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From: forum@ocr.simplelists.com on behalf of Cara Nord <caranord@coloradochildrep.org>
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To: OCR Listserve
Subject: El Pueblo - Summary of Events + Laws/Regs
Attachments: Licensing regs.docx

Importance: High

Good morning.

Below is a summary of events + laws/regs that may be beneficial for GALs who represent the best interests of children transitioning from El Pueblo and/or children who are in RCCF-level of care in general.

Its length is directly attributable to the number and length of the regulations. Where possible, key language is highlighted.

SUMMARY OF EVENTS

On 9/25/17, CDHS summarily suspended El Pueblo's residential child care facility license, pending proceedings to determine whether the license should be further suspended or revoked. In suspending El Pueblo's license, CDHS found that El Pueblo's operation presents a substantial danger to the public health, safety, and welfare requiring emergency action as indicated by:

- El Pueblo's failure to maintain published and prescribed standards,
- El Pueblo's furnishing or making misleading or false statements or reports to CDHS,
- El Pueblo's failing to provide safe conditions for children, and
- the existence of substantial evidence that El Pueblo employees committed child abuse.

The suspension and findings were based on reports including:

- physical abuse of children;
- physical restraints of children;
- hungry, bullying, and/or bruised children;
- children attempting suicide;
- children running from the facility;
- lack of supervision, medical attention, medication, and/or staff intervention.

LAW RE: SUSPENSION OF LICENSE

CRS 26-6-108:

- Subsection (1) explains that El Pueblo has 30 days from the date it received notice to petition CDHS to set a hearing.
- (2) lists the possible grounds for suspension.
- (2) explains the next step - El Pueblo may request a hearing before an administrative law judge of CDHS within 30 days of its receipt of the notice of the suspension. The administrative law judge of CDHS will render a recommendation to the executive director of CDHS who shall render the final decision of CDHS.

NEXT STEPS FOR GALs WHO REPRESENT THE BEST INTERESTS OF CHILDREN WHO ARE GOING FROM EL PUEBLO TO ANOTHER RCCF

The licensing requirements for child care facilities are at 12 CCR 2509-8:7.701-721. They are organized very clearly by the different types of facilities. See attached table of contents. Of particular importance to the El Pueblo situation are the:

- -7.701s, addressing general rules (applicable to all child care facilities).
- -7.705s, addressing RCCFs (for children who are transferring to other RCCFs).
- -7.706s, addressing Day Treatment Centers (for children who are remaining at El Pueblo).
- -7.714s, addressing standards for certain 24-Hour Child Care (facilities).

Following are a few specific regulations GALs with children transferring from El Pueblo to another RCCF may want to know.

7.714.932 Records

E. Within five (5) business days of when a child is removed from placement, the facility shall complete and send to the placing agency a summary of the child's discharge from the facility which includes at a minimum:

1. The date of the discharge of the child from the facility.
2. Where the child was placed following discharge.
3. A summary of the services provided to the child during care.
4. Goals met/not met during treatment.
5. The treatment goals and assessed needs which remain to be met and alternate service possibilities which might meet those goals and needs.
6. A statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare.
7. If the discharge was planned or unplanned.
8. The circumstances which led to an unplanned discharge.

F. Copies of a child's file, including discharge information but excluding all medical information covered by HIPAA, shall be provided to parent(s) or guardian(s) upon request or to others by written consent pursuant to Section 7.714.931.

7.714.2 Admission Policy and Procedures

D. The facility shall accept a child into care only after a preliminary assessment/screening of presenting problems in areas such as social, physical health, mental health, psychological concerns, previous physical or sexual abuse, and concerns about previous delinquent, assaultive, or destructive behavior, if appropriate, has been conducted.

E. The facility shall obtain a current comprehensive intake evaluation, including a social, health, and family history, developmental assessment or mental health evaluation, and a psychological evaluation, if determined to be necessary by the facility. Educational records shall be obtained if appropriate. As much of this information as possible shall be obtained prior to admission, but the total evaluation shall be completed within fourteen (14) calendar days after admission. If the facility is unable to obtain this information within these time periods or is totally unable to obtain the information, the facility must document its attempts to obtain the information and reasons for not obtaining the information.

