactions related to placement in the program (such as earnings, taxes, court ordered child support, subsistence fees, restitution, fines, treatment fees and savings). Monthly statements, signed and dated by the offender and staff, shall be provided to each offender and shall include credits, debits and balances for the following obligations (if applicable): subsistence, restitution, treatment fees paid to the program and savings held by the program. A final financial statement shall be provided to the offender upon successful termination. A copy shall be maintained in the offender's case record. Receipts for monies collected by the program shall be provided to the offender.
- 6-191:** A Limited Power of Attorney form, signed and dated by the offender and staff, shall govern the distribution of offender funds, if maintained by the program, in the event of escape in accordance with statute.
- 6-202:** The program shall have written policies and procedures and established practices that allow for the identification of offenders who have court-ordered child support obligations. At a minimum, the program will address the provision of information to offenders at the initial case management meeting regarding the process to modify court ordered child support. The program will be compliant with the procedures established by the DCJ and the Division of Human Services – Child Support Enforcement regarding the provision of offender information and employment status.

- 6-210: Offenders shall obtain both program approval and, if required, referral agency approval before entering into any contract.
- 6-220: The program shall have written policies and procedures and established practices that address when offenders under supervision will be permitted to drive and use privately-owned vehicles. Policy and practices shall require, at a minimum, a current and valid driver's license, proof of insurance and a Department of Motor Vehicle record. Copies of all documentation shall be maintained in the offender's case record.

*Discussion/Definitions: Allowing offenders to drive raises potential liability issues. Before offenders are authorized to drive, risk to the offender and community must be assessed. An example of high risk is a license revocation within the past 3 years. Other considerations may include the relationship of the offender's driving history to his/her offense (past or present). Due to the importance of current and valid documentation, programs should implement a "tickler" system that alerts staff of upcoming expiration dates.*

## Glossary

**Administrative staff** – Those employees who do not have supervisory or therapeutic contact with offenders as part of their regular job duties.

**Agent** – Anyone who performs work on behalf of the program.

**Ancillary staff** – All program staff, regular or temporary, not included under administration, program or security.

**Audit (financial)** – The purpose of an audit is to provide a reasonable basis for expressing an independent opinion of the financial statements of the agency by performing procedures such as assessing control risk, testing accounting records and obtaining corroborating evidence through inspection, observation and confirmation.

**Biometric identification** – Automated techniques for identifying individuals by using physiological or physical characteristics, including iris, retina, hand geometry, finger, face, handwriting and voice recognition techniques.

**Breath test** – Test administered to determine if alcohol has been consumed.

**Case record map** – Index of document locations within a case record.

**CCIC** – Colorado Crime Information Center; also known as CCIS.

**Chores** – General housekeeping duties.

**Chronological notes** – A recording of offender progress while in community corrections.

**Community Corrections** – A community-based program that provides residential and/or non-residential accommodations and supervision for felony offenders, and provides programs and services to aid in the reintegration of the offender into the community.

**Community Corrections Board** – A local governing authority that has the authority to establish or approve local community corrections programs, accept or reject offenders for placement and establish and enforce local standards.

**Conditional employment** – An offer of employment that is contingent on the results of a background investigation.

**Contraband** – Forbidden items as established by the program policies.

**Controlled substances** – Substances identified as illegal by state or federal law.

**Criminogenic** – Producing or leading to criminal behavior.

**Criminogenic needs** – Those individual problems or conditions that lead to criminal behavior.

**CRS** – Colorado Revised Statutes.

**DCJ** – The Colorado Division of Criminal Justice, within the Colorado Department of Public Safety. In

most cases, a reference to DCJ is also a reference to the Office of Community Corrections within DCJ.

**Direct sentence** – Also known as Diversion or direct placement, it is the sentencing of a felony offender to community corrections by the courts without an accompanying sentence to prison.

**Direct supervision** – A new community corrections employee must be supervised by another employee of the program who has a completed background investigation (including the receipt of the fingerprint card results) and formal orientation training.

**Discovery** – The time at which it is confirmed that an offender is **not** at the authorized location.

**DOC** – The Colorado Department of Corrections.

**Drug of choice** - The drug that the offender has used frequently and predominantly in the past; some offenders will have more than one drug of choice.

**Drug screening kit** – A portable drug screening device.

**Employment verification** – A staff-initiated contact with an offender's employer or verification through such documents as pay stubs and pay checks.

**Facility Search** – A search of common areas to which offenders have access, such as laundry rooms, conference rooms, bathrooms, day rooms, dining areas, kitchens and outside areas.

