

**PREA AUDIT REPORT     Interim    Final**  
**ADULT PRISONS & JAILS**

**Date of report:** August 23, 2017

<b>Auditor Information</b>			
<b>Auditor name:</b> Amanda Rasmussen			
<b>Address:</b> 24499 SW Graham's Ferry Road    Wilsonville, OR 97070			
<b>Email:</b> <a href="mailto:Amanda.L.Rasmussen@doc.state.or.us">Amanda.L.Rasmussen@doc.state.or.us</a>			
<b>Telephone number:</b> 503-569-8578			
<b>Date of facility visit:</b> July 17-21, 2017			
<b>Facility Information</b>			
<b>Facility name:</b> Southern New Mexico Correctional Facility (SNMCF)			
<b>Facility physical address:</b> 1983 Joe R. Silva Boulevard    Las Cruces, NM 88005			
<b>Facility mailing address:</b> <i>(if different from above)</i> <a href="#">Click here to enter text.</a>			
<b>Facility telephone number:</b> 575-523-3200			
<b>The facility is:</b>	<input type="checkbox"/> Federal	<input checked="" type="checkbox"/> State	<input type="checkbox"/> County
	<input type="checkbox"/> Military	<input type="checkbox"/> Municipal	<input type="checkbox"/> Private for profit
	<input type="checkbox"/> Private not for profit		
<b>Facility type:</b>	<input checked="" type="checkbox"/> Prison	<input type="checkbox"/> Jail	
<b>Name of facility's Chief Executive Officer:</b> David Jablonski			
<b>Number of staff assigned to the facility in the last 12 months:</b> 326			
<b>Designed facility capacity:</b> 768			
<b>Current population of facility:</b> 711			
<b>Facility security levels/inmate custody levels:</b> Level II, III, IV and V			
<b>Age range of the population:</b> 20-68			
<b>Name of PREA Compliance Manager:</b> John Chavez		<b>Title:</b> Lieutenant	
<b>Email address:</b> <a href="mailto:JohnA.Chavez@state.nm.us">JohnA.Chavez@state.nm.us</a>		<b>Telephone number:</b> 575-523-3200	
<b>Agency Information</b>			
<b>Name of agency:</b> New Mexico Corrections Department (NMCD)			
<b>Governing authority or parent agency:</b> <i>(if applicable)</i> <a href="#">Click here to enter text.</a>			
<b>Physical address:</b> 4337 State Road 14    Santa Fe, NM 87504			
<b>Mailing address:</b> <i>(if different from above)</i> <a href="#">Click here to enter text.</a>			
<b>Telephone number:</b> 505-827-8293			
<b>Agency Chief Executive Officer</b>			
<b>Name:</b> David Jablonski		<b>Title:</b> Secretary of Corrections	
<b>Email address:</b> <a href="mailto:David.Jablonski@state.nm.us">David.Jablonski@state.nm.us</a>		<b>Telephone number:</b> 505-827-8884	
<b>Agency-Wide PREA Coordinator</b>			
<b>Name:</b> Jillian Shane		<b>Title:</b> Inspector General	
<b>Email address:</b> <a href="mailto:Jillian.Shane@state.nm.us">Jillian.Shane@state.nm.us</a>		<b>Telephone number:</b> 505-383-2993	

## **AUDIT FINDINGS**

### **NARRATIVE**

Amanda Rasmussen, a U.S. Department of Justice (USDOJ) Certified PREA Auditor for Adult Facilities, conducted the Prison Rape Elimination Act (PREA) on-site audit of the Southern New Mexico Correctional Facility (SNMCF) in Las Cruces, New Mexico from July 17-21, 2017. SNMCF is operated by the New Mexico Corrections Department (NMCD). The audit was conducted with the assistance of one support staff, Steven Boston. Rasmussen conducted the documentation review, informal interviews with random staff and inmates, interviews with specialized staff and inmates, and authored this report. Boston conducted interviews of random staff and inmates. The audit team conducted the site review together.

The auditor provided the facility with a Notification of Audit on June 5, 2017. The notification contained information on the upcoming audit and stated that any inmate or staff member with pertinent information should send a letter containing this information to the auditor. The auditor instructed the facility to post this notification in all housing units and throughout the facility for the six weeks prior to the onsite audit. The auditor was provided with dated and timestamped photographs indicating the audit notice was posted in a timely manner. The facility warden provided this auditor with a memorandum, indicating that 40 copies of the notice were hand-delivered to all inmates in the Restrictive Housing Unit. During the facility site review, the auditor observed the posting in all housing areas and throughout the facility in inmate-accessible areas. The notice was observed to be posted in areas only accessible to staff, providing them the opportunity to contact the auditor. Prior to the onsite review, the auditor received three letters from inmates at the facility. Each inmate who contacted the auditor was interviewed while onsite.

On July 3, the auditor received a flash drive containing all relevant documentation pertaining to the audit, including, but not limited to: the pre-audit questionnaire (PAQ), policies, procedures, memorandum of understanding and training documents. The auditor reviewed the questionnaire and all included documentation. Prior to the site review, the auditor exchanged email communication with the Agency PREA Coordinator to discuss follow-up questions and concerns, based on the review of the documentation and additional information was provided to the auditor. The auditor reviewed SNMCF's 2015 PREA Audit Report and NMCD's 2015 Survey of Sexual Victimization.

Due to the weather conditions, the facility site review was divided in two parts, conducted in the morning hours on the first and second day. The auditor was given a site review of all areas of the facility, including the outlying buildings where inmates may be assigned for work. The Warden, Acting PREA Administrator and PREA Compliance Manager (PCM) were present for the site review. Deputy Wardens, Unit Managers, Case Managers and Captains joined the site review as the auditor reviewed their respective areas. The auditor spoke informally with staff and inmates during the site review and paid particular attention to the facility's camera placement, monitoring capabilities and areas of potential opposite gender viewing.

During the physical plant review, the auditor observed the facility configuration, locations of cameras and security mirrors, staff supervision of inmates, the housing unit layout including shower/toilet areas, placement of posters and other PREA informational resources, security monitoring, inmate intake, and search procedures. The auditor noted that shower and most restroom areas allow inmates to attend to bodily functions without being in view of opposite gender staff. There were two restroom areas that required additional barriers to prevent viewing by opposite gender staff. Temporary barriers were put into place prior to the end of the onsite portion of the audit, and plans were made to make permanent barriers. Search areas allowed for inmate privacy and prevented viewing by opposite gender staff. There did not appear to be any areas of the facility that had been newly renovated.

An entrance meeting was held in the afternoon on July 17 with the following persons in attendance: Acting PREA Administrator Robin Bruck, Warden James Mulheron, Major Adam Whitefield, Deputy Warden Estevan Flores, Deputy Warden Keith Miller, Unit Manager Oscar Trevizo, Captain Robert Page, Captain Jose Santiago, Lieutenant/Acting PCM John Chavez, Lieutenant Shawn Rosenbarker, and Lieutenant Victor Aldaz.

In the afternoon of the first and second day of the audit, the audit team interviewed random staff and inmates. Interviews were conducted with staff assigned to Administrative (0730-1500 hours), Day (0600-1400 hours), Evening (1400-2200 hours), and Morning (2200-0600 hours) shifts. On the third day of the onsite review, the auditors conducted specialized staff and inmate interviews, as well as the remainder of the random staff and inmate interviews.

SNMCF employs approximately 236 security staff. These staff include the ranks of captain, lieutenant, sergeant and officer. Security staff are assigned daily to four, eight-hour shifts. A total of 47 staff interviews were conducted, with at least one staff member interviewed from each interview category. The auditor conducted an audit in February 2017 for another NMCD facility, and carried over interview information from that audit for the Agency Head, Agency PREA Coordinator, Agency Contract Administrator and the Statewide Sexual Assault Nurse Examiner (SANE) Coordinator. The auditor selected names for random staff interviews by using a roster provided by the facility on the first day of the on-site review. Additional staff were randomly selected as the audit team reviewed the facility. Staff interviews were conducted with staff assigned to all shifts, and with both security and non-security personnel. Staff were interviewed using the DOJ protocols that question their PREA training and overall knowledge of the agency's zero tolerance policy, reporting mechanisms available to staff and inmates, response protocols when allegations of sexual abuse and/or sexual harassment are made, first responder duties, data collection processes and other pertinent PREA requirements. All interviews were conducted one at a time, in a private and confidential manner. All staff and inmates were approachable and open to speaking with the audit team. It was apparent during the interviews that staff and inmates felt comfortable reporting allegations up to and including the Warden. The auditor reviewed personnel files for 20 randomly selected staff members to determine compliance with training mandates and background check procedures. Personnel files were randomly selected by the auditor from an alpha roster provided on the first day of the onsite review. These files included new, veteran, security and non-security staff members, as well as one staff member who had been disciplined.

The inmate population on the first day of the onsite review was 711. A total of 40 inmate interviews were conducted, with at least one inmate interviewed from each interview category. Interviews were conducted with at least one inmate from each housing unit, with the exception of Housing Unit 5. At the time these interviews were to take place, a staff member was physically assaulted, requiring transport by emergency medical services and the unit was placed on lockdown status for the remainder of the week. This auditor selected names for random inmate interviews by using a roster provided by the facility on the first day of the on-site review. Additional inmates were randomly selected as the audit team reviewed the facility. Case files for 30 inmates in the facility were reviewed to evaluate screening and intake procedures, and inmate education. Inmate files were randomly selected by the auditor from an alpha roster provided by the facility on the first day of the onsite review. The PAQ provided by the PCM indicated there was one allegation of sexual abuse and 32 allegations of sexual harassment that were by the investigated facility in the past 12 months. Investigative report files for the sexual abuse allegation and six sexual harassment allegations were reviewed by the audit team.

On the fourth day of the audit, the audit team met with Inspector General/Agency PREA Coordinator Jillian Shane, Acting PREA Administrator Robin Bruck, and PCM Lt. Chavez to discuss SNMCF's compliance with the PREA standards. Areas of non-compliance were discussed and a reasonable and achievable corrective action plan was mutually agreed upon.

The exit conference was conducted in the afternoon on July 20, with the following persons in attendance: Inspector General/Agency PREA Coordinator Jillian Shane, Acting PREA Administrator Robin Bruck, Warden James Mulheron, Major Adam Whitefield, Deputy Warden William Edgman, Deputy Warden Estevan Flores, Deputy Warden Keith Miller, Unit Manager Oscar Trevizo, Unit Manager Willie Flores, Captain Robert Page, Captain Jose Santiago, Lieutenant/Acting PCM John Chavez, Lieutenant Shawn Rosenbarker, and Lieutenant Victor Aldaz. The auditor provided a summary of the audit and thanked the staff for their hard work and commitment to PREA. Agency administration and staff were very open and receptive to an honest discussion of areas where PREA compliance could be strengthened and the PREA compliance team began corrective measures while the auditor was still present onsite.

The auditor interviewed Julie Corrales, of the La Pinon Sexual Assault Recovery Services of Southern New Mexico, to discuss and confirm the agreement in place with NMCD to provide sexual abuse crisis intervention services to incarcerated survivors. She stated that SNMCF inmates are utilizing the hotline in place at the facility to obtain advocacy services and sexual assault resource information. She estimated that the center has received less than ten calls since inception of the agreement with SNMCF. The auditor spoke with Connie Monahan, Statewide Sexual Assault Nurse Examiner (SANE) Coordinator for the New Mexico Coalition of Sexual Assault Programs, to discuss and confirm the agreement in place with NMCD to provide SANE/SAFE services at Memorial Medical Hospital. Ms. Monahan oversees ten sexual assault programs in the state. She verified that all SANEs receive 64 hours of adult/pediatric training that meets the national training standards. SANEs are available at Memorial Medical Center 24-hours each day.

After the onsite audit, the auditor utilized the Auditor Compliance Tool for Adult Prisons and Jails as a guide in determining compliance with each standard. In order to determine compliance, the auditor used the information and documentation provided during the pre-audit, information obtained through staff and inmate interviews, as well as observations during the onsite review.