If a child is placed at the facility as an emergency placement, the facility shall obtain at least the following information: name, birth date, if available, and physical description of the child; date and time of the admission; name, address, telephone number and authority of person bringing the child to the facility, and the reason for placement. Any other information that may be available should be recorded at the time of placement or as it becomes available. The date that placement terminates shall also be recorded.

[...]

G. The placement agreement shall be developed with the involvement of the child, the parent(s) or guardian(s) and the representative of the placing agency. Where the involvement of any of these is not feasible or desirable, the

reasons for the exclusion shall be recorded by the facility. The placement agreement shall address by reference or attachment at a minimum the following:

1. Discussion of the child's and the parent's or guardian's expectations regarding: family contact and involvement; how family contact and involvement are to occur; the nature and goals of care, including any specialized services or specialized treatment to be provided, the religious orientation and practices of the child and/or family; the anticipated length of stay, planned discharge date, criteria for discharge, and plan for the child following discharge.
2. **The policy and procedure to be followed regarding the use of physical management, restraint and seclusion in an emergency situation pursuant to 7.714.53, et seq.**
3. A delineation of the respective roles and responsibilities of all agencies and persons involved with the child and his/her family.
4. Written authorization for care and treatment of the child.
5. Written authorization to obtain routine medical and dental care for the child and to obtain emergency medical and dental care.
6. The legal status or custody of the child.
7. If a child is placed by a Colorado county department of social/human services, the appropriate State form or contract shall be completed. This form or contract may provide some of the required authorizations.

H. Within twenty-four (24) hours of arrival at the facility, a child shall be given an orientation to the facility, consistent with the child's age and ability to participate, which includes at least the following:

1. Tour of the facility and instruction on fire alarm and fire evacuation procedures, escape routes and exits.
2. The rules/regulations of the facility.
3. Procedures that will affect the child's behavior, including limiting or restricting a child's rights where allowed, the type of discipline used in the facility, the consequences for certain behaviors, and the orientation, notification and consents required by Section 7.714.53, et seq.
4. The complete children's rights and children's grievance procedures as developed by the facility and the name of the client representative.
5. A form signed by the staff member and the child, if applicable, verifying that the orientation occurred.
6. Introduction to staff.
7. Discussion of tasks and behaviors the child is expected to perform.

7.705.21 Case Management Services Provided by the Residential Child Care Facility

A. A staff member qualified as stated at Section 7.705.46, A, shall be assigned the responsibility for case management for each child.

B. Each individual assigned the responsibility of providing case management services for a child shall:

1. Participate actively in the admission procedure, treatment planning, discharge and after care planning.
2. **Assure that appropriate information concerning the child and her/his background is shared with other staff members who deal with the child regularly [GALS should investigate the child's experiences at El Pueblo and ensure new RCCF case manager and other staff who deal with the child is aware of those experiences]** and maintain communication with parents, guardians, or referring agency, or the agency responsible for discharge planning and follow-up care of the child.
3. Assure that an individual child's plan is developed for the child and required plan review and necessary modifications are made pursuant to Section 7.714.4, D.
4. Assure that necessary progress reports for court and placing agency requirements are completed and submitted in a timely fashion.
5. Attend Administrative Reviews in person or by conference call.
6. Assure that the individual child's plan developed for each child is implemented, including treatment by specialists, and documented in the child's file.

7.714.4. Program Description and Individual Child's Plan

C. **Within seven (7) calendar days of admitting a child in care, a facility shall begin a comprehensive assessment/evaluation of the child.**

1. The assessment/evaluation shall be conducted by a planning team. This team shall include persons responsible for implementing the plan on a daily basis and persons who have had direct interaction with and observation of the child.