**Financial Review** – The objective of a financial review is to obtain a reasonable basis for expressing independent limited assurance that the financial statements of a program are in conformity with generally accepted accounting principles (GAAP) or another accepted basis of accounting. Though less comprehensive than a financial audit, a review is more comprehensive than a compilation of financial statements and relies heavily on inquiry and analytical procedures.

**Full time staff** – A community corrections employee who works at least 32 hours per week.

**Furlough** – Any authorized absence from the residential program, exclusive of work, for over 12 hours, but not exceeding 48 hours.

**Generally Accepted Accounting Procedures - (GAAP)** - A set of accounting standards, rules, and procedures for reporting earnings and losses in financial statements that was created by the Financial Accounting Standards Board and other standard-setting bodies and professional organizations.

**Governing Authority** - The legal entity that operates the community corrections program; the corporate board of directors or governmental unit authorized to act as the legal agent of the program.

**Grievance** – A statement expressing a complaint against a real or perceived wrong, or a circumstance believed to be unjust and grounds for redress.

**Health inventory** – Self reported medical history.

**Home visit** – The physical appearance of a staff member at the approved home address of a non-residential Diversion offender, during which the staff member has personal interaction with the offender for the primary purpose of assuring that the offender lives at the approved location. For purposes of the *Standards*, the requirement of a home visit does not imply the responsibility to physically inspect the interior of an offender's residence or the authority to conduct searches or seizures.

**In-House Substance Abuse Testing Equipment** – Urinalysis testing equipment that is maintained and operated by the program.

**Individual Responsivity** – The likelihood that an intervention targeted to address a criminogenic need will have the desired effect of eliminating criminal behavior.

**Intern** – Unpaid staff, assigned by an academic institution or governmental authority to perform specific duties, as supervised by the program.

**Job Search Status** – Any time period when an offender is looking for a job.

**LSI** – Level of Supervision Inventory. The LSI is an assessment tool that measures the risk and needs of an offender.

**Monitoring** – The verification of the offender's current location by the recording of time, date, place, person(s) contacted, signature of staff and results of the verification.

**NCIC** – National Crime Information Center.

**Negative Monitor** – Any unsuccessful attempt to verify an offender's presence at an authorized sign-out location. This includes, but is not limited to, instances in which a third party states that the offender is not at that location or a phone call is unanswered or answered by an automated device.

**New Program** – Any newly-established program or any existing program that has changed ownership.

**Non-Residential** – Applies to Direct Sentence offenders who have successfully completed residential placement and are now living independently in the community.

**Offender** – Anyone under criminal justice supervision.

**Offender Funds** – Monies earned by an offender while in community corrections and the system by which the program collects and distributes all monies received or earned by the offender during their residential placement.

**Operable** – In working order and suitable for use.

**Oversight agency** – The agency responsible for funding allocations, contracts and *Standards* compliance; usually a reference to DCJ.

**Parolee** – A DOC offender released to the community by the Colorado State Parole Board before his/her sentence has expired.

**Pass** – Any non-work, non-job search sign out that is less than 12 hours.

**Pat Search** – The search of an offender in an effort to detect contraband. Such searches require that the offender empty all pockets. With empty pockets, authorized program personnel of the same gender lightly pat the offender's body over clothing from head to toe. A pat search also requires that the offender remove shoes, socks, jackets, hats/bandanas, gloves and belts. A pat search does not require the removal of pants or shirts. A pat search also requires the presentation of personal items for inspection, including but not limited to purses, wallets, backpacks and other items that could readily be used to conceal contraband. If personnel of the same gender are not available, the patting down of an offender's body is

not required.

**Personal contact** – A face-to-face contact between the offender and a staff person.

**Phone contact** – A staff initiated telephone call to the offender.

**Prescribed medications** – Medication prescribed by a licensed health care professional.

**Probation** – Agents of the court responsible for the referral and monitoring of Direct Sentence offenders in community corrections.

**Program** – The agency contracting with the local community corrections board to provide community corrections services.

**Program staff** – Those employees or agents who are involved in the provision of services to offenders such as case management, assessment, educational or skills building groups or treatment.

**PSIR** – Pre-Sentence Investigation Report; in some jurisdictions, call a PSL.

**Random** – An event conducted in a method that is not predictable.

**Referral agency** – The public entity with legal authority to refer offenders for community corrections placement.

**Reinforcement** – To reward a desired response in order to encourage its repetition.

**Restitution** – Court-ordered compensation.

**Risk** – The assessed probability of continued criminal behavior.

**Room Search** – A search of the area where an offender sleeps and stores personal property. Thorough searches may include offender bedding, personal property, room furnishings, fixtures, decorations, closets, attached bathrooms and other places where contraband may be hidden.

