

NAVIGATE INVESTIGATE ILLUMINATE REFORM

OFFICE OF COLORADO'S
CHILD PROTECTION
OMBUDSMAN

ANNUAL REPORT FISCAL YEAR 2017-2018



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Letter from the Ombudsman

September 4, 2018

This annual report marks the agency's second full year as an independent state agency. This past year has been extraordinarily busy as we have continued to deepen our knowledge of the state's child protection system, as well as our relationships with a variety of community stakeholders.

In the past twelve months, I have had the privilege of visiting with approximately 15 different counties in the southwest corner of the state and in the San Luis Valley. Visiting counties in primarily rural jurisdictions has allowed me to learn about child protection work from a different point of view — a view distinct and separate from the urban settings where we often work. I met with citizens, county human service directors, guardians ad litem, respondent parent counsel, Court Appointed Special Advocates, county attorneys, children's advocacy center staff and members of law enforcement.

During these visits, I learned that rural communities have substantial challenges, including higher rates of child poverty, less human capital and are often geographically separated from services that are required to keep children and families safe — namely, substance abuse and mental health treatment. These factors all impact stakeholders' ability to provide support to children and families. And while rural communities may struggle with a lack of resources, I also learned that rural communities are resourceful, creative and collaborative. They find ways to leverage scarce resources to serve more families.

The knowledge gained from these visits is critical to our agency's understanding of the Colorado child protection system. As we review the effectiveness of systems and policies, it is crucial to understand that our child protection system is as unique as the county where people live and that there are different yet equally effective ways of helping them.

Our outreach efforts over the past year have not only increased our understanding of the state's complex child protection system but have also resulted in more calls from citizens in rural counties. In Fiscal Year 2017-2018, the CPO saw a 9 percent increase in the number of calls that we receive from rural areas. This means that more citizens are aware of our services and are seeking assistance on behalf of children and families. The CPO is proud of these community outreach efforts.

This annual report details many significant agency accomplishments including release of our first systemic investigative report on Colorado's adoption assistance program, our legislative and public policy work and our work to continue improving our own practice. You will see that this report details strong agency growth and continued dedication to the communities that we serve.

I am honored to serve as Colorado's Child Protection Ombudsman and look forward to continued work with all of our community partners to improve the child protection system for our state's children and families.

Sincerely,

Stephanie Villafuerte

Child Protection Ombudsman

Introduction

Colorado's child protection system is comprised of a complex web of agencies and systems. All provide vital and unique services to children and families. The threads that connect these systems are delicate and the way they interact with each other vary. Sometimes the connection is well established, built strong by years of use and understanding. Other links are more fragile and have been worn thin by overuse, lack of resources or poor communication. The Office of Colorado's Child Protection Ombudsman (CPO) was built to help strengthen the connections upon which the child protection system is built.

When two agencies work well to deliver services to children, the CPO studies them to determine why. When a connection between systems is fraying, the CPO analyzes the stressors pulling the two systems apart. Most importantly, the CPO works to understand and improve the conduits between agencies and the children and families they serve. This analysis is what the CPO uses to help strengthen these systems and improve outcomes for children and families.

During Fiscal Year 2017-2018, the CPO worked to better define its own role within the child protection system. To do that, Ombudsman Stephanie Villafuerte and CPO staff spent months evaluating and revising the CPO's practices, and questioning whether the services the CPO provides children and families were accomplishing the charge for which the agency was established. The result of this analysis improved the agency in ways unanticipated by the CPO. Relationships between the CPO and stakeholders improved, and the scope of the CPO's work expanded. The CPO is better positioned to deliver more meaningful solutions for citizens and more impactful work for the child protection system as a whole.

The CPO received a record number of calls during the past fiscal year. The demand for the CPO's services is growing and the CPO has spent a great deal of time ensuring that those services are ever-evolving to support families and improve systems. In short, the CPO spent the last year refining its role to ensure we are focusing our efforts on providing the service with which we are charged. The impact will be one felt for many years to come.

Agency Overview

CPO Vision

Ensuring safety for Colorado's children today and envisioning a stronger child protection system for the future.

Background

The CPO was established in June 2010, under Senate Bill 10-171. This legislation provided that the CPO would operate as a program through a contract with a local non-profit agency, issued and managed by the Colorado Department of Human Services (CDHS). Senate Bill 10-171 was passed in response to the deaths of 12 children in Colorado who were known to child protection services. The deaths of these children in 2007 sparked an outcry by the public that there be greater oversight, accountability and transparency of the child protection system in Colorado. The public demanded to know more about how the systems charged with protecting Colorado's children were keeping them safe and working to prevent such tragedies in the future.

Years after the CPO's creation, legislators determined that CPO needed independence from the agencies it was designed to review. So, on June 2, 2015, Senate Bill 15-204, *Concerning the Independent Functioning of the Office of the Child Protection Ombudsman*, was signed into law. This legislation transformed the original "program" into a distinct and independent state agency. The new, independent CPO opened in 2016.

The concept of an ombudsman dates back hundreds of years and is designed to provide citizens with an independent, unbiased and trusted intermediary between the public and an entity. In a similar fashion, the CPO works to provide a clear channel of communication between the citizens of Colorado and the agencies and providers tasked with protecting children. The CPO is guided by standards set by organizations such as the United States Ombudsman Association and the American Bar Association. Using those standards, the CPO serves the public by independently gathering information, analyzing complaints and providing recommendations to child protection agencies and providers.

To ensure the accountability and transparency of the CPO and the Ombudsman, the legislature also created the Child Protection Ombudsman Board (CPO Board) in 2015. The CPO Board was the first of its kind in the nation.

The CPO is now housed within the Colorado State Judicial Branch and is located at the Ralph L. Carr Judicial Center in Denver. Colorado's current Child Protection Ombudsman, Stephanie Villafuerte, was appointed in December 2015 by the CPO Board. Ombudsman Villafuerte took office in January 2016.

Mission

The Office of Colorado’s Child Protection Ombudsman works to improve the safety, permanency and well-being of Colorado’s children by investigating complaints, delivering recommendations and driving systemic reform in the child protection system.

Role of the CPO

By design, the CPO serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The CPO has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively assist citizens with concerns, investigate issues affecting the child protection system, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Responsibilities of the CPO

The CPO was established pursuant to C.R.S. 19-3.3-101. In addition to providing all citizens free and confidential services, the CPO provides citizens and stakeholders four primary areas of service.

NAVIGATE – The CPO helps citizens navigate the child protection system and directs them towards needed services and resources. Citizens often contact the CPO with questions about how a child protection agency/provider functions or which system provides a certain service. If the CPO determines that a citizen’s inquiry does not contain a complaint alleging violations by an agency/provider, the CPO will help resolve their question by providing an information and/or resource referral.

INVESTIGATE – The CPO objectively researches and investigates concerns about the delivery of services to children and families within the child protection system. During a case CPO staff will conduct a comprehensive, independent study of relevant facts, records and witness statements. The CPO’s case may include a single agency/provider or multiple systems impacting multiple families in Colorado.

ILLUMINATE – The CPO’s work illuminates the strengths and weaknesses within the child protection system that are directly impacting the safety, permanency and well-being of children and families. By publicly releasing reports, briefs and data, the CPO provides citizens and stakeholders with the information necessary to maintain a transparent and accountable child protection system.

REFORM – The CPO will make recommendations to the public, child protection agencies/providers, the General Assembly and the Governor that help reform and improve outcomes for children and families.

CPO Staff

Collectively, the CPO staff have almost 100 years of experience studying and working in the child protection system. Currently, the CPO is comprised of eight full-time positions which include, the Ombudsman, Deputy Ombudsman, Director of Communications and Policy, three Child Protection Systems Analysts and the Administrative Coordinator. The skill sets that each CPO staff member possesses creates one of the most unique perspectives within the child protection system.

CPO Jurisdiction

The CPO receives “*complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The Ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.*” See C.R.S. 19-3.3-103(1)(a)(I)(A).

Some examples of agencies/providers the CPO has jurisdiction to review include: human service agencies, youth services, law enforcement, educators, medical professionals and treatment providers.

Pursuant to C.R.S. 19-3.3-101 to 110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency/provider decision.
- Offer legal advice.

CPO Board

By law, the CPO Board is required to oversee the Ombudsman’s performance and act as an advisory body on strategic direction and financial oversight of the CPO.

| CPO Board Members | |
|--|--|
| Chief Justice Appointments <ul style="list-style-type: none">• Hon. Kenneth Plotz, Board Chair• Simone Jones, Board Vice Chair• Hon. Charles Greenacre• Pax Moultrie | Senate President Appointment <ul style="list-style-type: none">• Victoria Shuler |
| Governor Appointments <ul style="list-style-type: none">• Dee Martinez• Karen Beye• Constance Lee Linn• Eldridge Greer | Senate Minority Leader Appointment <ul style="list-style-type: none">• Peg Rudden |
| | Speaker of the House Appointments <ul style="list-style-type: none">• Dr. Richard Krugman |
| | House Minority Leader Appointment <ul style="list-style-type: none">• Kyle Forti |

Our Work

Ombudsmen operate throughout the world, specializing in everything from health care to labor restrictions. Some ombudsmen live within institutions, while others are housed independently. In addition to responding to citizens' concerns, the ombudsman's role has historically been designed to drive systemic change through impartial collaboration, data driven analysis and education. They research and investigate problems and provide education to the public and stakeholders on ways to solve them. The ombudsman's effectiveness does not reside in an ability to mandate compliance. Instead it drives reform by illuminating problems within an agency and creating detailed recommendations for reform.

As a specialty, child protection ombudsman offices have evolved over the past three decades. There are approximately 36 child protection ombudsman offices in the United States – Colorado being one of the newest. All of these agencies vary in structure, scope and responsibility.

In Colorado, the role of the CPO has also evolved during the past two years. Since becoming an independent agency, the CPO has routinely analyzed whether its work is helping children and families in both their individual cases, and on a system-wide level. The CPO took its first step toward accomplishing this goal during the spring of 2017, when it assessed and revised its operating procedures. The CPO implemented its revised *Case Practices and Operating Procedures* on July 1, 2017. These practices and procedures were designed to ensure the CPO handles the demand for its services in an efficient and effective manner. Specifically, the policies and procedures implemented on July 1, 2017 were designed to:

- Streamline procedures for receiving inquiries and complaints about the child protection system.
- Create clear deadlines and expectations for the agencies/providers the CPO is working with.
- Standardize reporting formats, including templates for public documents.
- Outline procedures for the public release of CPO findings, recommendations and data.

The *Case Practices and Operating Procedures* helped the CPO standardize its practice, but, more importantly, provided insight into how the CPO may continue to improve its practices, the services it offers to citizens and the CPO's ability to positively impact the child protection system. Using this insight, the CPO scheduled a staff retreat in May 2018 and began a scheduled review of its *Case Practices and Operating Procedures*. Additionally, CPO staff spent months researching the practices and policies of similar ombudsman offices across the country. As a result, the CPO determined that additional flexibility in its practice was needed to achieve strong outcomes for families. Such changes would allow the CPO to be more proactive in addressing issues affecting the child protection system and ensure issues identified by the CPO are resolved and systems are improved. (A copy of the CPO's *Case Practices and Operating Procedures* may be found in **Appendix A**.)

Some of the changes to the CPO's *Case Practices and Operating Procedures* include:

Updating CPO Services

The CPO will no longer call every case an "investigation." Initially, the CPO attempted to create consistency by using the same term to describe all its cases. During the past fiscal year, however, the CPO found that the word "investigation" was misleading to citizens. For some citizens, the term implied that the CPO has the ability to overturn decisions by agencies and providers and has the ability to hand down disciplinary actions. The CPO does not have the authority to do either. Additionally, the severity of the word created unnecessary tensions between the CPO and agencies and providers.

In place of calling all its cases investigations, the CPO revised its *Case Practices and Operating Procedures* to include a list of services that more accurately describe the way the CPO works with citizens and agencies. One addition is an **assist**. The CPO designed this service to give the agency more flexibility in working with citizens and agencies to reach more meaningful outcomes for families and children. In providing an assist, the CPO will often work with the citizen and the agency they are involved with to act as an interpreter. Child protection system analysts will work to understand why the citizen is frustrated or concerned, and in turn communicate with the relevant agency to seek some sort of explanation or resolution for that citizen.

Here is a complete list of the services the CPO now provides citizens:

- **Information and/or Resource Referral:** The CPO will provide the citizen with any information, resources or education necessary to help resolve their inquiry. The CPO may also connect citizens with entities that may help resolve their concern or question.
- **Assist:** The CPO will independently review relevant records and documents, including any information provided by citizens, as well as relevant rules and laws. The CPO will work to provide clarity regarding the processes, expectations and determinations in a specific case. This service may require the CPO to contact relevant agencies or providers to help gain clarity regarding their decisions and determinations. Not all assists require the CPO to contact relevant agencies or providers. CPO staff will use information gained from records, documents and/or discussions with agencies and to help provide citizens with answers and explanations in their case. The CPO may also use information gained during a case to inform the contact and/or the agency or provider of the need for additional communication.
- **Investigation:** If the CPO determines, through preliminary analysis of an inquiry or issue, that a case may result in recommendations for statutory, budgetary, regulatory and/or administrative changes to improve the child protection system, the CPO will initiate an investigation. Each investigation will include a comprehensive, independent study of relevant facts, records, rules and law. Additionally, the CPO will consider any statements

by parties with information and/or subject matter experts in a case. The CPO will contact relevant agencies or providers in a case.

At the conclusion of an investigation, the CPO will issue an investigation report which will include findings and recommendations. The investigation report will be posted to the CPO's website.

Compliance Concerns

The CPO, similar to many ombudsmen offices, has no authority to mandate an agency amend a practice or alter course in a case. Yet, under its previous policies, the CPO would cite law and rule violations to agencies and providers involved in cases. Ultimately, the CPO determined that centering its findings on whether it identified any compliance violations artificially restricted the CPO's ability to study issues and make meaningful recommendations. As such the CPO has altered its approach to reporting possible violations of rule and/or law.

If the CPO determines that an agency or provider may have violated any rules or laws, the CPO will issue a letter to the agency or provider, outlining its compliance concerns. The agency or provider will have 10 business days to provide a response to the CPO. The CPO's letter, and any response submitted by the agency or provider, will be provided to the agency/provider's supervising entity. The supervising entity will then make the final determination of whether a violation of law or rule occurred and list any relevant remedies. The supervising entity will have 15 business days to make their determination and respond to the CPO. Once the supervising entity responds, the CPO will post the letter on its website. Under this new policy, the CPO may report possible compliance issues in the course of providing any of its services.

Issue Briefs

As the CPO's cases continue to become more complex and cover more areas of child protection, the CPO recognizes the importance of communicating issues affecting the child protection system. During the past fiscal year, the CPO devised a system for communicating these issues in an efficient and timely manner. This will be done by releasing issue briefs. Issue briefs will highlight an issue or practice affecting the delivery of services to children and families within the child protection system. Issue briefs will state the issue being discussed, provide examples of how the issue is affecting children and families, provide an analysis of the relevant rules and laws and issue recommendations for improvement. While similar in structure to an investigation report, issue briefs will not require the same level analysis of investigations and will be focused on a practice or issue, as opposed to entire systems. The CPO has identified roughly half a dozen topics which will be discussed in issue briefs released during Fiscal Year 2018-2019.

Fiscal Year 2017-2018 Recap

Investigations and Recommendations

The CPO released five investigation reports during Fiscal Year 2017-2018. These reports included a total of 25 recommendations. Since its inception, the CPO has issued a total of 224 recommendations to agencies and providers within the child protection system.

Adoption Assistance Investigation Report

On December 13, 2017, the CPO released its investigation report regarding Colorado's adoption assistance program. The report marked the first systemic investigation completed by the agency. CPO staff spent more than 16 months analyzing the federal and state laws that guide the program and studied the complex mechanisms that fund the program. Additionally, the CPO worked with dozens of adoptive families and several local and state agencies to complete the investigation.

The investigation resulted in a total of 14 recommendations, including the CPO's first recommendation to the Colorado General Assembly. The remaining 13 recommendations were issued to the CDHS. The CPO's recommendations sought to create more equity in accessing the program, improve consistency in how the program is administered, strengthen the funding mechanisms for the program and ensure families are receiving thoughtful information about services. Those recommendations were used by the CDHS to create a two-year improvement plan for the program. Additionally, the CPO's recommendations in this case were used by Joint Budget Committee staff to create legislation – which was signed by Gov. John Hickenlooper in May – to improve how the program is funded. A complete copy of the investigation report may be found in **Appendix B**.

Individual Cases

Of the five investigation reports released during Fiscal Year 2017-2018, four centered on complaints from individual citizens. These cases focused on the individual agencies involved with the citizen who called the CPO. For example, the analysis in one of the four cases was pointed at determining whether a county department responded appropriately to a report of suspected child abuse. Additionally, the CPO analyzed a number of issues in completing these four cases. These issues include:

- How county human service departments respond to reports of abuse within a Division of Youth Services (DYS) facility.
- How county departments communicate with non-custodial parents after their children are involved in an assessment.
- Whether there is adequate due process for people who are the subject of an inconclusive finding of abuse and/or neglect.

The four reports described above were released on the CPO's website. Complete copies of these reports may also be found in **Appendix C**.

Investigation of El Pueblo Boys and Girls Home and Licensing Practices for Residential Child Care Facilities

In October 2017, the CPO opened an investigation of the actions leading to the closures of the El Pueblo Boys and Girls Home (El Pueblo) in Pueblo County. El Pueblo was a residential child care facility (RCCF) that was licensed by the CDHS and served children with complex mental and behavioral needs from across Colorado and other states. The closure followed the suspension of El Pueblo's license by the CDHS in response to multiple violations of RCCF standards that endangered the safety and well-being of children in the facility's care. In the course of its research, the CPO has identified a number of policy issues affecting the ongoing oversight of RCCFs statewide.

The CPO has issued a number of investigative briefings to keep citizens and stakeholders informed of the CPO's progress in the case. The most recent investigative briefing may be found in **Appendix D**. The CPO will release its investigation report – including recommendations – during the second quarter of Fiscal Year 2018-2019.

Systems Impact

Adoption Assistance Legislation and Rule Making

One of the recommendations issued in the CPO's adoption assistance investigation report addressed omissions in the state laws guiding the program. Currently, Colorado statute regarding the adoption assistance program does not incorporate critical elements of the federal statute. As a result, Colorado's law – and subsequent rules – fail to give families and practitioners adequate guidance on the services and subsidies available under the program. This has resulted in inconsistent policies across the state.

To address these inconsistencies in law, the CPO recommended the Colorado General Assembly and stakeholders work together to revise the statute (C.R.S. 26-7-101 to 108), to incorporate relevant federal language in order to provide clear guidance for entities administering the adoption assistance program. Sen. Jim Smallwood worked with the CPO during the 2018 Legislative Session to draft a bill that would accomplish this recommendation. Senate Bill 18-224 was introduced late in the session. Sen. Smallwood asked the bill to be postponed indefinitely, giving stakeholders the opportunity to collaborate on the issue during the summer months. (A complete copy of the bill may be found in **Appendix E**.) The CPO has been leading such stakeholder meetings and plans to continue working with Sen. Smallwood during the upcoming session. Additionally, the CPO has been an active participant at a CDHS task force charged with re-writing the rules in Volume VII that guide the adoption assistance program.

Municipal Court Information Sharing

At the request of legislators, the CPO spearheaded a group of more than 20 stakeholders to address gaps in how municipal courts share charging information and criminal records. Such blind spots in information sharing have long plagued the child protection community. The CPO coordinated the stakeholder group during the past legislative session and is coordinating meetings during the summer months. The CPO anticipates working with the stakeholder group and legislators to introduce legislation during next session.

Legislative Impact

In past fiscal years, strained resources and staff availability forced the CPO to turn down requests from legislators to provide input regarding legislation. During Fiscal Year 2017-2018, the increased efficiency with which the CPO handled its cases – and the increased exposure of the agency – resulted in the CPO weighing in on almost a dozen pieces of legislation. Additionally, the CPO provided educational testimony for four bills, including a bill to limit the release of autopsy reports of minors, proposed changes to addressing mandatory reporters who fail to report and a bill to protect the rights of parents with disabilities.

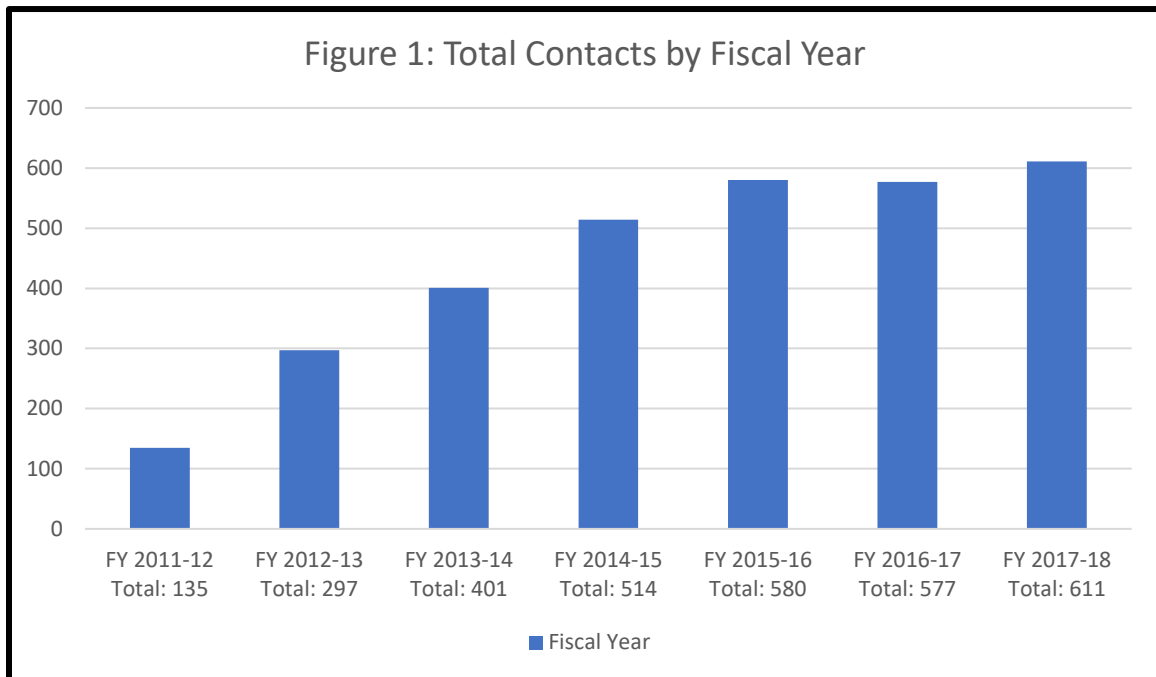
Coordination with the Juvenile Justice Community and Division of Youth Services

The CPO has expanded its efforts to coordinate with the juvenile justice community in order to address issues that may be affecting children in the child protection system. These efforts including forming and housing a regular round-table discussion with stakeholders from the Colorado Criminal Defense Bar, Colorado Public Defender's Office, Disability Law Colorado and the American Civil Liberties Union (ACLU). Additionally, the CPO is coordinating with the ACLU to streamline complaints regarding the DYS. The CPO has continued its efforts to connect with families and juveniles within the DYS. During the past fiscal year, the DYS posted the CPO's information on its website and started encouraging families with complaints about the DYS to contact the CPO.

The CPO is currently serving on one of several working groups as part of the Council of State Governments comprehensive review of Colorado's juvenile justice system. The working group is working to review and recommend changes to Colorado's policies regarding the use of secure detention for juveniles. The CPO was also appointed a spot on CDHS's Youth Seclusion Working Group, which was created through HB 16-1328 and is charged with studying the use of and alternatives to seclusion and restraint against youth in DYS facilities.

Outreach and Education

During Fiscal Year 2017-2018, the CPO received a record 611 contacts from citizens and stakeholders. This is a 6 percent increase from the total contacts received during the previous fiscal year, and a 353 percent increase compared to the CPO's first year in operation. (See Figure 1 for a year-by-year comparison.)



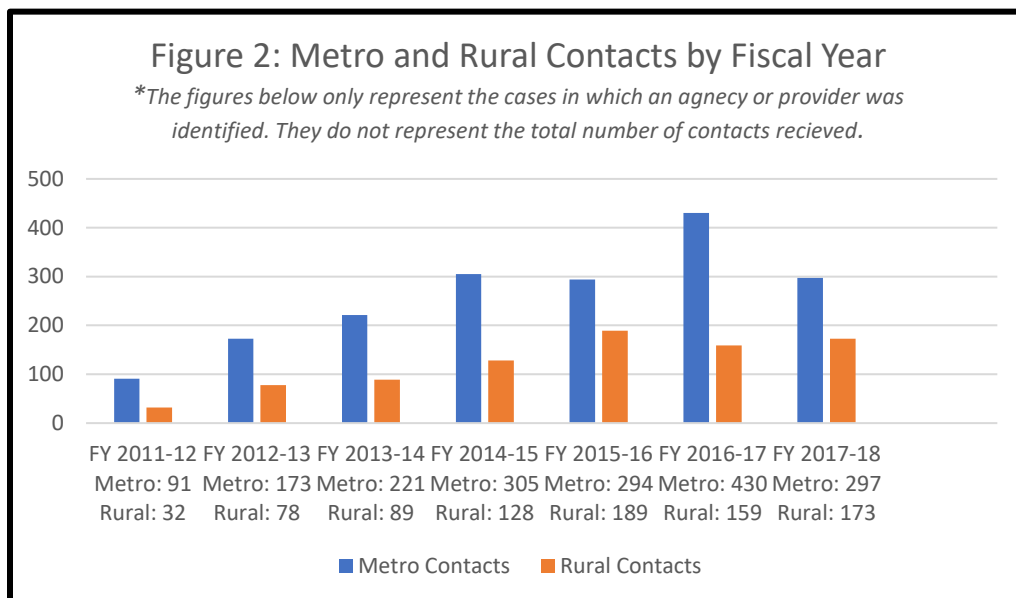
While the majority of CPO contacts are parents and family members of children, the CPO noted an increase in the number of calls it received from professionals during the past year. Examples of such professionals include:

- State and federal law enforcement
- District attorneys
- Members of the child protection legal community
- Educators
- Legislators

As in previous years, the CPO continued to receive increasingly complex cases involving multiple systems within the child protection system. The majority of contacts the CPO received during Fiscal Year 2017-2018 were concerning child welfare services, but an increasing number of cases involve mental health agencies and the DYS.

Of the total 611 contacts the CPO received during Fiscal Year 2017-2018, an agency or provider was identified in at least 470 cases. Citizens and stakeholders contacted the CPO regarding agencies or providers in 53 of Colorado's 64 counties during the past fiscal year. Ombudsman Villafuerte and CPO

staff dedicated substantial amounts of time during the past year to meeting with agencies and providers across the state. In particular, Ombudsman Villafuerte met with directors and/or staff of roughly a dozen county departments in rural communities. During Fiscal Year 2017-2018, the CPO focused its outreach efforts on the southwest corner of Colorado. Some of the county department Ombudsman Villafuerte met with include Alamosa, Archuleta, Conejos, Montezuma and Saguache counties. Additionally, the CPO regularly meets with the CDHS, DYS and the Colorado Human Services Directors Association. Outreach efforts also extended to roughly 20 other state agencies and organizations within the child protection system. Some examples of organizations the CPO met with include, the National Association of Counsel for Children, Disability Law Colorado, Adoption Options and The Adoption Exchange. These efforts have resulted in an increase in calls involving issues, agencies or providers outside of the metro area. During Fiscal Year 2017-2018, 37 percent of the contacts the CPO received – 173 complaints – involved agencies and providers outside of the metro area. This is a 9 percent increase from the year before. (See Figure 2: Metro and Rural Contacts by Fiscal Year, for a comparison of rural contacts by fiscal year.)



Office Growth

The CPO’s total appropriation for Fiscal Year 2017-2018 was \$782,421, which included 6 FTE.

| Figure 3: FY 2017-18 Budget Allocation | |
|---|------------------|
| Legal Services | \$8,525 |
| Program Costs | \$773,896 |
| Total Allocation | \$782,421 |

To facilitate the growing caseload and the evolving complexity of the cases brought to the CPO, the agency requested additional staff in its budget request for Fiscal Year 2018-2019. The request asked for .5 FTE to turn an existing part-time child protection analyst position into a full-time position. It also

asked for .5 FTE to turn the existing part-time administrative coordinator position into a full-time position. Additionally, the CPO requested an additional 1 FTE to create the position of a child protection systems analyst dedicated to cases involving the DYS.

The Joint Budget Committee granted the CPO’s request of additional staff, as well as funds to build and furnish additional office space. Ultimately, the CPO is now comprised of 8 FTE. The CPO expects to have all positions filled by the second quarter of Fiscal Year 2018-2019. To accommodate the new staff members, the CPO required two additional offices and the correlating technology services. See Figure 4 for a year-by-year comparison of the CPO’s appropriation.

| Figure 4: CPO Yearly Appropriation | | | |
|---|------------|------------|-------------|
| FY 2011-12 | FY 2012-13 | FY 2013-14 | FY 2014-15 |
| \$343,000 | \$343,000 | \$343,000 | \$504,250 |
| FY 2015-16 | FY 2016-17 | FY 2017-18 | FY 2018-19 |
| \$484,762* | \$614,458 | \$782,421 | \$1,024,898 |

*The reduction in funds between Fiscal Year 2014-2015 and Fiscal Year 2015-2016 was a result of the CPO becoming an independent agency.

Moving Forward

During the past fiscal year, the CPO continued to analyze and refine its practices. While some terms and definitions have changed, the goal of the CPO remains the same: Improving the child protection system through objective assessment and analysis. The CPO will continue working with citizens and agencies to help resolve concerns about the child protection system. The agency will continue analyzing how systems interact to deliver services to Colorado's children and families. To ensure the agency is efficiently and effectively fulfilling its charge, the CPO has developed the three strategies listed below.

As is required under the State Measurement for Accountable, Responsive and Transparent Government Reports Act (SMART Act), the CPO submitted its [Fiscal Year 2018-2019 Performance Plan](#) on June 13, 2018. (See C.R.S. 2-7-204.) The following goals were developed using the guidelines of the SMART Act and are designed to ensure the CPO is moving toward improvement on a continual basis. A complete copy of the CPO's Fiscal Year 2018-2019 Performance Plan is available on the "Informational Reports" page of the CPO's website.

Outreach and Education

The CPO is statutorily required to educate citizens and stakeholders "*concerning child maltreatment and the role of the community in strengthening families and keeping children safe.*" See C.R.S. 19-3.3-103(2)(c). To ensure the CPO is accessible to the public and consistently sharing its work with citizens and stakeholders, the CPO will continue to improve communication methods and increase outreach campaigns. To achieve this goal, the CPO will utilize the following strategies:

- Maintain consistent, timely and informative methods of communicating the CPO's work to citizens and stakeholders.
- Expand outreach efforts and improve campaigns to better engage and serve communities less familiar with CPO services.

Efficiency

The demand for CPO services has increased steadily since the agency's inception, as has the breadth and complexity of issues presented to the CPO. To facilitate systemic reform through comprehensive analysis and inclusive policy resolution, the CPO must recognize complex cases quickly and resolve less complicated cases faster. To do this, the CPO will implement practices and procedures that will decrease the amount of time *information/resource referrals* and *assists* that are open and conversely increase the amount of time CPO staff dedicate to systemic issues affecting the child protection system.

Systemic Reform

The CPO is charged with recommending systemic changes to "*improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado.*" See C.R.S. 19-3.3-103(2)(e). These recommendations are often included in the CPO's investigation reports. An

investigation is the most time and resource intensive service the CPO provides. To ensure the CPO is completing these cases in a timely manner, and maintaining a quality of work that will drive change within the child protection system, the agency will work to ensure that its staff is both capable and well equipped. To do this, the CPO will expand its expertise and resources to ensure the CPO has the capacity to drive reform across the child protection system. Additionally, the CPO will improve how it tracks and analyzes the recommendations it issues to other agencies and providers.

Conclusion

The CPO serves a unique and vital role in improving and bolstering the systems designed to keep Colorado children and families safe. However, as this agency continues moving forward, there is always room to improve and expand our own processes and services. Protecting children is an ever-evolving charge, and one the CPO does not take lightly. The CPO recognizes and appreciates that it is one of many entities dedicated to improving the lives of children and the systems that protect them. As this agency continues its work, it will continue searching for new ways to work with and serve stakeholders, legislators and citizens working toward the same goal. We look forward to working with members of the child protection community and with citizens to ensure a stronger protection system for the future.

The CPO respectfully submits this report to the Governor, Chief Justice, CPO Board and the General Assembly, as is required under C.R.S. 19-3.3-108.

Appendix A



CHILD PROTECTION
OMBUDSMAN
of COLORADO

Office of Colorado's Child Protection Ombudsman
CASE PRACTICES AND OPERATING PROCEDURES

Stephanie Villafuerte, Child Protection Ombudsman

Effective September 4, 2018
Last Reviewed September 4, 2018
Next Review September 1, 2019

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Definitions

The terms and phrases listed below will be used throughout this document to help explain the Office of Colorado's Child Protection Ombudsman's (CPO) case practices and operating procedures.

Agency/Provider:

Any public agency/provider within the child protection system that *"receives public moneys"* and is responsible for providing services that impact the *"safety, permanency, or well-being of the child."* See C.R.S. §19-3.3-103(1)(a)(I)(A).

Assist:

A service in which the CPO independently reviews relevant records and documents, including any information provided by contacts, as well as relevant rules and laws. The CPO will use this information to help the contact resolve their inquiry.

CMS (Case Management System):

The CPO maintains an internal case management system. This database includes all records related to the CPO's handling of citizens' inquiries and investigations.

Case:

Denotes any service provided by the CPO, including information and/or resource referrals, assists or investigations.

Case Briefing:

When the CPO identifies a case that requires additional study, time and resources, the CPO will release a report outlining why additional research is necessary, how the case will proceed and an estimated completion date. **(See Policy 10.102 Case Briefing).**

Case Number:

Every inquiry received by the CPO will be assigned a unique identifying number in the CMS. Citizens may use the identifying number to locate case information on the CPO website.

Child Protection System:

Per Colorado Revised Statute §19-3.3-103(1)(a)(I)(A), Colorado's child protection system is comprised of *"any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of the child."*

Closed Lack of Information:

This finding indicates that the contact did not provide the CPO with sufficient information to proceed.

Closed Per Contact:

This finding is issued when a contact withdraws their inquiry and requests that the CPO take no further action.

Contact:

Any individual who engages the CPO with an inquiry about the child protection system.

CPO (Office of Colorado’s Child Protection Ombudsman):

The Office of Colorado’s Child Protection Ombudsman will be referred to as the CPO. The CPO denotes the agency as a whole and does not refer to an individual employee.

Duplicate Inquiry:

If a contact makes repeated inquiries to the CPO and the CPO has previously resolved the inquiry, the CPO will issue this finding and close the inquiry without further services.

Evidence:

The available body of facts or information that support the CPO’s finding(s) in an case.

Finding:

A determination made by the CPO at the conclusion of a case.

Information and/or Resource Referral:

A CPO service that provides contacts with any information, resources or education necessary to help resolve their inquiry regarding the child protection system.

Inquiry:

A concern or question about the child protection system.

Intake:

All inquiries the CPO receives from contacts will be subject to an intake process. During that process the CPO will gather information from the contact and determine which CPO service will be most beneficial in addressing their concern or question.

Investigation:

A comprehensive, independent study of relevant facts, records, rules and law, as well as any statements by parties with information and/or subject matter expertise related to the inquiry or issue. Such information may be used to produce findings and recommendations for statutory, budgetary, regulatory and/or administrative changes to improve the child protection system.

Investigation Report:

At the conclusion of any investigation, the CPO will publicly release a report summarizing the case, including explanation of issues affecting the child protection system’s ability to ensure the safety, well-being or permanency of children. Reports also include findings and recommendations. Details about the investigation report may be found in **Policy 10.200**

Investigation Report.

Ombudsman:

The term Ombudsman refers to the head of the CPO who is responsible for the implementation and execution of these practices and procedures.

Ombudsman Discretion:

The Ombudsman, or her/his designee, has the authority to determine what service, if any, will be provided to a contact. The reasons for declination of services by the Ombudsman will be documented in the CPO case management system.

Recommendation:

A suggestion or proposal, *“to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado.”* See C.R.S. §19-3.3-103(2)(e).

Introduction

This document outlines general operating policies and procedures to guide the operations of the *Office of Colorado's Child Protection Ombudsman* (CPO).

In writing its procedures, the CPO completed a thorough study of policies and procedures practiced by child protection ombudsmen across the country and the world. CPO procedures were designed to mimic best practice standards set by the International Ombudsman Association, the United States Ombudsman Association and the American Bar Association.

These case practices and operating procedures have been developed to ensure that the *Ombudsman* is able to execute the functions and responsibilities of the CPO as mandated in statute.

1.000 Contacting the Office of Colorado's Child Protection Ombudsman

The business hours of the CPO are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays.

The CPO can be contacted in the following ways:

Mail: Office of Colorado's Child Protection Ombudsman
1300 Broadway, Suite 430
Denver, Colorado 80203

Email: Info@coloradocpo.org

Phone: 720-625-8640

Online Complaint Form: www.coloradocpo.org

Upon receipt of an email, letter or telephone message, CPO staff will respond within two business days.

In person appointments: Due to security restrictions at the Ralph L. Carr Judicial Center, the CPO is unable to accept *inquires* in person.

1.100 Role of the Ombudsman

By design, the *Office of Colorado’s Child Protection Ombudsman* (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex *child protection system* in an expert and timely manner. The *Ombudsman* has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate *inquires*, deliver *recommendations* and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the *child protection system*.

1.200 Responsibilities of the CPO

- The CPO was established pursuant to C.R.S. §19-3.3-101. The CPO’s primary duties include:
- Provide citizens free and confidential services.
- Help citizens navigate the *child protection system* and direct them towards needed services and resources.
- Objectively research and investigate concerns about the delivery of services to children and families within the *child protection system*.
- Illuminate the strengths and weaknesses within the *child protection system* that are directly impacting the safety, permanency and well-being of children and families.
- Make *recommendations* to the public, child protection *agencies/providers*, the General Assembly and the Governor that help reform and improve outcomes for children and families.

1.300 CPO Jurisdiction

The CPO receives “*complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.*” See C.R.S. §19-3.3-103(1)(a)(I)(A).

Examples of *agency/providers* the CPO has jurisdiction to review include: human services agencies, youth corrections, law enforcement, educators, medical professionals and treatment providers.

