

Prison Rape Elimination Act (PREA) Audit Report Adult Prisons & Jails

Interim Final

Date of Report June 17, 2020

Auditor Information

Name: Amanda van Arcken

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Company Name: Oregon Department of Corrections

Mailing Address: 2575 Center Street NE

City, State, Zip: Salem, Oregon 97301

Telephone: (503) 569-8578

Date of Facility Visit: December 9-11, 2019

Agency Information

Name of Agency:

New Mexico Corrections Department

Governing Authority or Parent Agency (If Applicable):

Click or tap here to enter text.

Physical Address: 4337 State Highway 14

City, State, Zip: Santa Fe, New Mexico 87508

Mailing Address: PO Box 27116

City, State, Zip: Santa Fe, New Mexico 87502

The Agency Is:

Military

Private for Profit

Private not for Profit

Municipal

County

State

Federal

Agency Website with PREA Information: <https://cd.nm.gov/office-of-the-secretary/office-of-inspector-general/prison-rape-elimination-act/>

Agency Chief Executive Officer

Name: Alisha Tafoya Lucero

Email: alisha.tafoyalucero@state.nm.us

Telephone: (505) 827-8884

Agency-Wide PREA Coordinator

Name: Robin Bruck

Email: robin.bruck@state.nm.us

Telephone: (575) 640-4720

PREA Coordinator Reports to:

Deputy Director Anthony Romero

Number of Compliance Managers who report to the PREA Coordinator

11

Facility Information

Name of Facility: Penitentiary of New Mexico

Physical Address: 4311 State Highway 14

City, State, Zip: Santa Fe, New Mexico 87504

Mailing Address (if different from above):
PO Box 1059

City, State, Zip: Santa Fe, New Mexico 87504-1059

The Facility Is:

Military

Private for Profit

Private not for Profit

Municipal

County

State

Federal

Facility Type:

Prison

Jail

Facility Website with PREA Information: <https://cd.nm.gov/nmcd-prison-facilities/penitentiary-of-new-mexico/>

Has the facility been accredited within the past 3 years? Yes No

If the facility has been accredited within the past 3 years, select the accrediting organization(s) – select all that apply (N/A if the facility has not been accredited within the past 3 years):

ACA

NCCHC

CALEA

Other (please name or describe: [Click or tap here to enter text.](#))

N/A

If the facility has completed any internal or external audits other than those that resulted in accreditation, please describe:
N/A

Warden/Jail Administrator/Sheriff/Director

Name: Leon Martinez, Warden

Email: leon.martinez@state.nm.us

Telephone: (505) 827-8294

Facility PREA Compliance Manager

Name: Mike Baca, Major

Email: mike.baca12@state.nm.us

Telephone: (505) 490-2829

Facility Health Service Administrator N/A

Name: Matt Meehan

Email: mmeehan@teamcenturion.com

Telephone: (505) 827-8535

Facility Characteristics

| | | |
|---|---|--|
| Designated Facility Capacity: | 864 | |
| Current Population of Facility: | 757 | |
| Average daily population for the past 12 months: | 760 | |
| Has the facility been over capacity at any point in the past 12 months? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| Which population(s) does the facility hold? | <input type="checkbox"/> Females <input checked="" type="checkbox"/> Males <input type="checkbox"/> Both Females and Males | |
| Age range of population: | 19-72 | |
| Average length of stay or time under supervision: | 5.01 yrs PNM North; 6.17 yrs PNM South; 3.51 yrs MRU | |
| Facility security levels/inmate custody levels: | Level II, Level IV, Level VI | |
| Number of inmates admitted to facility during the past 12 months: | 1129 | |
| Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more: | 1129 | |
| Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more: | 1129 | |
| Does the facility hold youthful inmates? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| Number of youthful inmates held in the facility during the past 12 months: (N/A if the facility never holds youthful inmates) | 0 <input type="checkbox"/> N/A | |
| Does the audited facility hold inmates for one or more other agencies (e.g. a State correctional agency, U.S. Marshals Service, Bureau of Prisons, U.S. Immigration and Customs Enforcement)? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| <p>Select all other agencies for which the audited facility holds inmates: Select all that apply (N/A if the audited facility does not hold inmates for any other agency or agencies):</p> | <input type="checkbox"/> Federal Bureau of Prisons <input type="checkbox"/> U.S. Marshals Service <input type="checkbox"/> U.S. Immigration and Customs Enforcement <input type="checkbox"/> Bureau of Indian Affairs <input type="checkbox"/> U.S. Military branch <input type="checkbox"/> State or Territorial correctional agency <input type="checkbox"/> County correctional or detention agency <input type="checkbox"/> Judicial district correctional or detention facility <input type="checkbox"/> City or municipal correctional or detention facility (e.g. police lockup or city jail) <input type="checkbox"/> Private corrections or detention provider <input type="checkbox"/> Other - please name or describe: Click or tap here to enter text. <input checked="" type="checkbox"/> N/A | |
| Number of staff currently employed by the facility who may have contact with inmates: | 255 | |