**Savings** – Earnings set aside to meet financial obligations upon community re-integration.

**Screening** – The use of specific criteria to evaluate potential community corrections placements.

**Security staff** - Those employees whose primary responsibilities involve program security, substance abuse testing, public safety issues and offender monitoring.

**Segment audit** – A segment is generally defined as a component of an enterprise that is engaged in providing a product or service to a certain group of customers or in a certain geographic area. A segment financial audit or review may be required if the community corrections program is being operated as a part of a unit of government or by a large corporate entity. The segment audit or review would follow the same guidelines as a financial audit or financial review, but would focus on the community corrections agency or agencies that are under the jurisdiction of these *Standards*.

**Self-administration** – means the ability of person to take medication independently without any assistance from another person.

**Service delivery** – Refers to services provided by treatment professionals or program staff.

**Service provider** – Refers to a qualified treatment provider or other licensed or certified individuals or agencies providing education or skills-based programs.

**Service type** – The billing classification of an offender, such as Transition Residential, Diversion Residential, Diversion Non-Residential or Therapeutic Community. Services types are created exclusively by DCJ.

**Sexual conduct** – Includes the knowing touching of the intimate parts of any person or the knowing touching of the clothing covering the immediate area of the intimate parts if that sexual conduct is for the purposes of sexual arousal, gratification or abuse. Note that, due to the special nature of correctional facilities, even consensual sexual conduct is prohibited and, in many cases, constitutes a felony.

**SOA-R** – Standardized Offender Assessment (Revised)

**Special condition** – Additional or unusual placement requirements.

**Staff-initiated monitor** – An effort by program staff to verify an offender's current sign out location; *see also*, Negative Monitor.

**Subsistence** – An established fee the offender is charged by the program in order to reside in the residential facility.

**Third parties** – Anyone outside the criminal justice system.

**Transition** – An offender placed in the community corrections program who is under the jurisdiction of the Colorado Department of Corrections.

**Verification** – Establishment or confirmation of the truth.

**Volunteer** – All unpaid staff not otherwise defined as an intern.

**Working Day** – Monday through Friday from 8:00 a.m. to 5:00 p.m., exclusive of holidays.

## Appendix

### ***PROCEDURES FOR PROGRAM AUDITS AND APPEALS***

#### **Audits**

The Colorado Division of Criminal Justice (DCJ) has the statutory obligation to audit all adult community corrections programs that receive funding from DCJ. An audit is a collaborative process between DCJ and the program.

Audits measure compliance with the *Colorado Community Corrections Standards* and with the statutes and contracts that govern community corrections operations, including the computation of earned time, the collection of restitution and the notification of crime victims.

The DCJ audit team consists of staff members of the Office of Community Corrections (OCC), and may include local board staff and/or board members, parole officers and local probation officers. The team reviews documentation (such as written policies and procedures, personnel records and client files), interviews program staff and clients, and observes the program's physical facility and daily operations during the course of the audit.

Audits may be:

- "Full," implying that most or all aspects of program operation will be compared to applicable statutes, contracts and the *Colorado Community Corrections Standards*. Full audits are routine and occur on a schedule that is guided by statutory requirements.
- "Follow-Up," implying that the primary focus of the audit will be areas of performance that led to findings in a prior audit, though other areas of program compliance may also be reviewed. Follow-up audits are routine and occur on a schedule that is intended to allow the program a period of several months to correct findings in a prior full or follow-up audit.
- "Limited and Specific," implying that the narrow focus of the audit will be areas of inquiry that may or may not have been the subject of earlier audits or reports. Limited and specific audits are not routine, and may occur in response to a reported incident, issue or complaint associated with the facility.

Boards and programs are generally notified two weeks in advance of a full audit. Limited notice or no notice may be provided for follow-up or limited and specific audits.

An audit team is generally on-site from 3 to 5 days for each full audit. Follow-up and limited and specific audits may require less time at the program.

## **Audit Reports**

Audit reports typically consist of:

- "Findings," in which specific observations of program performance are detailed;
- "Requirements," in which necessary changes in program policies, procedures or practices are described; and
- "Recommendations," in which the program is encouraged, but not required, to change a specific aspect of its operations.

Following an on-site audit, a draft audit report is prepared and sent to the program for comment prior to release to the local community corrections board and referral agencies. This report details what statutes, contractual provisions and *Standards* were reviewed and whether the program was found in compliance with those requirements.