Pursuant to C.R.S. §19-3.3-101 to 110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.

- Investigate *complaints* related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an *agency/provider* decision.
- Offer legal advice.

1.400 Case Confidentiality

The CPO may be limited in the type of and amount of information it may share with a *contact*, depending on the *contact's* relationship to the child and circumstances of the *case*.

When completing an *intake*, child protection systems analysts will ask *contacts* to confirm at least two pieces of information that verify the stated identity of the *contact* and their relationship to the case.

Pursuant to C.R.S. §19-3.3-103(3) “*the Ombudsman, employees of the office, and any persons acting on behalf of the office shall comply with all state and federal confidentiality laws that govern the state department or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records.*” These laws include, but are not limited to, the Colorado Children’s Code, CAPTA, HIPPA and FERPA.

1.500 Contact’s Confidentiality

Pursuant to C.R.S. §19-3.3-103 (1)(a)(I)(B) the CPO shall treat identities of *contacts* and *inquires* as confidential, unless the CPO obtains the consent of the *contact* to release their identity to an *agency/provider* and/or include the *contact's* identity in a public report.

When researching an *inquiry*, the CPO may ask a *contact* to sign a release of information form to secure additional documents and information needed to address an *inquiry*.

The CPO will release identifying information to the proper authorities for anyone that makes any statements of credible harm to themselves or to someone else.

2.000 Intake

All *inquiries* the CPO receives from *contacts* will be subject to an *intake* process and assigned a *case number*. During that process, the CPO will gather information from the *contact* and determine which CPO service is most appropriate. All information will be entered into the CMS.

The CPO will respond to all *inquires* within 48-business hours.

Per the discretion of the *Ombudsman*, *inquiries* may be prioritized based on the individual circumstances of the *inquiry*.

The CPO may conclude the *intake* process without providing a service for one or more of the following reasons:

- Lack of information from the *contact*
- *Duplicate inquiry*
- *Ombudsman discretion*

If the *case* is not closed in the *intake* process, the CPO will provide the *contact* any of its three services. The CPO's three services are:

- *Information and/or Resources Referral*
- *Assists*
- *Investigation*

The CPO will post a public notification on the CPO website for any *case* that moves out of the *intake* process. **(See Policy 10.101 Public Notifications)**

The CPO may be limited in the type and amount of information it may share with a *contact*, if the *contact* is not the legal guardian or custodian of a child involved in a case. Any information shared with *contacts* will be done in compliance with **Policy 1.400 Case Confidentiality and Policy 1.500 Contacts Confidentiality**.

3.000 Information and/or Resource Referral

If the CPO determines that the appropriate services is an *information and/or resource referral*, the CPO will provide the *contact* with any information, resources or education necessary to help resolve their *inquiry*. The CPO may also connect *contacts* with entities that may help resolve their concern or question.

The CPO will document the *information and/or resource referral* in the CMS and note what information, resources or education was provided to the *contact*.

After work on a *case* has concluded, the *case* will be presented to the *Ombudsman* and CPO staff. A *case* may only be closed in the CMS upon the approval of the *Ombudsman* or her/his designee.

4.000 Assists

At the conclusion of the *intake* process, the CPO may determine that an *investigation* is not necessary, but the *case* warrants a higher level of review than would be possible if providing the *contact* an *information and/or resource referral*. In such circumstances, the CPO will provide the *contact* with an *assist* and will work with the *contact* to help resolve their *inquiry*.

In all *cases* involving *assists*, the CPO will independently review relevant records and documents, including any information provided by *contacts*, as well as relevant rules and laws.

To maintain its impartiality – and in keeping with statute – the CPO will independently collect any information, records and/or documents necessary for completing a *case*. “*In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.*” See C.R.S. 19-3.3-103(1)(a)(II)(A). The CPO will incur reasonable expenses to photocopy relevant records.

In providing the *contact* an *assist*, the CPO will work to provide clarity regarding the processes, expectations and determinations in a specific *case*. This service may require the CPO to contact relevant *agencies/providers* to help gain clarity regarding their decisions and determinations. Not all *assists* require the CPO to contact relevant *agencies/providers*. CPO staff will use information gained from records, documents and/or discussions with *agencies/providers* to help provide *contacts* with answers and explanations in their *case*. The CPO may also use information and gained during a *case* to inform the *contact* and/or *agency/provider* of the need for additional communication.

All documents that are reviewed by the CPO, including records provided by an *agency/provider* or *contact*, will be scanned and electronically stored within the CMS.

The CPO will document all *assists* in the CMS and note what information, resources or education was provided to the *contact*.

After work on a *case* has concluded, the *case* will be presented to the *Ombudsman* and CPO staff. A *case* may only be closed in the CMS upon the approval of the *Ombudsman* or her/his designee.

4.100 Role of Agency/Provider During Assists

An *agency/provider* contacted by the CPO during an *assist* may expect the following:

- All initial communication with an *agency/provider* will be done in writing via email and will include a summary of the *inquiry*.
- All additional communication between the CPO and the *agency/provider* will be done in a manner deemed appropriate by both parties, including phone, email and in-person exchanges.
- The CPO will ensure all efforts to resolve the *inquiry* are done in a collaborative manner with the *agency/provider* so both entities have the ability to best serve the *contact*.

- If the case results in the identification of possible violations of rule or law, the CPO will follow the polices outlined in **Policy 4.200 Identified Compliance Concerns in Assists.**

4.200 Identified Compliance Concerns in Assists

If, through the course of any *case* involving an *information and/or resource referral, assist or investigation*, the CPO determines that an *agency/provider* may have violated any rules or laws, the CPO will issue a letter to the *agency/provider* outlining its compliance concerns. The *agency/provider* will be given 15 business days to provide a response to the CPO.

The CPO's letter, and any response submitted by the *agency/provider*, will then be provided to the *agency/provider's* supervising entity. The supervising entity will then make the final determination of whether a violation of law or rule occurred and provide any relevant remedies. The supervising entity will have 15 business days to make their determination and respond to the CPO. After the supervising entity submits its response, the CPO will post its letter, the *agency/provider* response and the supervising entity's determination on the CPO's website.

5.000 Investigation

If the CPO determines, through preliminary analysis of an *inquiry* or issue, that a case may result in *recommendations* for statutory, budgetary, regulatory and/or administrative changes to improve the *child protection system*, the CPO will initiate an *investigation*. See C.R.S. 19-3.3-103(2)(e).

Each *investigation* will include a comprehensive, independent study of relevant facts, records, rules and law. Additionally, the CPO will consider any statements by parties with information and/or subject matter expertise in a *case*.

The CPO will contact the relevant *agencies/providers* involved in the *case*. **(See Policy 5.100 Role of Agency/Provider During Investigation)** The CPO may schedule a site visit to review on-site records and meet with *agency/provider* staff.

To maintain its impartiality – and in keeping with statute – the CPO will independently collect any information, records and/or documents necessary for completing a *case*. “*In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.*” See C.R.S. 19-3.3-103(1)(a)(II)(A). The CPO will incur reasonable expenses to photocopy relevant records.

All documents that are reviewed by the CPO, including records provided by an *agency/provider* or *contact*, will be scanned and electronically stored within the CMS.

The *Ombudsman* maintains the discretion to terminate an *investigation* at any time.

At the conclusion of an *investigation*, the CPO will issue an *investigation report* which will include *findings* and *recommendations*, as well as any violations of rule or law. The *investigation report* will be posted to the CPO's website.

The CPO will document all *investigations* in the CMS. Prior to closing the *case* in the CMS, the *case* will be presented to the *Ombudsman* and CPO staff. A *case* may only be closed in the CMS upon the approval of the *Ombudsman* or her/his designee.

5.100 Role of Agency/Provider During Investigation

An *agency/provider* involved in an *investigation* may expect the following:

- All initial communication with an *agency/provider* will be done in writing via email and will include a summary of the *inquiry*.
- All additional communication between the CPO and the *agency/provider* will be done in the manner deemed most effective to address the *inquiry* and/or issue involved in an *investigation*, including phone, email and in-person exchanges.
- The CPO will submit all requests for documents and/or records to the *agency/provider* in writing via email.
- Prior to the public release of an *investigation report* – which includes *findings* and *recommendations* – the *agency/provider* will be:
 - Provided a copy of the CPO's *investigation report*.
 - Given 15 business days to respond to any CPO *finding* and/or *recommendation*.
 - All final *agency/provider's* responses must be submitted in writing via email.
 - The CPO will consider any *agency/provider* responses and – if appropriate based on the information provided – revise its *findings* and *recommendations* prior to publicly releasing its *investigation report*.
 - Advised that the CPO's *investigation report* and the *agency/provider's* responses will be made public and, in addition to posting the *investigation report* on its website, the CPO may distribute the *investigation report* to citizens, stakeholders and legislators.
- If the case results in the identification of possible violations of rule or law, the CPO will follow the policies outlined in **Policy 5.200 Identified Compliance Concerns in Investigations**.

5.200 Identified Compliance Concerns in Investigations

If, through the course of any *case* involving an *information and/or resource referral*, *assist* or *investigation*, the CPO determines that an *agency/provider* may have violated any rules or laws, the CPO will issue a letter to the *agency/provider* outlining its compliance concerns. The *agency/provider* will be given 15 business days to provide a response to the CPO.

The CPO's letter, and any response submitted by the *agency/provider*, will then be provided to the *agency/provider's* supervising entity. The supervising entity will then make the final determination of whether a violation of law or rule occurred and provide any relevant remedies. The supervising entity will have 15 business days to make their determination and respond to the CPO. After the supervising entity submits its response, the CPO will post its letter, the *agency/provider* response and the supervising entity's determination on the CPO's website.

6.000 CPO Document Requests to Outside Agencies or Providers

Pursuant to C.R.S. §19-3.3-103(a)(II)(A), *"In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents."* When requesting records from an outside entity or agency, CPO staff will submit a written request for records to the agency or entity that clearly defines the records needed.

If the CPO requests access to records, the CPO will submit a written request.

The CPO staff will limit their request for records to those that are related to the *case* or relevant to the circumstance surrounding the *case*. The CPO will also incur reasonable costs for the photocopying of all files.

7.000 Case Length

It is the goal of the CPO to provide a timely response to all *inquiries*. The length of time for a *case* to be completed will vary depending on internal CPO resources, the complexity of the issues, the length of time for outside reports to be obtained and, in some instances, for criminal or civil proceedings to be completed.

Cases are generally completed within 60 business days. Any delay outside of the above timeframes will be documented in the CMS and approved by the *Ombudsman*. A *case briefing* will be issued for any *case* that extends beyond 60 business days. The *contact* and any relevant *agency/provider* will be provided with a copy of the *case briefing*. **(See Policy 10.102 Case Briefing)**

8.000 Case Conclusions

The CPO will document all *cases* in the CMS. Prior to the closing the *case* in the CMS, the *case* will be presented to the Ombudsman and CPO staff. A *case* may only be closed in the CMS upon the approval of the *Ombudsman* or her/his designee.

If the CPO released an *investigation report* in the *case*, the *contact* will be provided with a copy of the *investigation report*.

A *contact* may withdraw their *inquiry* at any time during a *case*. The CPO will close the *case* in such circumstances, pending the *Ombudsman's* approval or her/his designee.

9.000 CPO Recommendations

The CPO will issue *recommendations* pursuant to C.R.S. §19-3.3-103(2)(e), which mandates the CPO to, “*recommend to the general assembly, the executive director, and any appropriate agency or entity statutory, budgetary, regulatory and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado.*”

10.000 Public Reporting

The CPO will provide citizens with clear and consistent reports detailing the CPO’s work to serve the public and improve the *child protection system*. **Policies 10.000** through **10.200** detail the CPO’s practice of releasing information. A reference chart detailing the CPO’s public reporting practices below.

| CPO PROCESS | CPO ACTION | PUBLIC REPORTING | TYPE |
|--------------------------------------|--|------------------|---|
| INFORMATION AND/OR RESOURCE REFERRAL | Provide information, resources or education. | YES | Public Notification (See Policy 10.101) |
| ASSIST | Work to help resolve <i>inquiry</i> . | YES | Public Notification (See Policy 10.101) |
| INVESTIGATION | Comprehensive, independent study of facts and issues. | YES | Public Notification (See Policy 10.101) Investigation Report (See Policy 10.200) |
| CASE BRIEFING | The CPO identifies a <i>case</i> that requires additional study, time and resources. | YES | Case Briefing (See Policy 10.102) Public Notification (See Policy 10.101) |

| | | | |
|------------------------|---|------------|---|
| RECOMMENDATIONS | CPO issues a <i>recommendation</i> to an <i>agency/provider</i> . | YES | Recommendations (See Policy 12.000) |
|------------------------|---|------------|---|

10.100 Case Announcements

To hold the CPO accountable to the public and ensure transparency of the CPO’s work, the CPO will make information concerning all pending *cases* available to the public through its website.

The CPO will communicate information about pending *cases* in two ways:

- Public Notifications
- *Case Briefings*

10.101 Public Notifications

After the CPO opens a *case*, a public notification of that *case* will be posted on the “Pending Cases” page of the CPO’s website. Each *case* will be identified on the “Pending Cases” page by a unique *case number*.

Each public notification will include:

- The *case number*
- Agency Type
- Area of concern
- CPO Service
- Case Status
- Date the CPO opened the *case*

Below is an example of a public notification:

| Case Number | Agency Type | Area of Concern | CPO Service | Status | Date Investigation Opened |
|-------------|----------------------|----------------------------|---------------------|----------------|---------------------------|
| 2017-XXXX | Example Service Area | Example of Area of Concern | Example CPO Service | Example Status | X/XX/2017 |

After a *case* is closed in the CMS, the status on the public notification will be changed from “ONGOING” to “COMPLETE.” After the status is changed to “COMPLETE” the public notification will remain on the “Pending Cases” page for 10 business days. If the CPO completes a *case brief* or *investigation report* in a *case*, those documents will appear in the public notification.

10.102 Case Briefing

If, through its preliminary research, the CPO determines a *case* requires additional study, time and resources, the CPO will release a *case briefing* outlining why additional research is necessary, how the *case* will proceed and an estimated completion date. The *case briefing* is designed to act as a mechanism to hold the CPO accountable to the public and ensure transparency of the CPO's work. The *case briefing* will outline why a *case* is warranted, how the *case* will proceed and an estimated completion date.

The *case briefing* will be completed and released no more than **60 business days** after the *case* is opened.

Each *case briefing* will include:

- *Case number*
- Agency Type
- Summary of the *inquiry*
- Summary of preliminary research
- CPO service (*information and/or resource referral, assist or investigation*)
- Next steps by the CPO
- Estimated length of the *case* and reasoning

Case briefings will be posted on the "Case Briefings" page of the CPO's website. A link to the *case briefing* will also be posted with the corresponding case on the "Pending Cases" page.

If the CPO determines it will not be able to meet the timeline set forth in the *case briefing*, the CPO will produce and release an updated *case briefing* explaining the reasons for the delay and will provide a new estimated date for completion.

10.200 Investigation Reports

In meeting its statutory requirements to "*improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system,*" as stated in C.R.S. §19-3.3-101(2)(a), the CPO will publicly release all *investigation reports*.

A copy of the CPO's *investigation report* will be provided to the *agency/provider* prior to the report's public release. The *agency/provider* will have **15 business days** to respond to any CPO findings and/or *recommendations*. All *agency/provider's* final responses must be submitted in writing via email. Any response provided to the CPO will be included in the *investigation report*.

The CPO will consider any *agency/provider's* response and – if appropriate based on the information provided – revise its *findings* and *recommendations* prior to publicly releasing its *investigation report*.

Each *investigation report* will include:

- Executive Summary
- Relevant *agencies/providers*
- Summary of the *inquiry*
- *Investigation* summary
- Conclusion
- Findings and *Recommendations*
- *Recommendation* summary
- *Agency/Provider* Response

All *investigation reports* will be posted to the “Investigation Reports” page on the CPO’s website.

In determining the release of any information, the “*ombudsman, employees of the office and any persons acting on behalf of the office shall comply with all state and federal confidentiality laws that govern the state department or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records,*” as stated in C.R.S. §19-3.3-103(3). These laws include, but are not limited to, the Colorado Children’s Code, CAPTA, HIPPA and FERPA.

11.000 Data Collection

The CPO records all actions taken during the life of a *case* in the CMS.

12.000 Recommendations

The CPO’s website will include a running list of all CPO *recommendations*. The list will be updated during the first week of every month.

Each *recommendation* listed will include:

- *Case number*
- *Recommendation* tracking number
- Date the CPO issued the *recommendation*
- Full-text of the CPO’s *recommendation*
- *Agency/provider* that received the *recommendation*
- *Agency/provider's* response (if applicable)

Below is an example of a *recommendation* on the “Recommendations” page:

| Case Number | Recommendation Number | Date Issued | Agency/Provider | Recommendation | Agency/Provider Response |
|-------------|-----------------------|-------------|-------------------------|------------------------------|--------------------------------|
| 2017-XXXX | 2017-XXXX-F1(R1) | XX/XX/2017 | Example Agency/Provider | Full text of recommendation. | Agree/Disagree/Partially Agree |

In determining the release of any information, the *“ombudsman, employees of the office and any persons acting on behalf of the office shall comply with all state and federal confidentiality laws that govern the state department or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records,”* as stated in C.R.S. §19-3.3-103(3). These laws include, but are not limited to, the Colorado Children’s Code, CAPTA, HIPPA and FERPA.

13.000 CPO Informational Reports

To ensure the CPO is effectively meeting its mandate to *“educate the public concerning child maltreatment and the role of the community in strengthening families and keeping children safe,”* as stated in C.R.S. §19-3.3-103(2)(c), the CPO must provide citizens with a consistent and timely flow of information about issues within the *child protection system* and the overall functioning of the CPO.

The CPO will do this through the scheduled release of the following informational reports:

- Annual Report: Per C.R.S. §19-3.3-108, will be submitted on September 1 of every year.
- State Measurement for Accountable, Responsive and Transparent (SMART) Government Act: Per C.R.S. §2-7-201 to 207.
- Quarterly Reports

Each report will be released and posted on the *“Informational Reports”* page of the CPO’s website.

14.000 Legislative Involvement

The CPO will work to provide the General Assembly with thoughtful insight and comprehensive research concerning issues within the *child protection system*. Through its research, cases and engagement with stakeholders and citizens, the CPO will provide legislators with *recommendations concerning “statutory, budgetary, regulatory and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado.”* See C.R.S. §19-3.3-103(2)(e).

15.000 Open Meetings Laws

All CPO board meetings are open to the public pursuant to C.R.S. §24-6-401 to 402.

16.000 Colorado Open Records Act (CORA)

The CPO is committed to transparency. The CPO is subject to the CORA (C.R.S. §24-72- 201 to 206) and in accordance with the provisions outlined in C.R.S. § 19-3.3-103(1)(a)(I)(B). In adhering to this Act, the CPO will comply with all state and federal confidentiality laws with respect to the treatment of confidential information or records and the disclosure of such information and records.

16.100 Procedures for Handling Record Requests

All records requests submitted to the CPO by mail, courier or email shall be immediately provided to the *Ombudsman*. The *Ombudsman* will approve all responses to the CORA except in extraordinary circumstances he/she will authorize a designee.

The CPO will accept only records requests made in writing or electronically via email. Records request made via social media shall not be accepted and must be resubmitted. Record requests or requestors that cite the Freedom of Information Act (FOIA) will be treated as though they were made pursuant to the CORA.

When responding to a records request, the CPO shall make every effort to respond within three business days, as is required by C.R.S §24-72-203(3)(b). A request is received the day an email or letter containing the request is opened. The three-business day response time begins the first business day following receipt of the request. A request received after noon on any day the CPO is officially closed will be considered received as of the following business day.

No employee of the CPO may modify, redact or omit any records they are required to provide, pursuant to this policy, to the *Ombudsman* or his or her designee handling the request. Staff should never assume a document is exempt and should always consult the *Ombudsman* before making a final determination. Redactions and decisions about whether a record falls under an exemption to the CORA will be made by the *Ombudsman* in consultation with the Colorado Attorney General's Office.

When feasible, the CPO will endeavor to provide electronic copies of files to requestors if such alternative is significantly less burdensome to provide than paper copies. When responsive records cannot be easily or cost effectively provided electronically to a requestor, the CPO will work with the requestor to schedule a time to inspect the records in person. The CPO is open from 8 a.m. to 5 p.m., Monday through Friday, except state holidays. The *Ombudsman* may grant exceptions where the CPO, requestor or the records produced require special accommodations.

When a requestor (either an individual or organization) has an overdue balance for completing a prior request to the CPO, work on a new CORA request will not begin until the overdue bill is paid in full.

16.200 Fees

When a request requires the production of more than 25 pages of documents or more than one hour of staff time to locate or produce the records, the CPO will charge the requestor for all copying expenses and for staff time in accordance with C.R.S. §24-72-205(5)(a) and applicable law.

Any cost charged to a requestor shall not exceed the actual cost of producing the records, in accordance with C.R.S. §24-72-205(5)(a) and applicable law.

For requests where the CPO anticipates more than 25 pages will be produced and/or more than one hour of staff time will be consumed, the CPO will provide a requestor with advance notice and an estimate of compliance costs. Such costs must be paid in full before the production of records unless alternative arrangements have been made through the *Ombudsman*.

16.300 Production of Documents

When the number of pages produced in response to a records request exceeds 25 pages, the CPO will charge \$0.25 per page for all documents copied.

When researching the location of a document, retrieving or producing records consumes more than one hour of staff time, the CPO shall charge \$20 an hour for all staff time. An hourly rate not to exceed \$30 an hour when specialized document production or specialized skills are required to fully comply with a records request. In extraordinary circumstance, the use of a third-party contractor may be necessary and will be discussed with the requestor in advance.

By policy of the CPO, the requestor shall also be charged \$30 an hour for time spent by an attorney engaged in the practice of law directly related to a records request, including but not limited to, the review of documents for privilege or other exemptions to production; document redaction; creation of documents that articulate the privileged nature of the requested documents or conducting CORA related legal research.

Payment is due within 30 calendar days of the invoice date. Past due amounts will be referred to collections.

16.400 Format of Records Produced

The CORA guarantees that *“all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law,”* as stated in C.R.S. §24-72-201. The CORA does not guarantee access to public records in a specific format. When the production or review of records in a specific format would interfere with the regular discharge of duties of the CPO and staff, in accordance with C.R.S. §24-72-203(1)(a), or levy an undue burden upon the CPO, the *Ombudsman* will determine

the appropriate format for the records to be produced. The CPO may require that members of the public only be allowed to review copies of documents when the custodian of records determines that allowing access to originals could interfere with the regular discharge of duties of the CPO, its staff or the production of original records could jeopardize the condition of the records.

16.500 CPO Contact for CORA Requests

For details on how to file a CORA request, please visit www.coloradocpo.org. Additionally, anyone seeking information may call the CPO at 720-625-8640 and ask to speak with the Communications and Policy Director.

17.000 Legal Advice

The CPO does not provide legal advice to *contacts* or *complainants*.

18.000 Mandatory Reporting

CPO staff members are required under C.R.S. §19-3-304 to report known or suspected child abuse and/or neglect. CPO staff will inform the *Ombudsman* or his/her designee prior to reporting alleged abuse and/or neglect, unless doing so would place a child or adult at risk of harm. CPO staff shall immediately, upon receiving such information, report or cause a report to be made to the county department, local law enforcement or through the Colorado's statewide child abuse reporting hotline (1-844-CO4-KIDS).

19.000 Conflict of Interest

Staff must have the ability to act independently and impartially in order to perform the duties necessitated by their position. Staff must be above reproach in all relationships and must not maintain any appearance of a conflict of interest. The CPO has a conflict of interest policy within the personnel manual. Each staff member must certify annually that they have reviewed the policy and have no conflicts of interest that would impair their ability to carry out their duties.

20.000 Filing a Grievance

Should a *complainant* believe that any staff member performed their duties in an unsatisfactory manner, the *complainant* is entitled to file a written grievance with the *Ombudsman*. **(See Appendix A: Grievance Policies)**

Should a *complainant* believe that the *Ombudsman* performed his/her duties in an unsatisfactory manner, the *complainant* is entitled to file a written grievance with the CPO Board. **(See Appendix A: Grievance Policies)**

APPENDIX A: Grievance Policies

Complaints Regarding CPO Staff Member Performance

Should a complainant to the Office of Colorado's Child Protection Ombudsman (CPO) be dissatisfied with the performance of a CPO staff member during the course of their involvement with the CPO, the complainant may file a grievance with the Ombudsman. In order to do so, the complainant must submit their detailed concerns in writing to the Ombudsman.

Grievances should be addressed to the Ombudsman and can be mailed to:

Office of Colorado's Child Protection Ombudsman
Attn: Complaint Regarding CPO Staff Member Performance
1300 Broadway, Suite 430
Denver, Colorado 80203

Once received, the Ombudsman will thoroughly review the grievance and take the following steps to ensure resolution:

1. Review the written grievance and speak with the complainant should more information be necessary.
2. Meet with staff associated with the grievance.
3. Review the work completed by CPO staff.
4. Provide written feedback to the complainant regarding the findings of the grievance review and any plan necessary to resolve the complainant's concerns.

THE COLORADO CHILD PROTECTION OMBUDSMAN BOARD

PUBLIC COMPLAINT PROCESS

ARTICLE I: AUTHORITY

Section 19-3.3-102(3)(a)(IV), C.R.S., requires the Colorado Child Protection Ombudsman Board (the "Board") to develop a public complaint process related to the Child Protection Ombudsman (the "Ombudsman").

ARTICLE II: GENERAL GUIDELINES

Before filing a complaint, the following general guidelines should be considered:

1. The public complaint process addressed in this policy is only intended to address performance-related issues with the Ombudsman. Specifically, this policy addresses whether the Ombudsman acted ethically or complied with agency procedures.
2. The public complaint process addressed in this policy is not intended to appeal the outcome or result of a case submitted to the Office of the Child Protection Ombudsman (the "Office").

ARTICLE III: PROCEDURES

Section 3.1 Procedure for Filing a Complaint.

Any person who has a complaint against the Ombudsman related to his or her performance, and who cannot resolve the issue through discussion directly with the Ombudsman, may file a complaint with the Board. The following procedures must be followed for submission of a public complaint:

1. The complaint must be in writing, and must include the name, address and telephone number of the person submitting the complaint.
2. The complaint shall set forth, as precisely as reasonably possible, the nature of the complaint and the efforts, if any, to resolve the complaint.

3. The complaint must be submitted with the following designated attention to the below address:

Office of the Colorado Child Protection Ombudsman
ATTN: PUBLIC COMPLAINT CONCERNING OMBUDSMAN
Ralph L. Carr Judicial Building
1300 Broadway, Suite 430
Denver, Colorado 80203

4. Once received, the Office of the Child Protection Ombudsman Staff ("Office") shall immediately forward the public complaint unopened to the Board Chair.

Section 3.2 Procedure for Resolution of Public Complaint.

Once a complaint is filed against the Ombudsman and received by the Board Chair, the following procedures address resolution of the matter:

1. The Chair or his or her designee will review the public complaint and determine, in his or her discretion, whether additional information is necessary from the individual. The Board Chair or designee shall send to the individual within thirty days an acknowledgment that the complaint was received.
2. The Chair or his or her designee shall notify the Ombudsman within the same thirty days that a complaint needs to be addressed at the next regularly scheduled meeting so the topic may be placed on the Board's agenda.
3. The public complaint will be distributed to the Board members in advance of the next regularly scheduled meeting for their review.
4. At the meeting, the Board shall discuss the complaint in public, unless the contents of the complaint addresses personnel issues related to the Ombudsman or the Chair, in his or her discretion, determines that the issue may cause potential embarrassment to the individual complainant.
5. If the complaint must be discussed in Executive Session, the Board Chair will call for a motion to enter into Executive Session.

6. In order to resolve the complaint, the Board may need to discuss the complaint with the Ombudsman or obtain additional information.
7. Following the Board's discussion concerning the grievance, whether in public or in Executive Session, the Board shall in public session and by majority vote determine what, if any action, should be taken in response to the complaint. The Board, as delegated to the Chair, shall provide a written response to the complainant notifying the complainant and the Ombudsman of the Board's determination.
8. The complaint shall be resolved as expeditiously as resources allow.

ARTICLE IV: AMENDMENTS

Section 4.1 Procedures.

This Public Complaint Process may be amended or repealed, in whole or in part, by a majority vote at any publicly noticed meeting of the Board and shall be effective upon adoption or amendment.


Section 4.2 Distribution.

The Chair, as may be delegated to the Ombudsman, shall provide a copy of the latest version of this Public Complaint Process to all new Board members upon their appointment, and to any other person who requests a copy. The latest version of the Public Complaint Process shall be made available to the public via the Office website.

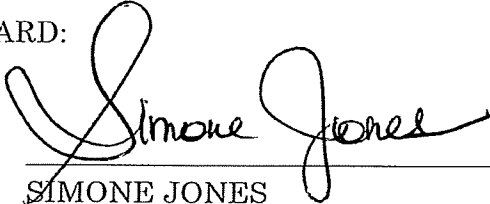
Section 4.3 History.

Adopted and effective by the Board on July 13, 2014.

CHILD PROTECTION OMBUDSMAN BOARD:



KENNETH PLOTZ
Board Chair



SIMONE JONES
Board Vice-Chair

Appendix B

NAVIGATE INVESTIGATE ILLUMINATE REFORM

OFFICE OF COLORADO'S
CHILD PROTECTION
OMBUDSMAN

INVESTIGATION REPORT CASE 2016-2074



Stephanie Villafuerte
Child Protection Ombudsman
December 13, 2017

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LETTER FROM THE OMBUDSMAN

Dear Citizens and Stakeholders,

Every year we celebrate National Adoption Day in November. On this day, we finalize the adoptions of children and we celebrate the commitment that parents and children make to one another to become forever families. However, the day a child's adoption is finalized marks just one step in their parents' lifelong journey to care for these children.

Many children adopted in Colorado have experienced abuse, neglect, multiple placements and institutionalization. These experiences often cause physical, psychological, emotional and developmental harm which affects children throughout their lives. Colorado has increased its efforts to find more adoptive families for children in need of safe and caring homes. While these efforts are laudable, it is equally important for us to remember that we must also focus our attention and resources on the long-term well-being and stability of these families.

The Office of Colorado's Child Protection Ombudsman launched its investigation of Colorado's adoption assistance program on August 26, 2016. The opportunity to study this complex program comes at a crucial time in our state's history. During the past several years, Colorado has made tremendous efforts to reduce the number of children in the child welfare system who live in long-term congregate care.

Adoption has become an important tool in the efforts to increase the number of permanent and stable homes for Colorado's abused and neglected children.

The number of adoptions completed each year in Colorado has continued to increase. In 2014, 773 adoptions were completed, 803 adoptions were completed in 2015 and 846 adoptions were completed in 2016, according to data provided by the Colorado Department of Human Services.

At the same time, many agencies in Colorado's child welfare system have embraced a new approach to helping children and families. This approach encourages human services agencies to provide holistic services to both a child and their family to ensure the best future for both.

The success of Colorado's adoption assistance program is critical to these efforts. This program is designed to encourage adoption of children with high needs, as well as to support parents in the care and raising of these children. The goal is to create healthy children and healthy families. To break the cycle of intergenerational abuse.

The Office of Colorado's Child Protection Ombudsman is an integral part of Colorado's child protection system. We recognize how important it is to work with all stakeholders to be outcome based and forward focused, as we all consider the best ways to meet the needs of Colorado's children and families.

The goal of this report is to examine the adoption assistance program and issues affecting the delivery of services to families. The recommendations provided in this report are designed to create positive change for everyone touched by this important program.

Sincerely,
Stephanie Villafuerte
Child Protection Ombudsman

AUTHORITY

Introduction

By design, the Office of Colorado's Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Jurisdiction

The CPO receives *"complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint."* See C.R.S. 19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. 19-3.3-101 to 110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency or provider decision.
- Offer legal advice.

Public Disclosure

In meeting its statutory requirements to *"improve accountability and transparency in*

the child protection system and promote better outcomes for children and families involved in the child protection system," as stated in C.R.S. 19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency or provider. The CPO will do so by publicly releasing its investigation reports.

Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency or provider when reviewing and/or investigating a complaint. *"In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents."* See C.R.S. 19-3.3-103(1)(a)(II)(A).

Confidentiality

Pursuant to C.R.S. 19-3.3-103(1)(a)(II)(B), the CPO treats all complaints as confidential, including the *"identities of complainants and individuals from whom information is acquired; except that disclosures may be permitted if the Ombudsman deems it necessary to enable the Ombudsman to perform his/her duties and to support any recommendations resulting from an investigation."*

Further, C.R.S. 19-3.3-103(3) states that *"the Ombudsman, employees of the office, and any persons acting on behalf of the office shall comply with all state and federal confidentiality laws that govern the state department or a county department with respect to the treatment of confidential information or records and the disclosure of such information and records."* These laws include, but are not limited to, the Colorado Children's Code, CAPTA, HIPPA and FERPA.

The CPO will release identifying information to the proper authorities for anyone who makes any statements of credible harm to themselves or to someone else.

EXECUTIVE SUMMARY

Children adopted in Colorado excel on the soccer field. They create masterpieces in art classrooms, they are listed on the honor roll at school and they bring immeasurable joy to the families they make whole. The adoptive parents and countless individuals who work to find children homes have allowed the hundreds of children adopted in Colorado every year an opportunity to thrive. The lives of most of these children, however, will also be forever impacted by the events they experience before they were placed in a home that was safe. Some were exposed to drugs and alcohol in utero. Others were neglected when they came home from the hospital. Many suffered severe emotional and physical abuse at the hands of their biological parents. The Colorado adoption assistance program was designed to encourage families to adopt children with special needs and to ensure those families have the supports necessary to provide safe and caring environments.

The Office of Colorado's Child Protection Ombudsman (CPO) received a complaint on July 29, 2016, alleging statewide disparities in adoption subsidy payments and inconsistencies in practices among county human services departments (county departments). These county departments work directly with families to provide services and benefits available under the adoption assistance program. The issues alleged in the complaint have been raised previously.

More than 15 years ago, Colorado's adoption assistance program was audited. The audit identified several insufficiencies in the program, many of which still exist today. Disparate rates have long dominated the discussion surrounding adoption assistance in Colorado because they are the most tangible element of the program. How a child's needs are determined and predicting what those needs will entail years into the future are parts of the program that are much harder to quantify. They are, however, essential factors in the equation. Through 16 months of research, the CPO has found that disparate adoption subsidy rates represent one of the many symptoms of a long-neglected program.

The CPO's investigation, which was opened on August 26, 2016, examined all sides of the adoption assistance program – from the federal laws that established it, to the families requesting assistance. Extensive collaboration with the Colorado Department of Human Services (CDHS), county departments, non-profit agencies and dozens of adoptive families provided the CPO with unprecedented access and insight into Colorado's program. This report details four areas of the adoption assistance program in need of improvement:

The Law – Omissions in state law and inconsistent interpretations of federal law and state rules have long plagued the foundation of Colorado's program. These laws fail to give families and practitioners adequate guidance on the services and subsidies available under the program. This has resulted in inconsistent policies across the state.

The Operating Structure – Various legal interpretations have resulted in inconsistent practices at the local level, ultimately weakening the operating structure in which county departments administer the program. Without impactful review and support, county departments have independently developed practices to meet the needs of their communities. The unintended consequence of this is a level of inconsistent practice that goes beyond the healthy flexibility county departments need to deliver services and benefits to families in their community. Families across Colorado expressed frustration and confusion concerning the various practices among county departments. This frustration is heightened by the fact there currently is no central location where families may access complete and accurate information about the adoption assistance program.

The Funding – Adoption subsidies and services pose a unique and demanding consideration for county departments' budgets. The high cost of providing for adoptive children's complex needs, the duration of the subsidy and the future unforeseen needs of these children make it challenging to adequately fund the program. The current formula used to allocate funds for the adoption assistance program also appears insufficient in capturing the complete

needs of families utilizing the program. The result is that county departments are forced to weigh the distribution of appropriate adoption subsidies against the fiscal demands of other child welfare programs in their departments.

The Services – While adoption from foster care has become a priority statewide, less attention has been paid to providing adoptive families and children the post-adoption services that are necessary to ensure they can remain in their homes and their families have the services that are required to raise them successfully. Accessing services, especially mental health care, after an adoption is finalized can be difficult. There is a lack of post-adoption services available for children and families in Colorado.

The above issues impact all 59¹ county departments that administer the statewide adoption assistance program. Improving these areas will ensure families across Colorado receive equitable consideration for benefits and services. This study dissected an expansive and complex system. The CPO found many challenges within the system—some that may be resolved in the near future. Others, however, are more complex and will require additional study and analysis by all stakeholders involved in Colorado’s adoption community.

COMPLAINT SUMMARY

On July 29, 2016, the CPO received a written complaint filed on behalf of two statewide agencies that serve adoptive children and families. The complaint detailed statewide concerns about the administration of the adoption assistance program in Colorado. The complaint stated that *“there is no consistency in the manner in which adoption assistance negotiations occur or the rate of the subsidy offered, if any.”*

Specifically, the complaint alleges families across Colorado are experiencing the following:

1. Adoptive families are not provided clear guidance or expectations concerning the negotiation process and therefore cannot meaningfully participate on behalf of their child.
2. Adoptive families are provided incomplete or inaccurate information concerning services that may be covered by adoption assistance.
3. Adoptive families are not provided adequate information explaining how their subsidy amount was determined.

The CPO opened its investigation on August 26, 2016.

¹ There are 59 county human services departments in Colorado providing services to the state’s 64 counties. Five departments provide services for two counties. Those departments are: Grand and Jackson counties; Gunnison and Hinsdale counties; La Plata and San Juan counties; Mineral and Rio Grande counties and Ouray and San Miguel counties.

SCOPE AND METHODOLOGY OF CPO INVESTIGATION

This investigation represents an unprecedented examination of the adoption assistance program in Colorado – both in the breadth of the families and stakeholders who worked with the CPO, and the depth of the analysis. The CPO spent more than a year studying the adoption assistance program across the state. That research included review of hundreds of documents, including federal and state law, Colorado rules and county-specific policies and program materials. While this information formed the foundation of the CPO’s investigation, the CPO also relied upon the experiences and perspectives of adoptive families and stakeholders to guide its research and, ultimately, to help create recommendations for improving Colorado’s adoption assistance program. In writing this report, the CPO was acutely aware that there is no benefit to oversimplifying any aspect of this program or the experiences of anyone involved.