## DESCRIPTION OF FACILITY CHARACTERISTICS

The New Mexico Corrections Department is a state agency incarcerating 8364 inmates in six publicly operated and five privately operated facilities. The mission statement of NMCD is *“We commit to the safety and well-being of the people of New Mexico by doing the right thing, always”*.

The Receiving & Diagnostic Center (RDC) for NMCD is located in Los Lunas, New Mexico. The RDC processes newly admitted inmates, evaluating them based on mental health, education, security threat group affiliations, medical, and security factors. The classification staff assigned to RDC enter an initial custody designation based on factors listed in risk assessment policy and procedure. These factors include severity of current conviction, history of escape or institutional violence, prior felony convictions and their severity, substance abuse, current age and security threat group affiliations within the last ten years. The RDC conducts the initial PREA screening for all inmates, and recommends housing assignments. This screening is completed again upon arrival at the next facility, and again within 30 days of arrival.

The mission statement of SNMCF is *“to cost effectively protect the public safety by assuring NMCD staff and incarcerated individuals are in secure, safe and sound institutions; identifying that portion of the incarcerated population that is conducive to rehabilitation and matching them with programs that have the best chance of reducing recidivism; and, operating probation and parole functions that appropriately provide alternatives to incarceration, while protecting the public and continue effective recidivism reduction programs.”*

SNMCF is located 12 miles west of the city of Las Cruces. SNMCF has a Level III (maximum/medium Levels III, IV, and V) and a Level II facility on its reservation. The Level III Unit has ten housing units subdivided into three pods. Each unit consists of single occupancy cells with 16 inmates per pod. The unit-design capacity is 480. The facility has 480 single cells and 48 segregation cells. There is 80 square feet of space per cell. Support buildings for SNMCF include supply warehouses and an automotive garage.

The Level II facility was completed in July 1996 and received its first inmates in August of 1996. It has a designed capacity of 300, with a current population of 271 at the time of the audit. The unit management staff has office space on the unit to be accessible to the inmate population. The housing is 1720 square feet dormitory style with two dorms, three pods per dorm. This is a standalone building located outside of the Southern New Mexico Correctional Facility Level III Unit compound. The SNMCF Level II Unit has no cells or segregation units. Each pod has three wall-mounted telephones, a water fountain and an adjunct dayroom/television area with sitting space. The food service, dining room area, education, library, and visitation are all located within the complex.

SNMCF contracted with Computer Assets to upgrade their existing analog surveillance system with a Next Level/Panasonic IP surveillance system. The system includes Next Level Security System Gateway 4000 recording stations and storage, and a total of 550 Panasonic IP surveillance cameras, viewing software and stations, data switches, uninterruptible power supplies, monitors and CAT6Plenum cable runs. This system has data storage capabilities for six months or more. Digital cameras are located indoor and outdoor, with zoom/pan/tilt zoom capabilities. Large, high definition monitors that are capable of displaying camera footage are located in control centers and administrative offices, and are accessed frequently by intermediate and higher-level staff. Approximately 270 of the expected 550 cameras are currently active.

SNMCF houses male inmates ranging in age from 20-68 years old. Approximately 58% percent of the population is Hispanic in origin. The average daily population is 730 inmates.

The following vocational and educational opportunities are available to offenders at SNMCF:

- Education: The Education Bureau provides quality educational/vocational programs and library services to inmates. Basic academic skills instruction and preparation for GED testing, including career/technical, college readiness, Special Education and adult literacy programs are available. Cognitive Behavioral Therapy Programs and courses assist inmates in recognizing destructive behavior patterns and developing positive, pro-social thinking habits in all areas of their lives. Inmates may pursue college education under their own funding through an accredited post-secondary institution. The facility offers residential drug and alcohol treatment programming.

- Vocational: A variety of programs are offered, designed to increase an inmate's ability to find a viable career upon release, to include automotive, barbering, and carpentry, as well as wheelchair repair and gardening.
- Prisoners and Animals Working toward Success (PAWS): This program provides education and life skills for both inmates and dogs, resulting in permanent, loving and caring homes for the dogs and teaching inmates to become productive citizens with patience, compassion and understanding of others. PAWS is made possible through NMCD's partnership with Action Programs for Animals, a local non-profit rescue group. Dogs are trained by inmates in basic obedience and manners for a period of approximately eight weeks. Upon successful completion of training, dogs will be adopted to families by an application process. This program is a true commitment to recidivism reduction by NMCD.

## **SUMMARY OF AUDIT FINDINGS**

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Number of standards exceeded: 0

Number of standards met: 43

Number of standards not met: 0

Number of standards not applicable: 0

## Standard 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA Coordinator

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a) NMCD Policy CD-150100 (*Policy, Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 4, "The NMCD has a 'zero tolerance' policy regarding abuse, sexual misconduct and sexual harassment directed towards offenders." This policy, combined with NMCD Policy CD-150101 (*Procedures to Offender Protection Against Abuse and Sexual Misconduct Reporting Procedures, PREA*) and NMCD Policy CD-150102 (*Procedures for Coordinated Response to Sexual Assaults*), outlines the agency's comprehensive approach to preventing, detecting and responding to sexual abuse and sexual harassment. The Inmate Handbook, provided to each inmate upon arrival at SNMCF, contains information about zero-tolerance on pages 8-12. The zero-tolerance policy is observable throughout the facility, as evidenced by inmate informational postings and handbooks, and zero-tolerance signs painted directly on housing unit walls. Interviews with both staff and inmates indicate they are knowledgeable of the zero-tolerance policy.

(b) On April 19, 2017, Deputy Secretary of Administration, David Jablonski, issued a memorandum indicating Jillian Shane's position as the NMCD PREA Coordinator and granting all of the rights, authority and responsibility necessary to effectively perform the duties of the position. This position is reflected in both agency and facility organizational charts. The PREA Coordinator reports directly to the agency head, Secretary David Jablonski. Ms. Shane was promoted to Inspector General in April 2017, but has retained the title of PREA Coordinator in addition to these duties. Ms. Shane indicated that Robin Bruck has been appointed in an acting capacity as a PREA Administrator. The PREA Administrator position is not reflected in any agency or facility organizational charts, and she appears to have assumed the duties of the PREA Coordinator. When interviewed, Ms. Bruck indicated that she has assumed the duties of the PREA Coordinator, and has the time and authority required to manage her responsibilities. Her sole responsibility at the facility is related to PREA. The PREA Coordinator has 11 PREA Compliance Managers that report directly to her for PREA matters from six public facilities and five privately operated facilities.

(c) Captain Rudy Ybarra is designated as the PREA Compliance Manager for SNMCF. Captain Ybarra was on medical leave at the time of the pre-audit and on-site review. In his absence, Lieutenant John Chavez was appointed as the acting-PCM. Chavez had held the position for three weeks at the time of the on-site review. When interviewed, Chavez indicated that he has the time to manage all of his PREA-related responsibilities. The PCM at SNMCF is a full-time, dedicated position.

## Standard 115.12 Contracting with other entities for the confinement of inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a) This auditor reviewed NMCD’s contract with Corrections Corporation of America, which was entered into on July 1, 2016. This contract includes language that states, *“Contractor shall house NMCD inmates in the Facility in full compliance with the Standards, Codes, Court Orders, and NMCD Policies set forth in paragraphs 2-6 below, as same may be applicable to the care and custody of NMCD inmates at the Facility, and shall operate, maintain and manage the Facility in compliance with all applicable federal and state Constitutional requirements and laws.”* Paragraph three, as referenced, states, *“Codes: All federal, state and local codes applicable to the Facility, to include the Prison Rape Elimination Act (PREA).”*

NMCD’s contract with Otero County was reviewed, which was signed on January 11, 2013. This contract includes language that states, *“The County shall house NMCD inmates in the Facility in full compliance with the Standards, Codes, Court Orders, and NMCD Policies set forth in subsection 1.1 through 1.5, below, as same may be applicable to the care and custody of NMCD inmates at the Facility, and shall operate, maintain and manage the Facility in compliance with all applicable federal and state constitutional requirements and laws.”* Subsection 1.6 is in addition to subsections 1.1-1.5, which states, *“The County must comply with the Prison Rape Elimination Act (hereinafter ‘PREA’) to protect the welfare of all NMCD inmates.”*

NMCD’s contract with Guadalupe County was reviewed, which was signed on September 30, 1998. This contract includes language that states, *“The County shall house NMCD inmates in the Facility in full compliance with the Standards, Codes, and Court Orders set forth in subsection 1.1 through 1.5, below, as same may be applicable to the care and custody of NMCD inmates at the Facility, and shall operate, maintain and manage the Facility in compliance with all applicable federal and state constitutional requirements and laws.”*

NMCD’s contract with Lea County was reviewed, which was signed on March 16, 2012. This contract includes provisions for immediately reporting serious incidents and staff misconduct. This contract includes language that states, *“The County shall house NMCD inmates in the Facility in full compliance with the Standards, Codes, and Court Orders set forth in subsection 1.1 through 1.5, below, as same may be applicable to the care and custody of NMCD inmates at the Facility, and shall operate, maintain and manage the Facility in compliance with all applicable federal and state constitutional requirements and laws.”*

NMCD’s contract with Clayton, New Mexico was reviewed, which was signed on September 21, 2006, which states, *“Clayton shall house NMCD inmates in the Jail in full compliance with the Standards, Codes, Court Orders, and NMCD Policies set forth in subsections 1.1 through 1.6, below, as same may be applicable to the care and custody of NMCD inmates at the Jail, and shall operate, maintain and manage the Jail in compliance with all applicable federal and state constitutional requirements and laws.”*

The contracts for Otero County, Lea County, Guadalupe County, and Clayton County are currently out for signature with language more specific to PREA. The additional language reads, *“Any Contractor providing services to NMCD or its designee who has direct contact with inmates or parolees, who are in the care and custody of the State of New Mexico, shall adhere to PREA standards. Any new contract or contract renewal shall provide for NMCD contract monitoring to ensure that the contractor is complying with the PREA standards.”*

(b) All contracts include provisions for contract monitors, who will monitor compliance with the contract by observation, interviews, reviewing facility records, inmate files, budget documents and attending staffing meetings or hearings. Each facility has a contract monitor on site, supervised by Internal Audits & Standards Compliance Acting Bureau Chief, Orion Stradford. When interviewed, Mr. Stadford indicated that he meets with the contract monitors on a monthly basis, and discusses PREA compliance. The results of those meetings are provided to Agency PREA Coordinator.

### **Standard 115.13 Supervision and monitoring**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a) NMCD Policy CD-150100 (*Policy, Offender Protection against Abuse and Sexual Misconduct Reporting Procedures, PREA*) directs that each facility will develop, document, and make best efforts to comply on a regular basis with a staging plan that provides for adequate levels of staffing, and where applicable, video monitoring to protect inmates against sexual abuse. These procedures address each enumerated factor that must be considered by the facility. Upon interview, Warden Mulheron indicated he is involved in staffing plan meetings. This information was also reflected in the minutes provided to this auditor from staffing plan meetings.

(b) Warden Mulheron submitted a memo stating that SNMCF did not deviate from the staff plan during the reporting period. When interviewed, the warden indicated that overtime is hired for any positions not filled on the roster.

(c) The same policy states, "At least one time per year, the facility will hold a meeting to assess, determine and document whether adjustments are needed to the staffing plan, the facility's deployments of video monitoring systems and other monitoring technologies; and the resources the facility has available to commit to ensure adherence to the staffing plan. At the conclusion of the meeting, documentation of the review shall be forwarded to the Agency Level PREA Coordinator for review." Documentation of staffing plan reviews held on June 29, 2016 and June 20, 2017 was reviewed. This documentation indicated there were no findings of inadequacy by any agencies or oversight bodies. All components of the facility's physical plant were reviewed, to include any areas of limited visibility or areas where staff or inmates may be isolated. A total of 31 additional cameras were put in place to assist in monitoring these areas. The facility is 96% staffed, with only 12 vacancies between four shifts. When interviewed, the warden indicated 12 staff have been selected to fill those vacancies, and there is a waiting list of approximately 15 other applicants for upcoming positions. To ensure the well-being and safety of inmates, continuation of inmate programming and the daily operations of the facility, an overtime bucket is created for each shift. The overtime bucket ensures that every post is covered by an officer on a voluntary or mandatory basis.