Programs may respond to draft audit reports by suggesting corrections or challenging conclusions. DCJ in turn will respond to such observations before the draft audit report becomes a final report.

If the audit team discovers possible criminal activity, such as falsification of records or tampering with urinalysis testing results, DCJ will refer the findings to local law enforcement to determine whether a criminal investigation is warranted.

After a draft report has been reviewed and revised, and after any challenges by the program have been addressed, the document will become a final report. Such final reports are transmitted to the local community corrections board, the local probation department, representatives of the Department of Corrections and other interested agencies. By statute, such reports are matters of public record.

Reports are also prepared after follow-up audits and limited and specific audits; these documents are reviewed, amended and published using the same process.

After the final audit report is issued, the program must prepare and submit to DCJ its corrective action plan regarding any Requirements set forth in that final report.

Notwithstanding the usual audit report process, DCJ reserves the right to immediately notify the local board and other appropriate agencies regarding any conditions or practices that are deemed unlawful, unsafe or in significant violation of contract provisions or the *Standards* when, in DCJ's sole discretion, those conditions or practices should be immediately addressed to preserve the public good. In accordance with the Community Corrections Master Contracts, conditions or practices that constitute an imminent and significant threat to public safety may justify the immediate suspension of program funding. Other actions to mitigate that threat may be taken by the local board, DCJ or other state or local agencies.

## **Audit Appeals**

The Division of Criminal Justice affords programs with the right to appeal audit report Findings or Requirements that it considers manifestly inaccurate or inconsistent with state law, contract provisions or the *Colorado Community Corrections Standards*. Disagreement with the published provisions of the *Standards* is not in itself considered a justification for appeal.

A program may appeal specific Findings or Requirements in a final audit report to its local community corrections board within 10 days of the issuance of that final report. Such appeal shall be in writing and shall set forth reasons and supporting documentation why each disputed Finding or Requirement should be affirmed or disaffirmed. The program shall provide the Office of Community Corrections (OCC) with a full copy of its appeal so that the OCC may provide information to the board regarding the disputed Findings or Requirements.

The local board receiving the appeal may either consider the appeal or refer the matter to the Director of the Division of Criminal Justice. The local board must determine whether it will consider the appeal within 10 days of the date the appeal is received. If the local board considers the appeal, it shall issue within 10 days of its next meeting a written response that either affirms or disaffirms each Finding or Recommendation that is the subject of the appeal. The local board shall forward a copy of its response to the OCC and the program.

The program and the OCC may choose to accept the local board's response as a final disposition of the matter. If the board's response affirms the disputed Findings or Requirements, the audit report shall remain as written. If the board's response disaffirms any of the disputed Findings or Requirements, the audit report shall be amended accordingly and reissued to all parties.

Within 10 days of the local board's response, either the program or the OCC may choose to further appeal the matter to the Director of the Division of Criminal Justice or such person acting in that capacity within the Colorado Department of Public Safety. Such further appeals shall be in writing and shall set forth reasons and supporting documentation why each disputed Finding or Requirement should be affirmed or disaffirmed.

The Director of the Division of Criminal Justice or such person acting in that capacity shall consider the matter and issue a letter within 10 days that affirms or disaffirms the Findings or Requirements that are the subject of the appeal. If the Director's response affirms the disputed Findings or Requirements, the audit report shall remain as written. If the Director's response disaffirms any of the disputed Findings or Requirements, the audit report shall be amended accordingly and reissued to all parties.

If the program is still in disagreement with the outcome, it may appeal to the Executive Director of the Colorado Department of Public Safety (CDPS). The CDPS Executive Director, or a designee, shall consider the matter and issue a letter within 30 days that affirms or disaffirms the specific Findings or Requirements that are the subject of the appeal. The decision by or on behalf of the Executive Director is considered final.

## ***VARIATIONS FROM THE STANDARDS***

### **Board Authority to Create More Stringent Requirements**

Individual communities may need to refine program requirements in response to unique local circumstances or program characteristics. By statute, local boards have the authority to impose requirements that are more stringent or are in addition to those contained in the applicable statutes and contracts, and in the *Colorado Community Corrections Standards*.

### **Waiver Requests**

Similarly, a program may need to request an exemption from particular provisions of the *Colorado Community Corrections Standards*. Such exemptions may be sought for good cause through the waiver request process.

A waiver request shall first be submitted in writing to the program's local board. While no specific format is required, each waiver request shall reflect, at a minimum, the specific *Standard(s)* for which an exemption is sought, a description of the desired exemption (for example, whether exemption is sought from the entire *Standard* or only a portion thereof) and a statement of why the requested exemption will not adversely impact public safety, offender treatment, offender management or the administration of the community corrections system.