The adoption assistance program impacts adoptions in multiple systems, including families in the public child welfare system, families who adopt through non-profit, private child placement agencies (CPAs) and families who adopt through kinship placements. In fulfilling the charge of the complaint, however, the CPO’s investigation and resulting report remained centered on adoptions from the public child welfare system. It is the CPO’s hope that this report serves as a catalyst for further conversations that will address the unique needs of multiple stakeholder groups within the adoption community.

Below is a summary of the CPO’s method for completing this investigation, a summary of the materials used and the stakeholders the CPO worked with, as well as a description of how this report was written.

CPO Research and Analysis

Colorado’s adoption assistance program is overseen by the Colorado Department of Human Services (CDHS), but each of the state’s 59 county human services departments

administers the program in their community differently. To understand the intricacies of each of the 59 county departments’ programs, the CPO created a survey. (See Appendix A) The survey consisted of 23 questions regarding the adoption assistance program and requested copies of the county departments’ policies (if applicable) and any other documentation the county departments felt was pertinent. The survey was sent to all 59 county departments on April 25, 2017. The CPO received completed surveys from 56 county departments. Of the 56 county departments that responded to the CPO, three indicated that they do not currently have any written policies for their adoption assistance program. In total, county departments submitted hundreds of pages of policies, state-prescribed forms and other information packets.

The CDHS provided the CPO several sets of data and reports. In total, the CPO received the following information from the CDHS:

- Financial data for fiscal years 2014, 2015 and 2016, demonstrating a county-by-county breakdown of the number of adoptions finalized, average adoption subsidy payments (with and without Medicaid Only agreements), number of Medicaid Only Agreements and number of Title IV-E Eligible adoptions.
- Financial data for fiscal years 2015, 2016 and 2017 demonstrating a county-by-county breakdown of foster care subsidy payments.
- Data demonstrating a county-by-county breakdown of active adoption assistance agreements in Colorado.
- Information regarding the award and distribution of Promoting Safe and Stable Families Program funding by the Office of Early Childhood.
- Information memorandums regarding the average annual adoption assistance payments by county departments.
- Colorado Title IV-E Adoption Assistance Monitoring Instrument and Non-Title IV-E Adoption Assistance Monitoring Instrument.
- Adoption Assistance Program Review letters distributed to county departments reviewed in 2016.

- Agendas for voluntary quarterly information meetings between the CDHS and county department staff.
- Nineteen initial decisions by administrative law judges and the corresponding final agency decisions regarding families' appeals of county department subsidy determinations.

The CPO completed an extensive study of the federal and state laws that guide the adoption assistance program, as well as the state rules used by county departments to create their individual program policies. These laws are cited in detail throughout this report. The CPO reviewed the following:

- The Adoption Assistance and Child Welfare Act of 1980, 42 United States Code (U.S.C.) 673
- The United States Department of Health and Human Services Child Welfare Policy Manual
- Colorado Revised Statute (C.R.S.) 26-7-101 to 108
- 12 Code of Colorado Regulations (C.C.R.) 2509-1 to 10 (Throughout this report, this set of regulations is referred to as Volume VII or "state rule.")
- Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit, March 2002. (See Appendix B)

CPO Interviews with Stakeholders

The CPO conducted dozens of interviews with stakeholders during its investigation. The CPO met with representatives from the following agencies:

- The Colorado Department of Human Services
- The Colorado Human Services Directors Association
- Non-profit private agencies that provide services to adoptive families in Colorado

CPO Interviews with Adoptive Families

The CPO interviewed more than two dozen pre-and post-adoption families. Eight of those families filed formal complaints with the CPO. Those cases were handled as individual investigations according to CPO Case Practices and Operating Procedures. The CPO did not

find any violations of child protection policy or law on the part of the county departments in those investigations. These investigations did, however, provide insight into issues that are addressed in this report.

The families that spoke with the CPO worked with county departments of all sizes. Some worked with county departments in rural areas and others in urban centers. Grievances and levels of frustrations varied among the families. Every family that spoke to the CPO described an area of the program they felt could be improved.

The CPO acknowledges that its work, by design, centers on complaints regarding the child protection system. As such, the information received from families during this investigation was of that nature. While the CPO was interested in soliciting information from families with positive experiences, it was beyond the scope of the CPO's resources to complete a statewide survey of the more than 9,000 adoptive families receiving adoption assistance in Colorado.

Writing this Report

The CPO elected not to identify adoptive families, individual county departments or individual stakeholders, such as agency directors or supervisors. This was done intentionally to keep the focus on issues affecting the adoption assistance program as a whole.

How to Read this Report

The CPO issued 14 recommendations as a result of this investigation. These recommendations are located throughout the Findings and Recommendations section of this report, along with any responses from relevant agencies. A chart summarizing the CPO's recommendations and any agency response is available on page 10.

Throughout this report, the terms "adoption assistance program," "adoption subsidies" and "adoption services" will be used.

- **"Adoption assistance program"** denotes the statewide program as it is administered at the county level.
- **"Adoption subsidies"** refers exclusively to monthly cash payments awarded

to adoptive children and families by county departments.

- **“Adoption services”** denotes other benefits a family may receive as part of an adoption assistance agreement, such as a Medicaid Only subsidy, a non-recurring payment or respite care.

OVERVIEW OF COLORADO’S ADOPTION ASSISTANCE PROGRAM

Introduction

When a child is abused or neglected, child welfare services may remove that child from their home and place them in foster care. While systems work to safely reunite the child with their family, there are times when these efforts fail and the child needs a safe and permanent home. However, the ability of the child welfare system to find suitable adoptive homes is often complicated by the fact that these children are victims of abuse and neglect who have extensive medical and emotional needs requiring constant and costly care often throughout their lifetimes.

History of the Federal Adoption Assistance Program

In 1980, the federal government passed the Adoption Assistance and Child Welfare Act (Act) to encourage the adoption of children from the foster care system.² This law was created in direct response to the growing number of children who languish in foster care.

Prior to the Act’s passage, few states reimbursed families for the costs of adoption and the raising of a special needs child. As such, the primary way that families could afford to care for these children was to continue to serve as foster parents and receive reimbursement. The lack of policies in this area inadvertently served as a disincentive for low to moderate income families who wanted to adopt but were unable to afford the high costs of providing care. The underlying purpose of the Act is to provide incentives for families of any economic status to adopt special needs children.³

The federal legislation provides financial incentives to states to maintain adoption assistance programs by partially reimbursing them for the costs of providing certain benefits

² 42 U.S.C. 673

³ Elizabeth Oppenheim, Alice Bussiere, Ellen C. Segal, Adoption Assistance for Children with Special Needs, ADOPTION LAW AND PRACTICE 9.01(2), 2000

and services to families. All states, including Colorado, have adoption assistance programs. Since the Act's passage, thousands of children have been adopted, children who otherwise might have remained in foster care.⁴

Multiple benefits are available under this program, including a monthly adoption subsidy (cash assistance), non-recurring adoption expenses and Medicaid. Additionally, "case services" may be available for special equipment, speech, occupational and physical therapies, and other mental health services if those services are not covered by the cash assistance benefit or Medicaid agreement.⁵

The adoption assistance program has helped thousands of children access services that are critical to their health and well-being. As of September 2017, 9,851 children in Colorado were receiving some form of adoption assistance.⁶

The Subsidy Program

When a family decides to adopt a child, they may request an adoption subsidy (cash assistance) and other services to meet their adoptive child's needs. There are two types of adoption subsidies in Colorado: Title IV-E (comprised of federal, state and county funds) and Non-Title IV-E (comprised of state and county funds).⁷

In Colorado, children adopted through the child welfare system or through private non-profit adoption agencies may be eligible for adoption assistance. In Colorado, the Title IV-E program provides the greatest number of adoption subsidies for children. This program creates a partnership between the federal and state government that subsidizes adoptions

of children who satisfy specific eligibility and categorical criteria.⁸

Eligibility criteria are complex and evolving.⁹ However, one significant eligibility determinant is whether the child has "special needs." This term is defined differently in each state, but in Colorado the definition includes: older youth, membership in a sibling group, physical disability, cognitive disability, emotional disability, learning disability and membership in a minority group.¹⁰ Essentially, special needs are defined broadly to include characteristics that would make the child's adoption more difficult.

The amount of cash assistance a child is eligible for is determined by considering the "circumstances of the adoptive parent" and the "needs of the child."¹¹ The use of a means test is prohibited in negotiating an adoption assistance agreement and therefore it is impermissible to base the subsidy amount solely on the income and assets of the adoptive family.¹² The payment may not exceed the amount the child received in foster care.¹³ Typically, families negotiate with human services agencies before the adoption is finalized, to determine the subsidy amount the child will receive, if any.

Federal law intends for the parties to negotiate the amount of the subsidy, to ensure that the unique needs of every child are considered and that no need is discounted solely upon the basis of a predetermined subsidy rate.

For nearly three decades, national researchers have questioned the fairness of the adoption assistance negotiation process and whether it is the most effective means of ensuring that children with comparable special needs are

⁴ Mary Eschelbach Hansen, *Distribution of Federal Entitlement: The Case of Adoption Assistance*, *The Journal of Socio Econ.* December 1, 2008

⁵ Volume VII, 7.306.52

⁶ Data provided by CDHS on September 26, 2017

⁷ This is a county/state subsidy program for children whose biological parents' income exceed federal limits, but whose children still qualify as having special needs.

⁸ 42 U.S.C. 673 (a)(1)(2); Elizabeth Oppenheim et al., *Adoption Assistance for Children with Special Needs*, *ADOPTION LAW AND PRACTICE* 9.01 (2), 2000.

⁹ As of October 1, 2017, the eligibility for Title IV-E adoption assistance is no longer related to a child's biological parent's eligibility for Aid to Families with Dependent Children (AFDC). This will increase the number of Colorado children eligible for a Title IV-E adoption subsidy. See ACF information memorandum ACYF-C13-IM-05, issued September 28, 2017.

¹⁰ Volume VII 7.306.4

¹¹ 42 U.S.C. 673(a)(3)

¹² ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

¹³ 42 U.S.C. 673(a)(3)

being treated similarly.¹⁴ While the debate on this issue continues, the negotiation process remains a critical element of the federal law and as such guides Colorado practice.

Once a subsidy has been awarded, it is memorialized into a formal adoption assistance agreement. This agreement is legally binding upon the parties.¹⁵ Federal law permits the subsidy to be readjusted periodically if there are changes in circumstances and with the *concurrence* of the adoptive family.¹⁶ In Colorado, these agreements are reviewed every three years from the date of the initial agreement.¹⁷

Adoption subsidies terminate when a child turns 18, but, in some cases, the subsidy continues until the child turns 21, if the state determines that the child has a mental or physical handicap which warrants continued assistance.¹⁸ Subsidies can be discontinued if the state determines that the parents are no longer legally responsible for the support or care of the child or if the state determines that the child is no longer receiving any support from the parents.¹⁹

Adoptive parents who disagree with an agency's decision to award a specific subsidy amount, to deny a subsidy, reduce the subsidy or terminate benefits have the right to appeal the agency's decision through the administrative hearing process.²⁰

Adoption assistance is administered at the state and local levels. The CDHS is responsible for providing guidance and assistance to the state's 59 county departments, as well as ensuring the departments are in compliance with the rules and laws that define the program. County departments work directly with adoptive families to determine eligibility for the program, negotiate the adoption subsidy and/or services, finalize the adoption

assistance agreements and review those agreements on a scheduled, routine basis. Additionally, the county departments are responsible for making payments to the families, as the funds for the adoption assistance program are distributed to the county departments annually.

In Colorado, most adoption assistance falls into one of the following four categories:

- 1. Monthly Subsidies (Cash Assistance) –** Monthly cash payments based *“upon the circumstances of the adoptive family and the needs of the child.”*²¹ These payments may be made for the duration of the assistance agreement or during a set time period.
- 2. Dormant or Medicaid Only –** No monthly subsidy payment is provided to the child. The county department documents the child's special needs and notes the possibility that financial assistance may be needed in the future. The child is provided Medicaid.
- 3. Non-Recurring Expenses –** The federal government reimburses states for one-time costs that are associated with facilitating the adoption process. These costs include adoption fees, home studies and attorney costs. Federal law will reimburse up to \$2,000 per child for these purposes. States are allowed flexibility in setting these rates to account for the differences in costs among various states and localities. The majority of county departments limit these funds to \$800 per child.
- 4. Case Services –** A type of service provided to meet a child's special needs that are identified at the time of the child's adoption, but are not covered by the adoption subsidy or Medicaid.

¹⁴ Mary Eschelbach Hansen, Daniel Pollack, Unintended Consequences of Bargaining for Adoption Assistance Payments, FAMILY COURT REVIEW, Vol. 43, No. 3, July 2005 494-510.

¹⁵ 42 U.S.C. 673 (a)

¹⁶ 42 U.S.C. 673(a)(3)

¹⁷ Volume VII, 7.306.401(E)

¹⁸ 42 U.S.C. 673(a)(4)

¹⁹ 42 U.S.C. 673(a)(4)

²⁰ 42 U.S.C. 671(a)(12)

²¹ Volume VII 7.306.42(D)(4)

FINDINGS AND RECOMMENDATIONS

Recommendation Locator

| | | | |
|-------------------------|---|---|---|
| Recommendation 1 | ID: 2016-2074-F1(R1) Page No. 16 | Agency Addressed: Colorado General Assembly | Agency Response: Not Applicable |
|-------------------------|---|---|---|

Recommendation: The Colorado General Assembly and stakeholders should work together to revise C.R.S. 26-7-101 to 108, to incorporate relevant federal language to provide clear guidance for entities administering the adoption assistance program.

| | | | |
|-------------------------|---|--|----------------------------------|
| Recommendation 2 | ID: 2016-2074-F1(R2) Page No. 16 | Agency Addressed: CDHS - Division of Child Welfare | Agency Response: Agree |
|-------------------------|---|--|----------------------------------|

Recommendation: Work with stakeholders to amend Volume VII to:

- Ensure Volume VII accurately reflects federal and state law regarding the adoption assistance program.
- Ensure county departments' policies accurately interpret federal and Colorado legal standards regarding the adoption assistance program.

| | | | |
|-------------------------|---|--|----------------------------------|
| Recommendation 3 | ID: 2016-2074-F2(R1) Page No. 20 | Agency Addressed: CDHS - Division of Child Welfare | Agency Response: Agree |
|-------------------------|---|--|----------------------------------|

Recommendation: Develop uniform descriptions of the types of services and subsidies offered under the adoption assistance programs to be used by county departments in their policies.

| | | | |
|-------------------------|---|--|----------------------------------|
| Recommendation 4 | ID: 2016-2074-F2(R2) Page No. 20 | Agency Addressed: CDHS - Division of Child Welfare | Agency Response: Agree |
|-------------------------|---|--|----------------------------------|

Recommendation: Develop uniform guidance and/or rules to help guide practices during negotiations. The uniform guidance and/or rules should include the following elements:

- An explanation of the difference between the benefits and monthly subsidy rates available when the child is in foster care, compared to the benefits and rates available after the child is adopted.
- Clear guidance regarding who is allowed to participate in adoption assistance negotiations with county departments.
- An explanation of how county departments determine and communicate initial subsidy offers during adoption assistance negotiations.
- A "script" county departments and families may use as a resource during adoption assistance negotiations. This "script" will detail eligibility factors, the purpose of the subsidy, what issues will be discussed, services available, the role of Medicaid and future review and possible re-determination of subsidy amounts.

Recommendation

5

ID: 2016-2074-F2(R3)

Page No. 23

Agency Addressed:
**CDHS – Division of
Child Welfare**

Agency Response:
Agree

Recommendation: Study and evaluate the use of predetermined maximum subsidy amounts in Colorado using existing department resources. This study should include:

- a. Whether the setting of predetermined maximum subsidy amounts is consistent with the original intent of the federal adoption assistance program, which is designed to encourage the adoption of special needs children from the child welfare system. The results of this study should be made public and reported to the General Assembly.

Recommendation

6

ID: 2016-2074-F2(R4)

Page No. 23

Agency Addressed:
**CDHS – Division of
Child Welfare**

Agency Response:
Agree

Recommendation: If predetermined maximum subsidy amounts prove to be best practice, then the Colorado Department of Human Services' Division of Child Welfare should use existing department resources to study:

- a. Which method for setting predetermined maximum subsidy amounts best ensures that subsidy amounts support the long-term well-being and stability of adoptive children. The results of this study should be made public and reported to the General Assembly.

Recommendation

7

ID: 2016-2074-F2(R5)

Page No. 27

Agency Addressed:
**CDHS – Division of
Child Welfare**

Agency Response:
Partially Agree

Recommendation: Improve the monitoring program so it may provide more impactful direction to county departments. To do this, the Colorado Department of Human Services' Division of Child Welfare should:

- a. Include the perspective of adoptive families in the monitoring program.
- b. Deepen the program's analysis of **how** adoptive parents experience the adoption assistance program and **how** services and subsidies provided to children impact their long-term well-being and stability.
- c. Consider obtaining additional staff for the purpose of completing more substantive and consistent review of county departments' adoption assistance programs.

Recommendation

8

ID: 2016-2074-F2(R6)

Page No. 28

Agency Addressed:
**CDHS – Division of
Child Welfare**

Agency Response:
Partially Agree

Recommendation: Create training opportunities at the Colorado Child Welfare Training Academy, at each regional center, as well as on-site training opportunities in rural communities to ensure all relevant county department staff have equal access to training regarding the adoption assistance program. Any training curriculum should specifically address:

- a. The law and rules guiding the adoption assistance program.
- b. Access to adoption-informed training to ensure that the children and families are receiving the services that are most appropriate for their needs.

Recommendation**9**ID: **2016-2074-F2(R7)**Page No. **29**Agency Addressed:
**CDHS – Division of
Child Welfare**Agency Response:
Agree

Recommendation: Complete an inventory of state-prescribed forms and ensure county departments are provided the most up-to-date forms.

Recommendation**10**ID: **2016-2074-F2(R8)**Page No. **30**Agency Addressed:
**CDHS – Division of
Child Welfare**Agency Response:
Agree

Recommendation: Create an easily accessible portal on its website that contains information about the adoption assistance program. This portal should include:

- a. The most recent versions of all county departments' policies regarding their adoption assistance program.
- b. Information about the adoption assistance program, including eligibility, details about the services and benefits available under the program, the duration of these services and benefits and children and families' rights.
- c. Direct access to Colorado Revised Statute and Volume VII regarding adoption assistance.
- d. Information on the availability of reimbursement for non-recurring expenses.
- e. Information on the availability of mental health services.
- f. Information on the availability of the federal adoption tax credit.
- g. Revise and post the adoption assistance handbook, which should be updated annually.
- h. Contact information for the Adoption Program and Colorado ICAMA Administrator should be available on the same page as information about the adoption assistance program.

Recommendation**11**ID: **2016-2074-F3(R1)**Page No. **33**Agency Addressed:
**CDHS – Division of
Child Welfare**Agency Response:
Agree

Recommendation: Track the **total** expenditures – including the cost of monthly subsidies and other services – at the state and county level for administering the adoption assistance program. It is vital to understand the total expense of administering the adoption assistance program to determine what gaps or opportunities exist for improving the long-term well-being and stability of children through service delivery.

Recommendation**12**ID: **2016-2074-F3(R2)**Page No. **33**Agency Addressed:
**CDHS – Division of
Child Welfare**Agency Response:
Agree

Recommendation: Using existing department resources, study alternative methods of funding the adoption assistance program. The goal of this study should be:

- a. To decrease the variance of subsidy benefits across county departments.
- b. To explore alternative mechanisms that will enhance county departments' ability to support adoptive children and their families.

Recommendation **13**

ID: **2016-2074-F4(R1)**

Page No. **36**

Agency Addressed:
**CDHS - Division of
Child Welfare**

Agency Response:
Agree

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare complete a statewide inventory of adoption-informed resources. This information should be used to create a strategic plan that will help connect families with post-adoption resources in every part of the state. This strategic plan should be made public and reported to the Colorado General Assembly.

Recommendation **14**

ID: **2016-2074-F4(R2)**

Page No. **37**

Agency Addressed:
**CDHS - Division of
Child Welfare**

Agency Response:
Partially Agree

Recommendation: Coordinate with the Colorado Department of Health Care Policy and Financing to:

- a. Identify the obstacles and barriers preventing adoptive parents from obtaining adoption-competent therapies and other treatments for their children.
- b. Study the rate at which adoptive children are accessing Medicaid services after finalizing their adoption.
- c. Study what services are being supplied by Medicaid providers to adoptive children and whether these services are meeting their specific needs.
- d. Make these findings public and report them to the Colorado General Assembly.

The Law

INTRODUCTION

The Adoption Assistance and Child Welfare Act of 1980 provides the legal framework for the administration of the Colorado adoption assistance program. States are provided guidance from the United States Department of Health and Human Services' Child Welfare Policy Manual regarding how to interpret the law.

Federal law provides standards and guidance that are not always reflected in the rules administered by CDHS, state law or the policies of county departments. The result is that the subsidies given to children are based upon differing understandings of the law by county departments, a circumstance that may inadvertently restrict the type of assistance given.

In Colorado, the adoption assistance program is governed by three bodies of law and rule.²² The current legal guidance is insufficient – both in state law and rule. This has resulted in inconsistent interpretations of the law by county departments which, ultimately, results in county departments using different standards to determine what subsidies and services are provided to children. These inconsistencies are reflected in the 53 county department policies submitted to the CPO. Currently, neither state law nor rule require county departments, nor the CDHS, to routinely review whether written policies accurately reflect federal guidelines, as well as state law and rule.

INCONSISTENCY IN LEGAL STANDARDS AND INTERPRETATIONS

Colorado's law regarding the adoption assistance program does not include standards contained in federal law or guidance.

Specifically, state law and rules lack standards and definitions for the following criteria,

which county departments use to determine adoption subsidies:

- Determining the needs of a child
- Circumstances of the family
- The future needs of the child

Determining the Needs of the Child

In Colorado, there is a wide variety of interpretations on how to define the "needs of the child." Understanding a child's needs plays a crucial role in determining a child's eligibility for, and the amount of, a Title IV-E subsidy.

Federal law states that the amount of the adoption subsidy "*shall be determined through agreement between the adoptive parents and the State or local agency administering the program.*" Federal law requires that in determining the subsidy amount that two factors must be considered: "*The **circumstances of the adopting parents** and the **needs of the child being adopted.***" [Emphasis added]²³

Each of these terms is defined in greater detail within federal law and guidance which states that, "*The payment agreed upon should combine with the parents' resources to cover the **ordinary and special needs** of the child **projected over an extended period of time and should cover anticipated needs, e.g. child care.***" [Emphasis added] *Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.*²⁴

Colorado state law arguably provides for both the "routine"²⁵ and "special needs"²⁶ of a child by stating, "*payments may include but are not limited to the maintenance costs, medical and surgical expenses, and other costs incidental to the adoption, care, training, and education of the child.*"²⁷ While Colorado law implies the subsidy is for both "ordinary needs" and "special needs,"

²² The three bodies of law and rule are: 42 U.S.C. 673, C.R.S. 26-7-101 to 108 and 12 Code of C.C.R. 2509-1 to 10.

²³ 42 U.S.C. 673(a)(3)

²⁴ ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

²⁵ C.R.S. 26-7-104(1)

²⁶ C.R.S. 26-7-101 defines "special needs" as a "child with a special, unusual, or significant physical or mental disability, or emotional disturbance, or such other condition which acts as a serious barrier to the child's adoption."

²⁷ C.R.S. 26-7-104(1)

it fails to explicitly state this. This is one of two crucial factors used to determine the subsidy amount that may be available to adopted children and their families.

State rules are also inconsistent in their interpretation of what constitutes “the needs of a child.” In one instance, Volume VII states, *“The county shall base the negotiation on the **special needs**²⁸ of the child and the circumstances of the adoptive parent.”* In a different section, the rules implicitly provide for both “ordinary needs” and “special needs” by stating, *“Adoption assistance is intended to help remove financial or other barriers to the adoption of Colorado children with **special needs** by providing assistance to the parent(s) in **caring for and raising of the child.**”*²⁹

These inconsistent definitions have an impact on the administration of the program. In Colorado adoption assistance is often mischaracterized in county departments’ policies as being **solely for children with “special needs” at the time of their adoption.** More than half of the county department policies reviewed by the CPO include language inconsistent with the federal requirement that a child’s **“ordinary needs” and “special needs”** be considered **“over an extended period of time.”**

The ambiguity of these rules has created a statewide system that largely administers adoption assistance based solely upon the “special needs” of the child, using the narrow definitions provided in state law and rule. The result creates a conflict between administering agencies and families on precisely the purpose of the adoption subsidy and what it should cover.

This conflict in statutory interpretation has caused adoptive parents to appeal county departments’ subsidy determinations,

claiming that the subsidy offered by the county department did not contemplate both their adoptive child’s “ordinary needs” and “special needs.”³⁰ In some instances, administrative law judges (ALJs) who preside over these cases, have noted the inconsistencies between these three bodies of law.

Circumstances of the Family

As stated previously, under the federal adoption assistance program, the “circumstances of the adopting parents” must be considered together with the “needs of the child” when negotiating the adoption assistance agreement.³¹

The federal government has broadly interpreted “family circumstance” to pertain to *“the adopting family’s capacity to incorporate the child into their household in relation to their lifestyle, standards of living and future plans, as well as their overall capacity to meet the immediate and future needs (including educational) of the child. This means considering the overall ability of the family to incorporate an individual child into their household.”*³²

Colorado law, however, does not define “family circumstances” nor provide guidance on how “family circumstances” shall be considered in the determination of the adoption subsidy.

While Volume VII instructs county departments to consider “family circumstances,” it provides no definition or guidance on how this relates to the determination of the amount of an adoption subsidy. How “family circumstances” are considered varies between county departments. Of the 53 county department policies reviewed by the CPO, seven did not list “family circumstances” as one of the criteria that must be considered. Other county departments did acknowledge

²⁸ Volume VII 7.306.4(3)(d) Under Volume VII, a child has a special need if they experience one or more of the following factors as a barrier to their adoption: physical disability, mental disability, developmental disability, educational disability, emotional disability, hereditary factors, high risk children, other conditions or ethnic background.

²⁹ Volume VII 7.306.4(A)(3)

³⁰ The CPO was provided 19 initial decisions issued by ALJs during 2005, 2013, 2014, 2015 and 2016. Six of those cases involved appeals in which families argued their child’s needs were not properly considered by county departments.

³¹ 42 U.S.C. 673(a)(3)

³² ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

the necessity of examining “family circumstances.” Some of these county departments provided various tools or worksheets to document a family’s resources to determine whether a subsidy is required to help the family meet the needs of the child. During its review, the CPO was unable to identify a tool that county departments use consistently to calculate a family’s resources.

The ambiguity in law and the various processes used to obtain this information is the source of frustration for families. The varying methods used by county departments was particularly confusing for families who adopted children from multiple departments. Additionally, families reported that they were not provided clear explanations of how their circumstances potentially increased or decreased the amount of the subsidy provided to their child.

Future Needs

The federal government has provided states with guidance regarding whether adoption subsidies may be used to cover a child’s “future needs.” Specifically, the guidance states that agencies should consider the, “ordinary and special needs of the child projected over an extended period of time and should cover anticipated needs, e.g. child care.”³³ Colorado law omits this critical federal guidance and as such unfairly limits the period of time and type of benefit a child may receive.³⁴

Consideration of a child’s future needs is also not reflected in Volume VII. Nearly half of the county department policies submitted to the CPO include language that contradicts federal language in this area. Some county department policies consistently state that adoption assistance is intended solely for the “special needs” of the child and not the “routine expenses associated with the raising of the child.”

Recommendation

1

Recommendation: The Colorado General Assembly and stakeholders should work together to revise C.R.S. 26-7-101 to 108, to incorporate relevant federal language to provide clear guidance for entities administering the adoption assistance program.

Recommendation

2

Recommendation: The CPO recommends the Colorado Department of Human Services’ Division of Child Welfare work with stakeholders to amend Volume VII to:

- a. Ensure Volume VII accurately reflects federal and state law regarding the adoption assistance program.
- b. Ensure county departments’ policies accurately interpret federal and Colorado legal standards regarding the adoption assistance program.

CDHS-DCW Response: AGREE “The Department agrees to work with stakeholders, county departments, and the State Board of Human Services to review and make modifications to the Code of Colorado Regulations to more clearly reflect federal and state law expectations regarding the adoption assistance program. The Department also agrees to ensure county departments’ policies accurately interpret federal and state standards regarding the adoption assistance program. The Department currently reviews specific adoption assistance cases, at a minimum, every 3-years. The Department will modify this process to include review of county departments’ policies.”

³³ ACYF-CB-PA-01-01 (U.S. Department of Health and Human Services) (1/23/01)

³⁴ C.R.S. 26-7-104(1)

The Operating Structure

INTRODUCTION

Inconsistent interpretation of federal regulations, combined with insufficient guidance from state law and rule, has essentially weakened the state's ability to create a strong framework for supporting county departments in administering the adoption assistance program. Colorado is, by design, a local-control state. Responsibility and authority for administering child welfare programs are largely dispersed to the 59 county departments. Understanding the unique needs of residents, and available resources in their community, enables these departments to provide tailored services to families and children. By law, county departments are entitled to the flexibility necessary to ensure their adoption assistance program is responsive to the needs of adoptive families in their areas. While ensuring departments maintain flexibility is crucial, it is equally important that every family in Colorado have equal opportunities to access services provided under the adoption assistance program.

The CPO has identified five areas of concern within the current operating structure:

1. Inconsistencies in policy and practice
2. Inconsistency in the assessment of a child's needs and the determination of subsidies
3. Lack of meaningful program evaluation and support
4. Lack of training and support
5. Inadequate and inconsistent information being provided to adoptive families

The CDHS develops statewide procedures, policies and regulations that create a framework for county departments to operate within, and to ensure compliance with law and rule.³⁵ These procedures, policies and regulations are not designed to limit or control the discretion of county departments. Rather, they should serve as framework to ensure adoptive families have equal opportunities to access services, and county departments have clear guidance and reliable support in administering such services. Currently, there is no required or standardized

training for county department staff who negotiate adoption subsidies with families.

INCONSISTENCIES IN POLICY AND PRACTICE

The current operating structure does not provide the necessary guidance or support that is needed to oversee this statewide program. This has resulted in outdated policies, inconsistent access to services and frustration on the part of families and stakeholders.

Specifically, the CPO found:

1. County departments use varying names to describe services and benefits available under the adoption assistance program. In some instances, these services also differ in content.
2. There are inconsistent practices and policies for conducting adoption assistance negotiations.

Types of Available Adoption Assistance

Volume VII states that county departments are authorized to offer the following types of adoption assistance agreements:

- **Long-Term Adoption Assistance**

Agreements - "... to partially meet a child's daily needs on an indefinite basis. A long-term agreement is made when the family's financial situation precludes adoption and is unlikely to change or when a child's needs take an excessive toll on the family's financial and emotional resources. This sort of monthly payment may continue until the family's or child's circumstances change, or the agreement terminates as outlined in Termination of Adoption Assistance, Section 7.306.59, of the Adoption Assistance agreement rules."³⁶

- **Time-Limited Adoption Assistance**

Agreements - "... to partially meet the everyday needs of the child for a specified period. These are start-up costs for those things that children placed for adoption do not always have, such as sufficient clothing. Agreement partially covers unmet needs that are time limited and non-renewable."³⁷

³⁵ Per information the CDHS provided the CPO on July 31, 2017.

³⁶ Volume VII 7.306.4(A)(3)(h)(1)

³⁷ Volume VII 7.306.4(A)(3)(h)(2)

- **Dormant or Medicaid Only Adoption Assistance Agreement** – *“... there is no adoption assistance payment provided at this time. County departments shall document special needs for the child in the services record and in the State Department’s automated system that the potential need for financial adoption assistance exists and may need to be activated at a future time.”*³⁸
- **Non-Recurring Adoption Expenses** – *“Reimbursement for the following non-recurring adoption expenses, not to exceed \$800 per child, is available to parents adopting children with special needs: (1) Legal fees (2) Adoption fees (3) Other expenses related to the legal adoption of the child(ren).”*³⁹
- **Case Services Payments** – *“Case services are a type of purchased program service that support a case plan for children in out-of-home placement or an adoption assistance agreement. Case services are provided to meet a child’s special needs identified when the child is placed for adoption and which are not covered by the adoption assistance or Medicaid assistance agreements.”*⁴⁰

County departments across the state use a variety of terms to describe these services. In addition to the titles stated above, here is a list of some of the different terms used to describe these services: “Maintenance,” “Provisional Services,” “Medical Subsidy,” “Professional Service Allowance,” “Private Insurance,” “Cash Assistance (lump sum and monthly cash payment),” “Deferred Agreement” and “Ongoing Financial.” The CPO recognizes that state-prescribed forms – which all adoptive families must sign – include a consistent list of services. However, many county department policies differ from information presented in these forms, and, often, families are not presented these forms until the day their adoption is finalized.

Similar categories of service not only vary in name, but vary in what services they provide to families. For example, Volume VII states that Non-Recurring Adoption Assistance Fees may not exceed \$800 per child and are available to cover legal and adoption fees, as well as other expenses. In administering this service, however, some county departments’ policies state that the department will not cover legal or adoption fees, such as filing fees or birth certificates. Other county departments state they will reimburse families for all of the above costs, as well as transportation costs for families completing their adoptions.

A second example of this issue is whether county departments consider respite and daycare as services available to families under the adoption assistance program. Families and stakeholders reported to the CPO that access to respite care may be vital in supporting adoptive families after finalization of their child’s adoption. Respite and daycare services may become a crucial service for a child whose needs change – including mental health or emotional disturbances – years after an adoption is finalized. The CPO found that 32 percent of the county department policies contained varying language about whether respite and day care services will be provided after an adoption is finalized. At least five departments indicated that respite care is not available under the adoption assistance program – contradicting the rule in Volume VII that states both respite and daycare services are available for children who qualify for a Title IV-E subsidy.⁴¹ The remaining county departments address respite and daycare services in their policies, however, they include various criteria for accessing these services. Some examples include:

“Respite – This is for time limited stays away from the home to help the family regroup. The reason for the respite must be directly related to the child’s special needs that were identified prior to the adoption... Day Care – This is only available for IV-E eligible children.

³⁸ Volume VII 7.306.4(A)(3)(h)(3)

³⁹ Volume VII 7.306.53

⁴⁰ Volume VII 7.306.52

⁴¹ Volume VII 7.306.52(D)(1) and Volume VII 7.306.52(D)(2)

Families will be referred for day care services through Title XX.”

“Respite care may be available for critical or urgent needs and the Department may request that the family and/or child be in therapy in order to access respite care.”

Families who worked with multiple county departments to complete adoption assistance agreements for their children, expressed frustration with the various descriptions of services and the lack of consistency between county departments.

Negotiation Practices

The amount of an adoption subsidy or services that a family receives is subject to bargaining between the adoptive family and the county department. National debate has consistently centered on whether negotiations represent the most equitable way for families to access subsidies and services.⁴²

This national debate is mirrored in negotiation practices in county departments across Colorado. Families reported two main areas of frustration with the negotiation process. The first centered on who is allowed to participate in and support the family through the negotiation process (also described as the “subsidy meeting”). For example, some county departments welcome anyone to the negotiation meeting the family wants present. Others do not allow a family’s attorney, guardians ad litem⁴³ or other professionals, such as CPA employees, according to stakeholders and the surveys submitted to the CPO.

Second, families are not provided consistent information about what to expect during negotiations and, as a result, reported feeling confused and unprepared to advocate for their children. One issue families repeatedly brought to the CPO’s attention was the dramatic decrease in the

monthly assistance rates children receive while in foster care compared to adoption.⁴⁴ The majority of county department polices accurately reflect the federal standard that the child’s adoption subsidy cannot exceed the monthly rate the family received while the child was in foster care. However, some families reported to the CPO that while they understood that was the case, they did not anticipate and were not prepared for the rate to dramatically decrease or to be eliminated completely.

According to the county department surveys and family accounts, several county departments prepare an initial offer for families. In such instances, these offers are communicated to families through email, the U.S. Postal Service or are presented first thing at the negotiation meeting. These offers often cause alarm among families, who had expected all the negotiations to take place at the meeting with the county department. Many families also told the CPO that they expected the negotiations to begin at the amount of the child’s foster care rate and work down. Several families expressed frustration when the county departments presented an initial subsidy offer that was half of the child’s foster care rate or, in several cases, a Medicaid Only subsidy.

Financial data provided by the CDHS indicates that during 2016, the average adoption subsidy amount awarded to children was an estimated 56 percent lower than the average foster care rate children received during the same year.

Additionally, both families and county departments described the uncomfortable position adoption assistance negotiations place them in. The two parties, who spend months working together to ensure the well-being and permanency of a child, can find themselves in conflicting positions when determining adoption subsidies and services.

⁴² Mary Eschelbach Hansen et al., Unintended Consequences of Bargaining for Adoption Assistance Payments, FAMILY COURT REVIEW, Vol. 43, No. 3, July 2005 494-510.

⁴³ In Colorado, a guardian ad litem is an attorney who provides best interest legal representation for children in dependency and neglect proceedings.

⁴⁴ Foster parents receive a monthly reimbursement to offset the cost of providing, food, shelter, clothing and other related expenses.

Recommendation

3

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare develop uniform descriptions of the types of services and subsidies offered under the adoption assistance programs to be used by county departments in their policies.

CDHS-DCW Response: AGREE "The Department agrees to develop uniform descriptions of the types of services and assistance offered under the adoption assistance program to be used by county departments in their policies. The Department will update the "Colorado Adoption Assistance Guide" to include, but not limited to, the following descriptions: Long-Term, Time-Limited, Dormant (Medicaid only), Non-Recurring Funds, and Case Services."

Recommendation

4

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare develop uniform guidance and/or rules to help guide practices during negotiations. The uniform guidance and/or rules should include the following elements:

- a. An explanation of the difference between the benefits and monthly subsidy rates available when the child is in foster care, compared to the benefits and rates available after the child is adopted.
- b. Clear guidance regarding who is allowed to participate in adoption assistance negotiations with county departments.
- c. An explanation of how county departments determine and communicate initial subsidy offers during adoption assistance negotiations.
- d. A "script" county departments and families may use as a resource during adoption assistance negotiations. This "script" will detail eligibility factors, the purpose of the subsidy, what issues will be discussed, services available, the role of Medicaid and future review and possible re-determination of subsidy amounts.