(d) NMCD Policy CD-150101 (*Procedures for Offender Protection against Abuse and Sexual Misconduct Reporting Procedures, PREA*) states on page 1, "Shift supervisors shall make unannounced rounds in housing units to deter staff sexual abuse and sexual harassment. Staff members are prohibited from alerting other staff members that supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility." While onsite, intermediate and higher-level supervisors were interviewed, and verified they conduct unannounced rounds on all shifts, in order to detect and deter any staff misconduct, including staff sexual abuse and sexual harassment. These rounds are documented by the control center officer of the housing unit. Control center logs are archived in the captain's office, and were reviewed by this auditor to ensure these rounds are conducted and documented on all shifts over time. While onsite, the audit observed unannounced rounds being conducted and documented. During the site review, staff indicated to the audit team that they often see supervisors in their areas, and at random time intervals.

### Standard 115.14 Youthful inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

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NMCD Policy CD-150100 (*Offender Protection Against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 6, “Inmates under the age of eighteen (18) years old will not be assigned to housing in the same housing unit as adult offenders but will be housed in the Youthful Offenders Management Unit at Central New Mexico Facility. Offenders under the age of eighteen (18) will have direct sight/sound contact with staff in areas outside of the housing unit.” Captain Ybarra submitted a memorandum indicating that SNMCF does not house youthful inmates. The auditor reviewed SNMCF population reports for the last 12 months, sorted by age, and did not find any inmates under the age of 18 listed. The daily population report provided for July 17 did not include any inmates under the age of 18. No interviews of staff or inmates indicted a youthful inmate may have been housed at SNMCF.

### Standard 115.15 Limits to cross-gender viewing and searches

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a and b) NMCD Policy CD-130301 (*Search Policy*) states on page 1, “Female inmates will only be pat searched by female officer [sic], with the exception of an emergency.” It also states, “Strip searches must be done by an officer of the same gender as the inmate and in an area that affords a reasonable degree of privacy, except in emergency circumstances. Visual inspections of inmate body cavities shall only be conducted by a trained officer of the same sex, in private, and based on a reasonable belief that the inmate is carrying contraband or other prohibited material.” This auditor reviewed the NMCD Lesson Plan for Searches (Correctional Officer), which clearly reiterates that strip and officers of the same gender as the inmate must conduct visual body cavity searches. The NMCD power point presentation for the Prison Rape Elimination Act was reviewed. This presentation reinforces the policy and prohibits cross-gender strip or visual body cavity searches except in exigent circumstances or when performed by medical practitioners. Both of these educational pieces are provided to all SNMCF staff at In-Service/Orientation, and in the NM Corrections Training Academy. All security staff attend the Corrections Training Academy, while non-custody staff attend Corrections 101 training. Each employee prints and signs their name on a sign-in sheet. After training on PREA, staff sign an acknowledgment form indicating they have received and understand the training.

(c) SNMCF does not house any female inmates. All strip searches are documented. Documentation of these strip searches was spot-checked and the auditor did not find any evidence indicating female staff have conducted strip searches of male inmates. Interviews of staff and inmates did not indicate cross-gender searches are occurring.

(d) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 7, “Staff members of the opposite sex of the inmate population in their facility must announce their presence when entering an inmate housing unit. These announcements must be logged into the housing unit daily log for that unit.” The facility has painted reminders of the announcement requirement on the entrance doors to facilities and housing units/pods. The main entrance to some housing units leads into the common area containing showers and toilets, and a second door leads into the residential and common areas for inmates. Because an announcement at the main door may not be heard past the second door, SNMCF staff are required to make an announcement at each door. This practice was observed while onsite. Interviews with staff and inmates indicated these announcements are taking place as required.

(e) NMCD Policy CD-130300 (*Search Policy*) states on page 4, “Facilities shall not search or physically examine a transgender or intersex offender of the sole purpose of determining the offender’s genital status. If the offender’s genital status is unknown, it may be determined during conversations with the offender, by reviewing medical records, or if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner.” The policy later indicates under what circumstances a strip search will be conducted, such as when entering/exiting the facility or before/after a significant opportunity to pass or receive contraband. NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 5, “Transgender and intersex inmates shall not be searched or examined by non-medical staff for the sole purpose of determining the inmate’s genital status. Genital status shall be determined by interviews or medical records reviews.” There was one inmate assigned to SNMCF that identified as transgender at the time of the audit. An interview with that inmate did not indicate searches had taken place outside of the policy.

(f) NMCD Policy CD-150100 (*Offender Protection Against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 7, “The agency shall train security staff in how to conduct cross-gender pat down searches and searches of transgender and intersex inmates, in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.” NMCD Policy CD-130300 (*Search Policy*) states on page 3, “Derogatory remarks of any kind, relating to the searches of inmates, will not be tolerated by the Department. Disciplinary action may be taken when it is established that derogatory remarks have been made.” The NMCD Lesson Plan for Searches (Correctional Officer) was reviewed. It outlines the proper way to conduct a pat or strip search on a transgender inmate. The lesson plan includes the information about not searching transgender or intersex inmates for the sole purpose of determining an inmate’s genital status, and all searches must be performed professionally and respectfully, and in the least intrusive manner possible, consistent with security needs. This auditor reviewed the NMCD power point presentation for the Prison Rape Elimination Act, which reinforces the same information, in multiple places. Interviews with staff indicated they are knowledgeable of their responsibility to interact with transgender and intersex inmates in a professional and respectful manner. There was one inmate assigned to SNMCF that identified as transgender at the time of the audit. An interview with that inmate indicated that pat down searches were conducted in a professional and respectful manner.

## Standard 115.16 Inmates with disabilities and inmates who are limited English proficient

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 5, “The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.” On page 7, it states, “Inmates with disabilities and inmates who are limited English proficient shall have access to all aspects of the Department’s efforts to prevent, detect and respond to sexual abuse and sexual harassment.” SNMCF provides inmates with a PREA Inmate Handbook, which is available in English and Spanish. Spanish is the primary second language of those incarcerated at SNMCF. The PREA Coordinator is currently working with the Nevada Department of Corrections to have some educational materials translated into braille. Currently, inmates with low vision are able to hear the educational video, and case managers will sit and read other information to them, if necessary. Case managers and BHS staff are trained to communicate with these developmentally delayed inmates, and would sit with them individually to provide information, as verified through interviews. The PREA education video has an option for Spanish subtitles. The PREA Inmate Handbook was written at third grade level, as the population literacy averages at a third to fifth grade level. While onsite, this auditor observed written postings and PREA-related information painted directly on walls. Many of the paintings utilize an eye-catching animated emoji character, holding a stop sign. The postings consisted of typed information on a regular-sized sheet of paper.

(b) Captain Ybarra provided a memorandum indicating there are ten staff members at SNMCF that are fluent in Spanish, and may be used as interpreters to assist in any PREA issues. He also provided a memorandum indicating the location of one TTY mobile phone, and the personnel who are trained to utilize them. The State of New Mexico has a current contract in place with Corporate Translation Services Language Link, to provide 24-hour service, 365 days a year for Limited English Proficiency clients.

(c) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 7, “The use of inmate interpreters to assist disabled or limited English proficient inmates in participating in efforts to prevent, detect and respond to sexual abuse and sexual harassment, except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate’s safety, the performance of first responders, or the investigation of the inmate’s allegations, is prohibited.” Interviews with random inmates and all levels of staff indicated that staff are used to translate, and no instances of inmate translators were noted. Staff translation services were utilized during at least one interview with a LEP inmate.

## Standard 115.17 Hiring and promotion decisions

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a) NMCD Policy CD-037400 (*Recruitment*) indicates they will not hire or promote applicants or contractor applicants who have engaged, been convicted of, or civilly or administratively adjudicated to have engaged in any of the prohibited activity outlined in the standard. Twenty randomly selected employee files were reviewed to determine if the proper criminal record background checks had been conducted, and the questions regarding past conduct were asked and answered.

(b) The policy states the agency will consider incidents of sexual harassment in determining whether to hire or promote anyone, or enlist the services of any contractor, who may have contact with inmates. There were no incidents noted in any of the files reviewed.

(c) The policy states the agency will directly ask all applicants and employees who may have contact with inmates about the prohibited misconduct in written applications, hiring/promotional interviews and in any interviews/self-evaluations conducted as part of a current employee's review. This auditor reviewed forms submitted by new employees, and verified the questions regarding prohibited conduct. NMCD uses a standardized form to request PREA-related information on employment candidates who previously worked in institutions. A human resource manager conducts these background checks, as verified through her interview and a review of documentation. While onsite, the personnel files of 20 randomly selected staff were reviewed and the criminal background check information was verified. Within the last 12 months, there was at least one transfer from another NMCD correctional facility. The PREA Coordinator provided me with a copy of the information request form to verify the process is being utilized.

(d) Criminal background checks for contractors are conducted at SNMCF annually. SNMCF employs contract staff (such as food service workers), who have a criminal background check conducted every three years. Documentation for contractors was reviewed to verify these checks are conducted as required.

(e) Although the standards indicate background checks shall be conducted at least every five years, NMCD conducts such checks every three years. Every employee or contract staff member hired prior to 2016 has received a background check, to ensure there were no gaps.

(f) NMCD Policy CD-037400 (*Recruitment*) states that employees have a continuing affirmative duty to disclose any such misconduct. Applicants are required to sign a background information request referencing PREA, as well as a second document asking directing if they have engaged in any of the prohibited conduct outlined in this standard.

(g) Applicants and employees certify that their responses on the PREA questionnaire are true, under penalty of forfeiting their right to any employment in the service in the State of New Mexico.

(h) Documentation from the SNMCF and my interview of the Human Resource Administrator indicated that SNMCF had not been requested to provide information on any staff who previously worked at SNMCF to another confinement facility.

### Standard 115.18 Upgrades to facilities and technologies

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-b) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 8, “When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency’s ability to protect the inmates from sexual abuse. When installing or updating a video monitoring system, electronic surveillance system or other monitoring technology, the agency shall consider how such technology may enhance the agency’s ability to protect inmates from sexual abuse.” Captain Ybarra supplied a memorandum indicating SNMCF is currently upgrading its technology system in, and this work was observed while on-site by the audit team. Interviews with the Warden, Captain and Agency PREA Coordinator indicated they were all aware of the requirement to consider PREA when installing or upgrading. During the onsite review, cameras were observed internally in hallways, common areas and entrances to buildings. No cameras were placed in showers, toilet areas or in single cells.

### Standard 115.21 Evidence protocol and forensic medical examinations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a and b) NMCD conducts administrative sexual abuse investigations. The New Mexico Department of Public Safety (NMDPS) is responsible for criminal sexual abuse investigations. NMCD Policy CD-150102 (*Coordinated Response to Sexual Assaults*) outlines comprehensive procedures for response to allegations of sexual abuse. The policy is based off the April 2013 edition of “*A National Protocol for Sexual Assault Medical Forensic Examination*”, published by the US Department of Justice. There are no youth housed at SNMCF. The Office of Professional Standards (OPS) has investigators trained on sexual abuse allegations. Interviews with the OPS Bureau Chief, an investigator and random staff indicated they are knowledgeable on obtaining usable physical evidence.