| | |
|---|--|
| Number of staff hired by the facility during the past 12 months who may have contact with inmates: | 25 |
| Number of contracts in the past 12 months for services with contractors who may have contact with inmates: | 2 |
| Number of individual contractors who have contact with inmates, currently authorized to enter the facility: | 62 |
| Number of volunteers who have contact with inmates, currently authorized to enter the facility: | 85 |
| Physical Plant | |
| <p>Number of buildings:</p> <p>Auditors should count all buildings that are part of the facility, whether inmates are formally allowed to enter them or not. In situations where temporary structures have been erected (e.g., tents) the auditor should use their discretion to determine whether to include the structure in the overall count of buildings. As a general rule, if a temporary structure is regularly or routinely used to hold or house inmates, or if the temporary structure is used to house or support operational functions for more than a short period of time (e.g., an emergency situation), it should be included in the overall count of buildings.</p> | 23 |
| <p>Number of inmate housing units:</p> <p>Enter 0 if the facility does not have discrete housing units. DOJ PREA Working Group FAQ on the definition of a housing unit: How is a "housing unit" defined for the purposes of the PREA Standards? The question has been raised in particular as it relates to facilities that have adjacent or interconnected units. The most common concept of a housing unit is architectural. The generally agreed-upon definition is a space that is enclosed by physical barriers accessed through one or more doors of various types, including commercial-grade swing doors, steel sliding doors, interlocking sally port doors, etc. In addition to the primary entrance and exit, additional doors are often included to meet life safety codes. The unit contains sleeping space, sanitary facilities (including toilets, lavatories, and showers), and a dayroom or leisure space in differing configurations. Many facilities are designed with modules or pods clustered around a control room. This multiple-pod design provides the facility with certain staff efficiencies and economies of scale. At the same time, the design affords the flexibility to separately house inmates of differing security levels, or who are grouped by some other operational or service scheme. Generally, the control room is enclosed by security glass, and in some cases, this allows inmates to see into neighboring pods. However, observation from one unit to another is usually limited by angled site lines. In some cases, the facility has prevented this entirely by installing one-way glass. Both the architectural design and functional use of these multiple pods indicate that they are managed as distinct housing units.</p> | 54 inmate housing units |
| Number of single cell housing units: | 48 |
| Number of multiple occupancy cell housing units: | 0 |
| Number of open bay/dorm housing units: | 6 |
| Number of segregation cells (for example, administrative, disciplinary, protective custody, etc.): | 36 |
| In housing units, does the facility maintain sight and sound separation between youthful inmates and adult inmates? (N/A if the facility never holds youthful inmates) | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A |
| Does the facility have a video monitoring system, electronic surveillance system, or other monitoring technology (e.g. cameras, etc.)? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

| | |
|--|---|
| Has the facility installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology in the past 12 months? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
|--|---|

Medical and Mental Health Services and Forensic Medical Exams

| | |
|--|---|
| Are medical services provided on-site? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Are mental health services provided on-site? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| Where are sexual assault forensic medical exams provided? Select all that apply. | <input type="checkbox"/> On-site <input checked="" type="checkbox"/> Local hospital/clinic <input type="checkbox"/> Rape Crisis Center <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.) |

Investigations

Criminal Investigations

| | |
|---|---|
| Number of investigators employed by the agency and/or facility who are responsible for conducting CRIMINAL investigations into allegations of sexual abuse or sexual harassment: | PNM 9 |
| When the facility received allegations of sexual abuse or sexual harassment (whether staff-on-inmate or inmate-on-inmate), CRIMINAL INVESTIGATIONS are conducted by: Select all that apply. | <input type="checkbox"/> Facility investigators <input type="checkbox"/> Agency investigators <input checked="" type="checkbox"/> An external investigative entity |
| Select all external entities responsible for CRIMINAL INVESTIGATIONS: Select all that apply (N/A if no external entities are responsible for criminal investigations) | <input type="checkbox"/> Local police department <input type="checkbox"/> Local sheriff's department <input checked="" type="checkbox"/> State police <input type="checkbox"/> A U.S. Department of Justice component <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.) <input type="checkbox"/> N/A |