CDHS-DCW Response: AGREE "The Department agrees to Recommendation No. 4. The Department agrees to develop uniform guidance to improve consistency in practices during adoption assistance negotiations. The guidance and/or rules will support adoptive parents and county departments in the negotiation process. This guidance and/or rules will include:

- a. An explanation of the difference between the benefits and monthly assistance rates available when the child is in foster care, compared to the benefits and rates available after the child is adopted;
- b. Clear guidance regarding who is allowed to participate in adoption assistance negotiations with county departments;
- c. Examples of how county departments determine and communicate initial subsidy offers during adoption assistance negotiations; and

d. Examples of “scripts” county departments and families may use during adoption assistance negotiations. This “script” will detail eligibility factors, the purpose of the subsidy, what issues will be discussed, services available, future review and possible re-determination of subsidy amounts.

In Colorado’s state supervised/county administered child welfare system, county departments maintain the statutory authority to negotiate both foster care rates and adoption assistance. As stated in the response to Recommendation No. 2, the Department will incorporate a review of the county departments’ policies, including the county departments’ methodology for determining rates. Likewise, policy making in Colorado’s state supervised/county administered child welfare system is a collaborative process between the Department, stakeholders, county departments, and the State Board of Human Services. Due to this collaborative process, the Department is willing to commit to provide guidance, but cannot guarantee specific rule promulgation. The Department agrees to work with stakeholder, county departments, and the State Board of Human Services to determine if rule promulgation is needed to implement the recommended guidance.

The role of Adoption Medicaid will need to be addressed with the Colorado Department of Health Care Policy and Financing.”

INCONSISTENCY IN THE ASSESSMENT OF A CHILD’S NEEDS AND THE DETERMINATION OF SUBSIDIES

Under Volume VII, a child qualifies as having a special need if one or more of the following nine factors act as a barrier to their adoption: physical disability, mental disability, developmental disability, educational disability, emotional disturbance, high risk children (such as HIV-positive, drug-exposed or alcohol exposed in utero), ethnic background or other conditions such as a child over the age of seven, a sibling group that should remain intact or a medical condition likely to require further treatment.⁴⁵

County departments use a wide variety of methods for determining how a child’s needs correlate to an appropriate subsidy or service. Currently, there is not enough information available about these methods to determine whether one is more effective in determining subsidies and services that will support the long-term well-being and stability of a child.

The CPO identified two areas of concern regarding how county departments identify a child’s need for subsidies and services:

1. Inconsistency in the methods used to set a maximum subsidy amount and lack of explanation for how these amounts are determined.
2. Inconsistency in the use of assessment tools to determine a child’s needs.

Maximum Subsidy Rates

County departments determine the maximum subsidy rates available under their programs. However, there are inconsistencies among county departments in how these rates are set. The CPO found that county departments use one of three methods to determine the maximum monthly subsidy payment available to families:

1. A department-wide cap is established without considering the individual child’s needs or “family’s circumstances.”
2. Maximum amounts are created for different categories of children. These categories vary between county departments and may include criteria such as a child’s age or level of care.
3. County departments directly cite the federal standard that an adoption subsidy may not exceed the amount the child was receiving, or would have received, while in foster care.⁴⁶

Colorado law allows county departments to set maximum subsidy rates. Additionally, Volume VII states that each county department shall establish a maximum subsidy amount. That rule, however, provides no guidance for how that maximum should be determined. The rule states:

“The county shall establish a maximum amount that could be provided to a family. The amount shall be no more than the rate that is

⁴⁵ Volume VII 7.306.4(A)(3)(d)

⁴⁶ Volume VII 7.306.41(E)(7)

*being paid for the child's current out-of-home care or that would have been paid if the child were in paid out-of-home care today."*⁴⁷

This requirement of county departments has resulted in families feeling discouraged when they learn that their child's monthly adoption subsidy rate will be limited by a predetermined maximum amount before the subsidy negotiation takes place. For many families, these predetermined amounts were substantially less than the rate their child was receiving while in foster care.

Families were also concerned when some county departments awarded adoption subsidies based on categorical assignments. These categories outline the maximum subsidy a child may receive. A review of the county departments' policies found that there are predominately three types of categories currently in use:

- **Age Brackets:** More than half of county departments surveyed use Age Brackets to establish their maximum subsidy amounts. For example, one county department has a maximum subsidy rate for children ages 0 to 10, a maximum rate for children 11 to 15 and a maximum subsidy rate for children 15 to 18. Typically, the maximums are higher for the children in older age brackets. Maximum amounts for the same age groups vary by as much as \$100 between county departments of similar size.
- **Needs Based Brackets:** Needs Based Brackets are used by four county departments. For example, one county department has a maximum subsidy amount for children who fall in "Level One," a maximum subsidy rate for children who fall in "Level Two" and a maximum rate for children who fall in "Level Three." In some instances, amounts for the same level vary by more than \$500 between county departments of similar size.
- **Difficulty of Care Brackets:** Difficulty of Care brackets are used by two county departments. Levels are used in these brackets similar to the way levels are

used in the Needs Based Brackets. Amounts for the same level vary by as much as \$400 in county departments of similar size.

The CPO was not provided explanations about why a type of bracket was used by a county department or what analysis was used to determine the maximum amounts that were assigned to each category within the brackets.

Assessment Tools

In determining a child's needs, county departments' practices generally fell within one of two categories, a study of the county department policies found. Some counties use assessment tools to determine a child's special needs. Other county departments did not use any tools and rely solely on a narrative history from the adoptive family and others familiar with the child. Almost all county departments required outside documentation, such as statements from physicians and mental health providers.

Sixteen county departments indicated they use some form of an assessment tool to determine a child's needs. Similar to the service types, the names and content of the assessment tools varied between county departments. Three types of assessment tools were submitted to the CPO: Needs Based Assessment, Difficulty of Care Assessment and Level of Care Assessment.

Some families said they were left questioning whether these tools adequately captured their child's immediate and long-term needs. In turn, families who worked with county departments that do not utilize assessment tools reported feeling concerned that there was not a more measured approach to considering their child's needs.

There is no analysis being performed to determine which assessment tools are the most effective method for measuring the needs of a specific child. As such, it is unclear whether the adoption assistance program is providing the services and benefits most likely to ensure adoptive children's long-term health and stability.

⁴⁷ Volume VII 7.306.41(E)(7)

Recommendation

5

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare study and evaluate the use of predetermined maximum subsidy amounts in Colorado using existing department resources. This study should include:

- a. Whether the setting of predetermined maximum subsidy amounts is consistent with the original intent of the federal adoption assistance program, which is designed to encourage the adoption of special needs children from the child welfare system. The results of this study should be made public and reported to the General Assembly.

CDHS-DCW Response: AGREE "The Department agrees to Recommendation No. 5. The Department agrees to explore with stakeholders and county departments the use of predetermined maximum adoption assistance amounts in Colorado. The Department will commit existing resources to explore how Colorado may implement a predetermined maximum adoption assistance amount and if the interpretation of this implementation is consistent with the original intent of the federal adoption assistance program to encourage the adoption of special needs children from the child welfare system. The findings of this exploration will be made public and reported to the General Assembly through the Department's annual SMART Act hearing."

Recommendation

6

Recommendation: The CPO recommends that if predetermined maximum subsidy amounts prove to be best practice, then the Colorado Department of Human Services' Division of Child Welfare should use existing department resources to study:

- a. Which method for setting predetermined maximum subsidy amounts best ensures that subsidy amounts support the long-term well-being and stability of adoptive children. The results of this study should be made public and reported to the General Assembly.

CDHS-DCW Response: AGREE "The Department agrees to Recommendation No. 6. As stated in the response to Recommendation No. 5, the Department agrees to explore with stakeholders and county departments maximum adoption assistance amounts. The Department will commit existing resources to explore what methodology best ensures adoption assistance amounts support the long-term well-being and stability of adoptive children. Should the Department determine setting maximum adoption assistance amounts is in the best interest for Colorado's adoption children, youth, and families, the Department will work with stakeholders, county departments, and the Child Welfare Allocation Committee to determine an appropriate methodology. The agreed upon methodology will be made public and reported to the General Assembly through the Department's annual SMART Act hearing."

LACK OF MEANINGFUL PROGRAM EVALUATION AND SUPPORT

The ability to support how county departments administer adoption assistance – and ultimately improve the outcomes for adoptive families – is currently stunted by insufficient analysis and evaluation. Currently, the CDHS employs one person who is responsible for monitoring and analyzing the adoption assistance program, as well as, providing technical support and other guidance to 59 county departments. This person is also responsible for ensuring children adopted through private, non-profit child placement agencies have access to services and benefits. The CPO's independent analysis of the adoption assistance program mimics analysis completed by the state auditor's office 15 years ago. The disparities identified by the CPO and the state auditor demonstrate why more meaningful evaluation of the adoption assistance program is needed to improve outcomes for families and children.

CPO Analysis of Adoption Assistance Benefits

There is a disparity among county departments in the percentage of Dormant or Medicaid Only subsidies awarded to families, compared to the percent of families that receive monthly adoption subsidies.⁴⁸ For example, two county departments of similar size finalized almost the same number of adoption assistance agreements during 2016, according to data from the CDHS. Of those agreements, one county department provided monthly adoption subsidies in 12 percent of its cases, while the other county department provided monthly adoption subsidies in 83 percent of its cases. In this instance, the data demonstrates that a family residing in one county was four times more likely to receive cash assistance, compared to a family living in a similarly situated county.

Additional analysis of the data showed:

- Among county departments that finalized 20 or more adoption assistance

agreements in 2016, the total number of Medicaid Only or Dormant subsidies ranged from 1 to 88 percent of the department's total subsidies.

- Among county departments that finalized 10 to 19 adoption assistance agreements in 2016, the total number of the Medicaid Only or Dormant subsidies ranged from 9 to 50 percent of the department's total subsidies.
- Among county departments that finalized one to nine adoption assistance agreements in 2016, the total number of Medicaid Only or Dormant subsidies ranged from 0 to 100 percent of the department's total subsidies.

While this analysis provides a picture of the various subsidies and services distributed by county departments, it does not provide any insight on whether these subsidies and services are beneficial or harmful in promoting successful adoptions in Colorado. This shortfall was previously identified 15 years ago, in the state auditor's report.

The performance audit found:

*"Currently, Division staff [CDHS] do not collect or review adoption subsidy rates set by all counties. We believe the Division should monitor adoption subsidy rates periodically to determine how these rates affect the Program as a whole. By doing this, Division staff may identify and work with counties to address potential problems with the varied rates set throughout the State. Additionally, the Division should report its monitoring results to the General Assembly on an annual basis."*⁴⁹

The state auditor issued the following recommendation:

*"The Division of Child Welfare Services should establish procedures to collect and review rate information on an annual basis to determine how rates set by all counties affect the Subsidized Adoption Program."*⁵⁰

⁴⁸ According to data provided by the CDHS.

⁴⁹ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Page 52)

⁵⁰ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Recommendation 10)

The CDHS partially agreed with the recommendation and provided the following response:

“The Department will meet with county representatives to develop a survey to collect and review subsidy rates on an annual basis to determine whether rates affect the Subsidized Adoption Program. The results of this survey will be presented to the Senate Health, Environment, Children and Families Committee and the House Health, Environment, Welfare and Institutions Committee.”⁵¹

Since 2003, an annual memorandum has been completed and shared with all county departments. The memo includes a spread sheet that details the number of adoptions that were finalized in each county, the average assistance payment in that county, the number of Medicaid Only agreements in that county and other statistics. The data is a summary of the past fiscal year. More recent memos include a paragraph which summarizes the data and offers some comparisons to the previous fiscal years. (The most recent memo is available in Appendix C.)

The CPO reviewed eight available memos.⁵² As they currently exist, the memos are not fulfilling the two points of analysis recommended in the 2002 report by the state auditor. In addition to collecting rate information, the recommendation also suggested the data be used to “determine how rates set by all counties affect the Subsidized Adoption Program.” These memos provide no analysis correlating how the rates awarded by county departments affect the adoptions assistance program as a whole.

Improved and increased analysis of adoption subsidies and services awarded by county departments, as well as the practices and policies that determine those amounts and services, will be necessary to determine how various adoption subsidies and services

help support families and correlate with successful adoptions in the state.

CDHS Monitoring of the Adoption Assistance Program

Currently, the only requirement that the CDHS review county departments’ adoption assistance programs is written in Volume VII. The 2002 State Auditor’s Subsidized Adoption Program performance audit, identified several service areas – including many of the areas outlined in this report – that were inconsistent between county departments. According to the CDHS, the results of the audit led to the creation of the State Monitoring/Sanction Process of Adoption Assistance Programs in Counties in 2012.⁵³

While the intent of the monitoring program was to address inconsistencies and compliance concerns, neither the rules dictating the monitoring program, nor the current method of reviewing county departments, accomplish this goal. The current method for reviewing county departments is primarily focused on compliance with federal law. The monitoring program does not effectively review practices employed by county departments and the outcomes those practices have for adoptive children.

The CPO found four areas of the monitoring program that prevent it from serving as an effective tool:

1. The review does not include consistent and meaningful review of county departments’ administration of the program.
2. The review does not seek nor incorporate the experiences of adoptive families.
3. County departments may go as long as three years without a review.
4. Currently, the CDHS does not follow up with county departments to ensure all recommendations issued as part of these reviews are adhered to, according to CDHS staff.

⁵¹ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Page 53)

⁵² CDHS provided the CPO annual memos for fiscal years 2003, 2009, 2010, 2011, 2012, 2013, 2014 and 2015.

⁵³ Per information the CDHS provided to the CPO on July 31, 2017.

Under Volume VII, the CDHS is required to randomly select cases from county departments' adoption assistance caseload.⁵⁴ A monitoring instrument is used to assess whether the handling of those cases was compliant with rule and law. The monitoring instrument is comprised of 14 categories and 77 points of inquiry. These include questions regarding the child's foster care placement and eligibility for adoption assistance. If the cases reviewed result in a passing score – 70 percent compliance with law and rules – the county department will then be reviewed again in three years.⁵⁵

A county department that fails any review, will be reviewed the following year and *“offered technical assistance based on the issues identified during the review and will be required to develop a corrective action plan.”*⁵⁶ The CDHS will also have continued contact with departments between reviews.⁵⁷ To date, the CDHS does not have a record of any county department failing all three reviews during a three-year cycle. This monitoring tool does not provide an effective analysis for determining how services are administered to families. For example, this tool does not address how county departments consider the “family's circumstances” and the “child's needs” in determining the appropriate service or subsidy amount. Additionally, the CDHS review relies solely on documentation and conversations with county departments,

according to the CDHS. The reviews do not include conversations with adoptive families to determine whether they were provided an adequate explanation of the benefits available under the adoption assistance program.

The CDHS provided the CPO with 22 letters issued in 2016, informing county departments about whether they passed their review. Six of those letters did not address the county departments' policies for administering the program. Currently, there is no standardized tool for evaluating county human service departments' policies.

In instances in which the review resulted in recommendations to amend policies, there was inconsistent compliance by county departments and no additional follow up by CDHS.⁵⁹ This trend presents a unique concern for county departments that pass their review, but are also offered recommendations for improvement. In such instances, a county department will not be reviewed again for three years and whatever practice or policy noted by the CDHS may be allowed to continue. Without a more impactful and detailed method for assessing how departments are administering adoption assistance services and subsidies to families, the CDHS does not have the necessary information to determine whether families are receiving equal access to services between county departments.

⁵⁴ Volume VII 7.306.43(A)

⁵⁵ Volume VII 7.306.43(B)(1)

⁵⁶ Volume VII 7.306.43(D)

⁵⁷ Per information the CDHS provided to the CPO on July 31, 2017.

⁵⁸ Per information the CDHS provided to the CPO on July 31, 2017.

⁵⁹ According to information provided by the CDHS during an interview on October 19, 2017.

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare improve the monitoring program so it may provide more impactful direction to county departments. To do this, CDHS-DCW should:

- a. Include the perspective of adoptive families in the monitoring program.
- b. Deepen the program's analysis of **how** adoptive parents experience the adoption assistance program and **how** services and subsidies provided to children impact their long-term well-being and stability.
- c. Consider obtaining additional staff for the purpose of completing more substantive and consistent review of county departments' adoption assistance programs.

CDHS-DCW Response: PARTIALLY AGREE "The Department partially agrees to Recommendation No. 7. The Department agrees to modify the review of county departments' adoption assistance programs to include how the county departments include the perspective of adoptive families, how the county departments consider the adoptive parents' experiences, and how the county departments' efforts potentially impact to the adoptive child(ren)'s long-term well-being and stability. The inclusion of these perspectives is within the scope of the county departments' process. As the supervising/monitoring entity for county practice, the Department does not provide any direct services to adoptive families. The Department agrees to submit a request for additional funding to support additional FTEs to complete more robust reviews of county departments' adoption assistance programs. The Department cannot commit to obtaining additional staff if funding is not available or the State of Colorado does not provide the funding to do so."

TRAINING AND GUIDANCE

The complexity of the negotiation process is most felt by county department staff who are required to carry out legally binding negotiations without being provided adequate training on the legal implications of the adoption assistance program. As stated earlier in this section, there is no required or standardized training at the state level for county department staff who negotiate adoption subsidies with families. The CDHS holds voluntary, quarterly meetings around the state to provide updates concerning the adoption assistance program, as well as to discuss any issues identified by the county departments. Technical support is available as needed.⁶⁰

At the direction of the CDHS, the CPO reviewed the continuing education classes available to county department employees. None of the classes available to employees address the adoption assistance program specifically, including families' rights under the program, nor any information regarding how to negotiate subsidies or provide appropriate services to families. There is no required curriculum for county department staff to complete before negotiating adoption subsidies.

Currently, the same CDHS staff member responsible for monitoring the program is also charged with providing voluntary training and technical support for

⁶⁰ Per information the CDHS provided to the CPO on July 31, 2017.

all 59 county departments. Families and stakeholders – including county departments and non-profit child placement agencies – conveyed frustration with the lack of guidance and support they receive in administering the adoption assistance program. The majority of county

human service directors that spoke with the CPO indicated they would appreciate an increase in guidance concerning the negotiation process. Similar sentiments were expressed by county departments featured in the 2002 audit.⁶¹

Recommendation

8

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare create training opportunities at the Colorado Child Welfare Training Academy, at each regional center, as well as on-site training opportunities in rural communities to ensure all relevant county department staff have equal access to training regarding the adoption assistance program. Any training curriculum should specifically address:

- a. The law and rules guiding the adoption assistance program.
- b. Access to adoption-informed training to ensure that children and families are receiving the services that are most appropriate for their needs.

CDHS-DCW Response: PARTIALLY AGREE "The Department partially agrees to Recommendation No. 8. The Department agrees to assess existing adoption services training through the Child Welfare Training Academy. The Department is not able to commit to the specific list of approaches if it is not assessed to be the most efficient and effective route to meeting the needs of county department staff. Based on this assessment, the Department will modify existing training, create new training opportunities, and ensure onsite technical assistance methods to best meet the diverse needs of county department staff. The Department will ensure incorporation of federal legislation, state statute and rule, and best practice expectations into the modified/enhanced/created training and technical assistance opportunities."

INADEQUATE AND INCONSISTENT INFORMATION BEING PROVIDED TO ADOPTIVE FAMILIES

How families are notified about the adoption assistance program, and what information is provided, varies greatly across the state, according to a review of county department policies and survey responses. Adoptive families across the state said information about the program is not easily accessible. Many families expressed concern that the lack of information places them in a position where

they are not able to properly advocate for their children. Additionally, there is currently no central information portal that provides the public and adoptive families complete and clear information about Colorado's adoption assistance program.

Stakeholders told the CPO, that when families are not provided clear or consistent information, many turn to online support groups or chat rooms. Often, the information provided to families in these forums is

⁶¹ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Page 57)

not accurate and causes families to enter negotiations with an unfavorable impression of the county department.

Inconsistent Information Provided to Adoptive Families

Of the county departments that responded to the CPO's survey, roughly a quarter of them said they provide families written information about the adoption assistance program. The materials provided to families vary in depth. Some information packets include language pulled directly from Volume VII or state-mandated forms. On the other end of the spectrum, some county departments provide families with information handbooks. These handbooks contain an extensive amount of material, including a statement explaining the negotiation process, information on tax credits available to the family, resource referral lists for post-adoption support and guidelines on the legal process for adopting a child. Several departments that provide handbooks appeared to use different versions of the same document. When the CPO inquired about the document's origins, the CDHS stated an adoption guidebook for families existed at one time. That guidebook was last revised in 2014, but is no longer distributed by the CDHS.⁶²

With few resources available to them, families expressed a desire for more relatable

materials and guidance outside of the county department they are negotiating with.

Additionally, the majority of county departments submitted state-mandated forms used to administer the adoption assistance program. An analysis of the forms revealed some county departments are using versions of the forms that are almost two decades old. Other county departments use versions that have been updated as recently as 2015.

Lack of Central Information

There is a lack of public information at the state and county level concerning the adoption assistance program. Information regarding the program's benefits and services mandated under federal law, state law and Volume VII are not easily obtainable by the public or families. Currently, there is no central location on the CDHS' website nor the county departments' websites that clearly lists families' rights and requirements of the adoption assistance program. There is no comprehensive list of all county department's written policies. At the time of the writing of this report, 34 county department policies were posted on the CDHS' website. Of those 34 policies, 16 were outdated.⁶³ Currently, the main adoption page of the CDHS' website does not contain meaningful or complete information about the adoption assistance program.

Recommendation

9

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare should complete an inventory of state-prescribed forms and ensure county departments are provided the most up-to-date forms.

CDHS-DCW Response: AGREE "The Department agrees to complete an inventory of state-prescribed forms, and ensure county departments have improved access to and are utilizing the most up-to-date forms."

⁶² Per information the CDHS provided in the CPO on July 31, 2017 in response to inquiry.

⁶³ These 16 policies include effective dates that differed from the more recently revised policies that were submitted to the CPO.

Recommendation: Create an easily accessible portal on its website that contains information about the adoption assistance program. This portal should include:

- a. The most recent versions of all county departments' policies regarding their adoption assistance program.
- b. Information about the adoption assistance program, including eligibility, details about the services and benefits available under the program, the duration of these services and benefits and children and families' rights.
- c. Direct access to Colorado Revised Statute and Volume VII regarding adoption assistance.
- d. Information on the availability of reimbursement for non-recurring expenses.
- e. Information on the availability of mental health services.
- f. Information on the availability of the federal adoption tax credit.
- g. Revise and post the adoption assistance handbook, which should be updated annually.
- h. Contact information for the Adoption Program and Colorado ICAMA Administrator should be available on the same page as information about the adoption assistance program.

CDHS-DCW Response: AGREE "The Department agrees to create an easily accessible page on its website containing information on the adoption assistance program. The adoption assistance program-specific page will include:

- a. The most recent versions of all county departments' policies regarding their adoption assistance program;
- b. Information about the adoption assistance program, including eligibility, details about the services and benefits available under the program, the duration of these services and benefits and children and families' rights;
- c. Direct access to Colorado Revised Statute and Code of Colorado Regulations regarding adoption assistance;
- d. Information on the availability of reimbursement for non-recurring expenses;
- e. Information on the availability of mental/behavioral health services;
- f. Information on the availability of the federal adoption tax credit;
- g. Direct access to the annually reviewed adoption assistance handbook; and
- h. Contact information for the Adoption Program and Colorado ICAMA Administrator."

The Funding

INTRODUCTION

The high costs of providing for adoptive children's complex needs, the duration of the subsidies and the unforeseen expenses for adopted children make the adoption assistance program a unique element of county departments' budgets. The current mechanisms dictating how funds are distributed for the adoption assistance program are insufficient. Similar to other areas of the adoption assistance program, additional research is needed to determine how to better provide funding for the adoption assistance program to ensure subsidies and services promote strong outcomes for children and families.

Specifically, the CPO found:

1. The formula used to distribute funds to county departments is insufficient in capturing the needs of the children and families receiving benefits under the program.
2. Current funding mechanisms inadvertently restrict the expansion of the adoption assistance program as they force county departments to balance the needs of adoptive children against the other areas of their child welfare programs.
3. Additional study is needed to consider alternative methods of funding the adoption assistance program.

FUNDING THE ADOPTION ASSISTANCE PROGRAM

Colorado's adoption assistance program is funded with federal, state and county dollars. These funds are used by county departments to administer the two available forms of adoption assistance in Colorado.

The first is a Title IV-E subsidy.⁶⁴ Under this program, the federal government pays 50 percent of the subsidy, with the remainder

paid for by the state (30 percent) and the county department (20 percent). To be eligible, children must meet specific financial and categorical criteria.

The second subsidy program is a Non-Title IV-E Subsidy. This is a state subsidy program for children who are not eligible for a federal subsidy. In this instance subsidies are paid for with state and county funding – the state contributes 80 percent and the county department contributes 20 percent.

Children may be eligible for one but not both subsidy programs. Under federal law, the amount a child receives as an adoption subsidy may not exceed the amount the child was receiving – or would have received – as a monthly foster care subsidy.⁶⁵

INSUFFICIENT FORMULA

Funds for the adoption assistance program are included in the Child Welfare Block Grant (the block grant.) The CDHS' Child Welfare Allocation Committee (CWAC) is required by statute to determine how the block grant funds will be allocated to all county departments. The CWAC has created an allocation formula that uses a set of variables to determine how much each county department receives for their child welfare programs. The formula is dynamic and the CWAC continually reviews the ethics and effectiveness of the formula. Once the block grant has been distributed, state law ensures county departments have flexibility in spending the child welfare funds. There is no function in the formula that protects or restricts funds for adoption subsidies.⁶⁶

At the time of the writing of this report, the allocation formula for determining county departments' block grants include two variables that represent costs associated with the adoption assistance program.⁶⁷ The two variables are:

⁶⁴ The statutory provisions governing adoption assistance program are in Title IV-E of the Social Security Act, and are commonly referred to as Title IV-E subsidy.

⁶⁵ 42 U.S.C. 673(3)

⁶⁶ Colorado Office of Performance and Strategic Outcomes, Division of Budget and Policy: June 28, 2016, Operational Memo, State Fiscal Year 2016-2017 Preliminary County Allocations

⁶⁷ House Bill 17-1052, which was signed in March 2017. This modified criteria that must be considered in setting the allocation formula. It has not yet been determined whether this change will impact how funds are distributed for the adoption assistance program.

- Average daily subsidy payment. This variable is determined by calculating the county department's average daily adoption subsidy (cash payment) during the three most recent fiscal years.
- Average number of new adoptions. This variable is determined by calculating the average number of adoptions completed each year for the three most recent fiscal years.

The first variable – average subsidy payments – does not adequately capture the total expense county departments incur in administering their adoption assistance payments. The current formula does not account for required benefits the county departments provide adoptive families, outside of monthly adoption subsidies. These benefits include case services and other expenses county departments may incur throughout the life of the adoption assistance agreement. Some examples of these expenses are medication, special therapies such as speech, occupational and physical therapies, as well as other services that are otherwise not provided for in the community or through Medicaid.⁶⁸

In similar fashion, the second variable – average number of new adoptions – does not adequately capture the population in need of or receiving adoption assistance. Finalized adoptions fluctuate substantially year-to-year in counties of all sizes. For example, during the past three fiscal years, nine county departments finalized 20 or more adoptions each year, according to CDHS data. One of the nine county departments saw a 26 percent decrease in the number of finalized adoptions between fiscal year 2015 and fiscal year 2016, while a different county department saw a 115 percent increase during the same time period, CDHS data showed.

During the past fiscal year, three of the nine counties mentioned above reported to the CPO that monthly adoption subsidies accounted for 12, 17 and 25 percent of their annual block grant.

RESTRICTIVE MECHANISMS

The current formula forces county departments

to weigh the immediate needs of children experiencing abuse or neglect, against the needs of a considerably smaller population of children whose immediate safety is less of a concern, but whose long-term needs are often expansive. The cost of providing a subsidy for a child being adopted is an expense that may last almost two decades. Continuing to distribute funds for adoption assistance through the block grant, provides county departments with little opportunity or ability to expand their programs.

PREVIOUS RESEARCH

Colorado's adoption assistance funding mechanisms have been previously studied. The constricting nature of the current funding mechanism has previously been identified as a barrier to the expansion of the adoption assistance program. In 2012, the CDHS coordinated with the Annie E. Casey Foundation (AECF) to examine funding structures at the county and state level. Specifically, the AECF was tasked with studying the funding structure of out-of-home placements in Colorado. The AECF produced four recommendations, one specifically addressing the funding mechanisms for the adoption and guardianship subsidy programs. (A complete copy of the recommendations may be found in Appendix D.)

The recommendation for adoption and guardianship subsidies centered on two substantial changes to the program's structure. The AECF recommended that the CDHS:

1. Reduce county departments' share of guardianship and adoption subsidies from 20 percent to zero.
2. Any future subsidies awarded by county departments should be financed by funds outside of the child welfare allocation block. Meaning, the funds should be housed in a location where county departments are ensured they will be protected for the use of funding the adoption assistance program.

The AECF found that, "... forcing the cost of those cases to be absorbed by a County within the constraints of a fixed allocation impeded

⁶⁸ Volume VII 7.306.52

the growth of adoption and guardianship cases, and, in turn, also constrains better permanency outcomes for children.”⁶⁹

The AECF went on to say that maintaining adoption and guardianship funds at the county level, “... will, overtime, discourage a County from growing its subsidy caseload

because that cost of doing so will increasingly consume ‘fiscal space’ within the annual allocation – crowding out other costs.”⁷⁰

The AECF’s recommendations were not implemented.

Recommendation

11

Recommendation: The CPO recommends the Colorado Department of Human Services’ Division of Child Welfare track the total expenditures – including the cost of monthly subsidies and other services – at the state and county level for administering the adoption assistance program. It is vital to understand the total expense of administering the adoption assistance program to determine what gaps or opportunities exist for improving the long-term well-being and stability of children through service delivery.

CDHS-DCW Response: AGREE “The Department agrees to track the total adoption assistance expenditures, including the cost of monthly assistance and other services, at the county department and state aggregate levels.”

Recommendation

12

Recommendation: The CPO recommends the Colorado Department of Human Services’ Division of Child Welfare use existing resources to study alternative methods of funding the adoption assistance program. The goal of this study should be:

- a. To decrease the variance of subsidy benefits across county departments.
- b. To explore alternative mechanisms that will enhance county departments’ ability to support adoptive children and their families.

CDHS-DCW Response: AGREE “The Department agrees with Recommendation No. 12. The Department will commit existing resources to explore with stakeholders and county departments how Colorado may fund adoption assistance programs. Should the Department determine alternative methods of funding are beneficial to Colorado’s adoptive children, youth, and families, the Department will work with stakeholders, county departments, and the Child Welfare Allocations Committee to determine an appropriate methodology.”

⁶⁹ Annie E. Casey Memorandum to the Colorado Department of Human Services, Recommended Changes to the CDHS/ County Fiscal Relationship, 2012.

⁷⁰ Annie E. Casey Memorandum to the Colorado Department of Human Services, Recommended Changes to the CDHS/ County Fiscal Relationship, 2012.

The Services

INTRODUCTION

Adoption is often viewed as a “happy ending” for children who come from abusive or neglectful backgrounds. However, research on special needs adoptions and the impact of trauma on child development shows that adoption cannot erase the impact of early childhood experiences. In fact, intensive, professional help is often required to help both the child and the parent form and maintain a trusting relationship. Accessing this help – often referred to as “post-adoption services” – months or years after adoptions are finalized can be extremely difficult, according to families, county departments and non-profit agencies.

The CPO found two primary obstacles that affect families’ ability to access post-adoption services:

1. How a child’s future needs are determined during the adoption assistance negotiations. There are minimal centralized, statewide resources for families seeking post-adoption services.
2. Difficulty accessing adoption-informed providers who accept Medicaid.

The needs of adopted children and their families vary significantly across a continuum of child and family functioning. One of the most important services that is needed by families who adopt from the child welfare system is appropriate ongoing care to meet the high physical and mental health needs of their children. It is well documented that children in foster care have significant health care needs, including physical, dental and behavioral health problems. Several behavioral health problems are common for this population because of the trauma associated with the abuse and/or neglect, as well as removal from their homes. As such, comprehensive and coordinated health care is critical to their health, well-being and long-term outcomes.

In Colorado, there is no one place that families can access the post-adoption support and

services they need. While the child welfare system provides some support, this system is not designed for ongoing care or support of adoptive families. This is in large part because the primary mission of the child welfare system is prevention and detection of child abuse and neglect, not post-adoptive supports which require professionals with adoption competent experience and training. Many stakeholders believe that families should be able to access community support, without having to access the child welfare system.

Nationally, the lack of post-adoption services is related to a narrow view of the adoption process. Adoption is often viewed as a “single point in time rather than a lifelong process.”⁷¹ The child welfare system in Colorado, like other states, expends a significant amount of resources on the front end of the process, such as the recruitment of adoptive parents. Equally important, however, is the need to develop resources that promote the long-term success of these relationships, which are inherently complex.

The age at which adoptive children present the highest need for services is not currently being tracked statewide. When post-adoption services are available there is no statewide evaluation of which services are most impactful in promoting the well-being of the child and the stability of the family. Additionally, existing tracking mechanisms in Colorado do not fully capture the number of disrupted adoptions, or provide meaningful analysis regarding why they disrupt and the impact the adoption subsidy or services had on the family.⁷² Without this data, the CDHS and county departments will not be able to measure the effectiveness of existing adoption assistance or determine what supports are needed.

These omissions in research were recognized in the 2002 state auditor’s report, which ultimately recommended the CDHS “implement a process to collect, evaluate and report data on dissolutions and out-of-home placements of adopted children.”⁷³

⁷¹ Adoption in America Today, Donaldson Adoption Institute, December 15, 2016

⁷² Per information the CDHS provided to the CPO on July 31, 2017.

⁷³ *Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002.* (Recommendation One)

The state auditor's report also recognized the urgency in providing families post-adoption services. The report issued a recommendation that, "*The Division of Child Welfare Services should encourage counties to expand their post-adoption services and supports.*"⁷⁴

County departments have worked to provide additional services and help connect families with providers and non-profit organizations. But county human service directors say their departments' abilities to provide families with post-adoption services is limited. These constraints are the result of inadequacies in the systems most responsible for providing services, and the county departments' role in the life of an adoption.

County human service directors said families may be hesitant to return to them for services for a variety of reasons including the perceived stigma of being engaged with the department. They also expressed concerns that families' hesitancy to contact them often allows their crisis to escalate to a level in which the county department has limited services to offer.

ACCESS TO POST-ADOPTION SUPPORT

Accounting for a child's future needs when determining adoption assistance subsidies or services proves difficult for families and county departments. The determination of adoption subsidies or services often rests on the needs that are apparent at the time the adoption assistance agreement is signed. What the adoption assistance agreements struggle to account for are the needs children may develop months or years from that day. Failing to account for a child's evolving needs may restrict their ability to access crucial services – such as mental health providers, specialized therapies and residential treatment – in the future.

Several families expressed fear and anxiety in their limited abilities to advocate for future services for their children. Many stated they were concerned that the support and guidance they received from the county departments while serving as foster parents,

would immediately stop after the adoption was finalized.

The difficulty of predicting a child's needs over a period of years is felt by both parents and county departments. This has led to adoption subsidy agreements which are limited in providing for future needs of children. As such, the need for statewide, centralized resources for adoptive parents and county departments becomes all the more critical.

Often, in Colorado, where a child lives affects their ability to access services after their adoption is finalized. Colorado has minimal centralized resources providing post-adoption services – such as crisis intervention, mental health care, adoption support groups and parenting classes – to families across the state. Often, access to and the type of post-adoption services available depends largely on where a family lives.

MEDICAID

In addition to providing adoption assistance, county departments rely heavily on Medicaid to provide ongoing mental health and physical care for adopted children. In Colorado, the state's behavioral health system is comprised of multiple agencies, funding sources and focuses of care. Medicaid is a joint state and federal program that provides health care to eligible beneficiaries. The Colorado Department of Health Care, Policy and Financing (HCPF) oversees the administration of Medicaid that impacts qualified children in the child welfare system. HCPF contracts with Behavioral Health Organizations to provide services through a statewide managed care system. Families and many county departments find the Colorado behavioral health delivery system to be inadequate to handle the specialized needs of adopted children.

Families repeatedly expressed frustration with Medicaid Only subsidies. Locating providers who accept Medicaid and have adoption and trauma informed practices can be difficult. One adoptive parent explained that years after the family finalized their adoption, their child began to exhibit violent behaviors. The 10-year-

⁷⁴ Report of the State Auditor, Subsidized Adoption Program Division of Child Welfare Services, Performance Audit March 2002. (Recommendation Three)

old would run away from home in the middle of the night and eventually their child was placed on a 72-hour mental health hold. There were no residential treatment centers available under Medicaid and the family had exhausted several other options and their finances in searching for the appropriate treatment. Accessing services was vital for preserving the adoption, the adoptive parent told the CPO. This was one of many stories adoptive families shared with the CPO concerning the difficulty of accessing behavioral health services under Medicaid.

The ability to provide Medicaid to adoptive families is a crucial element of the adoption assistance program. Unfortunately, adoptive families often experience difficulty in locating adoption-informed providers who accept Medicaid. The Adoption Exchange, a non-profit agency in Colorado, maintains a directory of post-adoption mental health professionals. Several county departments stated that they used this directory routinely to help connect families with post-adoption services. The directory, which was updated in April 2017, includes providers who specialize in services such as attachment therapy, trauma care and

post-adoption concerns. The directory includes 88 providers based in 12 different counties. Of those 88 providers, 32 of them – 40 percent – accept Medicaid. Currently, those 32 adoption-informed providers are based in 10 counties across the state, according to the directory. None of those 10 counties were rural counties.

An analysis of the directory and data provided by the CDHS showed that 23 percent of the adoption assistance agreements that were finalized in 2016 were Medicaid Only subsidies. Meaning the families were not provided a monthly cash subsidy. Of the county departments that provided Medicaid Only subsidies during 2016, 70 percent were counties in which there is not currently an adoption-informed provider who accepts Medicaid, according to The Adoption Exchange's directory. (It should be noted that other providers not listed in the directory may be available.)

More than 75 percent of the families the CPO spoke to said they could not secure timely or appropriate behavioral health services for their adoptive children.

Recommendation

13

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare complete a statewide inventory of adoption-informed resources. This information should be used to create a strategic plan that will help connect families with post-adoption resources in every part of the state. This strategic plan should be made public and reported to the Colorado General Assembly.

CDHS-DCW Response: AGREE "The Department agrees to complete a statewide inventory of adoption-informed resources in partnership with the Colorado Department of Health Care Policy and Financing, stakeholders, and county departments. Based on this inventory, the Department, with its partners, will develop a communication plan to improve families' access to post-adoption resources regardless of geographic location. This plan will be made public and reported to the General Assembly through the Department's annual SMART Act hearing."