(c) NMCD Policy CD-150102 (*Coordinated Response to Sexual Assaults*) outlines the procedures for response to an initial disclosure within 120 hours of a sexual assault, and states, “A facility health care professional will take a history and conduct an examination to document the extent of physical injury and to determine if there are injuries that merit transfer to another medical facility.” The shift supervisor makes an immediate verbal report to the warden, who will make an immediate report

to the PREA Coordinator, OPS and NMDPS. Forensic medical examinations are provided by a Sexual Assault Nurse Examiner (SANE) at Memorial Medical Center, in Las Cruces. NMCD Policy CD-150102 indicates these exams are provided at no charge to the inmate, as does the written guidelines between NMCD and the New Mexico Coalition of Sexual Assault Programs. An interview of the Statewide SANE Coordinator indicated SANEs are available at both locations, 24-hours each day. All SANEs receive the 64-hour adult/pediatric training as indicated by national protocols. SANEs that transfer to New Mexico from other states with certification are reviewed and required to audit any portions of the training specific to New Mexico. The PREA Resource Guide for Inmates provides a comprehensive overview of what a forensic medical exam will entail. In the past 12 months, there were two inmate forensic medical exams conducted. The auditor was unable to conduct an interview with the inmate who received the forensic medical exams, as he had been transferred to another facility.

(d and e) SNMCF has entered into a signed Memorandum of Understanding with La Pinon Sexual Assault Recovery Services of Southern New Mexico, to provide confidential community-based advocacy services to incarcerated survivors of sexual abuse. La Pinon is the only full-service sexual assault response agency in Southern New Mexico, providing comprehensive sexual assault recovery services for sexual abuse victims and their families. La Pinon is not part of a governmental unit. All of their services are bilingual and bi-cultural. Advocacy services are provided via telephone, mail, e-mail and in person. The PREA Inmate Handbook and PREA Resource Guide have information for incarcerated survivors about their ability to utilize advocates. The telephone number to contact advocates on an unmonitored and free telephone line is painted on the wall of every housing unit at SNMCF. As evidenced in the audit narrative, multiple phones were tested by this auditor and found to be in working order. An interview with a La Pinon advocate indicated they have received contact from inmates at SNMCF.

(f and g) NMDPS provided NMCD with a letter, dated February 27, 2017, indicating the level of training provided to their officers. This training includes trauma and victim response, medical and mental health care issues of sexual assault victims, and working with advocates.

(h) SNMCF and NMCD do not utilize qualified agency staff members as advocates.

#### **Standard 115.22 Policies to ensure referrals of allegations for investigations**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-e) NMCD Policy CD-150101 states, *“An investigation shall be conducted and documented whenever a criminal sexual behavior, sexual misconduct or threat is reported...The Agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.”* Allegations must be documented and referred to the agency with “legal authority” to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The Agency PREA Coordinator stated allegations for all NMCD facilities are tracked in an electronic database called IA PRO. This database includes all PREA and other administrative cases, and is never purged. OPS maintains contact with NMDPS to receive updates on criminal cases. Interviews with the PREA Coordinator, PCM and OPS staff indicated adherence to this standard. The PAQ indicated there were 33 allegations of sexual abuse and sexual harassment at SNMCF in the last 12 months. All 33 resulted in an administrative investigation, and one was referred for criminal investigation. The auditor reviewed seven complete investigative files. The auditor reviewed those investigative files to ensure allegations were referred and investigations are being conducted. The interview of the Secretary Jablonski indicated he is committed to

creating a sexually safe environment for all inmates, and has an established relationship with agency investigators to ensure allegations are referred and investigated properly.

### **Standard 115.31 Employee training**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a) NMCD provides staff development training programs under a single division, to ensure that training requirements are standardized and met. Training is provided to all staff who may have contact with inmates in the corrections academy, at new employee training (“Corrections 101”) and annually at in-service. This auditor reviewed the power point presentations associated with these trainings, and confirmed they included the following elements: the agency’s zero tolerance for sexual abuse and sexual harassment; how to fulfill responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures; inmates’ right to be free from sexual abuse and sexual harassment; the right of inmates and employees to be free from retaliation for reporting sexual abuse and harassment; the dynamics of sexual abuse and harassment in confinement; common reactions of victims; how to detect and respond to signs of threatened and actual sexual abuse; how to avoid inappropriate relationships with inmates; and, how to communicate effectively and professionally with all inmates (including those who identify as LGBTI or gender nonconforming). Interviews with randomly selected staff indicate they are aware of the agency’s zero-tolerance policy, their responsibilities and inmate rights with regard to PREA, as well as interacting professionally and communicating effectively with LGBTI and gender nonconforming inmates.

(b) SNMCF houses male inmates, and the curriculum is gender-neutral.

(c) The auditor reviewed 20 randomly selected employee files. All files contained the required documents.

(d) Employees sign a PREA Acknowledgement form after training, indicating they have received and understand the training. Each required element is identified on the PREA Acknowledgement form. These forms are maintained in the employee files. Twenty randomly selected employee files were reviewed to ensure these documents were completed.

### Standard 115.32 Volunteer and contractor training

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-c) This auditor reviewed the lesson plan for PREA training provided to volunteers and contractors to verify it contains information on their responsibilities under the agency’s sexual abuse and harassment prevention, detection and response policies and procedures. The training reminds contractors and volunteers of the agency’s zero tolerance policy, as well as their reporting responsibilities. The training concludes with a brief knowledge test. After contractors and volunteers receive PREA training, they sign an acknowledgment form stating, *“I understand that if I engage in sexual abuse with inmates, I shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and will be reported to relevant licensing bodies.”* The main training elements are identified on the PREA Acknowledgement form. These forms are maintained in the personnel files. Contractors and volunteers are provided a PREA Summary and Overview fact sheet, which reminds them of the agency’s zero-tolerance policy, and ways to report directly or anonymously. A random sampling of contractor and volunteer records were reviewed to confirm these forms have been signed. The Volunteer Handbook provided by NMCD was reviewed, and found to include information on establishing and maintaining appropriate professional boundaries with inmates. Interviews with volunteers and contractors indicated they understand and apply this training in their interactions with inmates. This auditor interviewed Senior Chaplain Calvin Robinson, who coordinates the PREA training for volunteers and contractors. This training is provided prior to contact with inmates and includes the required elements regarding prevention, detection and response.

### Standard 115.33 Inmate education

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-c, e and f) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states, *“Information shall be provided to offenders about sexual abuse/assault including: Prevention/intervention; self-protection; how to report; zero tolerance; reporting sexual abuse/assault; and, treatment/counseling. This information shall be communicated orally and in writing, in a language clearly understood by the offender, upon arrival at a facility. Within thirty (30) days of intake, the agency shall provide comprehensive education to inmates with in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents. In addition to providing such education, the agency shall ensure that key information is continuously and readily*

*available or visible to inmates through posters, inmate handbooks, or other written formats.*” This auditor reviewed the PREA Inmate Handbook, which is issued to all inmates upon their arrival to the facility, to confirm it contained the required information. All inmates sign a PREA Inmate Handbook Acknowledgment form, stating that they have received the handbook. These forms are maintained in inmate files, and were reviewed by this auditor. Inmates receive more information about Sexual Abuse and/or Assault during Orientation. After Orientation, they sign a verification form indicating they received the information. A space is included to indicate if the inmate exclusively speaks Spanish, and from whom they received assistance. The PREA Resource Guide is a lengthy document, and currently only available in English. NMCD is currently working on providing a Spanish translation. The PREA Resource Guide is available to inmates in the inmate library. While onsite, this auditor verified there was one copy available in the library, secured to a bookshelf. The auditor recommended that additional copies be placed elsewhere in the library, to ensure an inmate’s ability to access the information in a more confidential manner. An informal interview with the librarian indicated inmates have accessed this resource. PREA postings and paintings are clearly visible in all areas of the facility, to include common areas and housing units. These postings remind inmates of NMCD’s zero tolerance policy and provide hotline numbers to report incidents or speak with an advocate. A PREA educational video is shown at the Intake Center in Los Lunas. The video also airs on the inmate television system three times a day on Mondays and Tuesdays, and twice a day for the remainder of the week. Interviews with random inmates indicated they are aware of PREA and the agency’s zero-tolerance policy, and knew how to report allegations. Inmates indicated they would rather “police” concerns among themselves instead of reporting to staff. An interview with a confidential community-based advocate indicated the geographical population is culturally less likely to report incidents to local law enforcement and handles matters without outside parties. This was evidenced by the low number of sexual abuse allegations within the facility and the low level of contact between incarcerated survivors and the local advocacy center.

(d) Most educational material is available in English and Spanish, which is reflective of the needs of the inmate population. Hearing-impaired inmates can access this information in written formats. Case managers read the information to visually impaired inmates. An interview of one visually impaired inmate indicated they were able to access the educational material. Inmates who may be cognitively impaired or otherwise disabled are met with individually by case managers or mental health staff to ensure they are informed and understand, as evidenced through interviews with case managers and a mental health services staff member.

#### **Standard 115.34 Specialized training: Investigations**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-c) NMCD Policy CD-150101states, *“In addition to the general training provided to all employees, the agency shall ensure that to the extent the agency itself conducts sexual abuse investigations, that its investigators have received training in conducting such investigations in confinement settings.”* This auditor reviewed the power point presentation for this training, entitled, *“Investigating Sexual Assaults in a Correctional Setting”*. The training included information on techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative or prosecution referral. There are three facility and nine agency investigators currently employed by OPS who have received this training, as evidenced by their signature on training rosters and certificates of completion. This documentation is retained in their PREA Audit Report

personnel files. Interviews with the OPS Bureau Chief and an investigator indicated they are aware of and utilize the proper training when conducting sexual abuse investigations, and proceed in a trauma-informed manner.

(d) NMDPS provided NMCD with a letter, dated February 27, 2017, indicating the level of training provided to their officers. This training includes trauma and victim response, medical and mental health care issues of sexual assault victims, and working with advocates.

### **Standard 115.35 Specialized training: Medical and mental health care**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

The pre-audit questionnaire indicates there are 19 medical and mental health care practitioners employed at SNMCF. All full- and part-time medical and mental health care practitioners who work regularly in the facility receive training on detecting/assessing signs of sexual abuse/harassment, evidence preservation, responding effectively and professionally to victims, and how to report suspicions or allegations of sexual abuse/harassment. Participants in this training receive a certification of completion. Training records are maintained in employee personnel records. This auditor reviewed a random sampling of records to confirm documentation. This auditor reviewed the power point presentation for this training to confirm all required elements are included. This training is in addition to the employee and contractor/volunteer education. Interviews of staff indicated they have received the training and are knowledgeable of the required elements. Medical staff employed by NMCD do not conduct forensic examinations. Sexual Assault Nurse Examiners (SANE) conduct all forensic medical exams. The SANE Coordinator for the New Mexico Coalition of Sexual Assault Programs was interviewed and indicated all forensic examinations are performed by SANEs at Memorial Medical Center, and are available 24-hours each day. Each SANE is required to be certified after attending the 64-hour adult/pediatric training in accordance with national standards.

### **Standard 115.41 Screening for risk of victimization and abusiveness**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-b, f-g) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 5, “Inmates shall be screened within 48 hours of arrival at the facility and reassessed 25 days after the inmate’s arrival, for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Inmates will be reassessed thereafter due to a referral, request, incident of sexual abuse, or receipt of additional information that bears upon an inmate’s risk of sexual victimization or abusiveness. Housing and program assignments will be made accordingly.” NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 21 that each Classification Officer shall be responsible for “a PREA risk screening within 72 hours of inmates arrival and whenever and [sic] inmate is involved in a PREA incident”. The timelines in these two policies conflict. Corrective action at another facility instituted the implementation of the 48 hours requirement, and the policy had not been updated on page 21. A review of 30 inmate files indicated these screenings are taking place on time. Some 30-day screenings were taking place within eight days of an inmate’s arrival at SNMCF. The auditor recommended these screenings take place closer to the end of the required timeframe. When interviewed, inmates recalled being asked the screening questions.