2. The planning team shall assess and evaluate the needs and strengths of the child in at least the following areas where information is available:

- a. Medical, health and dental care, including a health history of the child and family, and if appropriate health information regarding speech therapy, occupational therapy, and physical therapy needs of the child;
- b. Mental and psychological health, including treatment history;
- c. Education/vocation;
- d. Personal/social development;
- e. Family and community relationships;
- f. Vocational training, if appropriate;
- g. Recreation;
- h. Life skills development;
- i. Emancipation skills, if appropriate;
- j. Legal status and history;
- k. Treatment/placement history;
- l. Alcohol/substance abuse history.

[...]

D. On the basis of this assessment/evaluation, and within fourteen (14) calendar days of admission, a facility shall develop an individual child's plan that is written, time-limited, strength-focused, outcome based, and goal-oriented. The plan must support the Family Services Plan.

1. A facility must provide an opportunity for the following persons to participate in the planning/evaluation process:

- a. The primary caregiver for the child;
- b. The child, unless contraindicated;
- c. His/her parent(s) or guardian(s), unless contraindicated;
- d. Representatives of the placing agency;
- e. School personnel;
- f. **Other persons significant in the child's life, such as a GAL, attorney, religious advisor, and therapist.**
- g. When any of the above persons do not participate, the facility shall have documentation of its efforts to involve the persons(s). When the involvement of parents(s) or guardian(s) of the child is deemed contraindicated by the agency or individual holding legal custody of the child, the reasons for contraindication shall be documented.

2. The individual plan shall include the following components:

- a. The findings of the assessment/evaluation.
- b. A statement of specific, measurable goals to be achieved or worked toward for the child and his/her family.
- c. Strategy for fostering, maintaining, and enhancing positive family relationships with the child and his/her family, including siblings, or other individuals considered like family, or guardian(s), and including the development of a permanent home for the child.
- d. Strategy for fostering, maintaining and enhancing active community involvement for the child.
- e. Specification of the daily activities intended to achieve the stated goals including, but not limited to, educational, vocational, and recreational activities.
- f. Specification of therapeutic services, specialized services, and strategies for positive behavior intervention that will be provided directly or arranged for, frequency of services, and method for ensuring their proper integration with the child's ongoing program activities.
- g. Long-term and short-term goals and the method to be used for evaluating the child's progress toward meeting the goals.
- h. Goals and preliminary plans for discharge, aftercare, and moving to a less restrictive setting.
- i. Identification of all persons responsible for implementing or coordinating implementation of the plan.
- j. Signature by a representative of the facility, a representative of the placing agency, the child, if indicated, and the child's parent(s) or guardian(s).
- k. Assurance by the facility that the plan and any subsequent revisions are explained to the child in care and his/her parent(s) or guardian(s) in a language or manner of communication the child and parent(s) or guardian(s) can understand.

1. Quarterly review of each plan to evaluate the progress which the short-term and long-term goals have been achieved and not achieved. The parties listed in Section 7.714.4, D, 1, shall have an opportunity to participate in the reviews. The plan shall support the Family Service Plan.

[...]

F. In addition to A-E, the following is required for an Individual Child's Plan in a Residential Child Care Facility that provides mental health services:

1. The licensed mental health professional responsible for providing care shall develop the mental health component of the Individual Child's Plan.

2. The multidisciplinary team shall include the Individual Child's Plan within its child specific case file.

3. The multidisciplinary team shall develop and finalize a comprehensive Individual Child's Plan of care (as covered in Section 7.714.4, D, 1, a-g) within fourteen (14) calendar days after the determination that mental health services are required. The plan shall be signed and dated by the child, the referral agency, the licensed mental health professional, and the parent/guardian. If a provisionally licensed mental health professional is providing the services, that person and his/her licensed supervisor shall also sign the Individual Child's Plan of care. The plan of care shall:

a. Address all areas listed at Section 7.714.4, C, together with mental health services and other needs including the child's presenting problems, physical health, emotional status, behavior, support system in the community, available resources, and discharge plan.

b. Include specific goals and measurable objectives, expected dates of achievement, specific discharge and transitional/after-care and follow-up services criteria to be met for termination of treatment, and specific treatment goals including, but not limited to:

1) Expected resolution of the problem that necessitated mental health services and the specific functional achievement to be obtained in measurable terms.