Administrative Investigations

| | |
|--|---|
| Number of investigators employed by the agency and/or facility who are responsible for conducting ADMINISTRATIVE investigations into allegations of sexual abuse or sexual harassment? | PNM 9 |
| When the facility receives allegations of sexual abuse or sexual harassment (whether staff-on-inmate or inmate-on-inmate), ADMINISTRATIVE INVESTIGATIONS are conducted by: Select all that apply | <input checked="" type="checkbox"/> Facility investigators <input checked="" type="checkbox"/> Agency investigators <input type="checkbox"/> An external investigative entity |
| Select all external entities responsible for ADMINISTRATIVE INVESTIGATIONS: Select all that apply (N/A if no external entities are responsible for administrative investigations) | <input type="checkbox"/> Local police department <input type="checkbox"/> Local sheriff's department <input type="checkbox"/> State police <input type="checkbox"/> A U.S. Department of Justice component <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.) <input checked="" type="checkbox"/> N/A |

Audit Findings

Audit Narrative

The auditor's description of the audit methodology should include a detailed description of the following processes during the pre-onsite audit, onsite audit, and post-audit phases: documents and files reviewed, discussions and types of interviews conducted, number of days spent on-site, observations made during the site-review, and a detailed description of any follow-up work conducted during the post-audit phase. The narrative should describe the techniques the auditor used to sample documentation and select interviewees, and the auditor's process for the site review.

Amanda van Arcken, 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 Penitentiary of New Mexico (PNM) in Santa Fe, New Mexico from December 9-11, 2019. This audit was conducted under a contract between the New Mexico Corrections Department (NMCD) and the Oregon Department of Corrections (ODOC) in conjunction with the Western States PREA Circular Auditing Agreement. The NMCD, ODOC and nine other agencies (California, Colorado, Hawaii, Los Angeles County, Indiana, Nevada, North Dakota, Montana, and Washington) are members of the Western States PREA Circular Auditing Agreement. The audit was conducted with the assistance of two support staff – Steve Boston and Marica Ventura. The audit team conducted the site review together. Amanda van Arcken conducted the documentation review for staff and inmates; informal interviews with random staff and inmates; formal interviews with specialized staff and targeted inmates; and, authored this report. Boston and Ventura conducted informal and formal interviews of random staff, specialized staff, random inmates and targeted inmates.

This auditor provided the facility with a Notification of Audit on October 25, 2019, in both English and Spanish. The notification contained information about 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 review, on a brightly-colored piece of paper that would stand out among other postings in these areas. The notice contained a reminder about the confidential nature of communication with the auditor, and possible exceptions to confidentiality. The auditor was provided with ten dated and time-stamped photographs on October 28, 2019, indicating the audit notice was posted as directed. The facility PCM provided this auditor with a written memorandum stating that all inmates unable to move freely in areas where the notice was posted were individually provided with copies of the audit posting. During the facility tour, 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 and areas accessible to visitors, providing them with the opportunity to contact the auditor. Prior to the onsite review, this auditor received one letter from an inmate at PNM and interviewed the author while onsite. During the onsite review, one inmate requested in writing to facility staff that he be interviewed by the auditor.

The Pre-Audit Questionnaire (PAQ) was initiated by the facility and was received by this auditor on December 5, 2019. The PAQ was formatted on a thumb-drive and included all relevant documentation pertaining to the audit, including, but not limited to: policies, procedures, memorandum of understanding and training documents. The auditor reviewed the questionnaire and all documentation. This auditor reviewed the *Annual Assessment of NMCD's Progress in Addressing Sexual Abuse* for 2018, 2017 and 2016, which are posted on the agency website. News articles referencing PNM were reviewed online. Nothing related to the sexual safety of the facility was located. This was the third PREA audit conducted at PNM.