The local board shall determine whether the requested exemption should be granted in whole or in part, or be denied. Such determination shall be in writing. If the board denies the request for a waiver, the matter is considered closed.

If the local board approves all or part of a waiver request, it shall transmit that approval and all supporting materials from the original waiver request to the Office of Community Corrections of the Division of Criminal Justice. The OCC may approve the request, as submitted by the local board, and may so notify both the board and the program that the exemption has been granted.

In the alternative, the Office of Community Corrections may determine that an exemption approved by the local board should not be granted. If it intends to deny a waiver request that has been approved by the local board, the Manager of the OCC shall first consult with the Director of the Division of Criminal Justice or such person acting in that capacity. If the Director concurs, the Office of Community Corrections shall communicate to the local board and the program that the waiver request is denied. The matter is then considered closed.

### **Amendments to the *Standards***

DCJ is the agency charged by statute with the promulgation of the *Colorado Community Corrections Standards*. Periodically, DCJ may publish revisions or amendments to the *Standards*, often to ensure that programs are in compliance with statutory or other changes. While DCJ will typically sponsor a comprehensive vetting process for changes to the *Standards*, it must reserve the right to effect such changes immediately, if circumstances warrant.

### ***TECHNICAL ASSISTANCE FROM DCJ***

The Division of Criminal Justice is often contacted by community corrections boards and programs for technical assistance. Within available resources, the OCC staff is available to provide training on issues related directly to community corrections, such as *Standards* compliance, time credit statutes, the accurate completion of CCIB entries and the basic Standardized Offender Assessment (SOA-R) process.

In addition, experts from the Division of Criminal Justice can share a wide range of knowledge of the criminal justice system, including victims' issues, sex offender management, domestic violence management, research, and the availability of grants. Local boards and programs are encouraged to seek such assistance at their discretion.



## COLORADO LAWYERS COMMITTEE

January 14, 2010

VIA U.S. MAIL

Ms. Kathleen Sebelius  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

**RE: Individuals Residing in Colorado Community Corrections Facilities Have Been Denied, But Are eligible for Health Care Services Funded with Federal Financial Participation.**

Dear Ms. Sebelius:

I am writing to seek your help with a critical problem which has resulted in the denial of health care for seriously ill individuals in Colorado's community corrections. This denial of health care affects anywhere from one to four thousand individuals a year. It is our understanding that Congresswoman Diana DeGette would like your assistance on this issue as well.

I am the Chair of the Mental Health Task Force ("Task Force") of the Colorado Lawyers Committee. The Colorado Lawyers Committee and the Mental Health Task Force are described on page 1 of the enclosed policy paper titled "Access to Medical Benefits For Individuals in Community Corrections." Our Task Force is comprised of attorneys and advocates attempting to resolve legal issues relating to access to quality mental health and health services. We are writing to obtain your prompt guidance to the Denver Regional Office of the Centers for Medicare & Medicaid Services ("Denver CMS"). Your Department's guidance would help to avoid further denials of mandated health care as well as delays resulting from imminent costly litigation.

Last year, the Mental Health Task Force learned that residents in Colorado's community corrections program have been systematically excluded from the Colorado Indigent Care Program ("CICP") since the state regulations for that program were amended in 2005. As a result, these individuals have virtually no access to basic medical care, including psychotropic medication. CICP funding includes disproportionate share dollars that share the same restriction as Medicaid dollars: exclusion of federal financial participation ("FFP") for "inmates of public institutions." 42 CFR §435.1009.

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Ms. Kathleen Sebelius  
January 14, 2010  
Page 2

We would like to share with you our research and conclusions which, consistent with Medicaid law and regulations, CMS policy, and the findings of Colorado's single state Medicaid agency, the Department of Health Care Policy and Financing ("HCPF"), establish that most of the residents in the 35 Colorado residential community corrections facilities are residents of private, not public, institutions, and are eligible to receive medical care with FFP dollars.

Attached is a letter written by Joan Hennenberg, the Executive Director of HCPF, on November 6, 2009 which supports our position and conclusion (attached as Ex. A). We believe you will reach the same result and we ask that you promptly share your conclusion with our regional CMS office so that the residents of Colorado Community Corrections facilities will once again become eligible for health care mandated by law. I will summarize these results in the remainder of this letter. I am also providing the fifteen page policy paper (attached as Ex. B) and a few key exhibits that comprehensively explain the issue.