2) Indications that planned services can reasonably be expected to improve the client's condition.

c. Specify the type, frequency, and duration of mental health services, rehabilitation services, medication management, emergency services, initial assessment, documented treatment modifications, and other services determined to be necessary to meet the child's specific mental health service goals.

d. Specify that all RCCF mental health services are necessary to meet the needs of the child and that the mental health services are necessary to treat the child's current diagnosis.

e. Identify the provision of, or the referral for, services other than RCCF mental health services and shall document any court ordered treatment including identifying the agency responsible for providing the court ordered treatment.

f. Be provided in all situations except emergency situations.

4. The RCCF shall ensure that the child and the legal guardian participate in the formulation, review, and revision of the Individual Child's Plan of care including, but not limited to, the mental health services portion of the plan. If the child or legal guardian is unable to participate or when his or her participation is clinically contraindicated, the RCCF shall document the reasons in the child's record. Any decision to not involve the family or guardian shall be approved by the referral agency. In addition, other persons selected by the child, the family or guardian, the referral agency or the multidisciplinary team may be included in the formulation, review, and revision of the plan care.

5. There shall be monthly review of each plan to evaluate whether the short-term and long-term goals have been achieved and not achieved. The plan shall be revised as appropriate.

6. There shall be documentation of the client's response to treatment approaches and changes in the Individual Child's Plan of care with the reasons for such changes.

G. The facility shall have a written plan for each individual in residence. Prior to the placement of the child in seclusion, the conditions for use of the seclusion shall be detailed and justified in the written plan, and the child shall be oriented to the room, the purpose of its use and type of behavior which might result in its use.

7.714.8 Personal Care of the Child

B. A general medical examination for each child must be completed or scheduled with a physician, physician's assistant or a nurse practitioner prior to or within fourteen (14) calendar days following

admission. A statement from the examiner shall be retained in the child's file. This exam shall include the following:

- 1. An examination for physical injury and disease.**
- 2. Vision and hearing screening.**
- 3. A current assessment of the child's health, including immunizations.**

CHILDREN'S RIGHTS & GRIEVANCE PROCEDURES:

The following rights will be particularly important for children who were traumatized/exposed to trauma at El Pueblo.

7.714.31 Children's Rights

A. The facility shall have written policies and procedures that address and ensure the availability of each of the following core rights for children in residence. **These rights may not be restricted or denied by the facility.**

- 1. Every child has the right to enjoy freedom of thought, conscience, cultural and ethnic practice, and religion.**
- 2. Every child has the right to a reasonable degree of privacy.**
- 3. Every child has the right to have his or her opinions heard and considered, to the greatest extent possible, when any decisions are being made affecting his/her life.**
- 4. Every child has the right to receive appropriate and reasonable adult guidance, support and supervision.**
- 5. Every child has the right to be free from physical abuse or neglect and inhumane treatment. Every child has the right to be protected from all forms of sexual exploitation.**
- 6. Every child has the right to receive adequate and appropriate medical and mental health and psychiatric care in the least restrictive setting possible, suited to meet individual needs.**
- 7. Every child has the right to receive adequate and appropriate food, clothing, and housing.**
- 8. Every child has the right to live in clean, safe surroundings.**
- 9. Every child has the right to participate in an educational program that will maximize his/her potential in accordance with existing law.**
- 10. Every child has the right to communicate with "significant others" outside the facility, such as a parent or guardian, caseworker, attorney or guardian ad litem, current therapist, physician, religious advisor, and, if appropriate, probation officer.**
- 11. No foster child shall be fingerprinted for the purpose of a criminal background check unless required by law enforcement.**
- 12. A child may be photographed upon admission for identification and administrative purposes of the facility pursuant to Section 19-3-306, C.R.S. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order. No other non-medical photographs or videotaping shall be taken or used without the written consent of the child's parent or legal guardian except in the case of a child abuse or police investigation.**
- 13. Every child has the right to the same consideration for care and treatment as anyone else regardless of race, color, national origin, religion, age, sex, political affiliation, sexual orientation, financial status or disability.**
- 14. Every child has the right to be given the names and professional status of the staff members responsible for his/her care.**
- 15. Every child has the right to receive assistance from the resident representative in filing a grievance and to receive copies of the grievance procedure.**
- 16. Every child fifteen (15) years of age and older has the right to request his or her own medical records, to see the records at reasonable times, and to be given written reasons if the request is denied.**
- 17. Every child fifteen (15) years of age and older, who is not in the custody of human services, has the right to accept treatment of his/her own free will and may sign in as a voluntary resident. The child has the right to refuse to sign the consent for voluntary treatment at the time of admission or may take back the consent at a later date pursuant to Section 27-10-103, C.R.S.**