(c-e) Intake screenings are conducted through an automated system, Criminal Management Information Systems (CMIS). This assessment is an objective screening tool, which automatically calculates risk after answers are populated. An inmate can be designated as having low/high risk of sexual victimization, or no/low/high risk of sexually aggressive behavior. The auditor reviewed the intake screening on CMIS and verified it contains the required evaluation elements.

(h) NMCD Policy CD-150100 states, “Inmate shall not be disciplined for refusing to participate in the screening process.” The auditor interviewed intake and classification staff and verified that inmates are not disciplined for refusing to participate. There were no interviews with staff or inmates that indicated any inmates had been disciplined for refusing to participate in the screening.

(i) Upon logging into CMIS, staff are reminded they are accessing a confidential information database, and that information in the database is for official use only, restricted to staff with a need to know, and may not be disclosed. By clicking “Application Logon”, staff acknowledge the confidential nature of the information and accept full responsibility for the proper use of the information. Interviews with staff indicated they are aware the information is confidential.

#### **Standard 115.42 Use of screening information**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-b) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 5, “Inmates shall be screened within 48 hours of arrival at the facility and reassessed 25 days after the inmate’s arrival, for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Inmates will be reassessed thereafter due to a referral, request, incident of sexual abuse, or receipt of additional information that bears upon an inmate’s risk of sexual victimization or abusiveness. Housing and program assignments will be made accordingly.” NMCD Policy CD-080100 (*Institutional Classification, Inmate Risk Assessment and Central Office Classification*) outlines which screenings inmates will go through, how information received is documented, and which staff member is responsible for each portion of the process. The classification officer completes the PREA risk screening form.

(c-g) According to the PCM, SNMCF is not subject to a consent decree, legal settlement, or legal judgement for protecting LGBTI inmates, and does not place those inmates in dedicated facilities, units, or wings solely based on such identification. According to the Agency PREA Coordinator, once screened, an individual decision on placement is made with medical and mental health staff and the PREA Coordinator. The shower configuration of the Level III facility provides for separate showers without any other accommodation, as all are single showers. If a transgender or intersex inmate were to be housed at the Level II facility, the inmate would be permitted to shower during count time. The privacy barriers in the Level II shower areas would prevent opposite gender viewing of a transgender female inmate. There was one inmate assigned to SNMCF that identified as transgender at the time of the audit. An interview of that inmate indicated she is able to shower privately, and that her own views of her safety were considered when assigned to housing at SNMCF. There is not currently a written policy or procedure about housing and programming assignments. The PREA Coordinator submitted a copy of a draft policy regarding the screening and housing of transgender and intersex inmates. The policy states that classification staff will make individual determinations on how to ensure the safety of each transgender and intersex inmate. When the housing determination is unclear, the staff will notify the Agency PREA Coordinator and the placement decision will be determined by the Gender Classification Committee comprised of the Agency PREA Coordinator, the Director of Operations and the Gender Responsive and Evidence-Based Manager.

#### **Standard 115.43 Protective custody**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-e) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 5, “*The placement of inmates determined to be at high risk of sexual victimization into Special Management shall cite the basis for the facility’s concern for the inmate’s safety and the reason why no alternative placements are appropriate consistent with policy CD-143001.*” This is also referenced in NMCD Policy CD-141100 (*Protective Custody Policy*), which states, “*Inmates with protective custody issues will only be placed in restrictive housing if all other viable alternative have been exhausted.*” Captain Ybarra provided a memo stating that no inmate at SNMCF who is at high risk for sexual victimization has been placed in involuntary segregation in the past year, or since their last PREA audit. While onsite, this auditor reviewed housing records of those inmates designated to be at high risk of sexual victimization, and confirmed that none had been assigned to protective custody housing. There were no inmate interviews that indicated this had been done in the past.

## Standard 115.51 Inmate reporting

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-b) NMCD inmates have multiple internal mechanisms for reporting, to include providing the information verbally or in writing to any staff member, contractor or volunteer; calling the Hotline; by filing a grievance; or, requesting a family member or friend report on their behalf. This information is available to inmates on pages 5 and 6 of the PREA Resource Guide, as well as pages 6 and 7 of the PREA Inmate Handbook. The handbook and resource guide are available in English and Spanish. NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states that in addition to the above-reference reporting mechanisms, inmates may place “a note or memo in any drop box located throughout the facility for classification, medical or mental health staff and/or even mail boxes (please be as specific as possible when submitting information in writing)”. Policies are available to inmates through the legal library, upon their request, and to the public via the agency website. Inmates at NMCD are informed they may write to a third party reporting agency that is not a part of NMCD in the PREA Inmate Handbook. This service is provided through an intergovernmental agreement between NMCD and the Colorado Department of Corrections, in effect since March 3, 2016. Inmate interviews indicated knowledge of their right to remain anonymous when using this reporting method. SNMCF does not have any inmates detained solely for civil immigration purposes.

(c) All staff at SNMCF are required to report any knowledge or suspicion of sexual abuse and sexual harassment, no matter how that information may be presented to them. This was evidenced through a review of training materials and staff interviews. The facility has provided staff with a small, blue pocket card referencing their reporting responsibilities, as well as a PREA Employee Reference Booklet that was created and distributed in June 2017.

(d) NMCD staff may report privately by advising their superior or the PREA Coordinator, speaking with the Warden or Director, or by sending an email to [PREAReporting@state.nm.us](mailto:PREAReporting@state.nm.us). This email address links to the agency PREA Coordinator. If she is gone, there is a process in place for another party to manually retrieve the emails from a secure system. The Coordinator stated this reporting mechanism has not been utilized within the last 12 months for any inmates at SNMCF. This auditor sent an email to the address on July 10, and received a response in less than three minutes. Interviews with staff indicated they are aware of how to privately report allegations.

## Standard 115.52 Exhaustion of administrative remedies

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-d) NMCD is not exempt from this standard, as they have administrative procedures in place to address inmate grievances regarding sexual abuse. NMCD Policy CD-150500 (*Inmate Grievances*) states on pages five and six, "Department personnel sexual misconduct. This also includes any Prison Rape Elimination Act, (PREA). Third parties, including fellow inmates, staff members, family members, attorneys and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall be permitted to file such requests on behalf of the inmates. Grievances submitted by the inmate or another individual who has knowledge of the incident [referring to matters grievable by inmates]. Under "Informal Resolution", the policy states, "It is the policy of the Department to resolve grievances at the lowest possible level. Informal resolution is used and required in the grievance process. The exception is any PREA grievances. These will not be subject to this standard and must be treated as emergency formal grievances. The Facility Grievance officer of the State wide Grievance/Disciplinary Appeals Manager has the authority to return the formal grievances to the respective Unit Manager, Chief of Security, or designated facility staff. This staff will deal with the issues at the local level (Informal complaint), If not completed in the initial request before proceeding to the formal grievance process. The exception to this is any PREA grievances will not be subject to this standard and must be treated as an Emergency Formal Grievance." PREA grievances must be completed within 90 days of submission, per policy. An extension of up to 70 days may be requested, if there is documentation showing the need for additional time to make an appropriate decision. An interview of the Grievance Officer indicated an extension has never been requested. She stated informal grievances are submitted to the staff member for response to the inmate, but PREA grievances are answered directly by her and referred for immediate investigation to the warden and OPS. The Inmate Handbook, provided to all inmates upon their arrival at SNMCF, provides information about PREA-related grievances on page 13, "You may file a grievance regarding this matter as well. Grievances on PREA concerns will be handled as emergency grievances and responded to immediately. The grievance timelines do not apply to PREA grievances." Captain Ybarra submitted a memo indicating that SNMCF has had seven inmate grievances concerning PREA within the last year. While on-site, the audit team reviewed all seven inmate grievances and facility responses.

(e) With regards to third party grievances, Policy CD-150500 states, "If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process. PREA Grievance may be filed on behalf of a third party in regards to an alleged victim. The alleged victim does not agree [sic], there must be written documentation noting that concern." An interview of the Grievance Officer indicated that no third party grievances had been submitted at SNMCF.

(f) Emergency PREA grievance responses must be completed within 48 hours of receipt of the grievance. This is also captured in NMCD Policy CD-150501 (*Inmate Grievances*). An interview of the Grievance Officer indicated these grievances receive a same day response that they are being referred to OPS for investigation.

(g) Page 8 of the PREA Inmate Handbook notifies inmates that they may be held accountable if they intentionally provide a false statement of sexual victimization, and may be charged criminally. The Grievance Officer stated there has not been any discipline of any inmate related to their filing of a PREA grievance.

### Standard 115.53 Inmate access to outside confidential support services

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-c) SNMCF has entered into a signed Memorandum of Understanding with La Pinon Sexual Assault Recovery Services of Southern New Mexico, to provide confidential community-based advocacy services to incarcerated survivors of sexual abuse. La Pinon is the only full-service sexual assault response agency in Southern New Mexico, providing comprehensive sexual assault recovery services for sexual abuse victims and their families. La Pinon is not part of a governmental unit. All of their services are bilingual and bi-cultural. Advocacy services are provided via telephone, mail, e-mail and in person. Captain Ybarra provided this auditor with a memo indicating that each inmate is provided a business card for La Pinon upon arrival at SNMCF. The business card has contact information on one side. The reverse side of the card states, *“NMCD and this Facility have a ZERO-tolerance for all forms of Sexual Abuse, Sexual Activity, Sexual Assault and Harassment Please advise any staff member of any occurrence of the above verbally or in writing; or use the third Party reporting mechanisms available in the inmate handbook and library [sic]”* The PREA Inmate Handbook and PREA Resource Guide have information for incarcerated survivors about their ability to utilize advocates. PREA postings and housing unit wall paintings throughout the facility provide inmates with the toll-free hotline number for the Rape Crisis Center of Central New Mexico. Inmates wanting to speak with a local Rape Crisis Center or an advocate may dial \*9999 from any inmate phone. This call is free, unmonitored, unrecorded and can be accessed from any inmate phone without a personal identification number. Inmates are notified the call is free, unmonitored and unrecorded in the PREA Inmate Handbook and on the poster. While conducting the onsite review, this auditor attempted to call \*9999 from at least one phone in each housing unit and found the hotline to be operational. The PREA Resource Guide includes mailing addresses and contact information for five agencies providing support to incarcerated survivors of sexual abuse. One agency specializes in helping male victims, and one agency provides services for LGBT persons. A brochure, *“From Victim to Survivor”*, includes contact information for the New Mexico Coalition of Sexual Assault Programs, Inc. NMCD Policy CD-150300 (*Access to Telephones, Telephone Monitoring, and Attorney Calls*) states, *“Inmates shall not be allowed to make any privileged or confidential, (i.e. unmonitored telephone calls) with the exception of attorney telephone calls and calls to a local rape crisis center with whom the facility has a memorandum of understanding.”* These phone lines are blocked from staff monitoring through the inmate telephone system contractor, Securas.

An advocate from La Pinon was interviewed by this auditor in person at SNMCF. She indicated the center does not receive many calls from incarcerated survivors at SNMCF, but stated this is representative of the culture in the geographical area as well as the composition of the inmate population at SNMCF. She stated they have not provided any in-person services at this time, but have communicated by mail and phone. During interviews, some inmates were aware of the advocacy services, however, several indicated they did not “need” advocacy services.

### Standard 115.54 Third-party reporting

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

There is a link on the main page for NMCD (<http://cd.nm.gov/>) for information on the Prison Rape Elimination Act. The page includes information on the standards, as well as the NMCD PREA Program. The website provides four ways to report incidents of sexual assault or sexual abuse, but does not specify the acceptance of third party reports, or define third party reporting. On July 10, this auditor sent an email to the link provided to report incidents. This email address links to the agency PREA Coordinator. If she is gone, there is a process in place for another party to manually retrieve the emails from a secure system. This auditor sent an email to the address on July 10, and received a response in less than three minutes. The Inmate Handbook, provided to all inmates upon arrival at SNMCF includes information on third party reporting. Page 12 of the handbook states, “Have a family member or friend report it to the [sic] any of the people listed above. The family member or friend can notify the facility by phone, fax, and email or in person.” NMCD has created a summary and overview brochure for family and friends of incarcerated persons, reminding them of the third-party reporting methods. While onsite, the auditor verified that information is available to family and friends in visiting areas. Agency policy directs employee reporting, as indicated in the review of standard 115.61.