Perhaps the most succinct statement of the law regarding FFP for inmates of public institutions is contained in two letters from your agency. Although the letters are a little over 10 years old, the law and regulations have not substantially changed. The April 10, 1998 letter from Denver Regional [HCFA] CMS (attached as Ex. C) tracks the December 12, 1997 letter from CMS Headquarters in Baltimore (attached as Ex. D) and both address what appears to have caused the confusion at HCPF: the distinction between the state control inherent in the definition of "inmate," and the state control involved in determining whether a facility is a "public institution."

Both documents clarify that inmate status requires involuntary confinement and excludes individuals on parole. Part of the test for excluding FFP, of equal importance, also requires that the individual be an inmate of a "public institution." Both the April 1998 and December 1997 letters track the federal regulations by defining a public institution as a facility under the responsibility of a governmental unit, or over which a governmental unit exercises administrative control. Exs. C & D at 2. The letters further clarify that this governmental control can exist when a facility is:

1. Actually an organizational part of a governmental unit, or
2. When a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates, or
3. When a governmental unit is responsible for the ongoing daily activities of a facility, for example, when facility staff members are government employees or when a governmental unit, board, or officer has final authority to hire and fire employees.

As outlined in the attached policy paper, of the 35 residential community corrections facilities in Colorado, approximately three are non-medical institutions that are an organizational part of a governmental unit (most often a county), and therefore meet the definition of public institution. However, most community corrections facilities are operated by private, usually nonprofit, organizations that contract with local community corrections boards, which receive funds from the Department of Public Safety (not the Department of Corrections). No governmental unit exercises final administrative control, including either ownership or control of the physical facilities and grounds used to house inmates. These private organizations are responsible for the day-to-day operations of each facility, including the hiring and firing of employees. They, therefore, do not meet the definition of public institution and FFP should be available for residents of these facilities, whether voluntary or involuntary.

Ms. Kathleen Sebelius  
January 14, 2010  
Page 3

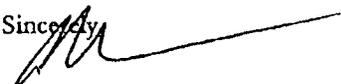
We have met with our state officials, including those with HCPF, regarding this issue since January 2009. From our research and meetings with HCPF staff it appears that HCPF amended the CIGP rules to exclude residents of private community corrections facilities because of confusion regarding the federal rules and policies regarding the definition of "inmates of public institutions." In an abundance of caution, in 2005 HCPF changed its regulation to deny eligibility for participants in community corrections programs. It apparently feared that CMS might cease providing federal matching dollars (and recoup prior payments) because it would determine that community corrections participants are inmates of public institutions, instead of what they are by definition: private institutions.

In August 2009, HCPF reconsidered its position on this issue and has since written the attached letter (Ex. A), supporting that most of Colorado's Community Corrections programs are private facilities, and most residents of community corrections program should be eligible for health care services funded with FFP dollars. However, HCPF has been waiting for Denver CMS to provide guidance. Apparently Denver CMS will not provide definitive guidance to HCPF until it receives guidance from your Center for Medicare and Medicaid Services. This process may well continue for another year, a year which can detrimentally affect many lives. The Mental Health Task Force also has tried to meet with Denver CMS and has sent Denver CMS copies of the existing guidance on this issue. However, the Denver CMS has not responded to our requests for a meeting or addressed the continuing validity of existing CMS guidance.

We are considering litigating this issue with the State of Colorado, which (we presume) might want to implead your agency. However, we do not want more time and unnecessary litigation to come between these needy individuals and their critical health care. We have been in touch with individuals who have gone back to prison to receive health care, and we are aware of individuals who have died from lack of care in community corrections. We also believe that individuals who receive no health care in community corrections may be eligible for health care funded with FFP after they leave the program, but they drain our general and Medicaid funds when they do not receive care until their health condition is so exacerbated the cost of care is extremely expensive.

We believe that the Denver Regional Office of CMS needs swift guidance from you that FFP should be available for residents of Colorado's private community corrections facilities. Please feel free to contact me at your convenience for further discussion or if you need additional information. We eagerly await your response.