Recommendation 14

Recommendation: The CPO recommends the Colorado Department of Human Services' Division of Child Welfare coordinate with the Colorado Department of Health Care Policy and Financing to:

- a. Identify the obstacles and barriers preventing adoptive parents from obtaining adoption-competent therapies and other treatments for their children.
- b. Study the rate at which adoptive children are accessing Medicaid services after finalizing their adoption.
- c. Study what services are being supplied by Medicaid providers to adoptive children and whether these services are meeting their specific needs.
- d. Make these findings public and report them to the Colorado General Assembly.

CDHS-DCW Response: PARTIALLY AGREE "The Department partially agrees with Recommendation No. 14. The Department respectfully requests the Child Protection Ombudsman of Colorado provide/assign this recommendation to the Colorado Department of Health Care Policy and Financing as these items are within that Department's scope and that Department's ability to modify, improve, etc. The Department is willing to work with the Colorado Department of Health Care Policy and Financing to identify the obstacles and barriers preventing adoptive parents from obtaining adoption-competent therapies and other treatments for their children; to review the rate at which adoptive children are accessing Medicaid services after finalizing their adoption; and to review what services are being supplied by Medicaid providers to adoptive children and whether these services are meeting their specific needs."

CPO Reply: The CPO agrees that this recommendation is the joint responsibility of both the Colorado Department of Human Services' Division of Child Welfare and the Colorado Department of Health Care Policy and Financing. As such, the CPO will ensure its report and recommendation are presented to the Colorado Department of Health Care Policy and Financing no later than 30 calendar days after the publication of this report. Additionally, the CPO will provide both agencies with any support they jointly determine is necessary to address this recommendation.

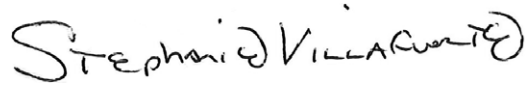
CONCLUSION

The CPO would like to thank all the stakeholders who shared their time and expertise during throughout this investigation. Specifically, the CPO would like thank the Colorado Department of Human Services and the county human services departments for cooperation and willingness to share their knowledge and insight into the adoption assistance program. Finally, the CPO would like to thank the dozens of families who came forward to share their experiences in the hope of creating a better system for the children and the children waiting for the permanent homes.

Pursuant to C.R.S. 19-3.3-103(2), the CPO respectfully submits this report to the citizens of Colorado, the General Assembly and the Colorado Department of Human Services' Executive Director, Reggie Bicha.



Jordan Steffen
Communications and Policy Director
Office of Colorado's Child Protection Ombudsman



Stephanie Villafuerte
Colorado Child Protection Ombudsman
Office of Colorado's Child Protection Ombudsman

Appendix C



Office of Colorado's Child Protection Ombudsman

INVESTIGATION REPORT

Case 2016-2293

Stephanie Villafuerte

Child Protection Ombudsman

February 27, 2018

Introduction

By design, the Office of Colorado’s Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Jurisdiction

The CPO receives *“complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.”* See C.R.S. §19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. §19-3.3-101 to 110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency/provider decision.
- Offer legal advice.

Public Disclosure

In meeting its statutory requirements to *“improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system,”* as stated in C.R.S. §19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency/provider. The CPO will do so by publicly releasing its investigation reports.

Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency/provider when reviewing and/or investigating a complaint. *“In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.”* See C.R.S. §19-3.3-103(1)(a)(II)(A).

How To Read This Report

The CPO has designed its investigative reports to provide citizens and stakeholders clear and concise information concerning the investigations in which the CPO issues recommendations.

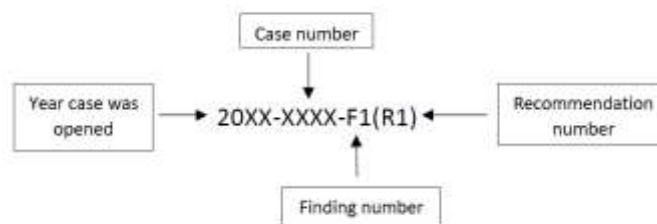
Each report will include an executive summary, relevant agency/provider, summary of the complaint, investigation summary, conclusion as well as the CPO's findings and recommendations. Below is a list of terms and brief explanations to serve as a reference while reading this report.

Findings

At the conclusion of each investigation, the CPO will issue one or more of the following **findings**:

1. **Absence of Law:** An investigation will conclude with this finding if the CPO identifies deficits in the law governing the functions of an agency/provider within the child protection system.
2. **Absence of Policy:** An investigation will conclude with this finding if the CPO identifies deficits in policy governing the functions of an agency/provider within the child protection system.
3. **Affirmed Agency/Provider Actions:** This finding means the CPO found no policy and/or law compliance violations by an agency/provider as they relate to the complaint.
4. **Affirmed Agency/Provider Actions with Recommendations:** This finding indicates that the agency/provider did not violate policy and/or law, but the CPO determines there are areas of practice that could be improved upon to ensure the highest level of service delivery to a child or family. In this instance, the CPO will make recommendations to the agency/provider.
5. **Agency/Provider Non-Compliance with Law:** This finding indicates that the agency/provider failed to follow state and/or federal child protection law.
6. **Agency/Provider Non-Compliance with Policy:** This finding indicates that the agency/provider failed to follow policies regulating their practice in delivering services within the child protection system.
7. **Identification of Practice Concerns:** This finding indicates that the CPO identified practice(s) within an agency/provider's handling of a case which negatively affect the delivery of services to children and families. These concerns do not violate policy and/or laws.

Recommendations



Each recommendation – a suggestion or proposal to improve the child protection system – will be a result of a specific finding. Multiple recommendations can be associated with the same finding. Each recommendation will be assigned a unique identification number to help stakeholders and citizens track the recommendation throughout the report and on the CPO's website.

I. Executive Summary

On December 12, 2016, the Office of Colorado's Child Protection Ombudsman (CPO) received a complaint from a mandatory reporter concerning a 16-year-old juvenile female, G.G.,¹ who was being held at the Gilliam Youth Services Center (GYSC). The complainant expressed concern that G.G. was injured when GYSC staff restrained her during two incidents which occurred during a three-day period. The complainant also alleged that during one of the two incidents involving G.G., GYSC staff acted inappropriately when they attempted to use a restraint device known as the WRAP.²

The complainant stated that the incidents had been reported to the Denver Department of Human Services (DDHS), through the Colorado Child Abuse and Neglect Hotline, on December 9, 2016. The complainant also told the CPO that a report detailing the two incidents was made to the director of the GYSC. The CPO inquired about G.G.'s safety while speaking with the complainant. The complainant, who had access to G.G. and was maintaining contact, assured the CPO that G.G. was no longer in contact with the staff involved in the two incidents. Additionally, the complainant stated that they did not believe G.G.'s safety or well-being were at risk by remaining in GYSC.

On December 19, 2016, the CPO opened a case into the two incidents described by the mandatory reporter. The CPO contacted the director of GYSC on December 20, 2016. The director confirmed that the staff involved in the two incidents involving G.G. were separated from her on December 9, 2016, and there had been no contact since the incidents were reported.

Initial review of documentation in the TRAILS system indicated that the DDHS received a report concerning G.G. on December 9, 2016, and upon review determined there were no allegations of abuse or neglect that required further assessment.³

However, in reviewing the DDHS caseworker's report in TRAILS, the CPO noted some concerning inconsistencies between the information the complainant reported to the CPO and the information that was documented by the caseworker. As a result, the CPO expanded its investigation on January 6, 2017, to include the DDHS' handling of this case. The CPO obtained an audio recording of the call that was placed to the Colorado Child Abuse and Neglect Hotline. After listening to the recording, the CPO found that several important pieces of information reported to the DDHS during the hotline call were not recorded in the caseworker's notes. This information included details about G.G.'s alleged injuries and specifics about the incidents. Using the limited information in the caseworker's notes, the DDHS determined there was not enough information in the report to warrant further investigation by a caseworker and the report was screened out. However, allegations of abuse and neglect within an

¹ For the purposes of this report, the juvenile will be referred to as G.G.

² When fully implemented, the WRAP consists of four components. Those components are: a locking shoulder harness, leg restraints, ankle strap and spit hood. In April 2017, the use of the WRAP restraint device was discontinued in all Division of Youth Services facilities, including GYSC.

³ Statewide child welfare database used by caseworkers for the documentation of their work with children and families

institution – such as a residential or day care facility – are required to be assigned for further assessment if they meet certain criteria⁴.

After discovering the discrepancies between the caseworker’s notes and the recording of the hotline call, the CPO contacted the DDHS on January 13, 2017, and requested a caseworker be sent to GYSC to further assess the allegations. The DDHS assigned a caseworker and the caseworker met with G.G. on January 17, 2017. Ultimately, the DDHS completed a thorough investigation and determined the allegation of abuse by GYSC was unfounded.

Upon conclusion of its investigation, the CPO found that GYSC was in compliance with rules and law regarding staff members’ use of restraint on G.G. The CPO affirmed the GYSC’s actions in this case.

However, the CPO found that DDHS were not in compliance with rule or law in their initial response to the report of suspected abuse at GYSC. In total, the CPO identified three violations of Volume VII⁵ and two violations of the Colorado Children’s Code⁶ in the DDHS’ handling of this case. The CPO found that none of these violations compromised the safety or well-being of G.G.

The CPO’s findings, recommendations and responses from GYSC and DDHS are summarized in the table below.

| Agency/Provider | CPO Finding | CPO Recommendation | Agency/Provider Response |
|-------------------------------------|---|-----------------------------------|---------------------------------|
| Gilliam Youth Services Center | Affirmed Agency/Provider Actions (See page 10) | None | Agree |
| Denver Department of Human Services | Non-Compliance with Policy (See page 10) | 2016-2293-F2(R1) (See page 11) | Disagree |
| Denver Department of Human Services | Non-Compliance with Policy (See page 11) | 2016-2293-F3(R1) (See page 11) | Disagree |
| Denver Department of Human Services | Non-Compliance with Policy (See page 11) | 2016-2293-F4(R1) (See page 11) | Disagree |
| Denver Department of Human Services | Non-Compliance with Law (See page 12) | 2016-2293-F5(R1) (See page 12) | Disagree |
| Denver Department of Human Services | Non-Compliance with Law (See page 12) | 2016-2293-F6(R1) (See page 12) | Disagree |

⁴ Volume VII Rule 7.000.2(A) defines institutional abuse as: any case of abuse and/or neglect that occurs in any public or private facility in the state that provides out of the home care for children. Institutional abuse shall not include abuse and/or neglect that occur in any public, private, or parochial school system, including any preschool operated in connection with said system; except that, to the extent the school system provides licensed child care before and/or after school, abuse that occurs while such services are provided shall be institutional abuse.

⁵ Rules promulgated by the State Board of Human Services that dictate how child welfare services are administered in Colorado

⁶ Colorado Law regarding child abuse and neglect

II. Relevant Agency/Provider(s)

The following agency/providers were the subject of the complaint in Case 2016-2293. The CPO notified the agency/providers below that they are the subjects of an investigation. During its investigation, the CPO requested information concerning the agency/provider's policies and practices as they relate to the complaint. The agency/providers were also notified that they will be named in this investigation report. Any response by the agency/providers will be stated in Section VIII of this investigation report.

Agency/Providers Involved:

- A. Gilliam Youth Services Center
- B. Denver Department of Human Services

III. Summary of the Complaint

| | |
|---------------------------------------|--------------------------------|
| Complaint Received: 12/12/2016 | Case Opened: 12/19/2016 |
|---------------------------------------|--------------------------------|

The CPO received a complaint alleging that a 70-pound, 16-year-old juvenile was injured when staff at GYSC inappropriately restrained her during two incidents that occurred during a three-day time-period. The complainant, a mandatory reporter, alleged that G.G. was injured during an incident on December 5, 2016 when two staff members restrained her. Three days later, on December 8, 2016, GYSC staff attempted to place G.G. in the WRAP, also causing injury. The complainant stated that excessive force was used in both incidents, causing multiple injuries to G.G.

Additionally, the complainant reported to the CPO that a report regarding the two incidents was made to the DDHS and the director of the GYSC.

IV. Investigation Summary

Due to concerns regarding the alleged inappropriate use of restraint – including the use of the WRAP – by staff at the GYSC, the CPO opened a formal investigation on December 19, 2016.

After initial review, the CPO found the documentation of the hotline call may have been incomplete and ultimately resulted in the DDHS incorrectly screening out the report without further assessment by a caseworker. The CPO expanded its investigation on January 6, 2017, to include the DDHS.

The CPO investigation involved the following:

- Review of the TRAILS database
- Review of documentation provided by the complainant
- Interview of G.G.
- Interviews of GYSC staff
- Site visit to GYSC
- Review of the hotline call recording
- CPO communication with the DDHS

- Review of medical reports from GYSC
- Review of video footage from GYSC

The CPO reviewed the following rules and laws during its investigation:

- Volume VII
- Colorado Children’s Code
- Division of Youth Corrections Policy⁷

While the CPO’s analysis included the review of excessive force allegations within the GYSC and all areas of the DDHS’ handling of this case, preliminary and ongoing research by the CPO led the CPO to focus on three main areas of concern:

1. Whether the use of restraints within the GYSC relating to the December 5, 2016 and December 8, 2016 incidents complied with DYC policy.
2. Whether the DDHS’ initial handling of the December 9, 2016 report of suspected institutional abuse was in accordance with Volume VII and the Colorado Children’s Code.
3. Whether incomplete documentation by the DDHS staff at the time of the initial report of abuse and/or neglect influenced the initial response by the DDHS.

A summary of the CPO’s analysis of each of these areas is outlined below. For the purposes of this report, the juvenile will be referred to as G.G.

Gilliam Youth Services Center Use of Restraint

On December 20, 2016, the CPO spoke with the GYSC staff regarding the WRAP restraint device. GYSC provided the CPO with the *Colorado Department of Human Services, Division of Youth Corrections, GYSC Implementing Procedure, 9.4 Physical Management and Security Equipment* (DYC policy) and the guidelines for using the WRAP, per the DYC training manual.

The CPO completed a site visit to the GYSC on December 27, 2016, and spoke with staff members. At this time, the CPO reviewed a video recording of the incident involving G.G. The CPO also interviewed G.G. regarding the incidents, her injuries and use of the WRAP restraint device.

The video surveillance from the incident on December 8, 2016, showed that GYSC staff did not implement all four parts of the WRAP while restraining G.G. Specifically, the video showed that only the ankle strap was applied. The video evidence supported the GYSC report that G.G. was in the prone position for 3 minutes. The CPO found this action does not exceed timeframes listed in DYC policy.

Specifically, DYC policy states:

“A juvenile shall not be in the prone position more than five (5) minutes during the application of the Wrap. The length of time the juvenile is in the prone position shall be documented on the physical response report in the Colorado

⁷ The Division of Youth Corrections (DYC) was renamed through legislation passed in 2017 to the Division of Youth Services (DYS). This report refers to the division as it was named at the time of this investigation.

Trail database. (Pathway: support, incidents, major incidents, restraints, transitional measures).”⁸

GYSC reported to the CPO that upon G.G.’s willingness to practice safe behaviors with staff, the process of administering the WRAP was discontinued. The CPO did observe G.G. to be in handcuffs at the time of the incident and the CPO was informed that it is not uncommon for handcuffs to leave a mark.

The video also showed G.G. resisting staff attempts to restrain her.

The CPO also reviewed copies of G.G.’s medical reports from GYSC, relating to the two incidents in December 2016. The records reflected that G.G. was seen by medical personnel, as is required after each incident involving restraints. Each time G.G. denied pain, injury and/or trauma as a result of the incidences. Medical personnel did not note any injuries after seeing G.G. The records reflect that there was no need for G.G. to require any further medical follow-up.

The CPO also conducted an interview with G.G. regarding the two incidents. During the interview, G.G. reported that she was seen by medical personnel after each restraint and that she denied being injured. G.G. further confirmed to the CPO that she had not had any further contact with the staff involved in the restraint incidents.

After interviewing GYSC staff, the review of medical records and the video footage of the restraint, as well as the interview of G.G., the CPO found GYSC staff acted in accordance with DYC policy when restraining G.G. on December 5, 2016. The CPO further found the use of the WRAP restraint device on December 8, 2016, to be in compliance with DYC policy.

December 9, 2016 Report of Alleged Institutional Abuse

On December 9, 2016, the DDHS received a report through the Colorado Child Abuse and Neglect Hotline regarding a 16-year-old female who was allegedly injured when staff at GYSC restrained her during two incidents. The DDHS’ caseworker documented the report in TRAILS as the following:

“[G.G.] has bone disorder and is little. [G.G.] weighs only 78 pounds. [G.G.] was restrained by staff two days ago and put in handcuffs. [G.G.] and another girl got into an altercation but [G.G.] said that she did not hit the other girl. [G.G.] said that she was upset because the other girl involved did not get restrained. [G.G.] said that she had marks from being in handcuffs. Today, she was escalated in her room and was throwing things around and needed to be restrained. She reports that she was picked up by her arms and thrown into her room. Staff called other staff to help in the restraint. She had red marks on her wrists and arms. [G.G.] reports that she was not seen by medical staff.”⁹

On December 13, 2016, the DDHS decided not to assign a caseworker to assess the allegations citing, *“no information available from reporter of abuse or neglect as defined in law.”¹⁰*

⁸ DYC policy S 9.4 (V)(K)(3)(a)

⁹ Notes documented in TRAILS Referral ID: [REDACTED]

¹⁰ Notes documented in TRAILS Referral ID: [REDACTED]

Following its receipt of a complaint from a mandatory reporter, the CPO reviewed the DDHS' caseworker's documentation of the December 9, 2016 report. The CPO found that the information the complainant provided about the injuries G.G. allegedly sustained while she was restrained, significantly differed from what was documented in TRAILS.

As such, the CPO obtained an audio recording of the hotline call¹¹ and compared the information provided in the call to what was documented by the DDHS' caseworker. The CPO found significant differences between the audio recording of the report and what was documented by the DDHS in Referral ID: [REDACTED].

Upon analysis of the two sources of information, the CPO found that the extent of G.G.'s alleged injuries, the feeling that staff were going to break her arm because of the excessive force and the details of the separate incidents were not documented in the DDHS' TRAILS referral.

Volume VII outlines specific information that is to be gathered when receiving a referral of alleged institutional abuse and/or neglect.¹² The CPO found that the DDHS failed to document seven key pieces of information that were provided by the reporting party, including:

1. Extent of the alleged injuries to the child, including scratches and red marks on both of her arms, scratches to her wrists, a scratch that drew blood, soreness through the shoulders and through the armpit, bicep and forearm.
2. The specific allegations of the abuse and/or neglect.
3. The name, address and present location of the person(s) alleged to be responsible for the abuse and/or neglect.
4. Any information indicating other juveniles at the institution have been injured, abused and/or neglected. If so, their names and current location.
5. Time, date and witnesses of the alleged incident.
6. Information which might be helpful establishing the cause of the injury, alleged abuse and/or neglect.
7. Name, addresses and contact information for the parents or guardians of the alleged victim(s).

Due to the discrepancies in documentation, the lack of information gathered at the time of the initial call and the DDHS' decision to not assess the allegations of institutional abuse, the CPO was concerned that the allegations of physical abuse on G.G. had not been adequately addressed. There was also concern that the DDHS' decision not to further assess the referral was not in compliance with Volume VII or the Colorado Children's Code.

On January 13, 2017, the CPO contacted the DDHS and requested information regarding the discrepancies between the audio recording of the hotline call and the documentation notes in TRAILS.

The DDHS responded to the CPO on the same day. The DDHS reported that after further review and analysis of TRAILS Referral ID: [REDACTED] and TRAILS Hotline ID: [REDACTED], the DDHS would assign a caseworker to further assess the allegations of institutional abuse.

¹¹ TRAILS Hotline ID: [REDACTED]

¹² Volume VII 7.103.2

On January 20, 2017, the CPO confirmed that Referral ID: [REDACTED] had been assigned to a caseworker for assessment at 2:14 p.m. on January 13, 2017. The referral was assigned with an immediate response timeframe given G.G.'s injuries, multiple incidents and her vulnerability due to her small size. The DDHS staff further documented that if G.G. had not been examined by medical staff at GYSC, she would need to be seen by a physician.¹³

DDHS Actions

The CPO was advised that after it inquired about Referral ID: [REDACTED] being screened out, the DDHS made the decision to assign the referral for further investigation based on the concern that some details provided by the reporter during the hotline call regarding the injuries to G.G. were not included in TRAILS referral ID: [REDACTED]. The referral was assigned for assessment by a caseworker on January 13, 2017. The caseworker interviewed G.G. on January 17, 2017 and the DDHS completed their investigation into the allegations of institutional abuse on February 7, 2017.

The CPO reviewed the completed assessment and found the DDHS completed a thorough investigation into the allegations. Documentation in TRAILS showed that the DDHS contacted the victim, the staff involved in the incidents, management staff at GYSC and the clinical consultant for G.G.'s guardian ad litem.¹⁴

It is important to note that, due to the delay in assigning a caseworker to this assessment, no photographs of the alleged injuries were taken and the allegations of injury could not be thoroughly assessed.

The DDHS closed the assessment for institutional abuse as unfounded.¹⁵

The DDHS stated the reason for the finding as:

"After reviewing documents, completing all interviews, and reviewing criminal and TRAILS history, caseworker determined that the alleged child abuse did not occur. Youth reports no marks, bruises, scars and/or other markings on her wrist when caseworker met with her. Caseworker did not observe any bruises or marks. Youth reports that she declined medical care at GYSC. All video's [sic] clearly show staff attempting to communicate with the youth and gain compliance from youth before entering into a physical response. All injuries reported by youth are consistent with being handcuffed. Due to youth's small size, the cuffs need to be secured tight enough for her not to slip her wrists out."¹⁶

¹³ Summary of notes in TRAILS Referral ID: [REDACTED] dated January 13, 2017

¹⁴ TRAILS Assessment ID: [REDACTED]

¹⁵ Volume VII Rule 7.000.2(A) defines unfounded as, "...that the abuse and/or neglect assessment established that there is clear evidence that no incident of abuse and/or neglect occurred."

¹⁶ Notes in TRAILS Assessment ID: [REDACTED] dated January 17, 2017

V. Conclusion

In conclusion, the CPO found that the GYSC followed DYC Policy in the use of restraints relating to the incidents in this report.

The CPO found that the DDHS was not in compliance with Volume VII and the Colorado Children’s Code in its documentation of the hotline call in the Colorado TRAILS system resulting in the DDHS’ failure to assign a caseworker to assess the report of abuse and/or neglect made on December 9, 2016. Failing to accurately document hotline calls may negatively impact a county human services department’s ability to make informed decisions in child abuse and/or neglect cases.

VI. Findings and Recommendations

At the conclusion of an investigation, the CPO may make findings that the agency/provider was not compliant with policy and/or was not compliant with law and will offer recommendations to the agency/provider for improvement of service delivery. If the CPO finds no violations of policy and/or law, the CPO may affirm the actions of the agency/provider. The CPO may also find an absence of policy or an absence of law.

The CPO maintains the discretion to issue recommendations at the conclusion of any investigation. The CPO cannot reverse or overturn decisions made by the agency/provider or court orders, as a result of an investigation.

Any agency/provider involved in a case will be provided a copy of the investigation prior to the report’s public release. Agencies will have 10 business days to respond to any CPO findings and/or recommendations. All agency/provider’s responses must be submitted in writing. Any response provided to the CPO will be included in the investigation report.

The CPO will consider any agency/provider response and, if necessary, revise its findings and recommendations prior to publicly releasing its investigation report.

Gilliam Youth Services Center

1 Affirmed Agency/Provider Actions

The CPO found that the GYSC’s use of restraint, as well as required medical follow up, were in compliance with DYC Restraint Policies.

Denver Department of Human Services

2 Non-Compliant with Policy

Volume VII: 7.103.2(B) to (H): Receipt of Referral Alleging Institutional Abuse and/or Neglect – Information to be Gathered

The rule requires employees of county departments of human services to gather and document, as available, 20 items of information when receiving a referral alleging

intrafamilial or third-party abuse and/or neglect. The CPO found that the DDHS failed to document seven pieces of information that were provided by the reporting party. The DDHS' failure to document this information in TRAILS resulted in staff screening the referral out because of insufficient information to meet the legal standard of abuse and/or neglect.

RECOMMENDATION (ID – 2016-2293-F2(R1)): The DDHS provide training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the importance of gathering complete information from the reporting party and accurately documenting it in the TRAILS case management system.

3 Non-Compliant with Policy

Volume VII: 7.103.6(A): Criteria for Assessing a Referral for Assessment

This rule requires county departments to assign a caseworker to assess an allegation of abuse and/or neglect if the allegation meets the definition of known or suspected abuse and/or neglect, and includes enough information to locate the alleged victim and indicates the child is under the age of 18.

The DDHS incorrectly screened out the referral it received on December 9, 2016. The mandatory reporter provided the necessary details to trigger an assessment by the DDHS; however, that information was not properly documented and the referral was therefore not assigned.

RECOMMENDATION (ID – 2016-2293-F3(R1)): The DDHS provide training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the screening process of institutional abuse and/or neglect referrals and requirements for assigning such referrals for assessment.

4 Non-Compliant with Policy

Volume VII: 7.104.2: Institutional Abuse and/or Neglect Grounds for Assessment

This section of rule requires county departments of human services to open an assessment into institutional abuse and/or neglect when allegations include a pattern of abuse and/or neglect by the same caregiver or staff in the same facility.

The DDHS violated this section of rule when it did not assign a caseworker to assess the allegations of institutional abuse despite the mandatory reporter's statement that G.G. had twice been injured during staff's attempts to restrain her.

RECOMMENDATION (ID – 2016-2293-F4(R1)): The DDHS provide training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the requirements for assigning institutional abuse and/or neglect referrals.

5

Non-Compliant with Law

Colorado Revised Statute: 19-3-308(1)(a), Action upon report of intrafamilial, institutional, or third-part abuse (immediate response).

Under this law, county departments of human services are required to immediately respond to any report of a known or suspected incident of abuse or neglect.

The DDHS was in violation of this law when it failed to assign a caseworker to assess the referral received on December 9, 2016.

RECOMMENDATION (ID – 2016-2293-F5(R1)): The DDHS offer training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the response requirements within the Colorado Children’s Code relating to reports of child abuse and/or neglect.

6

Non-Compliant with Law

Colorado Revised Statute: 19-3-308(1.5)(a), Action upon report of intrafamilial, institutional, or third party abuse (assessment).

Under this law, county human services departments are required to assess the possibility of abuse or neglect after receiving a referral.

The DDHS violated this law when it incorrectly screened out the referral without assessing the possibility of abuse or neglect.

RECOMMENDATION (ID – 2016-2293-F6(R1)): The DDHS provide training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the response requirements within the Colorado Children’s Code relating to reports of child abuse and/or neglect.

VII. Recommendation Summary

Pursuant to C.R.S. §19-3.3-103(2)(e), which mandates the CPO to, “recommend to the general assembly, the executive director, and any appropriate agency or entity statutory, budgetary, regulatory and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado.”


While the CPO does not have authority to mandate compliance with its recommendations, all recommendations issued by the CPO are made available to the public through the release of investigation reports.

| Recommendation ID | CPO Finding | Agency/Provider Response | Agree/Disagree |
|-------------------|----------------------------------|--------------------------|----------------|
| 2016-2293-F1 | Affirmed Agency/Provider Actions | Yes/No | Agree |
| 2016-2293-F2(R1) | Non-Compliance w/ Policy | Yes/No | Disagree |
| 2016-2293-F3(R1) | Non-Compliance w/ Policy | Yes/No | Disagree |
| 2016-2293-F4(R1) | Non-Compliance w/ Policy | Yes/No | Disagree |
| 2016-2293-F5(R1) | Non-Compliance w/ Law | Yes/No | Disagree |
| 2016-2293-F6(R1) | Non-Compliance w/ Law | Yes/No | Disagree |

A complete copy of the DDHS’ and GYSC’s response may be found in Appendix A.

The CPO is appreciative of the openness of the DDHS and the GYSC throughout this investigative process and recognizes all of the hard work that these agencies are doing to ensure that the children they serve receive the best possible care and services to help them thrive.

With Regards,



Melissa Vigil
Child Protection Systems Analyst

Approved:



Stephanie Villafuerte
Ombudsman



Sabrina Burbidge
Deputy Ombudsman

APPENDIX A

Agency/Provider Response

Any agency/provider involved in a case will be provided a copy of the investigation report prior to the report's public release. Agencies will have 10 business days to respond to any CPO findings and/or recommendations. All agency/provider's responses must be submitted in writing. Any response provided to the CPO will be included in the case report.

The CPO will consider any agency/provider response and, if necessary, revise its findings and recommendations prior to publicly releasing its case report.

The CPO provided a copy of this investigation report to each agency/provider listed in Section II of this report on November 29, 2017. The agency/provider submitted their written responses on December 13, 2017.

| Gilliam Youth Services Center | | |
|-------------------------------|------------------------|-----------------|
| Recommendation ID | CPO Finding | Agency/Provider |
| 2016-2293-F1 | Affirmed Agency Action | Agree |
| CPO Recommendation: | | |
| No Recommendation | | |
| GYSC Response: None | | |

| Denver Department of Human Services | | |
|--|-------------------------|-----------------|
| Recommendation ID | CPO Finding | Agency/Provider |
| 2016-2293-F2(R1) | Non-Compliant w/ Policy | Disagree |
| CPO Recommendation: | | |
| The DDHS provide training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the importance of gathering complete information from the reporting party and accurately documenting it in the TRAILS case management system. | | |
| DDHS Response: | | |
| "Please Refer to Denver Human Services' written response." (The DDHS' written response may be found in Appendix B.) | | |
| CPO Reply: | | |
| The CPO issued a written reply to the DDHS' response. The CPO considered the points raised by the DDHS. After consideration, however, the CPO determined that the findings identified in this case are accurate and its recommendations are appropriate to ensure such violations do not occur in the future. The CPO's written reply may be found in Appendix C. | | |

| Recommendation ID | CPO Finding | Agency/Provider |
|---|-------------------------|-----------------|
| 2016-2293-F3(R1) | Non-Compliant w/ Policy | Disagree |
| CPO Recommendation: | | |
| <p>The DDHS provide training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the screening process of institutional abuse and/or neglect referrals and requirements for assigning such referrals for assessment.</p> | | |
| DDHS Response: | | |
| <p>“Please refer to Denver Human Services’ written response.” (The DDHS’ written response may be found in Appendix B.)</p> | | |
| CPO Reply: | | |
| <p>The CPO issued a written reply to the DDHS’ response. The CPO considered the points raised by the DDHS. After consideration, however, the CPO determined that the findings identified in this case are accurate and its recommendations are appropriate to ensure such violations do not occur in the future. The CPO’s written reply may be found in Appendix C.</p> | | |

| Recommendation ID | CPO Finding | Agency/Provider |
|---|-------------------------|-----------------|
| 2016-2293-F4(R1) | Non-Compliant w/ Policy | Disagree |
| CPO Recommendation: | | |
| <p>The DDHS provide training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the requirements for assigning institutional abuse and/or neglect referrals.</p> | | |
| DDHS Response: | | |
| <p>“Please refer to Denver Human Services’ written response.” (The DDHS’ written response may be found in Appendix B.)</p> | | |
| CPO Reply: | | |
| <p>The CPO issued a written reply to the DDHS’ response. The CPO considered the points raised by the DDHS. After consideration, however, the CPO determined that the findings identified in this case are accurate and its recommendations are appropriate to ensure such violations do not occur in the future. The CPO’s written reply may be found in Appendix C.</p> | | |

| Recommendation ID | CPO Finding | Agency/Provider |
|--|-----------------------|-----------------|
| 2016-2293-F5(R1) | Non-Compliance w/ Law | Disagree |
| CPO Recommendation: | | |
| <p>The DDHS offer training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the response requirements within the Colorado Children’s Code relating to reports of child abuse and/or neglect.</p> | | |
| DDHS Response: | | |
| <p>“Please refer to Denver Human Services’ written response.” (The DDHS’ written response may be found in Appendix B.)</p> | | |

CPO Reply:

The CPO issued a written reply to the DDHS' response. The CPO considered the points raised by the DDHS. After consideration, however, the CPO determined that the findings identified in this case are accurate and its recommendations are appropriate to ensure such violations do not occur in the future. The CPO's written reply may be found in **Appendix C**.

| Recommendation ID | CPO Finding | Agency/Provider |
|--|----------------------|-----------------|
| 2016-2293-F6(R1) | Non-Compliant w/ Law | Disagree |
| CPO Recommendation: The DDHS provide training for the caseworkers and supervisors involved at this decision point on TRAILS Referral ID: [REDACTED]. Training should include the response requirements within the Colorado Children's Code relating to reports of child abuse and/or neglect. | | |
| DDHS Response: "Please refer to Denver Human Services' written response." (The DDHS' written response may be found in Appendix B .) | | |
| CPO Reply: The CPO issued a written reply to the DDHS' response. The CPO considered the points raised by the DDHS. After consideration, however, the CPO determined that the findings identified in this case are accurate and its recommendations are appropriate to ensure such violations do not occur in the future. The CPO's written reply may be found in Appendix C . | | |

APPENDIX B



December 13, 2017

Ms. Stephanie Villafuerte, Ombudswoman
Office of the Colorado Child Protection Ombudsman
1300 Broadway, Suite 430
Denver, CO 80203
Via email: svillafuerte@coloradocpo.org

RE: Investigation #2106-2293

On December 9, 2016, the Denver Department of Human Services ("DDHS") received a referral related to a child, G.G. The DDHS hotline social caseworker failed to capture the entire report, and this led to the referral being erroneously screened out. DDHS works closely with the Colorado Department of Human Services to monitor the work of the hotline. DDHS hotline social caseworkers, including the caseworker on this call who has 17 years of experience, have consistently demonstrated thorough documentation in tens of thousands of calls. While this isolated incident was regrettable, DDHS is concerned because this issue could have been quickly resolved through straightforward communication among stakeholders, as explained below.

On December 12, 2016, a reporting party called the Office of the Colorado Child Protection Ombudsman ("OCCPO") to inform the OCCPO that a referral that they made to DDHS had been screened out, and that they believed the referral had merit and should be investigated. The reporting party informed the OCCPO of additional allegations of child abuse and neglect that were not contained in the written referral reviewed by the DDHS RED team at the time of screen-out. The discrepancy between the report and the contents of the referral were noted by the OCCPO, yet the OCCPO staff failed to report the allegations to the Colorado Child Abuse and Neglect Hotline, as it is obligated to do under the law. Instead, the OCCPO opened an investigation into the matter on December 13, 2016, but did not contact DDHS until January 13, 2017. Immediately upon contact by the OCCPO on January 13, 2017, the DDHS Intake Manager opened an assessment. The child was seen on the next business day. As noted in the investigation report, the DDHS investigation was completed thoroughly and timely.

The referral concerned the use of restraints on G.G., a 16-year-old girl in the Gilliam Youth Detention Center. The OCCPO conducted an extensive records review of the referral. Two weeks following the opening of the OCCPO investigation, G.G. was interviewed and evaluated by OCCPO staff in the detention center, where she remained in custody. Although the OCCPO staff, the Division of Youth Corrections, and DDHS ultimately concluded that the use of restraints that led to the referral complied with regulations, it is concerning that this child potentially remained in harm's way during the OCCPO's handling of the investigation.

Furthermore, it is concerning that the potential delays in ensuring GG's safety and care could have been completely mitigated on December 12, 2016 with better stakeholder communication, particularly from the OCCPO. While it may be that this referral was not documented completely by the DDHS hotline



social caseworker, the issue was isolated to that one point in the process. Had either the reporting party or the OCCPO called to report their concern, “findings” from the investigation would have been avoided, G.G. would have been seen promptly, and she could have benefited from a collaborative system with functioning checks and balances. Instead, needless time and energy was spent by the OCCPO interviewing witnesses, investigating, and typing up a report. Not only was GG’s interview with DDHS delayed by a month, but throughout that time the OCCPO relied upon the alleged perpetrators of her abuse to keep her safe while she continued in their custody.

The investigation report cites many of the legal requirements and authorities of the Office of the Child Protection Ombudsman, but leaves out the most important to the safety of children: that of mandatory reporter of child abuse or neglect. Under C.R.S. §19-3-304((2)(gg), “the child protection ombudsman as created in article 3.3” of Title 19, C.R.S., is a mandatory reporter. The OCCPO had a legal duty to make a report to the Colorado Child Abuse and Neglect Hotline upon receiving allegations from the reporting party on December 12, 2017. It defies logic that the OCCPO received additional allegations from the reporting party concerned that DDHS screened out the referral, apparently unilaterally concluded that there was no cause for concern based on its assurance from the institution alleged to have harmed the child, and did not contact DDHS as it is obligated to do as a mandatory reporter. Instead the OCCPO chose to engage in a months-long investigation into the allegations. While it is my understanding that the OCCPO is making changes in its practices to prevent such a serious lapse in responsibility in the future, the failure to act in this instance weighs heavily on this investigation.

The OCCPO, by statute, is also tasked with: resolution of complaints, making recommendations regarding best practices and system improvements for the child protection system, and educating the public concerning child maltreatment and the role of the community in strengthening families and helping children. This investigation report achieves none of those objectives. The issue raised in this investigation was straightforward. It could have been resolved with one phone call to DDHS.

For all of these reasons, DDHS strongly disagrees with the findings of the investigation.

Moving forward, DDHS stands ready to work collaboratively with the OCCPO. Whenever complaints arise, we invite you to reach out and to help us resolve them. Working together, we can serve Denver’s children and families.

Sincerely,

A handwritten signature in blue ink, appearing to read "Don Mares", with a long, sweeping line extending to the right.

Don Mares
Executive Director

APPENDIX C



February 27, 2018

Mr. Don Mares
Executive Director
Denver Department of Human Services
1200 Federal Boulevard, Denver CO 80204

Dear Executive Director Mares,

During the past seven years, the Office of Colorado's Child Protection Ombudsman (CPO) has enjoyed a respectful and productive working relationship with your agency. We have worked positively with many of your staff to resolve concerns regarding child safety and those efforts have led to positive changes for the children we both serve. Regrettably, your recent correspondence to the CPO illustrates a sharp departure from the positive, outcome-focused approach that we have come to expect from your agency.

On December 13, 2017, the CPO received your letter detailing the Denver Department of Human Services' (DDHS) response regarding the CPO's investigation report for Case 2016-2293. Your letter incorrectly states facts and draws erroneous conclusions that have no basis in fact or law. As such, it is incumbent upon me to clarify the record in this case.