### Standard 115.61 Staff and agency reporting duties

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-b, e) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states, “It is mandatory that staff, vendors, contractors or any offenders who witness or are the subject of abuse or sexual misconduct, who witness retaliation against those who report such incidents, or who witness any staff neglect or violation or responsibilities that may have contributed to an incident, must immediately report such conduct to one or more of the following persons: The Secretary of Corrections, the Office of Professional Standards, the Warden, the Shift Supervisor, the Institutional Investigator, District Supervisor, or any other employee of the NMCD.” The policy also states, “Any employee, inmate or other person who in good faith reports abuse or sexual misconduct will not be subject to retaliation. Information will be kept confidential.” NMCD Policy CD-150101 (*Offender Protections against Abuse and Sexual Misconduct; Reporting*

*Procedures, PREA*) states on page two, “Any employee who witnesses or received information regarding the physical abuse, mental abuse or any sexual misconduct directed towards an offender shall immediately report the abuse to his or her immediate supervisor, who shall forward the report to the applicable disciplinary authority (e.g., Warden, Region Manager, Bureau Chief, or Division Director) and the Office of Professional Standards (OPS). Failure to report or knowingly submitting a false report may result in disciplinary action, up to and including dismissal.” The policy definition of “sexual misconduct” includes behavior that falls under sexual abuse and sexual harassment. NMCD Policy CD-031800 (*Office of Professional Standards Personnel Investigations and Staff Misconduct Reporting*) states, “All supervisors are responsible for reporting all allegations of staff misconduct or suspected staff misconduct to the applicable Disciplinary Authority... Inmates, family members, volunteers and contractors may also report allegations of staff misconduct to the applicable disciplinary authority or any employee. An OPS referral form will be completed and forwarded to OPS is appropriate.” This auditor reviewed two referrals of alleged or suspected staff misconduct forms submitted to OPS. The mandatory reporting requirement for PREA-related incidents is captured in two lesson plans for staff training. Both lesson plans state that inmates and employees have the right to be free from retaliation for reporting sexual abuse and sexual harassment. Staff sign a PREA Acknowledgment form stating they understand “the right of employees and inmates to be free from retaliation for reporting sexual abuse”.

(c) Medical and mental health services staff are required to report all suspicion, knowledge or information related to an incident of sexual abuse. Interviews with both medical and mental health services staff indicated they are aware of this requirement. Inmates are notified of this requirement at the onset of services. This notification is documented using the NMCD “Rights to Confidentiality and Availability of Services” form, CD-180201.1.

(d) No inmates under the age of 18 are incarcerated at SNMCF. New Mexico law uses the term “incapacitated adult” to identify a vulnerable adult. An incapacitated adult is one with a mental, physical or developmental condition that substantially impairs their ability to provide adequately for their own care or protection. When the auditor interviewed a mental health services provider, she indicated that incapacitated adults are assigned to the Long Term Care Unit, and not assigned at SNMCF.

### **Standard 115.62 Agency protection duties**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states, “When staff or the agency believes that an inmate is at substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.” This auditor reviewed the lesson plan for training staff on PREA, and confirmed it reiterates the expectation that staff take immediate action if an inmate is at “substantial risk of imminent sexual abuse”. Interviews with specialized staff, random staff and random inmates did not indicate any immediate actions had been necessary. Staff were aware of the requirements if it were to be necessary.

### Standard 115.63 Reporting to other confinement facilities

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-d) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states, “If an inmate reports any knowledge or suspicion or information regarding an incident of sexual abuse or sexual harassment that occurred in another facility, that Warden of the facility that received the information must immediately (no later than 72 hours) report it to the Warden of the facility where it is alleged to have occurred..[sic] The facility head or agency that receives such notification shall ensure that the allegation is investigated in accordance with these standards.” This auditor reviewed two samples of reports to other facilities from SNMCF that were sent appropriately, from warden to warden. During his interview, the Warden indicated he is aware these notifications must be sent from him to the facility head of the prior confinement facility.

### Standard 115.64 Staff first responder duties

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-b) This auditor reviewed the lesson plan for training staff on first responder responsibilities. It indicates the immediate actions required by the first security staff person to respond to a report of sexual abuse, to include separating the alleged victim and abuser, preserving any crime scene, and evidence collection. The training specifies staff will “request” the alleged victim and “ensure” the abuser do not take actions that could destroy physical evidence. After training, staff sign a PREA Acknowledgement form indicating they understand “preservation of evidence in sexual abuse investigation”. NMCD Policy CD-150102 (*Coordinated Response to Sexual Assaults*) outlines the systematic actions required by staff after a sexual assault incident. The policy includes an attachment, “Facility Response to Sexual Assault Checklist”. The checklist states, “Request victim not to shower, brush teeth, wash clothes, relieve themselves”, and “ensure the perpetrator does not do any activity to

*destroy any evidence such as shower, brush teeth, wash clothes, relieve themselves [sic]*". Captain Ybarra provided this auditor with a copy of a card provided to all staff that outlines appropriate first responder duties. It also includes a reminder that apart from reports to designated supervisors, staff shall not reveal any information related to the incident to anyone other than those involved in the investigation of the incident. Interviews with staff indicated they were not aware of the need to request a victim not take action that could destroy physical evidence and ensure the abuser does not take action. As a result of those interviews, Anthony Romero, Deputy Director of Operations issued a clarifying written memorandum to all NMCD staff, which reads, "As a reminder, as per Policy 150100, *Offender Protections Against Sexual Abuse and Sexual Harassment, PREA and the PREA Standards, upon identification of the victim and assailant(s), the facility or program administrator will assure the separation of the victim from his or her assailant(s) (CD-170100.MM). The staff will request that the victim not take any actions that could destroy physical evidence including, as appropriate, washing, brushing teeth, changing cloths, urinating, defecating, smoking, drinking or eating; and perpetrator will be instructed and staff will ensure that he or she does not to shower, wash their clothes, brush their teeth, or relieve him or herself in order to preserve evidence. The staff will require that the alleged assailant not take any actions that could destroy physical evidence including as appropriate, washing, brushing teeth, changing cloths, urinating, defecating, smoking, drinking or eating; and perpetrator will be instructed and staff will ensure that he or she does not to shower, wash their clothes, brush their teeth, or relieve him or herself in order to preserve evidence. While we aim to preserve evidence in the event of any incident, trauma informed approaches as they related to sexual assault victims, clearly differentiate between the victim and the perpetrator through the approach of educating and requesting the victim not destroy the evidence yet requiring the alleged perpetrator not do the same. In all cases, NMCD will aim to preserve evidence and request a victim to do so as well. However, if the victim in a PREA related matter desires to changes clothes, shower, urinate, defecate, eat or drink, we cannot prevent he or she from doing so. [sic]*" This information was relayed verbally to SNMCF staff at daily briefings, and staff signed a roster indicating the information was received and understood.

#### **Standard 115.65 Coordinated response**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

NMCD Policy CD-150102 (*Coordinated Response to Sexual Assaults*) is a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, and includes a "Facility Response to Sexual Assault Checklist". The policy indicates actions necessary by first responders, medical and mental health practitioners, investigators and facility leadership. Ms. Bruck provided this auditor with a facility-specific policy that mirrors the agency policy, signed on by the SNMCF Warden on August 7, 2017. In his interview, the Warden indicated he is immediately informed of all responses to incidents of sexual abuse.

### Standard 115.66 Preservation of ability to protect inmates from contact with abusers

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a) New Mexico State Employees are represented by the American Federation of State, County and Municipal Employees (AFSCME) Council 18. The ranks of Officer, Sergeant and Lieutenant are covered under the Collective Bargaining Agreement (CBA). This auditor reviewed the 2015-17 CBA. Facility post packages set out the assigned post, shift and regular days off. Each post contained in the roster shall be available for bidding and assignment on an agency seniority basis, except for specialty posts. Employees place their name next to the post package they desire, in order of agency seniority at the facility. The employee is assigned to the post package selected for six-month periods. The employer may change a long-term post assignment with seven days written notice to the employee. They may also change a long-term post assignment for cause. Page 106 of the CBA states, *“The Employer has the right to remove an employee from his/her post of choice or assigned post, or to assign an employee to a post not of his/her choice if there is a substantial need to do so. The Employer will verbally notify the employee of the reason for such a removal or assignment; and if requested in writing by the employee, the Employer shall provide the reason in writing to the employee.”* This auditor’s interview of the agency head indicated there is good communication between management and labor, and labor has not brought forward any concerns related to PREA. The Warden indicated that he has reassigned staff after an allegation for the duration of investigations. Captain Ybarra provided three samples indicating where a staff member had been reassigned or placed on administrative leave pending the conclusion of an investigation.

(b) The disciplinary and grievance process outlined in the CBA are consistent with the provisions of 115.72 and 115.76.

### Standard 115.67 Agency protection against retaliation

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a, d-e) NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states, *“Any employee, inmate or other person who in good faith reports abuse or sexual misconduct will not be subject to retaliation. Information will be kept confidential. Wardens or their designee’s will monitor those who report sexual abuse or cooperate with investigations for ninety (90) days and take appropriate steps to protect individuals from retaliation, including periodic status checks on inmates.”* The auditor reviewed staff and inmate monitoring forms to ensure these

checks are taking place as required. The monitoring form indicates the facility PCM will complete the monitoring. In his interview, Chavez indicates he completes these checks. The auditor recommended that this form be revised to include a space for the name of the staff member completing the monitoring, as well as the date each check was conducted. There is no way for this auditor to objectively verify the checks are being completed within the required timeframe.

(b) NMCD Policy CD-031800 (*Office of Professional Standards Personnel Investigations and Staff Misconduct Reporting*) states, “There is a zero tolerance policy prohibiting any retaliatory acts against anyone who has reported allegations of staff misconduct or criminal acts. Any employee who engages in substantiated retaliatory behavior is subject to dismissal.” The Warden indicated in his interview that retaliation of any form would not be tolerated at SNMCF. Interviews with staff indicated there were aware of these requirements. Emotional support services for staff are provided by Behavioral Health employees. The PREA fact sheet for contractors and volunteers states, “Inmates and staff who are in need of advocacy can also reach out to the Local Rape Crisis Centers, with who we partner with, for help.”

(c) NMCD Policy CD-150102 (*Coordinated Response to Sexual Assaults*) states, “The facility PREA Compliance Manager must immediately begin victim retaliation monitoring to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigation [sic] from retaliation by other inmates or staff. Retaliation Monitoring will be completed using the Staff Retaliation Monitoring form (CD-150102.2) and once completed at the end of 90 days (or longer if necessary) be sent to the Agency PREA Coordinator.” This auditor reviewed the retaliation monitoring form used for staff and inmates and verified that it contains all of the required elements for monitoring.

(f) The Agency does not continue monitoring for retaliation when an allegation has been deemed unfounded.

#### **Standard 115.68 Post-allegation protective custody**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 5, “The placement of inmates determined to be at high risk of sexual victimization into Special Management shall cite the basis for the facility’s concern for the inmate’s safety and the reason why no alternative placements are appropriate consistent with policy CD-143001.” This is also referenced in NMCD Policy CD-141100 (*Protective Custody Policy*), which states, “Inmates with protective custody issues will only be placed in restrictive housing if all other viable alternative have been exhausted.” Captain Ybarra provided a memo stating that no inmate at SNMCF who is at high risk for sexual victimization has been placed in involuntary segregation in the past year, or since their last PREA audit. A review of investigation documentation and interviews with the PREA Coordinator indicated that one inmate had been placed in restrictive housing after multiple allegations of sexual abuse and subsequent forensic medical exams. Warden Mulheron provided this auditor with a memorandum indicating the need for restrictive housing and reasons why no alternative placements were appropriate at the time. The inmate was transferred to another NMCD facility between the time of the allegation and the onsite review, and could not be interviewed by this auditor.