Sincerely,

  
Iris Eytan, Attorney at Law  
Chair, Mental Health Task Force  
Colorado Lawyers Committee

cc: The Honorable Diana DeGette, United States Congresswoman – Colorado  
Joan Hennenberry, Executive Director, Colorado Dept. Health Care Policy and Financing  
Richard Allen, Associate Regional Administrator, Division of Medicaid & Children's Health Operations  
Kris Lorez, Senior Policy Analyst for Health, Office of Governor Bill Ritter, Jr.  
Ed Kahn, Colorado Center on Law and Policy

# Attachment 6

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
1600 Broadway, Suite 700  
Denver, CO 80202-4967



**Region VIII**

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January 16, 2013

Mr. John W. Suthers  
Attorney General  
State of Colorado  
1525 Sherman Street, 7<sup>th</sup> Floor  
Denver, Colorado 80203

Dear Attorney General Suthers:

We have reviewed your letter of September 26, 2012. This letter responds to the latest issues raised by your office concerning Medicaid Federal Financial Participation ("FFP") for eligible Medicaid individuals residing in Colorado community corrections facilities. In your September 26th letter, you assert that, "participants in the State's community corrections programs are not inmates of a public institution, and thus are eligible" for FFP. That letter provides extensive information regarding Colorado's community corrections system, which is described as managing "offender populations that would otherwise be placed in secure facilities, such as county jails or state prisons." We do not agree with your analysis that Medicaid FFP is available to pay for services furnished to individuals who are required as a result of a criminal conviction to reside in government-controlled correctional facilities. Although those facilities may be less restrictive than traditional prisons, they are still public correctional facilities.

As you know, the Medicaid statute, at 42 U.S.C.A. §1396d(a)(29)(A) specifically excepts from FFP "any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); . . ." You correctly point out at page 4 of your letter, "A person who is an 'inmate of a public institution' is not eligible for Medicaid FFP under 42 C.F.R. §435.1009." The regulation at 42 C.F.R. §435.1010 defines a "public institution" as "an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control."

Colorado apparently takes the position that its community corrections facilities are not "public institutions" because the programs are contracted to private agencies and "are not under government control." However, your letter describes community corrections programs as a "unique collaboration between state agencies, local officials, and organizations that provide community corrections services, with an emphasis on local control." See September 26, 2012 letter, p. 1. In addition, the legislation authorizing the community corrections programs indicates that its purpose is to "establish and maintain community corrections programs which provide the courts, the department of corrections, and the state board of parole with more flexibility and a broader range of correctional options for offenders under the jurisdiction of such entities." See C.R.S. § 17-27-101. Such statements clearly show that Colorado and its governmental

subdivisions are responsible for, and exercise administrative control of these community correctional programs. In fact, Colorado recognized as early as 2005 that Medicaid FFP was not available for criminal offenders in community corrections facilities through the Colorado Indigent Care Program (CICP). The Colorado Department of Health Care Policy and Financing's (HCPF) CICP rules were amended in 2005 to deny Medicaid eligibility for offenders in community corrections facilities. See 10 Colo. Code Regs. §.2505-10:8.904(F)(1)(b) (2012).

CMS regulations do allow Medicaid FFP for services provided to Medicaid eligible individuals in certain publicly operated community residences. Medicaid FFP is available for services in "[a] publicly operated community residence that serves no more than 16 residents." However, the regulation specifically excludes from that definition community corrections facilities. See 42 C.F.R. §435.1010. It states that a "publicly operated community residence," does not include "(3) Correctional or holding facilities for individuals who are prisoners, have been arrested or detained pending disposition of charges, or are held under court order as material witnesses or juveniles." Id. Pursuant to this regulation, FFP is unavailable to pay for medical services for criminal offenders in Colorado community corrections facilities. Under the current Medicaid statute, regulations and policy, Colorado's community corrections facilities are public institutions for which Medicaid FFP is unavailable for care provided to Medicaid eligible individuals.

The Ninth Circuit Court of Appeals deferred to a similar statute and regulation in the Supplemental Security Income ("SSI") program, stating that it was reasonably related to Congressional intent not to pay SSI for individuals in penal or correctional facilities. Department of Health and Human Services, State of Washington, et al., v. Chater, 163 F.3d 1129, 1136 (9<sup>th</sup> Cir. 1998). The SSI program, which is administered by the Social Security Administration, has a statute (42 U.S.C.A. §1382(e)(1)(A)) and regulation (20 C.F.R. §416.211(c)(5)(iii)) that define "public institution." They are almost identical to the Medicaid statute and regulation that define a public institution. The Ninth Circuit noted that the definition of a public institution "reflects congressional intent to prevent the shift of public institutional programs, which are traditionally the responsibility of the State and local governments, to the Federal Government [citations omitted]." Id. at 1135. Accordingly, the Court held that juveniles residing in a privately operated detention center, pursuant to a contract with the State of Washington, were inmates of public institutions and not eligible for SSI payments.