On October 25, 2019, this auditor sent an email to PNM's PREA Compliance Manager (PCM) requesting the following documents prior to the audit team's arrival at the facility:

- A complete inmate roster, sorted by housing unit
- A list of inmates with mobility disabilities
- A list of inmates who are hard of hearing or deaf
- A list of inmates who have vision impairment or are blind
- A list of inmates who have reported sexual abuse

The following documents were requested to be available on the first day of the onsite review:

- A complete listing of all staff, contractors and volunteers
- Custody staff assignment rosters for all shifts of the onsite review
- Copies of any PREA-related grievances filed in the last 12 months
- A list of all inmates who have been at PNM prior to August 2012
- A list of all inmates who identify as lesbian, gay, bisexual, transgender or intersex
- A list of all inmates who disclosed prior sexual victimization during risk screening (in community and/or in confinement)

This auditor conducted outreach to Just Detention International (JDI), the Transgender Resource Center of New Mexico (TGRCNM), the Rape Crisis Center of New Mexico (RCC), La Pinon and Solace Crisis Treatment Center (SCTC) to learn about issues of sexual safety at the facility.

- JDI is a health and human rights organization that seeks to end sexual abuse in all forms of detention by advocating for laws and policies that make prisons and jails safe and providing incarcerated survivors with support and resource referrals. JDI advised this auditor that they have not received any correspondence from incarcerated survivors at PNM within the last 12 months.
- TGRCNM is a non-profit organization that provides support, community and connection to transgender, gender nonconforming, nonbinary and gender variant people and their families through advocacy, education and direct services. TGRCNM advised this auditor that while they do not have an MOU with NMCD, they have collaborated with the agency to provide training for staff and support services for transgender women at PNM. The center engages incarcerated transgender women through written correspondence, telephonic communication and in-person visits. The center has informally assisted with facilitating communication between incarcerated transgender women and NMCD staff. Staff at TGRCNM did not have any specific concerns related to the sexual safety of transgender women in custody at PNM.
- RCC provides support and advocacy to survivors of sexual assault and abuse within Central New Mexico and serves as a community resource on issues regarding prevention and awareness of sexual violence. Their services include 24-hour crisis intervention and advocacy services, professional counseling for survivors and family/friends, in-service training, community education and community organization. RCC employs a PREA Advocate who works solely with incarcerated victims and survivors. The PREA Advocate provides confidential support to these inmates through phone calls, letters and one-on-one visits. The PREA Advocate also works with family members of incarcerated survivors. This auditor left two messages but did not have return contact from RCC.
- La Pinon is a non-profit sexual assault response agency in Southern New Mexico, providing comprehensive sexual assault recovery services for sexual abuse victims and their families. La Pinon's services include a 24-hour crisis line, victim advocacy, accompaniment at forensic medical exams and prevention education services. NMCD has engaged with an advocate at La Pinon to be the party who answers all incarcerated survivor advocacy calls. La Pinon advised this auditor that they respond to all calls from incarcerated survivors at PNM, access the situation and relays the information provided

to the facility PCM or Solace Crisis Treatment Center for further action. La Pinion has had 73 contacts with incarcerated survivors at PNM in 2019.

- Solace Crisis Treatment Center is a non-profit agency located in Santa Fe, New Mexico. SCTC provides all services in English and Spanish, with interpretation services available for other language access needs. SCTC has a 24/7 crisis hotline and a Sexual Assault Nurse Exam Facility onsite. This auditor left two messages but did not have return contact from SCTC.

An entrance meeting was held in the morning of December 9, 2019 with facility leadership and members of the agency's central administration.

After the entrance meeting the audit team began conducting the physical plant review of PNM. The audit team was provided access to all areas of the facility, including outlying buildings where inmates may be assigned for work. This auditor observed the facility configuration, locations of cameras and security mirrors, the level of staff supervision, the housing unit layout (including shower/toilet areas), placement of posters and other PREA informational resources, security monitoring, and search procedures. Toilet and shower areas of the facility allowed for inmate privacy while undressing and using facilities. Cross-gender announcements were consistently observed when the audit team entered housing units. The audit notice was visible in all inmate areas. The telephonic contact information for La Pinion has been permanently stenciled on the walls in multiple areas of the facility. Inmate phones were tested to ensure the ability to contact the PREA Hotline and the confidential, community-based advocacy center. Locked boxes were in each housing unit or rotunda for inmates to deposit grievance and discrimination forms. Unit log books were checked to ensure the completion of unannounced supervisory rounds.

During the physical plant review, the audit team looked for potential blind spots in areas accessible to inmates, and areas where cross-gender viewing may occur. The facility took immediate action to begin correcting deficiencies or creating a plan to correct deficiencies, to include:

- Ensuring doors are secured when not actively in use;
- Labeling doors; and,
- Removing blinds from an office in the physical plant that completely obstruct a room.