## Standard 115.71 Criminal and administrative agency investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a and h) NMCD Policy CD-031800 (*Office of Professional Standards, Personnel Investigations and Staff Misconduct Reporting*) states, “Employee conduct involving allegations of sexual misconduct, sexual assault or any other alleged violations of the criminal law shall be referred to local law enforcement for consideration for prosecution. These referrals shall be made even if the employee resigns or retires during or prior to the NMCD’s investigation. NMCD reserves the right no [sic] to rehire any former employee whose allegations of violations of the criminal law are substantiated.” The procedures for this policy outline the actions that must be taken when staff become aware of an allegation of sexual abuse or sexual harassment. All allegations are reported through the chain of command, to the Office of Professional Standards. Level 1 allegations are those that may include any sexual misconduct by a staff member or inmate, and must be reported as soon as possible. OPS will conduct the administrative investigation, and NMDPS will conduct criminal investigations. Interviews with the OPS Bureau Chief, an investigator and the Warden indicated allegations are promptly, thoroughly and objectively investigated.

(b-c) All investigators assigned to OPS have received specialized training, “Investigating Sexual Assaults in a Correctional Setting”, as evidenced by their signature on training rosters, the issuance of participation certificates and interviews. The auditor reviewed the power point presentation associated with this training to determine that it contained the required elements of standard 115.34. This training includes proper techniques for obtaining usable physical evidence.

(d) NMCD Policy CD-031801 (*Office of Professional Standards, Personnel Investigations and Staff Misconduct Reporting*) states, “In any investigation when it appears that alleged personnel misconduct, if proven, would also constitute a violation of criminal law, the Investigations Officer shall advise the OPS Bureau Chief. The OPS Bureau Chief shall consult with NMCD General Counsel and the appropriate CAO [Chief Administrative Officer] and make a determination whether to proceed with the administrative investigation, or whether to defer such investigation or discipline while the criminal investigation proceeds, or whether to proceed with both investigations and actions subject to the restrictions on the use of evidence provided for by this policy and procedure.” If a determination is made to initially pursue only a criminal investigation or prosecution, the employee shall not be required to submit to a polygraph or provide statements as a condition of continued employment until the criminal investigation is completed. The OPS Bureau Chief indicated he was knowledgeable of this requirement.

(e) The interviews with the OPS Bureau Chief and an investigator indicated they conduct individual credibility assessments that are not determined by the person’s status as an employee or inmate. NMCD Policy CD-031801 (*Office of Professional Standards, Personnel Investigations and Staff Misconduct Reporting*) states on page 10, “If the allegation rests solely upon the accusation of an inmate or another staff member, the Department may require, whenever practical or feasible, that a sworn statement be provided by the complainant. If the complainant refuses to sign a sworn statement, the investigation will continue and be submitted to the OPS Bureau Chief to pursue the investigation further...After all other reasonable investigative techniques have been exhausted, the complainant may, in the Department’s discretion, be required to submit to a polygraph examination to verify the allegations raised against the employee. If the complainant refuses to submit to a polygraph examination, the administrative action will be terminated unless the Office of OPS determines that other sufficient, credible evidence exists to pursue the administrative action further.” NMCD Policy CD-031802 (*Polygraph Testing*)

states, *“When an allegation rests solely upon the accusation of an inmate or a staff member, the Department may require that a sworn statement be provided by the complainant. An inmate complainant shall be required to submit to a polygraph examination to verify the allegations raised against accused Department employee [sic] prior to requiring a Department employee to submit to a polygraph examination. The results of the polygraph examination, along with any other evidence that exists, shall determine the Department’s further course of action.”* NMCD Policy CD-150600 (*Allegations from Inmates against Corrections Department Staff or Other Inmates*) states, *“Any inmate making an allegation, verbal or written, against a member of the staff or against another inmate may be requested by the Department to be sworn by a notary public. The inmate is to be advised in writing that the inmate is furnishing a sworn statement having full knowledge that the information the inmate is furnishing is material to the issue or matter involved in the course of, or will initiate an official administrative proceeding, and that if the information is knowingly false, the penalty of perjury under NMSA 1978, Section 30-25-1, attaches using Inmate Sworn Statement form (CD-150611.1).”* The referenced form, CD-150600.1, repeats the same language. There were no inmates housed at SNMCF who had previously alleged sexual abuse.

(f and g) A review by the auditor of 14 administrative and criminal investigation files indicated they contain the required information on employee actions or failures to take actions, descriptions of physical and testimonial evidence, credibility assessments and investigative facts and findings.

(i) NMCD Policy CD-150101 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures*) states, *“All case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings and recommendations for post-release treatment and/or counseling shall be retained in a confidential manner and are retained for ten years.”* The New Mexico Administrative Code indicates that inmate investigational records will be retained for ten calendar years after the resolution of a case, and staff investigational records will be forwarded to human resources for further action, with dismissed cases retained for ten calendar years after the resolution of a case. The standard requires all reports will be retained for as long as the alleged abuser is incarcerated or employed by the agency, plus five years. Interviews with the Agency PREA Coordinator and the Management Analyst for OPS indicated these files are retained indefinitely in IA PRO, which is the database used for all NMCD investigations. During the PNM audit in February 2017, the OPS Management Analyst provided the auditor with a written memorandum verifying that this database is never purged, and hard copies are maintained as well.

(j) Interviews with the OPS Bureau Chief (j) and an investigator confirmed that investigations continue, even in the absence of the alleged abuser or victim.

(l) NMCD Policies CD-031800 and CD-031801 (*Office of Professional Standards, Personnel Investigations and Staff Misconduct Reporting*) outline the written expectations for notifying outside agencies of potentially criminal behavior, providing information or assistance in the investigation and ensuring a liaison is in place to provide and receive updates. The investigative process is tracked through the conclusion of the investigation and documented in IA PRO, as evidence through interviews with the OPS Bureau Chief, an investigator and the Agency PREA Coordinator.

### Standard 115.72 Evidentiary standard for administrative investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

NMCD Policy CD-031800 (*Office of Professional Standards, Personnel Investigations and Staff Misconduct Reporting*) defines preponderance of evidence as “Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it. That is, evidence which, as a whole, shows that the fact sought to be proved is more probable than not.” The policy states that all employee misconduct investigations will be determined by the preponderance of the evidence. This auditor reviewed the power point presentation for “*Investigating Sexual Assaults in a Correctional Setting*”, which provides the same information. Interviews with the Bureau Chief for the Office of Professional Standards and an investigator indicated they are aware of the evidentiary standard for administrative investigations.

### Standard 115.73 Reporting to inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on pages five and six, “An investigation shall be conducted and documented whenever a sexual assault or threat is reported. At the conclusion of an investigation into an inmate’s allegations against a staff member, the inmate will be informed in writing (unless the investigation determines that the allegation is unfounded) whether: the staff member continues to be posted in the inmate’s unit; the staff member continues to be employed; the staff member has been indicted; and, the staff member has been convicted. At the conclusion of an investigation into an inmate’s allegation against another inmate, the alleged victim will be informed in writing: whether the alleged abuser has been indicted on a charge related to the sexual abuse in the facility; and, upon the agency learning that the abuser has been convicted on a charge related to sexual abuse within the facility.” Captain Ybarra provided this auditor with copies of letters sent at the initiation of and conclusion of three incident investigations. The letters also reminded the incarcerated survivor of his options to seek counseling at the facility, correspond with local and state rape crisis centers or Just Detention International, or contact a confidential community-based advocate via \*9999.

## Standard 115.76 Disciplinary sanctions for staff

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a and c) NMCD Policy CD-037800 (*Disciplinary Action for Classified Employees*) states, “*The Corrections Department promotes the concept of progressive discipline and corrective action whenever appropriate. Individuals shall normally be dismissed only after efforts have been made to help that person correct any deficiencies in work performance or behavior. However, some misconduct is so severe as to not warrant progressive discipline and immediate dismissal is the only appropriate action. Furthermore, misconduct may justify the dismissal of a probationary employee.*” All NMCD employees are issued and expected to sign a Code of Ethics, in accordance with NMCD Policy CD-032200 (*Code of Ethics*). This policy outlines the expectation of the agency that all employees will conduct themselves in a manner reflecting the highest level of professionalism, ethics and credibility as an employee of the State. NMCD Policy CD-031800 (*Office of Professional Standards, Personnel Investigations and Staff Misconduct Reporting*) states that any employee who fails to fully cooperate with any NMCD investigation, or is untruthful during any part of an NMCD investigation, is subject to dismissal.

(b) NMCD Policy CD-150101 (*Procedures for Offender Protection against Abuse and Sexual Misconduct Reporting Procedures, PREA*) states, “*Where abuse is found to have occurred, appropriate administrative action against the offending party will be initiated, up to and including dismissal.*” An interview of the Agency PREA Coordinator indicates that the term “up to and including dismissal” is an umbrella statement used concerning disciplinary procedures. Upon recommendation from this auditor, the following language was added to the draft revision of the policy: “*For matters of sexual abuse, termination should be the presumptive disciplinary sanction for staff who have engaged in sexual abuse [sic].*”

(d) NMCD Policy CD-031800 (*Office of Professional Standards, Personnel Investigations and Staff Misconduct Reporting*) states, “*Employee conduct involving allegations of sexual misconduct, sexual assault or any other alleged violations of the criminal law shall be referred to local law enforcement for consideration for prosecution. These referrals shall be made even if the employee resigns or retires during or prior to the NMCD’s investigation. NMCD reserves the right no [sic] to rehire any former employee whose allegations of violations of the criminal law are substantiated.*” NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states, “*Sexual conduct between staff and inmates, volunteers, or contract personnel and inmates, regardless of consensual status, is prohibited and subject to administrative discipline, up to and including termination, and criminal sanctions and referred to local law enforcement authorities for possible criminal prosecution. Licensed professional engaging in sexual conduct with inmates will be reported to any relevant licensing body.*” There were no examples of such referrals for this auditor to examine.

### Standard 115.77 Corrective action for contractors and volunteers

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states, “Sexual conduct between staff and inmates, volunteers, or contract personnel and inmates, regardless of consensual status, is prohibited and subject to administrative discipline, up to and including termination, and criminal sanctions and referred to local law enforcement authorities for possible criminal prosecution. Licensed professional engaging in sexual conduct with inmates will be reported to any relevant licensing body.” After contractors and volunteers receive PREA training, they sign an acknowledgment form stating, “I understand that if I engage in sexual abuse with inmates, I shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and will be reported to relevant licensing bodies.” NMCD Policy CD-060200 (*Citizen Involvement and Volunteers*) states on page three, “Any volunteer who has or develops a relationship with an inmate other than that required for the specific program for which approval was granted as a volunteer will be denied or removed from volunteer status.” Captain Ybarra provided a written memorandum indicating SNMCF has not had to administer any corrective actions towards any contractors or volunteers for any PREA-related issues since the last audit. Interviews with the Agency PREA Coordinator, the Warden and PCM indicated that any contractor or volunteer who was found to have violated agency policy related to sexual abuse and sexual harassment would not be permitted to have further contact with inmates.

### Standard 115.78 Disciplinary sanctions for inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-b) NMCD Policy CD-150101 (*Procedures for Offender Protection against Abuse and Sexual Misconduct Reporting Procedures, PREA*) states, “Inmates shall be subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative finding that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.” NMCD Policy CD-090100 (*Inmate Discipline*) defines rule violations for sexual misconduct, rape and sexual harassment. The policy includes a sanction chart indicating which consequences (loss of privileges, disciplinary segregation, and loss of good time) are associated with each rule violation. NMCD Policy CD-090101 (*Inmate Discipline, Procedures*) states all disciplinary action will be “reasonable and proportionate in relation to the violation”.