To begin, it is important to note that the DDHS acknowledges that, *"The DDHS hotline social caseworker failed to capture the entire report, and this led to the referral being erroneously screened out."* These errors, as recognized by the DDHS, formed the basis of the CPO's findings that the DDHS violated Volume VII and, subsequently, the Colorado Children's Code in its handling of the referral involving 16-year-old G.G.

The DDHS spends a great deal of time in its response focused on spurious allegations against the CPO, rather than providing solutions to ensure such a mistake is not repeated by the DDHS in the future. While the DDHS characterizes the error as an *"isolated"* incident that is *"regrettable,"* the CPO characterizes it as a serious lapse that could have compromised child safety under different circumstances. Fortunately, that is not the case we have here.

Children in our community can only be protected to the extent that child protection stakeholders have accurate information to correctly assess the safety and well-being of children. When that information is of poor quality, all subsequent decision-making is tainted, forcing child welfare professionals to make ill-informed decisions on behalf of the children they are charged with protecting.

In this instance, a DDHS call taker documented information in the TRAILS database that did not accurately reflect and, in fact, omitted critical information about possible injuries sustained by the child in this case. This inaccurate documentation was relied upon by your own staff members, who made the decision to screen out the call because there was insufficient information to warrant a further assessment of the child or the circumstances involved.

In fact, the CPO's initial review of the DDHS' documentation almost led the CPO to conclude its own investigation. When the CPO began its investigation, it placed great weight on the DDHS finding that there was insufficient evidence of abuse or neglect in this case. The DDHS' errors were only discovered when the CPO reviewed the

audio recording of the hotline call in an effort to account for the inconsistencies in the information that appeared in the TRAILS report, compared to the information the complainant provided to the CPO.

The DDHS makes a fundamental misstatement of fact in its response, upon which it bases the entirety of its allegations against the CPO. In its response, the DDHS states that the original caller in this case called the CPO to, *"inform the OCCPO [CPO] that a referral that they made to DDHS had been screened out, and they believed the referral had merit and should be investigated."* In fact, a careful reading of the CPO's report (page 3, paragraph 2) indicates that the caller merely *"reported the incidents to the Denver Department of Human Services, through the Colorado Child Abuse Hotline, on December 9, 2016."* **The CPO never received information from the caller expressing concern with the actions taken by the DDHS.** The caller in this case expressed concerns about the Gilliam Youth Services Center's improper use of a restraint device that caused injuries to 16-year-old G.G.

The DDHS relies upon its own faulty reading of the CPO's report to inappropriately assert that the CPO had reason to believe at the time of the complainant's initial call that G.G. had been abused and neglected. The DDHS also incorrectly asserts that the CPO left G.G. in *"harm's way"* and failed to report child abuse as it is statutorily required to do. To be clear, the CPO had no information in its possession at the time of the initial call to believe G.G. had been abused or neglected. In fact, a careful review of the facts in this case show that the CPO received a call from the complainant on December 12, 2016. The DDHS screened out the call on December 13, 2016, indicating that there was no evidence of abuse or neglect. **This occurred a full day after the complainant contacted the CPO. Thus, it would have been impossible for the CPO to be in possession of information regarding the DDHS' actions and findings in this case at the time the complaint was filed.** As such, the CPO had no information or reason to believe that concerns regarding G.G.'s safety were not addressed by the DDHS. The CPO maintained that belief until January 6, 2017 when it reviewed the audio recording of the hotline call.

It was not until the CPO became aware of the vast discrepancies between the audio recording of the hotline call and the call taker's documentation that the CPO was required to open an independent investigation of the DDHS' actions in this matter. Once the CPO learned of the DDHS' faulty documentation, the CPO contacted the DDHS to report its concerns on January 13, 2017. The DDHS in turn, responded appropriately on January 17, 2017, and assessed the matter — eventually confirming its initial finding that there was insufficient evidence of abuse and neglect.

It is concerning that the DDHS would make a series of allegations about the CPO's actions or inactions in this case, without first critically reviewing relevant documentation.

Finally, the CPO is extremely uncomfortable with the DDHS suggesting that the issues identified by the CPO, *"could have been resolved with one phone call to DDHS."* As the DDHS is well familiar, the CPO is charged with providing an objective and transparent review of the systems tasked with protecting Colorado's children. To handle any case in the manner suggested by the DDHS would serve as a gross contradiction to the intent and charge of the CPO's authorizing statute.

The CPO shares the DDHS' interest in continuing to find ways to collaborate and work together to improve the programs and services that serve Colorado's children. The CPO will continue to work with the DDHS and to build on the productive and respectful relationship between our two agencies. Together our work will continue to improve the systems that protect Colorado's children.

Sincerely,



APPENDIX D



February 28, 2018

Ms. Stephanie Villafuerte, Ombudswoman
Office of the Colorado Child Protection Ombudsman
1300 Broadway, Suite 430
Denver, CO 80203
Via email: svillafuerte@coloradocpo.org

RE: Investigation #2106-2293

Dear Ms. Villafuerte,

Thank you for providing our department your reply containing your thoughts surrounding this challenging case. I know that you and I both agree that the most important thing we each can do in our respective roles is to work together to ensure the safety of a child when given the opportunity. Although little, it appears, would be gained by rehashing critical points in this case (for example to restate how much we would have appreciated receiving a call from your office on December 12 when, as indicated in your recent reply, you received a call from a concerned party about a child who he/she felt had sustained injuries by being restrained improperly—a concern, by the way, that should have triggered immediate reporting) we will just have to agree to disagree on several fronts. We will have to accept that, although our offices made good faith efforts via several telephone calls over several months, to work through our differences, as sometimes occurs, we were unable to do so.

I take solace, however, in the fact that both of our offices appear to have learned from this situation. As we have from day one in this case, we take ownership of having not screened in this case. We have made many strong efforts to ensure we do better the next time. You indicated to me that you have altered practices in the Office of the Child Protection Ombudsman surrounding the murky area of reporting calls to child welfare agencies when your office receives calls from concerned individuals; that when in doubt you all will now refer those cases immediately to our departments, as I understand your new policy based on our conversations.

Stephanie, I embrace your stated desire to continue to work together to improve programs and services. I hope we can also work together to ensure the safety of each child who comes to our attention. Although this has been a unique and challenging situation--one which we both worked extremely hard to resolve--we do, indeed, serve our constituencies best when we are able to work in partnership. My personal commitment is that we will strive to do so going forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Don Mares", is written over a light blue circular stamp.

Don Mares
Executive Director

Don Mares, Executive Director
Denver Human Services
1200 Federal Blvd. | Denver, CO 80204
www.denvergov.org/humanservices

General Assistance: 720-944-3666 | Report Child Abuse: 1-844-CO-4-KIDS



Office of Colorado's Child Protection Ombudsman

INVESTIGATION REPORT

Case 2016-2296

Stephanie Villafuerte

Child Protection Ombudsman

January 4, 2018

Introduction

By design, the Office of Colorado’s Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Jurisdiction

The CPO receives *“complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.”* See C.R.S. §19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. §19-3.3-101 to 110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency/provider decision.
- Offer legal advice.

Public Disclosure

In meeting its statutory requirements to *“improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system,”* as stated in C.R.S. §19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency/provider. The CPO will do so by publicly releasing its investigation reports.

Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency/provider when reviewing and/or investigating a complaint. *“In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.”* See C.R.S. §19-3.3-103(1)(a)(II)(A).

How To Read This Report

The CPO has designed its investigative reports to provide citizens and stakeholders clear and concise information concerning the investigations in which the CPO issues recommendations.

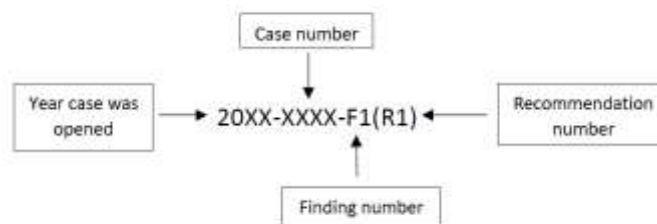
Each report will include an executive summary, relevant agency/provider, summary of the complaint, investigation summary, conclusion as well as the CPO's findings and recommendations. Below is a list of terms and brief explanations to serve as a reference while reading this report.

Findings

At the conclusion of each investigation, the CPO will issue one or more of the following **findings**:

1. **Absence of Law:** An investigation will conclude with this finding if the CPO identifies deficits in the law governing the functions of an agency/provider within the child protection system.
2. **Absence of Policy:** An investigation will conclude with this finding if the CPO identifies deficits in policy governing the functions of an agency/provider within the child protection system.
3. **Affirmed Agency/Provider Actions:** This finding means the CPO found no policy and/or law compliance violations by an agency/provider as they relate to the complaint.
4. **Affirmed Agency/Provider Actions with Recommendations:** This finding indicates that the agency/provider did not violate policy and/or law, but the CPO determines there are areas of practice that could be improved upon to ensure the highest level of service delivery to a child or family. In this instance, the CPO will make recommendations to the agency/provider.
5. **Agency/Provider Non-Compliance with Law:** This finding indicates that the agency/provider failed to follow state and/or federal child protection law.
6. **Agency/Provider Non-Compliance with Policy:** This finding indicates that the agency/provider failed to follow policies regulating their practice in delivering services within the child protection system.
7. **Identification of Practice Concerns:** This finding indicates that the CPO identified practice(s) within an agency/provider's handling of a case which negatively affect the delivery of services to children and families. These concerns do not violate policy and/or laws.

Recommendations



Each recommendation – a suggestion or proposal to improve the child protection system – will be a result of a specific finding. Multiple recommendations can be associated with the same finding. Each recommendation will be assigned a unique identification number to help stakeholders and citizens track the recommendation throughout the report and on the CPO's website.

I. Executive Summary

ISSUE: Whether the rules and policies of the Colorado Department of Human Services' Division of Child Welfare (CDHS) provide adequate due process for people who are the subject of an "inconclusive" finding of abuse and/or neglect. Currently, the CDHS has multiple processes for people to appeal or challenge a finding that they have abused and/or neglected a child. There are, however, no such processes for people who receive an "inconclusive" finding, in which there is insufficient evidence to determine whether child abuse and/or neglect has occurred.

On December 14, 2016, the Office of Colorado's Child Protection Ombudsman (CPO) received a complaint concerning the outcome of a child abuse investigation by the Denver Department of Human Services (DDHS). In October 2016, the DDHS received a report regarding 6-month-old O.T.¹ On October 14, 2016, O.T.'s mother noticed an unusual bruise on her son's groin area. Concerned about her family's history of leukemia and her own diagnosis of a bruising disorder, O.T.'s mother took him to see his pediatrician, who eventually sent them to Children's Hospital Colorado (Children's Colorado) for a blood draw.

Prior to the family's arrival at Children's Colorado, O.T.'s pediatrician requested a consultation by a Children's Colorado physician. This request prompted the DDHS' involvement in the case. A social worker at Children's Colorado contacted the DDHS and reported that an infant with unusual bruising should be seen by a DDHS caseworker immediately. After arriving at Children's Colorado, O.T.'s family informed the DDHS caseworker, law enforcement and emergency room physicians that O.T.'s bruising may be the result of O.T. being incorrectly placed in an infant carrier by the family's nanny, according to the complainant. The nanny had placed O.T. in the carrier the previous evening and the shape of the bruises appeared to match that of a snap located on the interior of the carrier. The responding caseworker, law enforcement and a physician at Children's Colorado agreed with the explanation and O.T. was sent home with his parents. The caseworker did not note any concerns for O.T.'s safety in the statewide TRAILS database.²

As is standard procedure for cases involving possible abuse or neglect, Children's Colorado contacted the Kempe Center's Child Protection Team (CPT).³ Prior to leaving the hospital, the family was briefly seen by a physician on the CPT. The full CPT, comprised of multiple physicians, reviewed O.T.'s case after the family left the hospital, using medical records and photographs. Upon conclusion of its review, the CPT determined that O.T.'s bruising was not caused by the infant carrier alone.

Ultimately, there were contradicting positions on the cause of the bruising. Emergency department physicians who examined O.T. found that the bruising was likely caused by the infant carrier. The CPT

¹ For the purposes of this report, the infant will be referred to as O.T.

² The TRAILS database is the state automated case management system used for documentation in child welfare cases across all 64 counties in Colorado.

³ A team of child abuse experts which provides comprehensive medical evaluations and consultations at the Children's Hospital.

that reviewed O.T.’s case found that the bruising could not be caused by the infant carrier alone. The DDHS considered both positions prior to issuing an “inconclusive” finding on November 25, 2016. This finding indicates that there was insufficient evidence to either prove or disprove whether O.T.’s parents or nanny caused physical abuse that resulted in the bruise on the infant’s groin.

The complainant reported concerns to the CPO that this “inconclusive” finding, which will remain in the statewide TRAILS database, could later have negative implications for O.T.’s parents and nanny. The CPO opened a formal investigation on December 16, 2016.

The CPO’s investigation found no violations of Volume VII⁴ or the Colorado Children’s Code⁵ on the part of the DDHS. The CPO affirmed the DDHS’ handling of O.T.’s case and did not issue any recommendations to the agency.

The CPO did find an absence of policy in Volume VII regarding any process for families or individuals to appeal a finding of “inconclusive.” As a result, the CPO has issued a recommendation to the CDHS.

The CPO’s findings, recommendations and the CDHS’ response are summarized in the table below.

| Agency/Provider | CPO Finding | CPO Recommendation | Agency/Provider Response |
|--|--|---------------------------------------|---------------------------------|
| Denver Department of Human Services | Affirmed Agency/Provider Actions (See page 8) | Not Applicable | Agree |
| Colorado Department of Human Services’ Division of Child Welfare | Absence of Policy (See page 9) | Rec. 2016-2296-F2(R1) (See page 9) | Agree |

II. Relevant Agency/Provider(s)

The following agency/providers were the subject of the complaint in Case 2016-2296. The CPO notified the agency/providers below that they are the subjects of an investigation. During its investigation, the CPO requested information concerning the agency/provider’s policies and practices as they relate to the complaint. The agency/providers were also notified that they will be named in this investigation report. Any response by the agency/providers will be stated in Section VIII of this investigation report.

Agency/Providers Involved:

- A. Denver Department of Human Services
- B. Colorado Department of Human Services’ Division of Child Welfare

⁴ Rules promulgated by the State Board of Human Services that guide how child welfare services are administered in Colorado

⁵ Colorado Law regarding child abuse and neglect. See C.R.S. 19-3-301 to 308.

III. Summary of the Complaint

| | |
|--------------------------------|-------------------------|
| Complaint Received: 12/14/2016 | Case Opened: 12/16/2016 |
|--------------------------------|-------------------------|

The CPO received a complaint concerning TRAILS assessment ID: [REDACTED]. The complainant reported that an assessment was opened by a DDHS caseworker on October 14, 2016, concerning physical abuse on a then 6-week-old male infant, O.T. The complainant stated that during the DDHS assessment, O.T. was examined by his pediatrician, emergency room physicians at Children’s Colorado and Denver Police officers who all stated the bruising to O.T.’s thigh and groin area was caused by an infant carrier. A child protection team assigned to O.T.’s case ultimately found that the bruise was not caused by the infant carrier alone. Ultimately, the DDHS closed the case with a finding of “inconclusive.”

The complainant was concerned with the “inconclusive” finding that resulted from the DDHS’ assessment, and that there is no means for the family to appeal such finding.

IV. Investigation Summary

The CPO opened an investigation on December 16, 2016.

The CPO investigation involved the following:

- Review of the Colorado TRAILS system
- Review of photographic and written documentation from the case
- Interview of O.T.’s parents
- Interviews of the DDHS staff
- Review of O.T.’s medical reports
- Review of the CPT consultation and review reports
- CPO communication with the DDHS

The CPO reviewed the following rules and laws during its investigation:

- Volume VII
- Colorado Children’s Code

Below is a list of relevant dates in this case:

- October 14, 2016 – The DDHS received a report of alleged abuse concerning O.T.
- October 14, 2016 – O.T. was examined by his pediatrician and sent to Children’s Colorado for consultation.
- October 14, 2016 – O.T. was examined by his pediatrician, emergency room physicians at Children’s Colorado and Denver Police Officers.
- October 14, 2016 – The CPT is assigned to O.T.’s case.
- November 1, 2016 – The DDHS concluded their assessment and issued an “inconclusive” finding.
- December 14, 2016 – Complaint filed with the CPO.
- December 16, 2016 – CPO opened an investigation.

A summary of the CPO’s analysis is outlined below.

Findings Related to Child Abuse/Neglect Investigations

When a county human services department (county department) is conducting a high-risk assessment⁶ into allegations of child abuse and/or neglect, they are required by Volume VII to decide if child abuse and/or neglect did or did not occur. The conclusion of a high-risk assessment will result in one of three different findings:

- Founded “means that the abuse and/or neglect assessment established by a preponderance of the evidence⁷ that an incident(s) of abuse and/or neglect occurred.”⁸
- Unfounded “means that the abuse and/or neglect assessment established that there is clear evidence that no incident of abuse and/or neglect occurred.”⁹
- Inconclusive “means that the abuse and/or neglect assessment established that there was some likelihood that an incident(s) of abuse and/or neglect occurred but assessment could not obtain the evidence necessary to make a founded finding.”¹⁰

Appellate Process for Findings Related to Child Abuse and/or Neglect Investigations

All child abuse and/or neglect findings are entered into the Colorado TRAILS system. This system is not a public system, but in some instances information in the TRAILS database may be used or accessed during background checks for employers, volunteer opportunities or for the purposes of becoming a foster or adoptive parent.

When a county department concludes an assessment with a “founded” finding for child abuse and/or neglect, the person who caused the abuse or neglect has the right to appeal the finding and may, in some instances, have the finding removed from the Colorado TRAILS system.¹¹

When a county department concludes an assessment with a “founded” finding, the department may enter the finding one of two ways. In some instances, the county will implement the deferral process.¹² In these instances, the county department enters a finding of “deferred” instead of “founded.” The case file will still include information indicating the allegations of child abuse or neglect were “founded,” but the individual’s name would no longer be associated with the “founded” finding. The deferral process may be used if the individual has no prior allegations of child abuse or neglect and the individual completes an agreement with the county department to resolve the issues presented in the assessment within 60 days.¹³

If a county department does not implement the deferral process, an individual who is the subject of a “founded” finding may appeal the finding through the CDHS¹⁴ or appeal the finding through a fair

⁶ Volume VII Rule 7.000.2(A) defines “high-risk assessment” as, “the differential response track established for high risk situations where the alleged victim child(ren) are identified and a finding of abuse and/or neglect is made.”

⁷ Volume VII Rule 7.000.2(A) defines “preponderance of the evidence” as “credible evidence that a claim is more likely true than not.”

⁸ Volume VII Rule 7.000.2(A)

⁹ Volume VII Rule 7.000.2(A)

¹⁰ Volume VII Rule 7.000.2(A)

¹¹ Volume VII Rules 7.111 and 7.112

¹² Volume VII Rule 7.108

¹³ Volume VII Rule 7.108(A)

¹⁴ Volume VII Rule 7.111

hearing in front of an administrative law judge.¹⁵ Under this process, the case file is reviewed to determine whether the county department had enough evidence to support the “founded” finding.

The CDHS also has the authority to remove, a “founded” finding from an individual’s record.¹⁶

Currently, there are no such processes in Colorado for individuals who are the subject of an “inconclusive” finding.

October 14, 2016 Report of Alleged Physical Abuse

On October 14, 2016, the DDHS received a report regarding 6-week-old O.T., who had unusual bruising on his groin area. O.T. was sent to Children’s Colorado and was undergoing a full skeletal survey and a C.T. scan to determine the extent of his injuries.

That same day, the DDHS assigned a caseworker to respond immediately to Children’s Colorado to begin an assessment into the allegations of potential physical abuse on O.T. by either his parents or his nanny, who had cared for him the previous evening. The caseworker arrived at the hospital, interviewed the parents and observed the child. At this time, the mother provided the explanation that the nanny had incorrectly used an infant carrier the previous evening and the bruises were consistent with the snap on the infant carrier. The caseworker noted a “button like imprint” on O.T.’s groin similar to the size and shape of a snap on the infant carrier.¹⁷

The caseworker met with DPD officers and the treating physicians at Children’s Colorado, who agreed the infant carrier was the likely explanation for the bruising, and O.T. was sent home with his parents.¹⁸

As is Children’s Colorado policy, a physician from the Kemp Center’s Child Protection Team (CPT) observed O.T. the same day. The CPT physician found that the infant carrier was not a sufficient explanation for the bruising.¹⁹

Medical records from Children’s Colorado reflect that O.T.’s test results were negative for any additional injuries.²⁰

The caseworker was later notified that the CPT was concerned with the photographs of O.T.’s bruises and did not agree with the emergency department physicians. The CPT determined the injuries were more likely caused by some form of forced trauma and not the infant carrier alone.

On November 2, 2016, the DDHS requested that the assessment involving O.T. be closed with an “inconclusive” finding for physical abuse on O.T. by his mother, father and the nanny.

¹⁵ Volume VII Rule 7.112

¹⁶ Volume VII Rule 7.111(K)

¹⁷ Notes from TRAILS assessment ID: [REDACTED]

¹⁸ Notes from TRAILS assessment ID: [REDACTED]

¹⁹ Documentation from Child Protection Team consultation on October 19, 2016

²⁰ Documentation from Child Protection Team Review on October 26, 2016

The CPO provided O.T.'s family with requested guidance for contacting and working with the DDHS. The DDHS was asked to reconsider the "inconclusive" finding. Ultimately, the DDHS confirmed the "inconclusive" finding, citing the information detailed above.

Colorado Department of Human Services' Division of Child Welfare

On March 27, 2017, the CPO contacted the CDHS inquiring whether there is currently any process for individuals seeking to appeal an "inconclusive" finding. The CDHS stated that there is no process to appeal or challenge an "inconclusive" finding. The CDHS informed the CPO it is aware of the issue and has initiated research to determine the best course of action.

V. Conclusion

In conclusion, the CPO found that the DDHS was in compliance with Volume VII in its issuing of an "inconclusive" finding in O.T.'s case.

The CPO found there to be an absence of policy for providing individuals an opportunity to appeal or challenge an "inconclusive" finding of child abuse and/or neglect.

VI. Findings and Recommendations

At the conclusion of an investigation, the CPO may make findings that the agency/provider was not compliant with policy and/or was not compliant with law and will offer recommendations to the agency/provider for improvement of service delivery. If the CPO finds no violations of policy and/or law, the CPO may affirm the actions of the agency/provider. The CPO may also find an absence of policy or an absence of law.

The CPO maintains the discretion to issue recommendations at the conclusion of any investigation. The CPO cannot reverse or overturn decisions made by the agency/provider or court orders, as a result of an investigation.

Any agency/provider involved in a case will be provided a copy of the investigation prior to the report's public release. Agencies will have 10 business days to respond to any CPO findings and/or recommendations. All agency/provider's responses must be submitted in writing. Any response provided to the CPO will be included in the investigation report.

The CPO will consider any agency/provider response and, if necessary, revise its findings and recommendations prior to publicly releasing its investigation report.

Denver Department of Human Services

1 Affirmed Agency/Provider Actions

The CPO found that the DDHS utilized Volume VII rules appropriately when entering a finding of "inconclusive" in the assessment of TRAILS Assessment ID: [REDACTED].

2 Absence of Policy

Currently there is no rule in Volume VII allowing for an individual to appeal or challenge an “inconclusive” finding of child abuse and/or neglect.

RECOMMENDATION (ID – 2016-2296-F2(R1)): Using existing department resources, the CDHS should:

- a. Coordinate with stakeholders to study the use of “inconclusive” findings by county departments. This study should include how often the finding is used by county departments and whether county departments consider it to be useful in their practice.
- b. Research practice in other states regarding the use of “inconclusive” findings or similar dispositions.
- c. Research any available processes in other states for challenging “inconclusive” findings or similar dispositions.

VII. Recommendation Summary

Pursuant to C.R.S. §19-3.3-103(2)(e), which mandates the CPO to, “recommend to the general assembly, the executive director, and any appropriate agency or entity statutory, budgetary, regulatory and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado.”

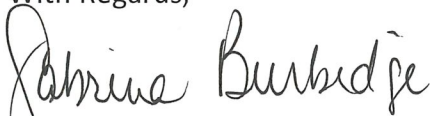
While the CPO does not have authority to mandate compliance with its recommendations, all recommendations issued by the CPO are made available to the public through the release of investigation reports.

| Recommendation ID | CPO Finding | Agency/Provider Response | Agree/Disagree |
|-------------------|-------------------|--------------------------|----------------|
| 2016-2296-F2(R1) | Absence of Policy | Yes | Agree |

A complete copy of the DDHS’ and the CDHS’ responses may be found in **Appendix A**.

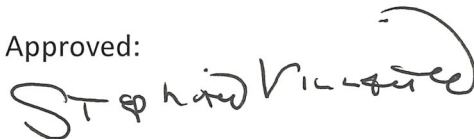
The CPO is appreciative of the cooperation of the DDHS and the CDHS throughout this investigative process.

With Regards,



Sabrina Burbidge
Deputy Ombudsman

Approved:



Stephanie Villafuerte
Ombudsman

APPENDIX A

Agency/Provider Response

Any agency/provider involved in a case will be provided a copy of the investigation report prior to the report's public release. Agencies will have 10 business days to respond to any CPO findings and/or recommendations. All agency/provider's responses must be submitted in writing. Any response provided to the CPO will be included in the case report.

The CPO will consider any agency/provider response and, if necessary, revise its findings and recommendations prior to publicly releasing its case report.

The CPO provided a copy of this investigation report to each agency/provider listed in Section II of this report on December 15, 2017. The agency/provider submitted their written responses on January 3, 2017.

Denver Department of Human Services

| Recommendation ID | CPO Finding | Agency/Provider |
|--|-------------------------------|-----------------|
| Not Applicable | Affirm Agency/Provider Action | Agree |
| <p>DDHS Response: "Thank you for sharing your investigation report and recommendations. Because there are no recommendations for Denver Department of Human Services, we do not have a specific response."</p> | | |

Colorado Department of Human Services' Division of Child Welfare

| Recommendation ID | CPO Finding | Agency/Provider |
|---|-------------------|-----------------|
| 2016-2296-F2(R1) | Absence of Policy | Agree |
| <p>CPO Recommendation: Using existing department resources, the CDHS should:</p> <ol style="list-style-type: none"> a. Coordinate with stakeholders to study the use of "inconclusive" findings by county departments. This study should include how often the finding is used by county departments and whether county departments consider it to be useful in their practice. b. Research practice in other states regarding the use of "inconclusive" findings or similar dispositions. a. Research any available processes in other states for challenging "inconclusive" findings or similar dispositions. | | |
| <p>CDHS-DCW Response: "The department agrees with this recommendation and will assign staff and an existing stakeholder group."</p> | | |



Office of Colorado's Child Protection Ombudsman

INVESTIGATION REPORT

Case 2016-2553

Stephanie Villafuerte

Child Protection Ombudsman

December 18, 2017

Introduction

By design, the Office of Colorado’s Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Jurisdiction

The CPO receives *“complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.”* See C.R.S. §19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. §19-3.3-101 to 110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency/provider decision.
- Offer legal advice.

Public Disclosure

In meeting its statutory requirements to *“improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system,”* as stated in C.R.S. §19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency/provider. The CPO will do so by publicly releasing its investigation reports.

Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency/provider when reviewing and/or investigating a complaint. *“In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.”* See C.R.S. §19-3.3-103(1)(a)(II)(A).

How To Read This Report

The CPO has designed its investigative reports to provide citizens and stakeholders clear and concise information concerning the investigations in which the CPO issues recommendations.

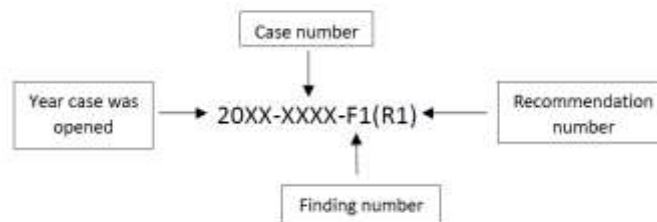
Each report will include an executive summary, relevant agency/provider, summary of the complaint, investigation summary, conclusion as well as the CPO's findings and recommendations. Below is a list of terms and brief explanations to serve as a reference while reading this report.

Findings

At the conclusion of each investigation, the CPO will issue one or more of the following **findings**:

1. **Absence of Law:** An investigation will conclude with this finding if the CPO identifies deficits in the law governing the functions of an agency/provider within the child protection system.
2. **Absence of Policy:** An investigation will conclude with this finding if the CPO identifies deficits in policy governing the functions of an agency/provider within the child protection system.
3. **Affirmed Agency/Provider Actions:** This finding means the CPO found no policy and/or law compliance violations by an agency/provider as they relate to the complaint.
4. **Affirmed Agency/Provider Actions with Recommendations:** This finding indicates that the agency/provider did not violate policy and/or law, but the CPO determines there are areas of practice that could be improved upon to ensure the highest level of service delivery to a child or family. In this instance, the CPO will make recommendations to the agency/provider.
5. **Agency/Provider Non-Compliance with Law:** This finding indicates that the agency/provider failed to follow state and/or federal child protection law.
6. **Agency/Provider Non-Compliance with Policy:** This finding indicates that the agency/provider failed to follow policies regulating their practice in delivering services within the child protection system.
7. **Identification of Practice Concerns:** This finding indicates that the CPO identified practice(s) within an agency/provider's handling of a case which negatively affect the delivery of services to children and families. These concerns do not violate policy and/or laws.

Recommendations



Each recommendation – a suggestion or proposal to improve the child protection system – will be a result of a specific finding. Multiple recommendations can be associated with the same finding. Each recommendation will be assigned a unique identification number to help stakeholders and citizens track the recommendation throughout the report and on the CPO's website.

I. Executive Summary

On June 27, 2017, the Office of Colorado’s Child Protection Ombudsman (CPO) received a complaint regarding the Adams County Department of Human Services’ (ACDHS) handling of a child abuse report on a 2-year-old boy (L.H.).¹

The complainant reported that on October 30, 2016, a report of child abuse and neglect was made to the ACDHS. The report to ACDHS alleged that L.H.’s mother was found to be “extremely drunk”² while caring for L.H. and making attempts to drive with L.H. while intoxicated. The ACDHS completed an assessment of the allegations. At that time, the ACDHS found L.H. to be safe in his mother’s care and did not remove L.H. from his home or open a child welfare case with the family.

The complainant stated to the CPO that, although the father of L.H. does not have custody of him, ACDHS failed to inform or interview the father regarding the allegations of neglect.

On June 28, 2017, the CPO opened a case in this matter. Volume VII³ requires county human services departments to notify parents of any assessment into allegations of child abuse and/or neglect involving their child, as well as the outcome of their assessment.⁴ The CPO found that the ACDHS did not contact L.H.’s father regarding the allegations or the outcome of the assessment. According to the TRAILS database,⁵ L.H.’s father’s contact information was available to ACDHS. The CPO noted that the ACDHS supervisor approved the assessment for closure even though the caseworker had not complied with the notification requirements.

Upon conclusion of its investigation, the CPO identified two technical violations of Volume VII involving ACDHS’s handling of the report alleging neglect on L.H. The CPO did not find that either of these technical violations placed L.H. in an unsafe situation or at risk of further harm. Volume VII was designed to ensure that parents’ and children’s rights are protected during any involvement with county human services departments. In this case, the CPO found that the father’s rights were violated by not advising him of his child’s involvement with the ACDHS and failing to advise him of the outcome of the ACDHS assessment. For these reasons, the CPO issued two recommendations to the ACDHS. The CPO’s findings, recommendations and agency responses are summarized the table below.

| Agency/Provider | CPO Finding | CPO Recommendation | Agency/Provider Response |
|---|---|-------------------------------|---------------------------------|
| Adams County Department of Human Services | Non-Compliance with Policy (See page 6) | 2016-2553-F1(R1) (See page 6) | Agree |
| Adams County Department of Human Services | Non-Compliance with Policy (See page 7) | 2016-2553-F2(R1) (See page 7) | Agree |

¹ For the purposes of this report, the child will be referred to as L.H.

² Notes documented in TRAILS Referral ID: [REDACTED]

³ Rules promulgated by the State Board of Human Services that dictate how child welfare services are administered in Colorado

⁴ Volume VII 7.104.1(C)(2) and 7.104.15(B)(1)

⁵ Statewide child welfare database used by caseworkers for the documentation of their work with children and families

II. Relevant Agency/Provider(s)

The following agency/provider was the subject of the complaint in Case 2016-2553. The CPO notified the agency/providers below that they are the subjects of an investigation. During its investigation, the CPO requested information concerning the agency/provider's policies and practices as they relate to the complaint. The agency/providers were also notified that they will be named in this investigation report. Any response by the agency/providers will be stated in Section VIII of this investigation report.

Agency/Providers Involved:

- A. Adams County Department of Human Services

III. Summary of the Complaint

| | |
|--------------------------------|-------------------------|
| Complaint Received: 06/27/2017 | Case Opened: 06/28/2017 |
|--------------------------------|-------------------------|

The CPO received a complaint concerning TRAILS Referral ID: [REDACTED] regarding the Adams County Department of Human Services' (ACDHS) handling of a report of neglect involving a 2-year-old boy, L.H. Specifically, the complainant was concerned that L.H.'s father was not notified when the ACDHS assessed a report of possible abuse or neglect involving L.H. The complainant was also concerned that L.H.'s father was not notified of the outcome of the assessment. The complainant stated the father learned of the report several months after the ACDHS completed the assessment.

IV. Investigation Summary

Due to concerns that ACDHS did not appropriately contact, notify or interview L.H.'s father, who was identified through the assessment and may have had information regarding the alleged neglect, the CPO opened a formal investigation on June 28, 2017.

The CPO investigation involved the following:

- Review of the TRAILS database
- Review of Colorado State Courts database⁶
- Review of documentation provided by the complainant
- CPO communication with the ACDHS

The CPO reviewed the following rules and laws during its investigation:

- Volume VII
- Colorado Children's Code ⁷

⁶ Statewide database which contains court records and documentation of court proceedings

⁷ Colorado Law regarding child abuse and neglect

The CPO's analysis included the review of the TRAILS Assessment ID: [REDACTED]. The CPO identified technical violations in the handling of the assessment by the ACHDS. The CPO did not find that these technical violations placed the child in imminent danger or at risk for future harm.

Below is a list of relevant dates in this case:

- October 30, 2016: Report of abuse and/or neglect filed with the ACDHS concerning L.H.
- December 12, 2016: The ACDHS closed its assessment.
- April 12, 2017: L.H.'s father became aware of the assessment by the ACDHS through a third party.
- June 27, 2017: Complaint filed with the CPO.
- June 28, 2017: CPO opened a formal investigation.

A summary of the CPO's analysis is outlined below. For the purposes of this report, the child will be referred to as L.H.

October 30, 2016 Report of Alleged Environmental Neglect

On October 30, 2016, the ACDHS received a report regarding a woman and her 2-year-old son. The report documented concerns that L.H.'s mother was found caring for L.H. while intoxicated, was attempting to drive with L.H. while intoxicated and that L.H. was not appropriately clothed for the weather.⁸

The CPO conducted a review of TRAILS Assessment ID: [REDACTED] and found that the ACDHS completed a thorough assessment of the allegations to ensure that L.H. was safe. During the review, the CPO found that L.H.'s father's contact information was provided to the caseworker by L.H.'s mother on November 3, 2016. Documentation in TRAILS reflects that on November 3, 2016, the caseworker notified L.H.'s mother that L.H.'s father would be contacted regarding the allegations.⁹

The CPO found that there are no documented attempts by ACDHS to contact L.H.'s father regarding the report of child abuse/neglect concerning L.H. and the ACDHS' assessment of the allegations. Further, there was no documentation by the ACDHS indicating that L.H.'s father was notified of the outcome of the assessment.

On July 5, 2017, the CPO contacted ACDHS due to the lack of documentation concerning contact with L.H.'s father.

On July 14, 2017, the CPO received a response from the ACDHS. The ACHDS reviewed TRAILS Referral ID: [REDACTED] and concluded that L.H.'s father was not contacted prior to the caseworker and supervisor closing the assessment on December 12, 2016.

⁸ Notes documented in TRAILS Referral ID: [REDACTED]

⁹ Notes documented in TRAILS Referral ID: [REDACTED]

V. Conclusion

The CPO found that the ACDHS was not in compliance with Volume VII when the department failed to contact, notify or interview L.H.'s father during its assessment of the report of child abuse and/or neglect. The ACDHS also violated Volume VII when they failed to notify L.H.'s father of the outcome of the assessment.

VI. Findings and Recommendations

At the conclusion of an investigation, the CPO may make findings that the agency/provider was not compliant with policy and/or was not compliant with law and will offer recommendations to the agency/provider for improvement of service delivery. If the CPO finds no violations of policy and/or law, the CPO may affirm the actions of the agency/provider. The CPO may also find an absence of policy or an absence of law.

The CPO maintains the discretion to issue recommendations at the conclusion of any investigation. The CPO cannot reverse or overturn decisions made by the agency/provider or court orders, as a result of an investigation.

Any agency/provider involved in a case will be provided a copy of the investigation prior to the report's public release. Agencies will have 10 business days to respond to any CPO findings and/or recommendations. All agency/provider's responses must be submitted in writing. Any response provided to the CPO will be included in the investigation report.

The CPO will consider any agency/provider response and, if necessary, revise its findings and recommendations prior to publicly releasing its investigation report.

Adams County Department of Human Services

1 Non-Compliance with Policy

Volume VII: 7.104.1(C)(2): Intrafamilial Abuse and/or Neglect Assessment- Timing and Elements

This rule requires the county caseworker to interview all children, caregivers, non-custodial parent(s), family members and other persons identified through the assessment who may have information regarding the alleged abuse and/or neglect. The CPO found that the ACDHS failed to contact L.H.'s father despite his contact information being available. This resulted in L.H.'s father being unaware of ACDHS involvement with his son.

RECOMMENDATION (ID – 2016-2553-F1(R1)): The ACDHS should provide training for the caseworkers and supervisors involved in this incident. Training should include the importance of contacting both parents during the course of an assessment as they may have information regarding the alleged abuse and/or neglect. Additional training and technical support for the supervisor should involve his/her responsibility to review all assessments prior to closure, to ensure that the assessment was completed thoroughly and per Volume VII requirements.

Volume VII: 7.104.15(B)(1): Notice

This rule requires county departments to inform the parent(s), guardian(s) or caregiver(s) of the alleged victim child(ren) of the outcome of the assessment. It further requires county departments to notify parents who may not have custody of their children to the outcomes of child abuse and/or neglect assessments unless it is not in the best interest of the child(ren) to do so.