Cameras were noted in areas where inmates may be using restrooms or showers. This auditor reviewed video feed of those areas to confirm the facility has acted to digitally obscure areas that may show breasts, buttocks or genitalia. In all, PNM utilizes 527 cameras. Video footage is retained for six months or more on the system if it is not preserved. The surveillance system includes 12 Next Level Security System Gateway 4000 recording stations and storage, and Panasonic IP cameras. Digital cameras are located indoors and outdoors, with zoom/pan/tilt capabilities. Large, high definition monitors that can display camera footage are in control centers and administrative offices and are accessed frequently by intermediate and higher-level staff.

During the second and third days onsite, the audit team conducted staff and inmate interviews. 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.

PNM employs 289 staff who may have contact with inmates. These staff include one major, six captains, 22 lieutenants, 59 sergeants and 202 officers. Security staff are assigned daily to two, 12-hour shifts and work four days on and three days off. As of October 2019, PNM was operating with a 28% vacancy rate.

The facility creates an “overtime bucket” to ensure vacant shifts are covered with relief staff, on-site/off-site volunteers or on-site/off-site mandatory staff.

The August 2017 edition of the PREA Auditor Handbook requires at least 12 random security staff be interviewed. A total of 18 random security interviews were conducted – five staff assigned to “morning watch” (1800 to 0600 hours), and 13 staff from “day watch” (0600 to 1800 hours). Random interviews with security staff, non-security staff, volunteers and contractors were selected based on who was working during the site review.

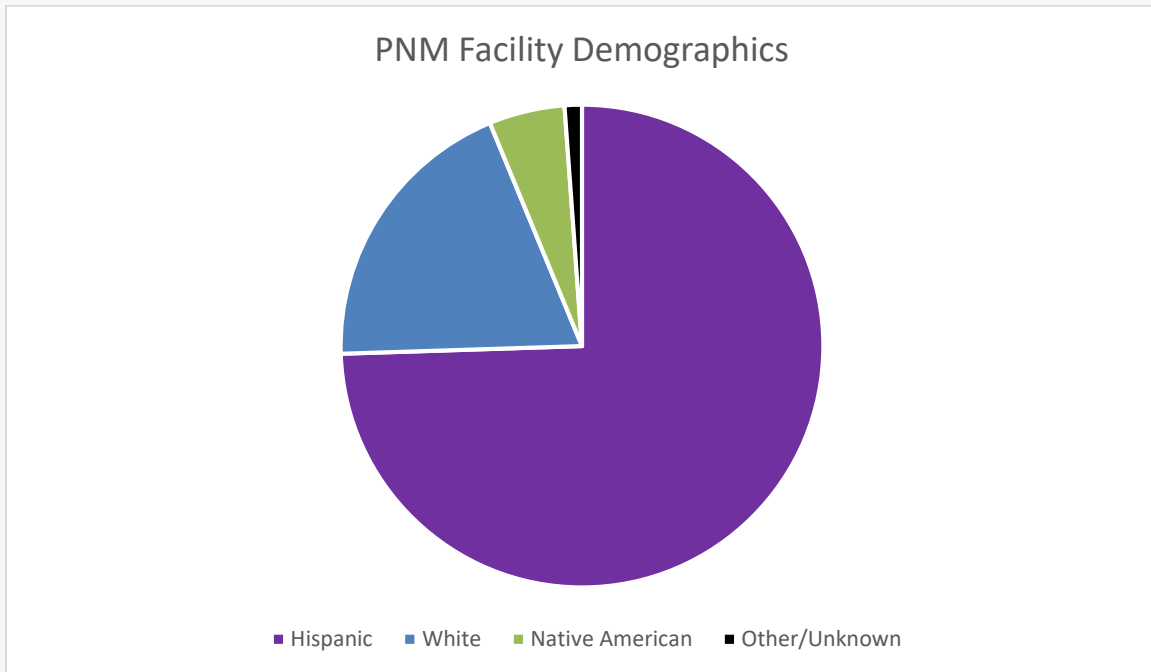
Interviews were conducted with the following specialized staff:

- Agency head designee
- Warden
- Agency PREA Coordinator
- Facility PREA Compliance Manager
- Agency contract administrator
- Five intermediate or higher-level facility staff
- Medical Services staff
- Mental Health Services staff
- Human Resource manager
- Facility volunteer coordinator
- Investigative staff
- SANE
- Classification officer
- Staff who supervise inmates in segregated housing
- Staff on the sexual abuse incident review team
- Designated staff member charged with monitoring retaliation
- Grievance coordinator
- Inmate disciplinary officer
- Mailroom staff

Using an alphabetical list of all staff, this auditor divided the total number by 25 and highlighted every 11th name for file reviews. The personnel files for those selected were reviewed to determine compliance with training mandates and background check procedures.