(c) NMCD Policy CD-090101 (*Inmate Discipline, Procedures*) states, “For inmates in Special Management, APA and MHTC, the Disciplinary Officer will submit the Inmate Misconduct Mental Health Review form (CD-090101.9) and a copy of the misconduct reports to the Facility Mental Health Manager. The Facility Mental Health Manager will determine whether there are or are no mental health issues; and, recommend how the mental health issues should be considered during the disciplinary hearing.”

(d) An interview with the Behavioral Health Supervisor indicated the only sex offender treatment therapy, counseling or intervention offered at NMCD is for convicted sex offenders who must take part in such treatment as a condition of their sentencing while incarcerated.

(e) This auditor reviewed one investigative file that indicated an inmate was placed in disciplinary segregation upon multiple allegations of sexual abuse and subsequent forensic medical exams. Warden Mulheron provided this auditor with a memorandum indicating the need for restrictive housing and reasons why no alternative placements were appropriate at the time. The inmate was transferred to another NMCD facility between the time of the allegation and the onsite review, and could not be interviewed by this auditor.

(g) All sexual activity between inmates is prohibited and treated as a rule violation, but is not considered sexual abuse. Captain Ybarra provided a written memorandum indicating SNMCF has not had any substantiated cases of inmate-on-inmate sexual abuse since their last audit.

#### **Standard 115.81 Medical and mental health screenings; history of sexual abuse**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-b) NMCD Policy CD-180200 (*Behavioral Health Reception and Diagnosis Center (RDC)*) states intersystem inmate transfers will undergo a mental health appraisal by qualified mental health person within 14 days if identified as having significant health care problems. NMCD Policy CD-150100 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures, PREA*) states on page 6, “Inmates identified as at risk for sexual victimization shall be assessed by a mental health or other qualified professional within 14 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners. Inmates with a history of criminally sexual behavior shall be identified, monitored and counseled.” NMCD Policy CD-150102 (*Coordinated Response to Sexual Assaults*) states on page 4, “An inmate identified as high risk for sexually assaultive behavior or who has a history of sexually assaultive behavior will be assessed by a mental health or other qualified professional [sic] Inmates identified as at risk for sexual victimization shall be assessed by a mental health or other qualified professional within 14 days of learning of such abuse history and offered treatment when deemed appropriate by mental health practitioners. Inmates at risk for sexual victimization shall be identified, monitored, and counseled. Inmates with a history of sexually assaultive behavior will be identified, monitored, and counseled.” This auditor reviewed ten examples of referrals to medical or mental health practitioners as a result of scoring high for sexually aggressive behavior, high risk of sexual victimization, convictions for perpetrating sexual abuse or experiencing prior sexual victimization. SNMCF utilizes a form for this referral (*Consent/Refusal for Treatment*) and the inmate must sign and date the form stating they either consent or refuse to participate with referral appointment.

(c) This element of the standard does not apply to SNMCF, as it references jail inmates.

(d) All information related to sexual abuse is limited to those with a need to know. Upon logging into CMIS, staff are reminded they are accessing a confidential information database, and that information in the database is for official use only, restricted to staff with a need to know, and may not be disclosed. By clicking "Application Logon", staff acknowledge the confidential nature of the information and accept full responsibility for the proper use of the information. Interviews with staff indicated they are aware the information is confidential.

(e) Mental Health Practitioners, referred to in NMCD as Behavioral Health Staff, use form CD-180201.1 to obtain informed consent with their inmate clients. This document is signed by the inmate and witnessed by a staff member, before being retained in the inmate's file. NMCD Policy CD-176100 (*Patients [sic] Rights and Responsibilities*) states, "Principles of confidentiality will be followed and patients will be afforded the opportunity to approve or refuse the release of information in accordance with applicable law. Patients will be advised of any limits to confidentiality necessary in the correctional setting."

### **Standard 115.82 Access to emergency medical and mental health services**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-b) NMCD Policy CD-150102 (*Coordinated Response to Sexual Assaults*) outlines the procedures taken when there is an initial disclosure within 120 hours of a sexual assault. A facility health care professional will take a history and conduct an examination to document the extent of physical injury and to determine if there are injuries that merit transfer to another medical facility. The purpose of the examination is to determine the patient's stability for transfer to a site that provides forensic medical examinations. NMCD Policy CD-170101 (*Clinical Services*) states on page 20, "In the event of a sexual assault, health services staff will ensure that the victim receives prompt and appropriate medical intervention...With the inmate assault victim's consent, he or she will be transported to a Medical Center by Security for examination, treatment and collection of evidence." SNMCF has medical health services staff onsite, 24-hours a day, as evidenced by a review of health services staff schedules and an interview with a health services staff member.

(c) NMCD Policy CD-170101 (*Clinical Services*) states on page 20, "The Medical Director will review the treatment recommendations from the Medical Center and ensure the inmate victim receives the indicated prophylactic treatment and testing." An interview with a medical health services staff member indicated incarcerated survivors are offered sexually transmitted infection prophylaxis information and treatment during the forensic medical exam and upon their return to the facility.

(d) Page 13 of the PREA Resource Guide for Inmates states, "In the New Mexico Corrections Department victims of sexual assault shall be offered access to forensic medical examinations, without financial cost, when evidentiary or medically appropriate as determined by the OPS Investigator or law enforcement. The OPS Investigator/law enforcement will review all evidence, including the victim's statements, to determine if a forensic medical examination is appropriate...Victims who do not wish to fully cooperate with the investigation can still be referred for a forensic medical exam at no cost to them." The

memorandum of understanding/guidelines for New Mexico SANE and PREA states, *“The SANE Program will be responsible for submitting invoices for the SANE medical-forensic exam for incarcerated victims to the NM Coalition of Sexual Assault Programs who will submit to NM Dept of Human Services and reimburse the SANE program [sic]. If the SANE goes to the detention facility the exam, it is appropriate for the SANE program to charge the detention facility a reasonable fee for mileage and driving time. This financial agreement is between the SANE Program and the detention facility [sic]”* NMCD Policy CD-150102 (Coordinated Response to Sexual Assaults) states, *“The Warden or designee will ensure that victims of sexual assault are promptly transferred under appropriate security provisions By [sic] Emergency Medical Services or NMCD personnel as is medically appropriate to a community health care facility for treatment and gathering of evidence, (CD-170100.OO [sic]). This will be at no charge to the inmate.”* Captain Ybarra provided a written memorandum indicating that no inmates at SNMCF have required any services associated with emergency or mental health for any PREA-related allegations since their last PREA audit.

**Standard 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers**

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-h) NMCD Policy CD-150102 (Coordinated Response to Sexual Assaults) states, *“A facility mental health professional will perform an evaluation to assess the need for crisis intervention and long-term follow-up. The facility medical director and mental health supervisor will develop a treatment plan for follow-up services. The assigned mental health provider will provide access to counseling and advocacy services. An inmate identified as high risk for sexually assaultive behavior or who has a history of sexually assaultive behavior will be assessed by a mental health or other qualified professional [sic] Inmates identified as at risk for sexual victimization shall be assessed by a mental health or other qualified professional within 14 days of learning of such abuse history and offered treatment when deemed appropriate by mental health practitioners. Inmates at risk for sexual victimization shall be identified, monitored, and counseled. Inmates with a history of sexually assaulted behavior will be identified, monitored and counseled.”* This auditor reviewed emails indicating evaluations are taking place as required. Interviews with medical and mental health services staff members indicated ongoing treatment is provided to victims of sexual abuse, as well as known inmate-on-inmate abusers. When asked about the comparison with a community-level of care, they indicated they believed the facility’s standard of care to be higher. Inmates are scheduled for appointments and do not have to seek these services out on their own. All medical and mental health services at SNMCF are at no charge to the inmate population.

(d-e) As SNMCF does not house female inmates, these elements of the standard does not apply.

### Standard 115.86 Sexual abuse incident reviews

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

(a-e) NMCD Policy CD-150102 (*Coordinated Response to Sexual Assaults*) directs that a Critical Incident Review be completed within 14 calendar days. It further states, “The Warden and Facility PREA Compliance Manager should complete the sexual abuse incident team review at the conclusion of every criminal or administrative sexual abuse investigation, unless the allegation has been determined to be unfounded. A completed report will be submitted to the PREA Coordinator and the Director of Adult Prisons, or designee using the Sexual Abuse or Assault Incident Review Team form (CD-150102.3). The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical/mental health practitioners.” Page 5 of the policy indicates the review will be completed within 30 days of the outcome of the investigation. The policy and the review form indicate the review team will consider the required elements of the standard. The auditor reviewed five Sexual Abuse or Assault Incident Review Team forms to ensure they were completed as required. The review team’s recommendations were noted and implemented. All staff present during the review sign a “PREA Sexual Abuse Response Team Committee Confidentiality Agreement”. This form stipulates to the confidential nature of the information being reviewed, and any violation of confidentiality could include corrective or disciplinary action up to and including termination.

### Standard 115.87 Data collection

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

NMCD does not have a policy in place to guide them in data-collection efforts. SNMCF provided this auditor with a copy of their 2015 Survey of Sexual Victimization, and a copy of their 2015 Annual Assessment of NMCD’s Progress in Addressing Sexual Abuse. The reports for 2016 had not yet been generated. The 2015 annual assessment includes the data necessary to answers all questions from the most recent version of the Survey of Sexual Victimization conducted by DOJ, and includes data from the state’s privately operated facilities. The 2012, 2013, 2014 and 2015 annual assessments are available to the public via the NMCD website at <http://cd.nm.gov/prea/prea.html>.

### Standard 115.88 Data review for corrective action

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

NMCD does not have a policy in place to guide them in data-collection efforts. SNMCF provided this auditor with a copy of their 2015 Survey of Sexual Victimization, and a copy of their 2015 Annual Assessment of NMCD’s Progress in Addressing Sexual Abuse. The reports for 2016 had not yet been generated. The 2015 annual assessment includes the data necessary to answer all questions from the most recent version of the Survey of Sexual Victimization conducted by DOJ, and includes data from the state’s privately operated facilities. The 2015 assessment identifies problem areas and corrective actions for all facilities, and includes comparisons from the last three years. The report is approved by the agency head, Secretary of Corrections David Jablonski. The 2012, 2013, 2014 and 2015 annual assessments are available to the public via the NMCD website at <http://cd.nm.gov/prea/prea.html>. The reports do not contain any personally identifying information.

### Standard 115.89 Data storage, publication, and destruction

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

**Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.**

NMCD Policy CD-150101 (*Offender Protection against Abuse and Sexual Misconduct; Reporting Procedures*) states, “All case records associated with claims of sexual abuse, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings and recommendations for post-release treatment and/or counseling shall be retained in a confidential manner and are retained for ten years.” The New Mexico Administrative Code indicates that inmate investigational records will be retained for ten calendar years after the resolution of a case, and staff investigational records will be forwarded to human resources for further action, with dismissed cases retained for ten calendar years after the resolution of a case. Sexual abuse data collected by NMCD is securely retained in an electronic database, IA PRO. Access to IA PRO is strictly limited to those with a legitimate need to know, and access must be authorized through the Agency PREA Coordinator. The 2012, 2013, 2014 and 2015 annual assessments are available to the public via the NMCD website at <http://cd.nm.gov/prea/prea.html>. The reports do not contain any personally identifying information.

**AUDITOR CERTIFICATION**

I certify that:

- The contents of this report are accurate to the best of my knowledge.
- No conflict of interest exists with respect to my ability to conduct an audit of the agency under review, and
- I have not included in the final report any personally identifiable information (PII) about any inmate or staff member, except where the names of administrative personnel are specifically requested in the report template.

Amanda Rasmussen

August 23, 2017

Auditor Signature

Date