On December 12, 2016, the ACDHS approved and closed the assessment without notifying L.H.'s father of the outcome of the assessment.

RECOMMENDATION (ID – 2016-2553-F2(R1)): The ACDHS should provide training for the supervisor involved in approving the closure of this assessment. Training should include Volume VII requirements for parental notification of assessment outcomes. Training should also include the supervisor's responsibility to review all assessments prior to closure to ensure that the assessment has been completed thoroughly per Volume VII requirements.

VII. Recommendation Summary

Pursuant to C.R.S. §19-3.3-103(2)(e), which mandates the CPO to, "recommend to the general assembly, the executive director, and any appropriate agency or entity statutory, budgetary, regulatory and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado."

While the CPO does not have authority to mandate compliance with its recommendations, all recommendations issued by the CPO are made available to the public through the release of investigation reports.

| Recommendation ID | CPO Finding | Agency/Provider Response | Agree/Disagree |
|-------------------|--------------------------|--------------------------|----------------|
| 2016-2553-F1(R1) | Non-Compliance w/ Policy | Yes | Agree |
| 2016-2553-F2(R1) | Non-Compliance w/ Policy | Yes | Agree |

A complete copy of the ACDHS' response may be found in **Appendix A**.

The CPO is appreciative of the cooperation of the ACDHS throughout this investigative process and recognizes the hard work that this agency is doing to ensure that the children they serve receive the best possible care and services to help them thrive.

With Regards,



Melissa Vigil
Child Protection Systems Analyst

Approved:



Stephanie Villafuerte
Ombudsman



Sabrina Burbidge
Deputy Ombudsman

APPENDIX A

Agency/Provider Response

Any agency/provider involved in a case will be provided a copy of the investigation report prior to the report's public release. Agencies will have 10 business days to respond to any CPO findings and/or recommendations. All agency/provider's responses must be submitted in writing. Any response provided to the CPO will be included in the case report.

The CPO will consider any agency/provider response and, if necessary, revise its findings and recommendations prior to publicly releasing its case report.

The CPO provided a copy of this investigation report to each agency/provider listed in Section II of this report on December 1, 2017. The agency/provider submitted their written responses on December 15, 2017.

| Adams County Department of Human Services | | |
|---|-------------------------|-----------------|
| Recommendation ID | CPO Finding | Agency/Provider |
| 2016-2553-F1(R1) | Non-Compliant w/ Policy | Agree |
| <p>CPO Recommendation: The ACDHS should provide training for the caseworkers and supervisors involved in this incident. Training should include the importance of contacting both parents during the course of an assessment as they may have information regarding the alleged abuse and/or neglect. Additional training and technical support for the supervisor should involve his/her responsibility to review all assessments prior to closure, to ensure that the assessment was completed thoroughly and per Volume VII requirements.</p> | | |
| <p>ACDHS Response: "In response to Recommendation 2016-2553-F1(R1), Adams County Department of Human Services agrees with the Ombudsman's recommendation of training regarding the importance of contacting both parents during the course of an assessment. Adams County agrees that per rule the non-custodial parent should be notified unless it is not in the child's best interest to do so. During our review of this report it was determined that despite having contact information, our assigned caseworker did not make contact with the father even though there was no information provided that this contact with the non-custodial parent would be contraindicated. The caseworker offered this as an error; however, we will follow up to provide additional training to workers and supervisors regarding this rule. Although the involved caseworker is no longer involved in direct practice, and while the supervisor has subsequently retired, we will provide this training to our remaining staff and supervisors to assure clear understanding of the rule."</p> | | |

| Recommendation ID | CPO Finding | Agency/Provider |
|--|-------------------------|-----------------|
| 2016-2553-F2(R1) | Non-Compliant w/ Policy | Agree |
| <p>CPO Recommendation: The ACDHS should provide training for the supervisor involved in approving the closure of this assessment. Training should include Volume VII requirements for parental notification of assessment outcomes. Training should also include the supervisor's responsibility to review all assessments prior</p> | | |

to closure to ensure that the assessment has been completed thoroughly per Volume VII requirements.

ACDHS Response:

“In response to recommendation 2016-2553-F2(R2), Adams County Department of Human services also agrees with the Ombudsman’s recommendation to specifically train our supervisors to look for this information as part of their assessment closures. This training will include requirements for parental notifications, all required information for assessment closure and tools available for them to assist in ensuring that all information is present.”



Office of Colorado's Child Protection Ombudsman

INVESTIGATION REPORT

Case 2017-2630

Stephanie Villafuerte

Child Protection Ombudsman

January 25, 2018

Introduction

By design, the Office of Colorado’s Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Jurisdiction

The CPO receives *“complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.”* See C.R.S. §19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. §19-3.3-101 to 110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency/provider decision.
- Offer legal advice.

Public Disclosure

In meeting its statutory requirements to *“improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system,”* as stated in C.R.S. §19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency/provider. The CPO will do so by publicly releasing its investigation reports.

Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency/provider when reviewing and/or investigating a complaint. *“In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.”* See C.R.S. §19-3.3-103(1)(a)(II)(A).

How To Read This Report

The CPO has designed its investigative reports to provide citizens and stakeholders clear and concise information concerning the investigations in which the CPO issues recommendations.

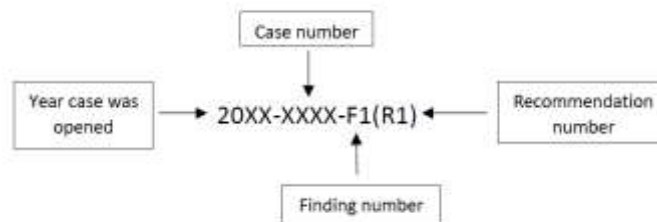
Each report will include an executive summary, relevant agency/provider, summary of the complaint, investigation summary, conclusion as well as the CPO's findings and recommendations. Below is a list of terms and brief explanations to serve as a reference while reading this report.

Findings

At the conclusion of each investigation, the CPO will issue one or more of the following **findings**:

1. **Absence of Law:** An investigation will conclude with this finding if the CPO identifies deficits in the law governing the functions of an agency/provider within the child protection system.
2. **Absence of Policy:** An investigation will conclude with this finding if the CPO identifies deficits in policy governing the functions of an agency/provider within the child protection system.
3. **Affirmed Agency/Provider Actions:** This finding means the CPO found no policy and/or law compliance violations by an agency/provider as they relate to the complaint.
4. **Affirmed Agency/Provider Actions with Recommendations:** This finding indicates that the agency/provider did not violate policy and/or law, but the CPO determines there are areas of practice that could be improved upon to ensure the highest level of service delivery to a child or family. In this instance, the CPO will make recommendations to the agency/provider.
5. **Agency/Provider Non-Compliance with Law:** This finding indicates that the agency/provider failed to follow state and/or federal child protection law.
6. **Agency/Provider Non-Compliance with Policy:** This finding indicates that the agency/provider failed to follow policies regulating their practice in delivering services within the child protection system.
7. **Identification of Practice Concerns:** This finding indicates that the CPO identified practice(s) within an agency/provider's handling of a case which negatively affect the delivery of services to children and families. These concerns do not violate policy and/or laws.

Recommendations



Each recommendation – a suggestion or proposal to improve the child protection system – will be a result of a specific finding. Multiple recommendations can be associated with the same finding. Each recommendation will be assigned a unique identification number to help stakeholders and citizens track the recommendation throughout the report and on the CPO's website.

I. Executive Summary

ISSUE: Whether the Adams County Department of Human Services (ACDHS) failed to assign a caseworker to investigate allegations of abuse and/or neglect.

On August 29, 2017, the CPO received a complaint concerning the safety of five children, ranging in age from one to 10 years of age. The complainant stated that a report of child abuse and neglect had been made to the Adams County Department of Human Services (ACDHS) regarding the children through the Colorado Child Abuse and Neglect Hotline. The report alleged that 1-year-old D.P.; 3-year-old K.P.; 6-year-old O.P.; 8-year-old L.P. and 10-year-old M.P. (herein collectively referred to as “the children”) were living in a potentially unsafe home. Specifically, the complainant stated that the ACDHS received a report alleging that:

- L.P. was being locked in a crawlspace in his parent’s home for hours.
- All of the children were being hit by their parent.
- M.P. is being forced to drink alcohol.

The complainant was concerned for the children’s safety should the allegations not be further assessed by the ACDHS.

Through an independent review of the statewide TRAILS database,¹ the CPO confirmed the ACDHS received a report from a mandatory reporter regarding specific allegations of abuse and neglect on the five children on August 29, 2017. This referral is identified as TRAILS referral ID: [REDACTED]. Per Volume VII, county human services departments (county department) have 24 hours to determine how the department will respond.² The CPO reviewed the TRAILS database on August 30, 2017 to determine the response by ACDHS to the referral. On August 30, 2017, the ACDHS determined that the report did not meet the legal definition of abuse³ and neglect⁴ and, therefore, did not assign a caseworker to further assess the allegations.

Upon review, the CPO found the allegations met the legal threshold for assignment and therefore, immediately contacted the ACDHS regarding their decision not to assign a caseworker. ACDHS confirmed their decision and declined to assign a caseworker to assess the allegations of abuse and neglect. Due to concerns for the children’s safety, the CPO notified the Colorado Department of Human

¹ The TRAILS database is the state automated case management system used for documentation in child welfare cases across all 64 counties in Colorado.

² Volume VII 7.103.3(A)

³ C.R.S. 19-1-103(1)(a)(i) defines “abuse” as, “an act or omission in one of the following categories that threatens the health or welfare of a child: Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death and either: Such condition or death is not justifiably explained; the history given concerning such condition is at variance with the degree or type of such condition or death; or the circumstances indicate that such condition may not be the product of an accidental occurrence.”

⁴ C.R.S. 19-3-102(1)(a)(b)(c) states, “child neglect occurs when (a) A parent, guardian, or legal custodian has abandoned the child or has subjected him or her to mistreatment or abuse or a parent, guardian, or legal custodian has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop such mistreatment or abuse and prevent it from recurring; (b) The child lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; (c) The child’s environment is injurious to his or her welfare.”

Services' Division of Child Welfare (CDHS) and requested further review and assistance concerning the ACDHS refusal to assess the allegations. Following the CPO's contact with the CDHS, they immediately contacted ACDHS resulting in ACDHS assigning a caseworker to assess the allegations on September 1, 2017. The assessment was closed on October 19, 2017, after the ACDHS determined there was enough evidence to prove the parent abused and neglected L.P. when the child was locked in the crawl space. Additionally, the ACDHS determined the parent had neglected M.P. when the child was forced to drink alcohol.

The CPO found one violation of Volume VII⁵ and two violations of the Colorado Children's Code⁶ by the ACDHS regarding their decision not to assign the referral on August 30, 2017. The CPO's findings, recommendations for the ACDHS and the ACDHS' responses are summarized in the table below.

| Agency/Provider | CPO Finding | CPO Recommendation | Agency/Provider Response |
|---|---|-------------------------------|--------------------------|
| Adams County Department of Human Services | Non-Compliance with Policy (See page 7) | 2017-2630-F1(R1) (See page 8) | Agree |
| Adams County Department of Human Services | Non-Compliance with Law (See page 8) | 2017-2630-F2(R1) (See page 8) | Partially Agree |
| Adams County Department of Human Services | Non-Compliance with Law (See page 8) | 2017-2630-F3(R1) (See page 8) | Agree |

II. Relevant Agency/Provider(s)

The following agency/providers were the subject of the complaint in Case 2017-2630. The CPO notified the agency/providers below that they are the subjects of an investigation. During its investigation, the CPO requested information concerning the agency/provider's policies and practices as they relate to the complaint. The agency/providers were also notified that they will be named in this investigation report. Any response by the agency/providers will be stated in Section VIII of this investigation report.

Agency/Providers Involved:

- Adams County Department of Human Services

III. Summary of the Complaint

| | |
|---------------------------------------|--------------------------------|
| Complaint Received: 08/29/2017 | Case Opened: 08/29/2017 |
|---------------------------------------|--------------------------------|

The CPO received a complaint concerning TRAILS referral ID: [REDACTED]. The complainant stated that on August 29, 2017, a mandatory reporter made a report alleging child abuse and neglect to the ACDHS. The complainant was concerned that the ACDHS closed the referral without assigning a caseworker to further assess the allegations.

⁵ Rules promulgated by the State Board of Human Services that guide how child welfare services are administered in Colorado. See C.C.R. 2509-1 to 10.

⁶ Colorado law regarding child abuse and neglect. See C.R.S. 19-3-301 to 318.

The complainant alleged that the five children were residing in a home where they were being exposed to domestic violence and substance use by their biological parent. The complainant further stated that the children were experiencing physical and emotional abuse at the hands of their parent. The complainant was concerned for the children's safety should the allegations not be further assessed by the ACDHS.

IV. Investigation Summary

The CPO opened an investigation on August 29, 2017.

The CPO investigation involved the following:

- Review of relevant documentation in the Colorado TRAILS database
- Email communication with the ACDHS
- Email communication with the CDHS

The CPO reviewed the following rules and laws during its investigation:

- Volume VII
- Colorado Children's Code

Below is a list of relevant dates in this case:

- August 29, 2017 – Report of abuse and neglect filed with the ACDHS.
- August 29, 2017 – Complaint filed with CPO.
- August 29, 2017 – CPO opens investigation.
- August 29, 2017 – ACDHS determines there is not enough information to assign a caseworker for further assessment.
- August 30, 2017 – CPO contacts ACDHS regarding assignment decision.
- September 1, 2017– ACDHS confirmed their decision and informed the CPO they would not assign a caseworker for further assessment.
- September 1, 2017 – CPO contacts the CDHS.
- September 1, 2017 – ACDHS assigns a caseworker to assess the allegations.
- October 19, 2017 – ACDHS completes the assessment.

August 29, 2017 Report of Alleged Abuse and Neglect to ACDHS

On August 29, 2017, the ACDHS received a report regarding five children who were allegedly being abused and neglected by their biological parent. The reporting party provided the ACDHS with the following specific allegations of abuse and neglect:

- L.P. was being locked in a crawlspace in his parent's home for hours.
- All of the children are being hit by their parent and have had marks.

- M.P. is being forced to drink alcohol.⁷

Volume VII outlines a specific framework by which referrals concerning child abuse and/or neglect are to be handled. This framework is also known as RED Team.⁸ When a referral is processed through RED Team, the following points are discussed:

- Danger/harm
- Complicating/risk factors
- Gray area
- Cultural considerations/race
- Safety
- Strengths/protective factors
- Next steps

The RED Team, comprised of county department staff, reviews the details of the report and any subsequent information. The Team then decides if more information is needed and how the department will respond.

The ACDHS processed the mandatory reporter's call through RED Team on August 30, 2017, according to a review of the TRAILS database. The ACDHS RED Team reviewed the report of possible emotional and physical abuse by the parent, but ultimately declined to assign a caseworker to further assess the report, according to documentation in the TRAILS database.⁹ The ACDHS documented its reasoning for not assessing the allegation as:

*"No information available from reporter of abuse or neglect as defined in law."*¹⁰

Per Volume VII, county departments are required to assess allegations of abuse and neglect if the report includes details of a specific incident of abuse and/or neglect, the child is under the age of 18 and the alleged victim can be located.¹¹

The CPO found the allegations in TRAILS referral ID: [REDACTED] met the legal definition of child abuse and neglect. Concerned for the children's safety, the CPO contacted the ACDHS and inquired why the department determined the report did not meet the legal definition of abuse and neglect.¹²

On September 1, 2017, the ACDHS indicated there was not enough information contained in the report to meet the legal definition of abuse and neglect. The department confirmed its original decision to not assign a caseworker to further assess the report.¹³

⁷ Notes documented in TRAILS Referral ID: [REDACTED]

⁸ Volume VII 7.000.2(A) defines "RED team" as "the acronym for review, evaluate and direct. The RED team is a group decision making process that utilizes the framework and agency response guide to determine county department response to referrals." See Volume VII 7.000.2(A).

⁹ Notes documented in TRAILS Referral ID: [REDACTED]

¹⁰ Notes documented in TRAILS Referral ID: [REDACTED]

¹¹ Volume VII 7.103.6

¹² CPO inquiry sent to the ACDHS on August 30, 2017

¹³ ACDHS's September 1, 2017 response to CPO inquiry dated August 30, 2017

After receiving the ACDHS' response, the CPO contacted the CDHS and requested that CDHS staff review the referral to determine if the decision by the ACDHS was appropriate. Upon review of the referral in the TRAILS database, the CDHS contacted the ACDHS and a caseworker was assigned to assess the allegations on September 1, 2017.

The assessment was closed on October 19, 2017, with affirmative findings for abuse and neglect on the part of the children's parent.

V. Conclusion

In conclusion, the CPO found that the ACDHS, failed to comply with Volume VII and the Colorado Children's Code in its initial handling of TRAILS referral ID: [REDACTED] on August 30, 2017. The CPO acknowledges that ultimately, upon direction from the CDHS, the ACDHS assigned a caseworker to assess the allegations of abuse and neglect.

VI. Findings and Recommendations

At the conclusion of an investigation, the CPO may make findings that the agency/provider was not compliant with policy and/or was not compliant with law and will offer recommendations to the agency/provider for improvement of service delivery. If the CPO finds no violations of policy and/or law, the CPO may affirm the actions of the agency/provider. The CPO may also find an absence of policy or an absence of law.

The CPO maintains the discretion to issue recommendations at the conclusion of any investigation. The CPO cannot reverse or overturn decisions made by the agency/provider or court orders, as a result of an investigation.

Any agency/provider involved in a case will be provided a copy of the investigation prior to the report's public release. Agencies will have 10 business days to respond to any CPO findings and/or recommendations. All agency/provider's responses must be submitted in writing. Any response provided to the CPO will be included in the investigation report.

The CPO will consider any agency/provider response and, if necessary, revise its findings and recommendations prior to publicly releasing its investigation report.

Adams County Department of Human Services

1 Non-Compliance with Policy

Volume VII: 7.103.6(A): Criteria for Assessing a Referral for Assessment

This rule requires county departments to assign a caseworker to assess an allegation of abuse and/or neglect if the allegation meets the definition of known or suspected abuse and/or neglect and includes enough information to locate the alleged victim and indicates the child is under the age of 18.

The ACDHS improperly screened out the referral it received on August 29, 2017. The reporting party provided the information required under Volume VII for the ACDHS to assign a caseworker to assess the allegations. The report included allegations of substance use and domestic violence by the biological parent, as well as neglect and physical abuse of the children.

RECOMMENDATION (ID – 2017-2630-F1(R1)): The ACDHS provide training to RED Team participants regarding Volume VII requirements for the assignment of abuse and neglect referrals for assessment.

2 Non-Compliance with Law

Colorado Revised Statute: 19-3-308(1)(a), Action upon report of intrafamilial, institutional, or third-part abuse (immediate response).

Under this law, county departments are required to immediately respond to any report of known or suspected incident of abuse or neglect.

The ACDHS failed to assign a caseworker to assess the referral received on August 29, 2017, pursuant to C.R.S. 19-3-308(1)(a).

RECOMMENDATION (ID – 2017-2630-F2(R1)): The ACDHS provide training for the supervisors, administrators and RED Team participants involved at this decision point on TRAILS referral ID: [REDACTED]. Training should include instruction regarding the legal definition of abuse and neglect and its utilization in the assignment of referrals for assessment.

3 Non-Compliance with Law

Colorado Revised Statute: 19-3-308(1.5)(a), Action upon report of intrafamilial, institutional, or third party abuse (assessment).

Under this law, county departments are required to assess the possibility of abuse or neglect after receiving a referral.

The ACDHS incorrectly screened out the referral pursuant to C.R.S. 19-3-308(1.5)(a).

RECOMMENDATION (ID – 2017-2630-F3(R1)): The ACDHS provide training for the supervisors, administrators and RED Team participants involved at this decision point on TRAILS referral ID: [REDACTED]. Training should include instruction regarding the legal definition of abuse and neglect and its utilization in the assignment of referrals for assessment.

VII. Recommendation Summary

Pursuant to C.R.S. §19-3.3-103(2)(e), which mandates the CPO to, “recommend to the general assembly, the executive director, and any appropriate agency or entity statutory, budgetary, regulatory and administrative changes, including systemic changes, to improve the safety of and promote better outcomes for children and families receiving child protection services in Colorado.”

While the CPO does not have authority to mandate compliance with its recommendations, all recommendations issued by the CPO are made available to the public through the release of investigation reports.

| Recommendation ID | CPO Finding | Agency/Provider Response | Agree/Disagree |
|-------------------|--------------------------|--------------------------|-----------------|
| 2017-2630-F1(R1) | Non-Compliance w/ Policy | Yes | Agree |
| 2017-2630-F2(R1) | Non-Compliance w/ Law | Yes | Partially Agree |
| 2017-2630-F3(R1) | Non-Compliance w/ Law | Yes | Agree |

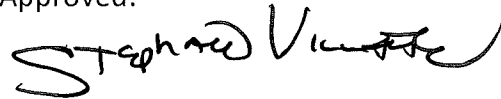
A complete copy of the ACDHS’ responses may be found in Appendix A. A copy of the CPO’s Investigative Briefing for this may be found in Appendix B.

With Regards,



Sabrina Burbidge
Deputy Ombudsman

Approved:



Stephanie Villafuerte
Ombudsman

APPENDIX A

Agency/Provider Response

Any agency/provider involved in a case will be provided a copy of the investigation report prior to the report's public release. Agencies will have 10 business days to respond to any CPO findings and/or recommendations. All agency/provider's responses must be submitted in writing. Any response provided to the CPO will be included in the case report.

The CPO will consider any agency/provider response and, if necessary, revise its findings and recommendations prior to publicly releasing its case report.

The CPO provided a copy of this investigation report to each agency/provider listed in Section II of this report on December 15, 2017. The agency/provider submitted their written responses on January 23, 2018.

| Adams County Department of Human Services | | |
|---|--------------------------|-----------------|
| Recommendation ID | CPO Finding | Agency/Provider |
| 2017-2630-F1(R1) | Non-Compliance w/ Policy | Agree |
| <p>CPO Recommendation: The ACDHS provide training to RED Team participants regarding Volume VII requirements for the assignment of abuse and neglect referrals for assessment.</p> | | |
| <p>ACDHS Response: "We do not agree with the overall assertion that our staff are not trained in policy related to child abuse and neglect. We agree that the RED team erred in their decision-making in this instance and did not follow rule."</p> | | |

| Recommendation ID | CPO Finding | Agency/Provider |
|---|-----------------------|-----------------|
| 2017-2630-F2(R1) | Non-Compliance w/ Law | Partially Agree |
| <p>CPO Recommendation: The ACDHS provide training for the supervisors, administrators and RED Team participants involved at this decision point on TRAILS referral ID: [REDACTED]. Training should include instruction regarding the legal definition of abuse and neglect and its utilization in the assignment of referrals for assessment.</p> | | |
| <p>ACDHS Response: "We partially agree that the supervisor and team erred in not initially assigning this referral for assessment. The Supervisor has subsequently retired and is no longer facilitating RED teams. The Administrator who reviewed your initial concern subsequently staffed with CDHS personnel, and after full discussion that specifically considered the RED team's consideration that led to their conclusion as well as the specific facts of the referral agreed to assign as a 5-day assessment.</p> <p>We agree that in this instance the RED team erred in their interpretation and application of the statutory definitions outlined in law."</p> | | |

| Recommendation ID | CPO Finding | Agency/Provider |
|--|-----------------------|-----------------|
| 2017-2630-F3(R1) | Non-Compliance w/ Law | Agree |
| <p>CPO Recommendation: The ACDHS provide training for the supervisors, administrators and RED Team participants involved at this decision point on TRAILS referral ID: [REDACTED]. Training should include instruction regarding the legal definition of abuse and neglect and its utilization in the assignment of referrals for assessment.</p> | | |
| <p>ACDHS Response: “We disagree with these recommendations as an overall conclusion about our practice and the assertion our staff are not trained regarding the specific rule, law and legal definitions of child abuse and neglect. ARD outcomes and the statewide screen out audit consistently demonstrate that Adams County performs at a very high level related to the accuracy of our decision-making through the RED team process. We consistently perform above 97% in the assessed accuracy of our RED team decisions, and in the recent statewide screen out review achieved greater than 90% in our screen out decisions. While there is certainly room for improvement, our overall training is solid, and complies with both rule and law on a consistent basis. Volume VII Rule, relevant law and definitions are clearly posted in each RED team meeting site, and our teams meticulously refer to the definitions while making their decisions each day. As a county, we are committed to continuous quality improvement and routinely use data to drive decisions around practice improvements. In 2018 we are implementing strategies to provide greater consistency in decision making across RED teams and to identify any patterns or trends that may impact our overall performance. This will include a review of data that can be reviewed down to a facilitator level to determine patterns of strength as well as potential areas for training to improve performance. It will also look at more subtle factors such as group fatigue that can set in when teams are reviewing a high number of referrals. This data is at a much more granular level, but reflects the reality of working with teams that are making highly complex group decisions in the compressed time required to process all the referrals that come to us each day.</p> <p>We would agree that in this instance the RED team erred by not initially assigning for assessment. After discussing with our colleagues at the state following your contact, a manager made the decision to override the RED team decision and to assign for assessment. We agree that assignment of a CFI to the family should not have been the deciding factor in whether the allegations met the threshold for assignment. We have subsequently reiterated for our staff that while a CFI may serve as an information source for us and may be seen as offering a protective factor, it is our responsibility to assess for abuse and neglect.</p> <p>We agree in this instance that our staff did not fully regard and correctly interpret law and the legal definition as outlined therein. We will debrief with the remaining available staff to assure that they fully understand why the team decision ultimately failed to comply with rule and with law. We will also work to assure that this discussion is elevated in all onsite training.”</p> | | |

APPENDIX B



Office of Colorado's Child Protection Ombudsman
INVESTIGATIVE BRIEFING
Case Number 2017-2630

Stephanie Villafuerte
Child Protection Ombudsman
November 29, 2017

Introduction

By design, the Office of Colorado’s Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Jurisdiction

The CPO receives *“complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.”* See C.R.S. §19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. §19-3.3-101-110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency/provider decision.
- Offer legal advice.

Public Disclosure

In meeting its statutory requirements to *“improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system,”* as stated in C.R.S. §19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency/provider. The CPO will do so by publicly releasing its Investigation Reports.

Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency/provider when reviewing and/or investigating a complaint. *“In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.”* See C.R.S. §19-3.3-103(1)(a)(II)(A)

I. Purpose of Investigative Briefing

If, through its preliminary research, the CPO determines an investigation requires additional resources and/or time beyond the 60-business day requirement stated in the *Office of Colorado’s Child Protection Ombudsman’s Case Practices and Operating Procedures*, the CPO will release an Investigative Briefing. The Investigative Briefing will outline why additional research is necessary, how the investigation will proceed and an estimated completion date. The Investigative Briefing is designed to act as a mechanism to hold the CPO accountable to the public and ensure transparency of the CPO’s work.

II. Service Area

| | |
|----------------|------------------------------|
| Case 2017-2630 | Service Area: Human Services |
|----------------|------------------------------|

The opening of an investigation does not indicate the CPO has found any violations or practice concerns regarding the agency/provider involved. After a complaint is opened the CPO will conduct a comprehensive, independent study of relevant facts, records and witness statements. Only after the CPO completes this study will it determine whether it will affirm the agency/provider’s actions or issue recommendations for improvements. The CPO will release an Investigation Report if it issues recommendations.

For the purposes of this briefing, the CPO will identify the Service Area involved in the complaint. Each CPO investigation involves agencies/providers who fall in one of the Service Area categories below:

- **Human Services:** Any county human service department, the Colorado Department of Human Services and/or tribal social services office.
- **Law Enforcement:** Any state, county or municipal law enforcement agency.
- **Division of Youth Services:** The Division of Youth Services and any facility or program housed within the department.
- **Community Agency:** Any community organization or program, outside of those listed, that receives public funds for the protection, permanency and well-being of children.
- **Mental Health:** Any agency/provider in Colorado that receives public funds for the purpose of providing mental health services to children and their families.
- **Judicial:** Any entity within the Judicial Branch, that is within the CPO’s jurisdiction, that provides for the protection, permanency and well-being of children.
- **Other:** Any entity in Colorado, outside those previously listed, that receives public funds for the protection, permanency and well-being of children.

III. Summary of the Complaint

| | |
|---------------------------------------|---|
| Complaint Received: 08/29/2017 | Investigation Opened: 08/29/2017 |
|---------------------------------------|---|

On August 29, 2017, the CPO received a complaint that five children, ranging in age from one to 10 years of age, were living in a potentially unsafe home where they were allegedly being exposed to substance use and domestic violence by their biological parent. Additionally, the complainant alleged the children were being physically abused by their parent. The relevant county human services department received a report regarding the children through the Colorado Child Abuse and Neglect Hotline. The complainant was concerned that the relevant county human services department declined to assign a caseworker to assess the report of child abuse and neglect.

IV. Summary of Preliminary and Ongoing Research

The CPO opened an investigation in this case on August 29, 2017. To date, the CPO has reviewed the case as it was documented in the statewide TRAILS¹ database. An initial review by the CPO confirmed that the relevant county human services department did not assign a caseworker to assess the allegations described above. As a result, the CPO contacted the county department and the Colorado Department of Human Services' Division of Child Welfare, and requested an assessment be completed. On September 1, 2017, the county department assigned a caseworker to assess the allegations.

The CPO has reviewed applicable law and rules in the case. The CPO's initial study and analysis of the available information has focused on the issue of whether the county human services department followed law and rule in its handling of the report of suspected abuse and/or neglect.

V. Next Steps

The relevant county department completed its assessment in this case in October 2017. Due to staffing shortages, the CPO has been unable to review the completed assessment. To ensure an accurate and thorough study of the case, the CPO requires additional time to review this assessment and determine whether the county department followed rule and law in the handling of this case.

VI. Estimated Length of Investigation

It is the goal of the CPO to provide a timely response to all investigations. The length of time for an investigation to be completed will vary depending on internal CPO resources, the complexity of the issues, the length of time for outside reports to be obtained and, in some instances, for criminal or civil legal proceedings to be completed.

Investigations are generally completed within 60 business days from the day the investigation is opened. Any delay outside of that timeframe will be documented in the CPO's internal database and approved by

¹ Statewide child welfare database used by caseworkers for the documentation of their work with children and families

the Ombudsman. The complainant and any relevant agency/provider(s) will also be provided with written notification of any delay and expected completion date.

The CPO expects to complete the Investigation Report for Case 2017-2630 and submit it to the agency/provider involved in the complaint, no later than December 8, 2017.

VII. Conclusion

This Investigative Briefing, and the subsequent Investigation Report, will be posted on the CPO's website. The CPO is appreciative of the openness of the agency/provider(s) involved in this case.

With Regards,

Approved:



Sabrina Burbidge
Deputy Ombudsman



Stephanie Villafuerte
Ombudsman

Appendix D



Office of Colorado's Child Protection Ombudsman

INVESTIGATIVE BRIEFING

(Updated)

Case Number 2017-2736

Stephanie Villafuerte

Child Protection Ombudsman

August 17, 2018

Introduction

By design, the Office of Colorado’s Child Protection Ombudsman (CPO) serves as an independent, neutral problem solver that helps citizens navigate a complex child protection system in an expert and timely manner. The Ombudsman has independent access to child protection records that are not otherwise available to the public. This allows the CPO to objectively review and investigate complaints, deliver recommendations and drive systemic reform through research and education. Through objective study the CPO works to improve the delivery of services to children and families within the child protection system.

Jurisdiction

The CPO receives *“complaints concerning child protection services made by, or on behalf of, a child relating to any action, inaction, or decision of any public agency or any provider that receives public moneys that may adversely affect the safety, permanency, or well-being of a child. The ombudsman may, independently and impartially, investigate and seek resolution of such complaints, which resolution may include, but need not be limited to, referring a complaint to the state department or appropriate agency or entity and making a recommendation for action relating to a complaint.”* See C.R.S. §19-3.3-103(1)(a)(I)(A).

Pursuant to C.R.S. §19-3.3-101-110, the CPO does not have the authority to:

- Investigate allegations of abuse and/or neglect.
- Interfere or intervene in any criminal or civil court proceeding.
- Review or investigate complaints related to judges, magistrates, attorneys or guardians ad litem.
- Overturn any court order.
- Mandate the reversal of an agency/provider decision.
- Offer legal advice.

Public Disclosure

In meeting its statutory requirements to *“improve accountability and transparency in the child protection system and promote better outcomes for children and families involved in the child protection system,”* as stated in C.R.S. §19-3.3-101(2)(a), the CPO will provide the public and stakeholders any recommendations it makes to an agency/provider. The CPO will do so by publicly releasing its Investigation Reports.

Impartiality

To maintain its impartiality – and in keeping with statute – the CPO will independently collect information, records and/or documents from an agency/provider when reviewing and/or investigating a complaint. *“In investigating a complaint, the ombudsman shall have the authority to request and review any information, records, or documents, including records of third parties, that the ombudsman deems necessary to conduct a thorough and independent review of a complaint so long as either the state department or a county department would be entitled to access or receive such information, records, or documents.”* See C.R.S. §19-3.3-103(1)(a)(II)(A)

I. Purpose of Investigative Briefing

If the CPO determines an investigation requires additional resources and/or time beyond the 60-business day requirement stated in the *Office of Colorado’s Child Protection Ombudsman’s Case Practices and Operating Procedures*, the CPO will release an Investigative Briefing. The Investigative Briefing will outline why additional research is necessary, how the investigation will proceed and an estimated completion date. The Investigative Briefing is designed to act as a mechanism to hold the CPO accountable to the public and ensure transparency of the CPO’s work.

II. Service Area

| | |
|----------------|------------------------------|
| Case 2017-2736 | Service Area: Human Services |
|----------------|------------------------------|

The opening of an investigation does not indicate the CPO has found any violations or practice concerns regarding the agency/provider involved. After an investigation is opened the CPO will conduct a comprehensive, independent study of relevant facts, records and witness statements. Only after the CPO completes this study will it determine whether it will affirm the agency/provider’s actions or issue recommendations for improvements. The CPO will release an Investigation Report if it issues recommendations.

For the purposes of this briefing, the CPO will identify the Service Area involved in the complaint. Each CPO investigation involves agencies/providers who fall in one of the Service Area categories below:

- **Human Services:** Any county human service department, the Colorado Department of Human Services and/or tribal social services office.
- **Law Enforcement:** Any state, county or municipal law enforcement agency.
- **Division of Youth Services:** The Division of Youth Services and any facility or program housed within the department.
- **Community Agency:** Any community organization or program, outside of those listed, that receives public funds for the protection, permanency and well-being of children.
- **Mental Health:** Any agency/provider in Colorado that receives public funds for the purpose of providing mental health services to children and their families.
- **Judicial:** Any entity within the Judicial Branch, that is within the CPO’s jurisdiction, that provides for the protection, permanency and well-being of children.
- **Other:** Any entity in Colorado, outside those previously listed, that receives public funds for the protection, permanency and well-being of children.

III. Summary of the Complaint

| | |
|--------------------------------|----------------------------------|
| Complaint Received: 09/27/2017 | Investigation Opened: 10/20/2017 |
|--------------------------------|----------------------------------|

The CPO is currently investigating the actions leading to the recent closure of El Pueblo Boys and Girls Home (El Pueblo), a residential child care facility (RCCF)¹ that was licensed by the Colorado Department of Human Services (CDHS) and served children with complex mental and behavioral health needs from across Colorado and other states. The closure followed the suspension of El Pueblo's license by the CDHS in response to multiple violations of RCCF standards that endangered the safety and well-being of children in the facility's care.

Immediately following the closure, the CPO was contacted by several stakeholders within the child protection community inquiring about the license suspension and expressing concerns about the allegations made against the facility.

In response to these claims, the CPO conducted a preliminary review of reports of abuse and neglect at El Pueblo in the statewide TRAILS database.² The review yielded a consistent and dense log of reports dating back more than a decade. This record, in combination with the claims of stakeholders, raised concerns about the efficacy of the institutional oversight mechanisms that were in place at this facility and at other RCCFs still in operation.

On October 20, 2017, the CPO opened an investigation into the actions leading to the closure of El Pueblo focused on the following questions:

- *Were state and county institutional assessment and monitoring practices at El Pueblo executed in accordance with Colorado law and rule?*
- *Were state and county institutional assessment and monitoring processes implemented at El Pueblo effective in keeping children safe?*
- *What factors may have impaired the effective assessment and monitoring of alleged abuse and neglect at El Pueblo?*
- *Are there ongoing factors that impair the effective assessment and monitoring of alleged abuse and neglect in other RCCFs?*

IV. Summary of Preliminary and Ongoing Research

To date, the CPO has conducted the following research:

Review of TRAILS History – The TRAILS database includes documentation of all referrals, assessments and findings of child abuse and neglect. The CPO has reviewed a sample of the

¹ Volume VII 7.701.2(G) defines Residential child care facility as a facility that, "shall provide twenty-four (24) hour residential group care and treatment for five (5) or more children between ages of three (3) and eighteen (18) years old and for those persons to twenty-one (21) years old who are placed by court order prior to their eighteenth birthday."

² The TRAILS database is the state automated case management system used for documentation in child welfare cases across all 64 counties in Colorado.

documentation for El Pueblo, including all assessments³ completed by the county human services department (county department) caseworkers during the 12-month period preceding the license suspension.

Review of Relevant Policy and Law – Guidelines for the licensing and monitoring of RCCFs are located in both law and rule. The CPO has reviewed applicable portions of the Colorado Children’s Code,⁴ the Colorado Child Care Act⁵ and Volume VII.⁶ The CPO has also requested the internal operating procedures for the CDHS’ Placement Services Unit (PSU), which is responsible for investigating alleged licensing violations at all RCCFs in Colorado.

Interviews with Relevant Agency Staff – The CPO has conducted preliminary interviews with staff members and managers from the PSU. The PSU was formally known as the “24-Hour Licensing and Monitoring” unit. These conversations have covered the unit’s role in the El Pueblo case and its practice with respect to residential facilities generally.

In the course of this preliminary research, the CPO identified a number of policy and practice concerns that extend beyond El Pueblo. The CPO’s investigation, therefore, will include the study of aspects of the statewide system for overseeing RCCFs.

This system is complex and comprised of multiple actors that share responsibility for the well-being of the children in residential care. The CPO continues to investigate how the roles of these multiple entities are related, and whether there is overlap or ambiguity that hinders the timely detection of and response to institutional abuse and neglect.