During the onsite review, Marianna Vigil was assigned as the Interim Warden of PNM. On February 10, 2020, Leon Martinez was hired as Warden of PNM.

The PAQ indicated the average daily population for audit period was 760 inmates. The inmate population on the first day of the onsite review was 757. The August 2017 edition of the PREA Auditor Handbook requires at least 15 random inmate interviews and at least 15 targeted inmate interviews for an adult prison population of 501-1000 inmates. The audit team planned to interview at least one random inmate from each housing unit (54 in total), in addition to any targeted inmates. Using inmate rosters sorted by facility and housing, this auditor divided the total number of inmates by 20, and then counted off by the resulting number. The identified inmate name was selected for both file reviews and random interviews. If the resulting number did not identify one inmate from each housing unit, the auditor selected the inmate in the first occupied cell of that housing unit. A total of 60 random inmates were interviewed. No inmates declined to be interviewed. Files were reviewed to evaluate screening and intake procedures, documentation of inmate education and medical or mental health referrals when required.



The Penitentiary of New Mexico did not have any inmates who were youthful, in segregated housing for high risk of sexual victimization, limited-English proficiency or who identified as gay or bi-sexual. A total of 16 targeted inmate interviews were conducted. Interviews were conducted with the following targeted inmates:

- Four inmates with a physical disability
- One inmate with a vision impairment
- One inmate with a cognitive disability
- Four inmates who identify as transgender or intersex
- Two inmates who reported sexual abuse
- Four inmates who reported sexual victimization during risk screening

There were three inmates at PNM who were admitted to the facility prior to August 20, 2012. The auditor verified that all inmates had received comprehensive PREA education when conducting the previous audit at PNM, and again during the current audit.

The PAQ provided by the facility PCM indicated there were four allegations of sexual abuse and six allegations of sexual harassment during the audit period of October 2018 through October 2019.

Investigation Data

| Allegation Type | Total Number of Allegations | Substantiated | Unsubstantiated | Unfounded | Ongoing Investigation |
|------------------------------------|-----------------------------|---------------|-----------------|-----------|-----------------------|
| Inmate-on-Inmate Sexual Harassment | 2 | 0 | 2 | 0 | 0 |
| Staff-on-Inmate Sexual Harassment | 4 | 0 | 1 | 3 | 0 |
| Inmate-on-Inmate Sexual Abuse | 0 | 0 | 0 | 0 | 0 |
| Staff-on-Inmate Sexual Abuse | 4 | 0 | 2 | 2 | 0 |
| Information Only | 2 | 0 | 0 | 0 | 0 |
| Totals | 12 | 0 | 5 | 5 | 0 |

NMCD uses “*Information Only*” to categorize allegations that are unfounded by video evidence or inmate-on-inmate consensual sexual activity. These allegations are still reported to the Office of Professional Standards and closed out as “information only” for record-keeping purposes.

This auditor reviewed the inmate grievances submitted at PNM for the audit period of October 2018 through October 2019:

| | OCT | NOV | DEC | JAN | FEB | MAR | APRIL | MAY | JUNE | JULY | AUG | SEPT | OCT | TOTAL |
|-----------------------|-----|-----|-----|-----|-----|-----|-------|-----|------|------|-----|------|-----|-------|
| Total Received | 24 | 27 | 13 | 36 | 52 | 13 | 35 | 32 | 67 | 37 | 20 | 2 | 17 | 375 |
| PREA-related | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

An exit meeting was held in the afternoon on December 11, 2019 with facility leadership and members of the agency’s central administration. The auditor provided a summary of the audit through the on-site phase and provided information on what to expect during the Corrective Action Period (CAP).

The auditor spoke with a local Sexual Assault Nurse Examiner (SANE) at Christus St. Vincent’s Hospital, to discuss and confirm the agreement in place with NMCD to provide SANE/SAFE services. She verified that all SANEs receive training that meets the national training standards.

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. To determine compliance, the auditor used the information and documentation provided during the pre-audit, information obtained through staff and inmate interviews, and observations during the onsite review. There were no barriers to completing the audit of PNM. The interim report was scheduled to be provided to the facility no later than January 25, 2020. The interim report was provided to the facility on February 8, 2020 as the auditor was waiting for additional information from the facility.