B. The following children's rights may be limited to reasonable periods during the day or restricted according to written policies of the facility to ensure the protection of the children, staff, and program from unreasonable and unnecessary intrusions and disruptions and from health and safety hazards.

- 1. Every child has the right to have access to letter-writing materials, including postage, and to have staff members of the facility assist him/her if unable to write, prepare, and mail correspondence.**

2. Every child has the right to have access to telephones to both make and receive calls in privacy.
3. Every child has the right to have convenient opportunities to meet with visitors.
4. Every child has the right to wear his/her own clothes, keep and use his/her own personal possessions, and keep and be allowed to spend a reasonable sum of his/her own money.
5. Every child has the right to receive and send sealed correspondence. No incoming or outgoing correspondence shall be opened, delayed, held, or censored by the personnel of the child care facility.

C. Written policies that restrict or limit a child's rights as listed at 7.714.31, B, must include at a minimum:

1. Plans for how and when telephone and written communications will take place.
2. Plans for regular visits of the child with relatives, friends, or others interested in his/her welfare, both within and outside of the facility, unless in the judgment of treatment staff and the placement agency visits would be detrimental to the child and/or his/her family.
3. Plans for extenuating circumstances and emergency situations affecting the child and his/her family.
4. The requirement that the facility notify the child, if appropriate to the age of the child, and his/her parent(s) or guardian(s) at the time of admission of any policy that would limit or restrict a child's rights. The notification must be communicated in a language or mode of communication the child can understand and, if possible, be signed by the child and his/her parent(s) or guardian(s).

D. If the facility enforces any restrictions upon the child's rights as listed at 7.714.31, B, the facility must, in compliance with the written policy and procedure of the facility:

1. Inform the child and the child's family and custodian or legal guardian, in a language or mode of communication the child can understand, of the conditions of and reasons for restriction or termination, of his/her rights.
2. Place a written report summarizing the conditions of and reasons for restriction, denial, or termination of the child's rights in that child's case record or treatment record. *Information pertaining to a restriction, denial, or termination of a child's rights contained in the child's treatment or case record must be made available, upon request, to the child or the child's guardian ad litem (GAL).*
3. When a restriction of a child's rights affects another individual, the individual shall be informed, in a language or mode of communication the individual can understand, of the conditions of and reasons for the action.

7.714.32 Children's Grievance Procedure

A. The facility must designate a client representative and establish a written grievance procedure that provides adequate due process safeguards, spells out the appeal process and assures that children and parent(s) or guardian(s) are entitled to report any grievance and shall not be subject to any adverse action as a result of filing the grievance.

1. The facility must follow grievance procedures without alteration or interference and must respond to any grievance filed within 72 hours.
2. This grievance procedure shall be made available to all children as provided for in the resident rights.
3. If a grievance is filed with the facility, the grievance shall be recorded in the child's record along with the investigation findings and resulting action taken by the facility. Information regarding the grievance must be sent to the individual or agency holding legal custody of the child. A copy of the child's grievance may be sent to the parent with the child's permission.
4. A list of the resident rights shall be prominently posted in all facilities in areas frequented by children and legal guardians. These rights shall include the grievance procedure, the name, address, and telephone number of their resident representative, as well as a list of agencies where complaints may be filed.

B. A list of the children's rights and the grievance procedures must be provided and explained to the child and the parent or guardian in a language or manner of communication that they can understand.

OCR WISHES OUR BEST WISHES TO YOU AND THE CHILDREN WHOSE BEST INTERESTS YOU REPRESENT!

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