So far, the CPO has identified five specific factors in the case of El Pueblo that may be indicative of issues affecting the ongoing oversight of other RCCFs statewide. This list will guide the ongoing investigation, but it is neither final nor exhaustive. Each requires further research.

(1) County Departments’ Capacity to Screen and Assess Institutional Abuse and Neglect

Under current state rule, all referrals of suspected “institutional abuse”⁷ are initially handled by the county department in which the facility is located, regardless of the home jurisdiction of the child involved. That county department is responsible for deciding whether to assign a caseworker to conduct an in-person assessment or “screen” the referral out. This decision hinges on a determination of whether the referral constitutes an allegation of abuse or neglect as defined in law. If a referral is accepted, the caseworker visits the facility and makes a “finding,” based on interviews and evidence, as to whether the alleged abuse or neglect occurred.⁸ Affirmative findings

³ 7.000.2(A): “Assessment” means the work conducted by a caseworker to engage the family and the community to gather information to identify the safety, risks, needs and strengths of a child, youth, family, and community to determine the actions needed. “Assessment” and “investigation” as used in C.R.S. 19-3-308 are interchangeable in these rules.

⁴ Colorado law regarding child abuse and neglect. See C.R.S. Title 19.

⁵ Colorado law regarding the licensing of child care facilities. C.R.S. 26-6-101 to 121.

⁶ Rules promulgated by the State Board of Human Services that guide how child welfare services are administered in Colorado. See C.C.R. 2509-1 to 10.

⁷ Volume VII 7.000.2(A) defines “Institutional abuse” as, “any case of abuse and/or neglect that occurs in any public or private facility in the state that provides out of home care for children. Institutional abuse shall not include abuse and/or neglect that occurs in any public, private, or parochial school system, including any preschool operated in connection with said system.”

⁸ 7.104.132(A): County departments shall enter a finding of founded, inconclusive or unfounded, as an outcome of all high risk or traditional assessments in the state automated case management system no later than sixty (60) days after the receipt of the referral.

of abuse and neglect by county departments are critical in deciding whether to suspend or revoke a facility's license.

The CPO is currently reviewing El Pueblo's referral log to identify screening and assessment trends and to evaluate their impact on the monitoring and safety of the facility.

(2) Shared Investigations of Alleged Abuse in Facilities

In Colorado, the process for investigating allegations of institutional abuse and neglect is unique. Namely, whereas cases of child abuse and neglect that occur in a home are the sole responsibility of county departments, institutional abuse and neglect assessments occur in two stages that are conducted by two agencies. The first is conducted by the local county department to assess whether child abuse or neglect occurred.⁹ The second is conducted by the PSU to assess facility compliance with statewide standards.¹⁰ The PSU may also initiate reviews of incidents and practices at RCCFs without the involvement of county departments. The findings of reviews initiated by the PSU are documented in "Reports of Inspection" (ROIs) and stored in a database that is separate from the TRAILS database.

The CPO has reviewed the assessment reports completed by the relevant county department and the PSU for El Pueblo. The CPO is also examining the PSU's relationship with county departments. The CPO will analyze whether these relationships and the PSU's array of investigative typologies may impact clear lines of authority in the oversight of RCCFs.

(3) Role and Authority of the Statewide Placement Services Unit

Under the Colorado Child Care Act, CDHS has the authority and responsibility to license, inspect and sanction facilities that provide 24-hour care for children. When a facility consistently fails to maintain standards, the PSU has the authority to take "adverse action" on any license it has previously granted, by way of suspension, revocation or probationary status.¹¹ Often, the PSU relies on information contained in county departments' assessments to make these determinations. Adverse action may, however, be contested and reversed through an appeals process initiated by the facility.

The PSU team is small and mobile. A total of 10 specialists are tasked with licensing and monitoring approximately 230 facilities. The CPO continues to investigate whether the structure, size, policies and authority of this unit are sufficient to provide effective oversight to RCCFs statewide.

(4) Appropriate Monitoring by Other Agencies Responsible for Children's Well-being

Responsibility for formally assessing referrals of institutional abuse and neglect belongs to the state and the county department in which a RCCF is located. There are several other entities, however, that share a professional responsibility for the safety and well-being of the individual children who are placed there. The CPO is currently reviewing a sample of specific cases to determine what, if any, role other child protection entities played in the identification of abuse and neglect at El Pueblo.

⁹ In institutional abuse and neglect investigations, the county's assessment is called a "Stage I review." The subject of a Stage I is the *person*—typically the facility staff member—who is the alleged perpetrator of abuse or neglect.

¹⁰ In institutional abuse and neglect investigations, the PSU assessment is called a "Stage II investigation." The subject of a Stage II is the *facility itself*, which bears administrative culpability for any violations Volume VII standards.

¹¹ See C.R.S. 26-6-108(2) for a list of legal grounds for adverse action on a child care license.

(5) Shortage of Alternative Placements for High-Needs Youth

At the time of the license suspension, there were 37 children residing at El Pueblo, all of whom require intensive behavioral health services. Following the facility closure, these children had to be relocated by their families or home county human services departments with very short notice. For many of these children, there are very few providers who can provide the services they need within existing funding constraints. The CPO continues to investigate whether limitations in Colorado’s behavioral health system may impact the effective regulation of RCCFs for youth who require the highest levels of care.

V. Investigation Update

Since opening its investigation in October 2017, the CPO has spent the past five months studying factors that impact the quality of RCCFs in Colorado. Initially, the CPO opened its investigation in response to concerns voiced by stakeholders following the closure of El Pueblo in September 2017. Research and interviews conducted after the CPO released its Investigative Briefing in December 2017 revealed systemic shortcomings in funding, policy and practice that may impact other facilities that are still in operation. The CPO’s final report will address aspects of the statewide system for the provision and oversight of RCCFs.

Thus far, the CPO’s investigation has included a thorough review of both case-specific documentation and relevant statewide policies, data and laws. The CPO has also spoken with representatives from multiple agencies and organizations that work with Colorado’s residential child care system.

Initially, the CPO’s investigation was narrowly focused on allegations of institutional abuse and neglect. However, interviews with state and local agencies revealed that this narrow framing may not capture the full range of concerns about the conditions in El Pueblo and other facilities. Accordingly, the CPO continues to study a wide range of systemic factors that impact not just the handling of institutional abuse and neglect, but the quality of residential treatment and services more generally.

VI. Next Steps

The CPO will also conduct further interviews with the multiple state and local agencies and organizations that work with Colorado’s residential child care system. Additionally, the CPO will study and monitor the implementation of requirements under the federal Family First Prevention Services Act.

VII. Estimated Length of Investigation

It is the goal of the CPO to provide a timely response to all investigations. The length of time for an investigation to be completed will vary depending on internal CPO resources, the complexity of the issues, the length of time for outside reports to be obtained and, in some instances, for criminal or civil legal proceedings to be completed. Investigations are generally completed within 60 business days from the day the investigation is opened.

Any delay outside of that timeframe will be documented in the CPO's internal database and approved by the Ombudsman. The complainant and any relevant agency/provider(s) will also be provided with written notification of any delay and expected completion date.

In its Investigative Briefing, which was first released on December 5, 2017, the CPO anticipated it would complete the Investigation Report for Case 2017-2736 no later than April 1, 2018. That release date was later changed to September 1, 2018. The increased breadth and complexity of the case required the CPO to spend additional time analyzing the systems involved in the case.

The CPO has spent months analyzing the systems described above. However, the passage of the federal Family First Prevention Services Act on February 9, 2018, has added an additional level of complexity. The conversations regarding the requirements of this federal statute, particularly those that will impact RCCFs in Colorado, are ongoing. As such, the CPO requires additional time to monitor these conversations and incorporate the impacts of the Family First Act in its analysis. The CPO expects to complete the Investigation Report in this case on or before November 1, 2018.

VII. Conclusion

This Investigative Briefing, and the subsequent Investigation Report, will be posted on the CPO's website. The CPO is appreciative of the cooperation of the agency(s)/provider(s) involved in this case.

With Regards,

Caroline Parker

Caroline Parker
Child Protection Systems Analyst

Approved:

Stephanie Villafuerte

Stephanie Villafuerte
Ombudsman

Appendix E

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1137.01 Jane Ritter x4342

SENATE BILL 18-224

SENATE SPONSORSHIP

Smallwood,

HOUSE SPONSORSHIP

(None),

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 CONCERNING THE SUBSIDIZATION OF ADOPTION OF CHILDREN AND
102 YOUTH IN COLORADO WHO HAVE SPECIAL NEEDS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill updates provisions of the state's adoption assistance program (adoption program) that provides cash subsidies and other noncash benefits to families who adopt children who, because of one or more special needs, might not otherwise be adopted. The department of human services (state department) administers the adoption program in conjunction with county departments of human or social services (county

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

department). The state department is required to keep data on the adoption program to help evaluate the adoption program's ongoing effectiveness in providing stability to families involved in special needs adoptions. As appropriate, the state department, a county department, or a nonprofit child placement agency is required to provide prospective adoptive families, at the time of application, with information on the various benefits available through the adoption program.

The bill outlines eligibility for the adoption program and the available benefits. Specific benefits for an adoption made through the adoption program are detailed in a written adoption assistance agreement (agreement) that addresses the unique needs of the eligible child or youth to be adopted. The terms of an agreement are negotiated between all parties involved. Determination of the type and amount of benefits to be provided through the adoption program must take into consideration the circumstances of the adopting family and the needs of the child or youth being adopted. The agreement must be reviewed at least every 3 years, but may be reviewed sooner at the request of the adoptive parents.

The adoptive parents may appeal any decision made pursuant to the provisions of the adoption program with a hearing before an administrative law judge in accordance with the "State Administrative Procedure Act".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**
3 **with amendments,** article 7 of title 26 as follows:

4 **ARTICLE 7**

5 **Subsidization of Adoption**

6 **26-7-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY
7 FINDS AND DECLARES THAT:

8 (a) COLORADO CHILDREN AND YOUTH WHO RESIDE IN OR HAVE
9 PREVIOUSLY RESIDED IN AN OUT-OF-HOME PLACEMENT DESERVE AND CAN
10 BENEFIT FROM THE STABILITY AND SECURITY OF PERMANENT, SAFE
11 ADOPTIVE HOMES;

12 (b) IN PARTICULAR, ADOPTION IS AN IMPORTANT TOOL TO HELP
13 INCREASE THE NUMBER OF PERMANENT AND STABLE HOMES FOR

1 COLORADO'S ABUSED AND NEGLECTED CHILDREN AND YOUTH; AND

2 (c) MANY CHILDREN AND YOUTH WHO ARE ADOPTED IN COLORADO

3 HAVE EXPERIENCED PRIOR ABUSE, NEGLECT, MULTIPLE PLACEMENTS, AND

4 INSTITUTIONALIZATION. THESE PRIOR EXPERIENCES OFTEN CAUSE

5 PHYSICAL, PSYCHOLOGICAL, EMOTIONAL, AND DEVELOPMENTAL HARM

6 THAT AFFECTS THESE CHILDREN AND YOUTH THROUGHOUT THEIR LIVES.

7 (2) THE GENERAL ASSEMBLY THEREFORE DECLARES THAT IT IS THE

8 INTENT OF THIS ARTICLE 7 TO:

9 (a) ENCOURAGE FAMILIES OF ANY ECONOMIC STATUS TO ADOPT

10 CHILDREN AND YOUTH WITH SPECIAL NEEDS AND PROVIDE SUCH FAMILIES

11 WITH BENEFITS THAT WILL ENABLE THEM TO MEET THE CURRENT AND

12 ANTICIPATED NEEDS OF CHILDREN AND YOUTH WHO MEET THE CRITERIA

13 FOR SUCH BENEFITS AS ESTABLISHED IN THIS ARTICLE 7;

14 (b) ENSURE THAT ALL CHILDREN AND YOUTH AND FAMILIES IN

15 COLORADO HAVE EQUAL OPPORTUNITIES TO ACCESS THE BENEFITS

16 ESTABLISHED IN THIS ARTICLE 7;

17 (c) ENSURE THAT ALL CHILDREN AND YOUTH AND FAMILIES IN

18 COLORADO HAVE EQUAL ACCESS TO CONSISTENT INFORMATION,

19 GUIDANCE, AND PRACTICES TO ENSURE THAT THE UNIQUE NEEDS OF EACH

20 CHILD OR YOUTH RECEIVE CONSISTENT CONSIDERATION, REGARDLESS OF

21 THE AGENCY THAT IS ADMINISTERING BENEFITS PURSUANT TO THIS

22 ARTICLE 7;

23 (d) ENSURE THAT FAMILIES ARE ABLE TO MAINTAIN SAFE AND

24 STABLE HOMES FOR THE CHILDREN AND YOUTH THEY ADOPT THROUGH

25 BENEFITS TAILORED TO ACCOMMODATE AND SUPPORT BOTH THE SPECIAL

26 AND ORDINARY NEEDS OF THE ADOPTED CHILDREN AND YOUTH; AND

27 (e) ENSURE THAT ANY AGENCY THAT IS PROVIDING BENEFITS

1 PURSUANT TO THIS ARTICLE 7 HAS CLEAR GUIDANCE AND SUPPORT IN ITS
2 EFFORTS TO HELP CHILDREN AND YOUTH FIND AND MAINTAIN SAFE,
3 PERMANENT ADOPTIVE HOMES.

4 **26-7-102. Definitions.** AS USED IN THIS ARTICLE 7, UNLESS THE
5 CONTEXT OTHERWISE REQUIRES:

6 (1) "AGREEMENT" MEANS AN ADOPTION ASSISTANCE AGREEMENT
7 NEGOTIATED AND ENTERED INTO PURSUANT TO SECTION 26-7-107.

8 (2) "BENEFITS" MEANS ANY SUBSIDY OR SERVICE AVAILABLE TO
9 ADOPTIVE FAMILIES PURSUANT TO THIS ARTICLE 7.

10 (3) "CHILD PLACEMENT AGENCY" MEANS ANY CORPORATION,
11 PARTNERSHIP, ASSOCIATION, FIRM, AGENCY, INSTITUTION, OR PERSON
12 LICENSED BY THE STATE DEPARTMENT PURSUANT TO ARTICLE 6 OF THIS
13 TITLE 26 TO PLACE, FACILITATE PLACEMENT, OR ARRANGE FOR THE
14 PLACEMENT OF A CHILD OR YOUTH FOR THE PURPOSE OF ADOPTION,
15 TREATMENT, OR FOSTER CARE. ONLY CHILDREN OR YOUTH WHO ARE
16 PLACED THROUGH A CHILD PLACEMENT AGENCY THAT IS DESIGNATED AS
17 A NONPROFIT ENTITY ARE ELIGIBLE TO RECEIVE BENEFITS PURSUANT TO
18 THIS ARTICLE 7.

19 (4) "COUNTY DEPARTMENT" MEANS A COUNTY DEPARTMENT OF
20 HUMAN OR SOCIAL SERVICES.

21 (5) "PROGRAM" MEANS THE ADOPTION ASSISTANCE PROGRAM
22 CREATED IN SECTION 26-7-103.

23 (6) "SERVICES" MEANS ANY BENEFITS OTHER THAN CASH
24 ASSISTANCE THAT A FAMILY MAY RECEIVE AS PART OF AN ADOPTION
25 ASSISTANCE AGREEMENT.

26 (7) "SPECIAL NEEDS" MEANS ONE OR MORE SPECIFIC FACTORS OR
27 CONDITIONS THAT WOULD MAKE IT REASONABLE TO CONCLUDE THAT A

1 CHILD OR YOUTH CANNOT BE ADOPTED WITHOUT PROVIDING BENEFITS TO
2 ASSIST IN SUCH ADOPTION. SUCH FACTORS MAY INCLUDE, BUT ARE NOT
3 LIMITED TO:

4 (a) A PHYSICAL DISABILITY, SUCH AS HEARING, VISION, OR
5 PHYSICAL IMPAIRMENT; NEUROLOGICAL CONDITIONS; DISFIGURING
6 DEFECTS; OR HEART DEFECTS;

7 (b) A MENTAL, INTELLECTUAL, OR DEVELOPMENTAL DISABILITY,
8 SUCH AS A PERCEPTUAL, SPEECH, OR LANGUAGE DISABILITY; A METABOLIC
9 DISORDER; OR ANY DISABILITY THAT RESULTS IN EDUCATIONAL DELAYS OR
10 SIGNIFICANT LEARNING PROCESSING DIFFICULTIES;

11 (c) AN EDUCATIONAL DISABILITY THAT QUALIFIES FOR SECTION
12 504 OF THE FEDERAL "REHABILITATION ACT OF 1973", AS AMENDED, 29
13 U.S.C. SEC. 701 ET SEQ., OR SPECIAL EDUCATION SERVICES;

14 (d) AN EMOTIONAL DISTURBANCE, SUCH AS POST-TRAUMATIC
15 STRESS DISORDER, BIPOLAR DISORDER, AND OTHER MENTAL HEALTH
16 DISORDERS;

17 (e) HEREDITARY FACTORS THAT HAVE BEEN DOCUMENTED BY A
18 PHYSICIAN OR PSYCHOLOGIST;

19 (f) FACTORS THAT PLACE A CHILD OR YOUTH IN A "HIGH-RISK"
20 CATEGORY, SUCH AS BEING HIV-POSITIVE OR DRUG- OR
21 ALCOHOL-EXPOSED IN UTERO;

22 (g) OTHER CONDITIONS THAT ACT AS A BARRIER TO THE CHILD'S OR
23 YOUTH'S ADOPTION, INCLUDING, BUT NOT LIMITED TO, A HEALTHY CHILD
24 OR YOUTH OVER SEVEN YEARS OF AGE OR A SIBLING GROUP THAT SHOULD
25 REMAIN INTACT, AND MEDICAL CONDITIONS LIKELY TO REQUIRE FURTHER
26 TREATMENT; OR

27 (h) ETHNIC BACKGROUND OR MEMBERSHIP IN A MINORITY GROUP

1 WHOSE CHILDREN OR YOUTH MIGHT BE DIFFICULT TO PLACE.

2 (8) "STATE DEPARTMENT" MEANS THE STATE DEPARTMENT OF
3 HUMAN SERVICES.

4 (9) "SUBSIDY" REFERS EXCLUSIVELY TO MONTHLY CASH
5 ASSISTANCE THAT IS PROVIDED TO ELIGIBLE FAMILIES AS PART OF AN
6 ADOPTION ASSISTANCE AGREEMENT.

7 **26-7-103. Adoption assistance program - created -**
8 **administration - funding - reporting - rules - definition.** (1) THE
9 ADOPTION ASSISTANCE PROGRAM IS CREATED IN THE STATE DEPARTMENT
10 AND SHALL BE ADMINISTERED BY THE STATE DEPARTMENT AND COUNTY
11 DEPARTMENTS PURSUANT TO THIS ARTICLE 7. THE STATE DEPARTMENT
12 SHALL, THROUGH THE STATE BOARD OF HUMAN SERVICES, ADOPT ANY
13 RULES NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE 7.

14 (2) IN ADDITION TO ANY MONEY APPROPRIATED TO THE STATE
15 DEPARTMENT BY THE GENERAL ASSEMBLY FOR THE PROGRAM, THE STATE
16 DEPARTMENT IS ALSO AUTHORIZED TO ACCEPT, ON BEHALF OF THE
17 PROGRAM, ANY FEDERAL FUNDS MADE AVAILABLE FOR ANY PURPOSE
18 CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE 7.

19 (3) THE STATE DEPARTMENT SHALL KEEP SUCH DATA AS
20 NECESSARY TO EVALUATE THE PROGRAM'S EFFECTIVENESS IN PROVIDING
21 STABILITY TO ELIGIBLE CHILDREN, YOUTH, AND FAMILIES INVOLVED IN
22 ADOPTION. ON OR BEFORE JULY 1, 2019, AND EVERY JULY 1 THEREAFTER,
23 THE STATE DEPARTMENT SHALL PREPARE AND MAKE AVAILABLE TO THE
24 PUBLIC A REPORT THAT INCLUDES, BUT IS NOT LIMITED TO, INFORMATION
25 CONCERNING:

26 (a) THE COST OF ADMINISTERING THE PROGRAM, INCLUDING
27 EXPENDITURES FOR MONTHLY SUBSIDIES AND OTHER BENEFITS;

1 (b) THE TYPES OF SERVICES AWARDED THROUGH THE PROGRAM ON
2 A STATEWIDE BASIS;

3 (c) THE NUMBER OF DISSOLVED ADOPTIONS INVOLVING CHILDREN
4 AND YOUTH WHO QUALIFIED FOR OR RECEIVED BENEFITS FROM THE
5 PROGRAM. FOR THE PURPOSES OF THIS SECTION, "DISSOLVED ADOPTION"
6 MEANS A SITUATION IN WHICH THE CHILD OR YOUTH IS RETURNED TO THE
7 CUSTODY OF A COUNTY DEPARTMENT, NONPROFIT CHILD PLACEMENT
8 AGENCY, OR TRIBAL ORGANIZATION AT ANY TIME AFTER THE FINALIZATION
9 OF AN ADOPTION.

10 (d) THE RESULTS OF ANY PROGRAM EVALUATION PERFORMED BY
11 THE STATE DEPARTMENT.

12 **26-7-104. Information for prospective adoptive families.**

13 (1) AT THE TIME THAT A FAMILY MAKES AN APPLICATION FOR ADOPTION
14 OF A CHILD OR YOUTH WHO IS POTENTIALLY ELIGIBLE FOR BENEFITS
15 PURSUANT TO THIS ARTICLE 7, THE STATE DEPARTMENT, A COUNTY
16 DEPARTMENT, A NONPROFIT CHILD PLACEMENT AGENCY, OR A TRIBAL
17 ORGANIZATION, AS APPROPRIATE, SHALL PROVIDE THE PROSPECTIVE
18 ADOPTIVE FAMILY, IN WRITING, WITH INFORMATION CONCERNING THE
19 FOLLOWING:

20 (a) THE AVAILABILITY OF BENEFITS, WITH AN EXPLANATION OF THE
21 DIFFERENCE BETWEEN THESE BENEFITS AND FOSTER CARE PAYMENTS;

22 (b) THE AVAILABILITY OF REIMBURSEMENT FOR ANY
23 NONRECURRING EXPENSES INCURRED IN THE ADOPTION OF AN ELIGIBLE
24 CHILD OR YOUTH;

25 (c) THE AVAILABILITY OF MENTAL HEALTH SERVICES THROUGH
26 MEDICAID OR OTHER PROGRAMS;

27 (d) THE FEDERAL ADOPTION TAX CREDIT FOR AN INDIVIDUAL WHO

1 IS ADOPTING OR IS CONSIDERING ADOPTING A CHILD OR YOUTH IN FOSTER
2 CARE OR THROUGH A NONPROFIT CHILD PLACEMENT AGENCY, IN
3 ACCORDANCE WITH SECTION 403 OF THE FEDERAL "FOSTERING
4 CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008",
5 PUB.L. 110-351;

6 (e) NOTICE OF THE RIGHT TO BRING TO THE ADOPTION ASSISTANCE
7 NEGOTIATION PROCESS:

8 (I) PARTIES WHO POSSESS RELEVANT INFORMATION ABOUT THE
9 CHILD'S OR YOUTH'S HISTORY AND NEEDS; AND

10 (II) LEGAL REPRESENTATION FOR THE CHILD OR YOUTH AND
11 FAMILY; AND

12 (f) NOTICE OF THE RIGHT TO APPEAL AND BE REPRESENTED BY
13 LEGAL COUNSEL, AT THE PROSPECTIVE ADOPTIVE PARENTS' EXPENSE, IN
14 ACCORDANCE WITH THE "STATE ADMINISTRATIVE PROCEDURE ACT",
15 ARTICLE 4 OF TITLE 24, FOR ANY OF THE FOLLOWING:

16 (I) THE DETERMINATION OF A CHILD'S OR YOUTH'S ELIGIBILITY FOR
17 BENEFITS;

18 (II) THE DETERMINATION OR REDUCTION OF BENEFITS; AND

19 (III) THE TERMINATION OF AN ADOPTION ASSISTANCE AGREEMENT.

20 **26-7-105. Eligibility for adoption benefits.** (1) THE PARTIES
21 MAY NEGOTIATE AVAILABLE BENEFITS ONLY AFTER A DETERMINATION HAS
22 BEEN MADE THAT ALL OF THE FOLLOWING CONDITIONS ARE PRESENT AT
23 THE TIME THE CHILD OR YOUTH WAS PLACED FOR ADOPTION:

24 (a) THE CHILD OR YOUTH WAS IN THE CUSTODY OF A COUNTY
25 DEPARTMENT, NONPROFIT CHILD PLACEMENT AGENCY, OR TRIBAL
26 ORGANIZATION AND IS LEGALLY AVAILABLE FOR ADOPTION; AND

27 (b) IT HAS BEEN DETERMINED THAT THE CHILD OR YOUTH CANNOT

1 OR SHOULD NOT BE RETURNED HOME TO HIS OR HER BIOLOGICAL PARENTS;
2 AND

3 (c) REASONABLE, BUT UNSUCCESSFUL, EFFORTS TO PLACE THE
4 CHILD OR YOUTH FOR ADOPTION WITHOUT BENEFITS HAVE BEEN MADE,
5 EXCEPT UNDER THE FOLLOWING CIRCUMSTANCES:

6 (I) IT IS DETERMINED THAT SUCH EFFORTS WOULD BE AGAINST THE
7 BEST INTEREST OF THE CHILD OR YOUTH BECAUSE OF FACTORS THAT
8 INCLUDE, BUT ARE NOT LIMITED TO, THE EXISTENCE OF A SIGNIFICANT
9 BOND WITH THE PROSPECTIVE ADOPTIVE PARENTS OR A SEARCH FOR A
10 NONSUBSIDIZED ADOPTIVE PLACEMENT WOULD DELAY A CHILD'S OR
11 YOUTH'S RIGHT TO PERMANENCY IN A TIMELY MANNER; OR

12 (II) THE CHILD OR YOUTH IS BEING PLACED BY A BIRTH PARENT
13 WITH DESIGNATED ADOPTIVE PARENTS THROUGH A NONPROFIT CHILD
14 PLACEMENT AGENCY; AND

15 (d) THE CHILD OR YOUTH IS ONE WITH "SPECIAL NEEDS", AS
16 DEFINED IN SECTION 26-7-102 (7); AND

17 (e) THE STATE DEPARTMENT OR NONPROFIT CHILD PLACEMENT
18 AGENCY HAS DETERMINED THAT THE ADOPTIVE FAMILY HAS THE
19 CAPABILITY OF PROVIDING FOR THE NONFINANCIAL NEEDS OF THE CHILD
20 OR YOUTH IN ALL AREAS.

21 **26-7-106. Available benefits.** (1) THE STATE DEPARTMENT OR A
22 COUNTY DEPARTMENT MAY AUTHORIZE ONE OR MORE OF THE FOLLOWING
23 TYPES OF BENEFITS AVAILABLE PURSUANT TO THIS ARTICLE 7:

24 (a) MONTHLY SUBSIDY PAYMENTS UP TO THE AMOUNT THAT IS
25 BEING PAID FOR THE CHILD'S OR YOUTH'S OUT-OF-HOME CARE, OR THAT
26 WOULD HAVE BEEN PAID IF THE CHILD OR YOUTH WERE IN PAID
27 OUT-OF-HOME CARE AT THE TIME OF THE CHILD'S OR YOUTH'S ADOPTION;

- 1 (b) MEDICAID, AS DESCRIBED IN ARTICLE 4 OF TITLE 25.5;
- 2 (c) REIMBURSEMENT FOR NONRECURRING EXPENSES INCURRED IN
- 3 CONNECTION WITH THE ADOPTION, INCLUDING BUT NOT LIMITED TO:
- 4 (I) ANY FEES ORDINARILY ASSESSED BY THE STATE DEPARTMENT,
- 5 A COUNTY DEPARTMENT, OR A CHILD PLACEMENT AGENCY FOR ADOPTION
- 6 INVESTIGATIONS AND HOME STUDY REPORTS; AND
- 7 (II) ANY REASONABLE AND NECESSARY ADOPTION FEES, COURT
- 8 COSTS, ATTORNEY FEES, AND OTHER EXPENSES WHICH ARE DIRECTLY
- 9 RELATED TO THE LEGAL ADOPTION OF THE CHILD; AND
- 10 (d) PAYMENT OR REIMBURSEMENT FOR OTHER CASE SERVICES NOT
- 11 OTHERWISE PROVIDED FOR OR AVAILABLE THROUGH MEDICAID.

12 **26-7-107. Determination of benefits - adoption assistance**
13 **agreement - review - definitions.** (1) THE BENEFITS PROVIDED IN ANY
14 CASE PURSUANT TO THIS ARTICLE 7 MUST BE DETERMINED THROUGH AN
15 AGREEMENT BETWEEN THE ADOPTIVE PARENTS AND THE STATE
16 DEPARTMENT OR COUNTY DEPARTMENT ADMINISTERING THE PROGRAM.
17 THE TERMS OF THE AGREEMENT MUST BE REACHED THROUGH A
18 DISCUSSION AND NEGOTIATION PROCESS THAT ADDRESSES THE UNIQUE
19 NEEDS OF THE ELIGIBLE CHILD OR YOUTH. ONCE THE TERMS OF THE
20 AGREEMENT ARE REACHED BY THE RESPECTIVE PARTIES, THE PARTIES
21 SHALL ALL SIGN THE AGREEMENT PRIOR TO ADOPTION FINALIZATION.

22 (2) THE USE OF A MEANS TEST IS PROHIBITED IN THE PROCESS OF
23 SELECTING AN ADOPTIVE FAMILY OR IN NEGOTIATING THE TYPE OR
24 AMOUNT OF BENEFITS TO BE PROVIDED.

25 (3) DETERMINATION OF THE TYPE AND AMOUNT OF BENEFITS TO BE
26 PROVIDED MUST TAKE INTO CONSIDERATION THE CIRCUMSTANCES OF THE
27 ADOPTING FAMILY AND THE NEEDS OF THE CHILD OR YOUTH BEING

1 ADOPTED. THE MONTHLY SUBSIDY AMOUNT MAY BE UP TO, BUT MAY NOT
2 EXCEED, THE AMOUNT THAT IS BEING PAID FOR THE CHILD'S OR YOUTH'S
3 OUT-OF-HOME CARE OR THAT WOULD HAVE BEEN PAID IF THE CHILD OR
4 YOUTH WERE IN PAID OUT-OF-HOME CARE AT THE TIME OF THE CHILD'S OR
5 YOUTH'S ADOPTION. THE AMOUNT OF PAYMENTS MAY BE READJUSTED
6 PERIODICALLY IF EITHER THE NEEDS OF THE CHILD OR YOUTH OR THE
7 CIRCUMSTANCES OF THE FAMILY CHANGE, BUT ONLY WITH THE
8 CONCURRENCE OF THE ADOPTIVE PARENTS. FOR THE PURPOSES OF THIS
9 SECTION:

10 (a) "NEEDS OF THE CHILD OR YOUTH" INCLUDES BOTH THE
11 ORDINARY AND SPECIAL NEEDS OF THE CHILD OR YOUTH PROJECTED OVER
12 AN EXTENDED PERIOD OF TIME, INCLUDING THE CHILD'S OR YOUTH'S
13 ANTICIPATED NEEDS.

14 (b) "CIRCUMSTANCES OF THE FAMILY" INCLUDES THE FAMILY'S
15 ABILITY TO INCORPORATE THE CHILD OR YOUTH INTO THE HOUSEHOLD IN
16 RELATION TO THE FAMILY'S LIFESTYLE, STANDARD OF LIVING, AND FUTURE
17 PLANS AND THE OVERALL CAPACITY TO MEET THE IMMEDIATE AND FUTURE
18 PLANS AND NEEDS, INCLUDING EDUCATIONAL, OF THE CHILD OR YOUTH.

19 (4) IN CASES WHERE A SUBSIDY IS NOT PROVIDED IN AN
20 AGREEMENT, THE STATE DEPARTMENT OR COUNTY DEPARTMENT SHALL
21 DOCUMENT:

22 (a) THE CHILD'S OR YOUTH'S SPECIAL NEEDS IN THE SERVICES
23 RECORD AND IN THE STATE DEPARTMENT'S AUTOMATED SYSTEM; AND

24 (b) THAT THE POTENTIAL NEED FOR FINANCIAL SUBSIDIES EXISTS
25 AND MAY NEED TO BE ACTIVATED AT A FUTURE TIME.

26 (5) AN AGREEMENT ENTERED INTO PURSUANT TO THIS SECTION
27 MUST BE REVIEWED AT LEAST EVERY THREE YEARS. THE AGREEMENT MAY

1 BE READJUSTED, BUT ONLY WITH THE CONCURRENCE OF THE ADOPTIVE
2 FAMILY. AT LEAST SIXTY DAYS PRIOR TO A MANDATORY REVIEW
3 PURSUANT TO THIS SUBSECTION (5), THE STATE DEPARTMENT OR COUNTY
4 DEPARTMENT SHALL PROVIDE WRITTEN NOTICE OF THE UPCOMING REVIEW
5 TO THE ADOPTIVE FAMILY. THE ADOPTIVE PARENTS MAY REQUEST A
6 REVIEW OF THE AGREEMENT PRIOR TO THE THREE-YEAR MANDATORY
7 REVIEW IF CHANGES OCCUR IN THE NEEDS OF THE ADOPTED CHILD OR
8 YOUTH OR IN THE CIRCUMSTANCES OF THE FAMILY.

9 (6) BENEFITS PROVIDED THROUGH THE PROGRAM MUST BE
10 CONTINUED IF THE ADOPTIVE PARENTS LEAVE THE STATE OF COLORADO
11 WITH THE ADOPTED CHILD OR YOUTH.

12 **26-7-108. Termination of subsidies.** (1) THE STATE
13 DEPARTMENT OR COUNTY DEPARTMENT SHALL TERMINATE THE PAYMENT
14 OF SUBSIDIES AVAILABLE PURSUANT TO THIS ARTICLE 7 WHEN ANY OF THE
15 FOLLOWING SITUATIONS OCCUR:

16 (a) THE CHILD OR YOUTH REACHES EIGHTEEN YEARS OF AGE OR, IN
17 CASES WHERE THE STATE DEPARTMENT OR COUNTY DEPARTMENT HAS
18 DETERMINED THAT THE CHILD OR YOUTH HAS A DEVELOPMENTAL OR
19 PHYSICAL DISABILITY THAT WARRANTS CONTINUED ASSISTANCE, THE
20 CHILD OR YOUTH REACHES TWENTY-ONE YEARS OF AGE;

21 (b) THE ADOPTIVE PARENT OR PARENTS ARE NO LONGER LEGALLY
22 RESPONSIBLE FOR THE SUPPORT OF THE CHILD OR YOUTH;

23 (c) THE CHILD OR YOUTH IS NO LONGER RECEIVING SUPPORT FROM
24 THE ADOPTIVE FAMILY; OR

25 (d) THE STATE DEPARTMENT OR COUNTY DEPARTMENT CERTIFIES
26 THE DEATH OR MARRIAGE OF THE CHILD OR YOUTH.

27 (2) PARENTS WHO RECEIVE SUBSIDIES SHALL KEEP THE STATE

1 DEPARTMENT OR COUNTY DEPARTMENT THAT IS ADMINISTERING THE
2 PROGRAM INFORMED OF CIRCUMSTANCES THAT WOULD MAKE THEM
3 INELIGIBLE TO CONTINUE TO RECEIVE SUBSIDIES PURSUANT TO THIS
4 SECTION.

5 **26-7-109. Appeals.** (1) IN ANY DECISION MADE PURSUANT TO
6 THIS ARTICLE 7, THE ADOPTIVE PARENTS HAVE THE RIGHT TO APPEAL TO
7 THE STATE DEPARTMENT, WITH A HEARING BEFORE A STATE DEPARTMENT
8 ADMINISTRATIVE LAW JUDGE IN ACCORDANCE WITH THE "STATE
9 ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24. THE
10 FOLLOWING SITUATIONS ARE SUBJECT TO AN APPEAL:

11 (a) A DETERMINATION OF A CHILD'S OR YOUTH'S ELIGIBILITY FOR
12 BENEFITS PURSUANT TO SECTION 26-7-105;

13 (b) ANY DETERMINATION, REDETERMINATION, OR REDUCTION OF
14 BENEFITS PURSUANT TO THIS ARTICLE 7;

15 (c) TERMINATION OF AN ADOPTION ASSISTANCE AGREEMENT
16 ENTERED INTO PURSUANT TO SECTION 26-7-107; OR

17 (d) THE FAILURE OF THE STATE DEPARTMENT, COUNTY
18 DEPARTMENT, OR NONPROFIT CHILD PLACEMENT AGENCY TO NOTIFY THE
19 ADOPTIVE FAMILY OF AN ELIGIBLE CHILD OR YOUTH ABOUT THE
20 AVAILABILITY OF BENEFITS PURSUANT TO THIS ARTICLE 7.

21 **SECTION 2.** In Colorado Revised Statutes, 19-1-115, **amend**
22 (4)(d)(II) as follows:

23 **19-1-115. Legal custody - guardianship - placement out of the**
24 **home - petition for review for need of placement.** (4) (d) (II) For an
25 adoptive family who receives an approved Title IV-E adoption assistance
26 subsidy pursuant to the federal "Social Security Act", 42 U.S.C. sec. 673
27 et seq., or an approved payment in subsidization of adoption pursuant to

1 ~~section 26-7-103, C.R.S.~~ ARTICLE 7 OF TITLE 26, the cost of care, as
2 defined in section 19-1-103 (30), ~~shall~~ MUST not exceed the amount of the
3 adoption assistance payment.

4 **SECTION 3.** In Colorado Revised Statutes, 19-2-114, **amend**
5 (1)(b) as follows:

6 **19-2-114. Cost of care.** (1) (b) For an adoptive family who
7 receives an approved Title IV-E adoption assistance subsidy pursuant to
8 the federal "Social Security Act", 42 U.S.C. sec. 673 et seq., or an
9 approved payment in subsidization of adoption pursuant to ~~section~~
10 ~~26-7-103, C.R.S.~~ ARTICLE 7 OF TITLE 26, the cost of care, as defined in
11 section 19-1-103 (30), ~~shall~~ MUST not exceed the amount of the adoption
12 assistance payment.

13 **SECTION 4. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly (August
16 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
17 referendum petition is filed pursuant to section 1 (3) of article V of the
18 state constitution against this act or an item, section, or part of this act
19 within such period, then the act, item, section, or part will not take effect
20 unless approved by the people at the general election to be held in
21 November 2018 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.