The corrective action period began on February 8, 2020. During that time the facility PCM and agency PREA Coordinator submitted all the additional documentation, as requested. The final report was provided to the facility on June 17, 2020, reflecting full compliance with the PREA standards.

Facility Characteristics

The auditor's description of the audited facility should include details about the facility type, demographics and size of the inmate, resident or detainee population, numbers and type of staff positions, configuration and layout of the facility, numbers of housing units, description of housing units including any special housing units, a description of programs and services, including food service and recreation. The auditor should describe how these details are relevant to PREA implementation and compliance.

The New Mexico Corrections Department is a state agency incarcerating approximately 6800 adult inmates in seven publicly-operated and four 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 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 the severity of their current conviction, any history of escape or institutional violence, any prior felony convictions and their severity, substance abuse, current age, and all security threat group affiliations within the last ten years. The RDC conducts the initial PREA risk screening for all inmates and recommends housing assignments. The PREA risk screening is completed again upon arrival at the next facility.

The mission statement of the Penitentiary of New Mexico is, *"The Penitentiary of New Mexico, as an integral part of the criminal justice system, provides protection to the public, staff and inmates by operating a secure and safe institution by maintaining custody control, supervision, programs and services for offenders with professionalism, progressive management and fiscal responsibility."*

PNM maintains its national accreditation status by the American Correctional Association and provides a "balanced system" approach to corrections from incarceration to community-based supervision with training, education, programs and services that provide opportunities for offenders to transition to communities. The level system within NMCD requires that inmates who cannot be managed or function within general population to be separated from the general population. Management of such inmates is based upon behaviorally-based step programs, in which increased privileges are granted for inmates who demonstrate appropriate behavior for a specified period.

PNM is located along the historic Turquoise Trail, 14 miles south of Santa Fe, New Mexico. It is the department's only maximum-security facility, originally opened in 1956. A section of the facility, referred to as "Old Main" was closed in 1998 and is no longer used to house inmates. The closure was as a result of the termination agreement of the federal court order known as the Duran Consent Decree. The Old Main is used as a multi-agency tactical training area and for television/movie productions.

PNM is situated on 426 acres of land, and the complex includes housing for the Department's administrators, housing for security staff, and the New Mexico Adult Parole Board. Support buildings for PNM include a supply warehouse, automotive garage, mailroom, canteen warehouse and administrative buildings. Three facilities within the complex house Level II, Level IV, Level V and Level VI offenders.

The South Facility was opened in 1988 and consists of six individual units. Each unit has four pods of 12 inmates. There are 288 individual cells. The South Facility houses Level IV inmates in the Reintegration into Population Program (RPP), Special Management Population (SMP) and the Restrictive Housing Unit (RHU).

The North Facility was opened in 1985 consists of six individual units. Each unit has four pods of 12 inmates. There are 288 individual cells. The North Facility houses inmates actively in the Predatory Behavior Management Program (PBMP), the Alternate Placement Area (APA) and Restrictive Housing Unit (RHU). Unit 4, also known as the Death House, is within the North Facility, but it does not house any inmates and is not actively being used. The death penalty in New Mexico was repealed on July 1, 2009.

The Level II facility was opened in 1990. The Minimum Restrict Unit (MRU) consists of two dormitories, labeled A-Dorm and B-Dorm. Each dormitory has three units with a total of 144 inmates. To qualify for dormitory housing, the facility considers inmate's criminal background and behavior within the facility to determine if they can function in a dormitory without presenting a significant amount of risk to safety and security. Inmates must have less than four years remaining until their projected release date. The MRU has a maximum capacity of 288 bunks. Inmates at this facility participate in various vocational, education and treatment programs. The perimeter of the Level II facility is a two-fence system; the outer fence is topped with concertina wire, with a stun fence directly behind it, and the inner fence is topped with concertina wire.

Summary of Audit Findings

The summary should include the number and list of standards exceeded, number of standards met, and number and list of standards not met.

Auditor Note: No standard should be found to be “Not Applicable” or “NA”. A compliance determination must be made for each standard.