You have raised the additional issue of whether a criminal offender residing in one of these facilities is an "inmate." Your letter states that "based on the structure of the Colorado community corrections program, participants are not 'inmates of a public institution' . . . ." However, Footnote 2 of your letter states that "inmate," under Department of Corrections programs, means "any person who is sentenced to a term of imprisonment for a violation for the laws of this state, any other state, or the United States." See C.R.S. §17-1-102(6.5). In the case of Romero v. The People of Colorado, 179 P.3d 984 (2007), the Colorado Supreme Court's treatment of a criminal offender sentenced to a community correctional facility comported with the Department of Corrections' definition of "inmate." The Court held that a criminal offender whose sentence to a community correctional facility was revoked could be resentenced to a longer sentence than the original sentence if a hearing was first held. Id. at 987. We believe it may be unnecessary to address the definition of "inmate," given our analysis that Colorado

community corrections facilities are public institutions. However, we are not persuaded that a criminal offender residing in a Colorado community corrections facility is not an "inmate," under the applicable Medicaid statute, regulations and policy.

According to your letter, HCPF has advised that "a significant number of community corrections participants are already otherwise [Medicaid] eligible under the 1115 Demonstration Waiver effective April 1, 2012, as well as under the Affordable Care Act after January 1, 2014." The enactment of the Affordable Care Act has not changed the applicable statutory and regulatory provisions discussed in this letter. At this point in time, unless there is a change in the applicable law and/or the interpretation of the applicable law, the payment exclusion also applies to individuals who become eligible for Medicaid through the expansion population if that individual meets the definition of an inmate of a public institution. The applicable law also makes Medicaid FFP unavailable through the Colorado section 1115 demonstration, Adults without Dependent Children, for services furnished to criminal offenders in community corrections facilities.

You have stated that the Colorado Department of Corrections "has concluded that its Eighth Amendment obligations do not include coverage of medical care for community corrections residents." Colorado requires criminal offenders in community corrections facilities to sign a waiver form acknowledging that they will not receive any health care benefits. See Colo. Dep't of Corr. Admin. Regulation 250-03 (9/1/11). At the same time, your letter states, "there is a strong argument in favor of allowing pregnant women residing in a community corrections program to receive Medicaid services." As we previously advised the Colorado Department of Health Care Policy and Financing, Medicaid FFP is available in the case of a criminal offender in a community corrections facility who is Medicaid eligible and who is admitted as a hospital inpatient for 24 hours. The hospital must be an accredited and licensed hospital and the admission cannot be to a hospital or hospital unit under the authority of any correction unit. See Letter from Richard Allen, Assoc. Reg'l Adm'r to Joan Henneberry, Exec. Dir., Colo. Dep't of Health Care Policy and Fin. (Aug. 16, 2010). When these conditions are met, Colorado can claim FFP for a Medicaid eligible pregnant woman's hospitalization and delivery.

We agree that prenatal care for pregnant women who are criminal offenders in community corrections facilities is a medical necessity. However, Medicaid FFP is not available to pay for medical services, except, as the statute provides, when the Medicaid eligible individual in a community corrections facility is admitted as an inpatient to a medical institution for a minimum of 24 hours. The "gap" referenced in your letter for prenatal and other necessary health care services for criminal offenders in community corrections facilities is an apparent result of the State's interpretation that the Eighth Amendment does not obligate it to provide such services to criminal offenders sentenced directly by the courts or indirectly through the Department of Corrections to community corrections facilities.

We understand Colorado's concern with paying for medical services for criminal offenders in community corrections facilities and that Medicaid FFP would make that easier. However, as discussed above, the applicable law does not permit CMS to acquiesce in, and approve Medicaid FFP for this purpose. We would appreciate it if you would continue to update us on this issue and the potential litigation that you have referenced in your letter. Although we disagree that the

Mr. Suthers, Page 4

Federal Government, through Medicaid FFP, is obligated to pay for medical services for criminal offenders in Colorado's community corrections facilities, we also believe that it is important to continue to discuss this matter.

Sincerely,



Richard Allen  
Associate Regional Administrator  
Division of Medicaid and Children's Health  
Operations

Cc: Hon. Diana DeGette, United States Congresswoman, Colorado  
Hon. Kathleen Sebelius, Secretary of Health and Human Services  
Susan E. Birch, Executive Director, Colorado Department of Health Care Policy & Financing  
Tom Clements, Executive Director, Colorado Department of Corrections  
Jessica Yates, Colorado Lawyers Committee, Mental Health Task Force  
Iris Eytan, Colorado Lawyers Committee, Mental Health Task Force  
Ed Kahn, Colorado Center for Law and Policy