Standards Exceeded

Number of Standards Exceeded: 2

List of Standards Exceeded: [Click or tap here to enter text.](#)

- 115.73 Reporting to Inmates
- 115.86 Sexual Abuse Incident Reviews

Standards Met

Number of Standards Met: 43

- 115.11 Zero Tolerance of Sexual Abuse and Sexual Harassment; PREA Coordinator
- 115.12 Contracting with Other Entities for the Confinement of Inmates
- 115.13 Supervision and Monitoring
- 115.14 Youthful Inmates
- 115.15 Limits to Cross-Gender Viewing and Searches
- 115.16 Inmates with Disabilities and Inmates who are Limited English Proficient
- 115.17 Hiring and Promotion Decisions
- 115.18 Upgrades to Facilities and Technologies
- 115.21 Evidence Protocol and Forensic Medical Examinations
- 115.22 Policies to Ensure Referrals of Allegations for Investigations
- 115.31 Employee Training
- 115.32 Volunteer and Contractor Training
- 115.33 Inmate Education
- 115.34 Specialized Training: Investigations
- 115.35 Specialized Training: Medical and Mental Health Care
- 115.41 Screening for Risk of Victimization and Abusiveness
- 115.42 Use of Screening Information
- 115.43 Protective Custody
- 115.51 Inmate Reporting
- 115.52 Exhaustion of Administrative Remedies
- 115.53 Inmate Access to Outside Confidential Support Services
- 115.54 Third-Party Reporting
- 115.61 Staff and Agency Reporting Duties
- 115.62 Agency Protection Duties
- 115.63 Reporting to Other Confinement Facilities
- 115.64 Staff First Responder Duties
- 115.65 Coordinated Response
- 115.66 Preservation of Ability to Protect Inmates from Contact with Abusers
- 115.67 Agency Protection against Retaliation
- 115.68 Post-allegation Protective Custody
- 115.71 Criminal and Administrative Agency Investigations
- 115.72 Evidentiary Standards for Administrative Investigations
- 115.76 Disciplinary Sanctions for Staff
- 115.77 Corrective Action for Contractors and Volunteers
- 115.78 Disciplinary Sanctions for Inmates

- 115.81 Medical and Mental Health Screenings; History of Sexual Abuse
- 115.82 Access to Emergency Medical and Mental Health Services
- 115.83 Ongoing Medical and Mental Health Care for Sexual Abuse Victims and Abusers
- 115.87 Data Collection
- 115.88 Data Review for Corrective Action
- 115.89 Data Storage, Publication, and Destruction
- 115.401 Frequency and Scope of Audits
- 115.403 Audit Contents and Findings

Standards Not Met

Number of Standards Not Met: 0

List of Standards Not Met:

PREVENTION PLANNING

Standard 115.11: Zero tolerance of sexual abuse and sexual harassment; PREA coordinator

All Yes/No Questions Must Be Answered by The Auditor to Complete the Report

115.11 (a)

- Does the agency have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment? Yes No
- Does the written policy outline the agency's approach to preventing, detecting, and responding to sexual abuse and sexual harassment? Yes No

115.11 (b)

- Has the agency employed or designated an agency-wide PREA Coordinator? Yes No
- Is the PREA Coordinator position in the upper-level of the agency hierarchy? Yes No
- Does the PREA Coordinator have sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities?
 Yes No

115.11 (c)

- If this agency operates more than one facility, has each facility designated a PREA compliance manager? (N/A if agency operates only one facility.) Yes No NA
- Does the PREA compliance manager have sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards? (N/A if agency operates only one facility.)
 Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Organizational chart
- PNM Organizational chart
- *PREA Factsheet*
- *PNM Inmate Handbook*
- Interview with the PREA Coordinator
- Interview with the PREA Compliance Manager

(a) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page 4, *"The NMCD has a 'zero tolerance' policy regarding all forms of sexual abuse, sexual misconduct and sexual harassment towards offenders."* This policy outlines the agency's comprehensive approach to preventing, detecting and responding to sexual abuse and sexual harassment, including definitions of prohibited behaviors and consequences for those found to have participated in prohibited behaviors.

The *PNM Inmate Handbook* provided to each inmate upon arrival at the facility contains information about zero-tolerance on page 16. It states, *"Sexual misconduct is a crime. The Corrections Department will investigate all reports of sexual misconduct. If you are the victim of sexual misconduct, REPORT IT IMMEDIATELY. The New Mexico Corrections Department has ZERO-TOLERANCE regarding all forms of sexual activity, sexual harassment, sexual abuse and sexual assault."*

The zero-tolerance policy is observable throughout the facility, as evidenced by paintings on the wall, and written postings in staff areas, referred to as a *PREA Factsheet*. Interviews with both staff and inmates indicate they are knowledgeable of the zero-tolerance policy.

(b) The NMCD employs an upper-level, agency-wide PREA Coordinator. The PREA Coordinator reports directly to the Director of Adult Prisons for PREA-related issues. This position is reflected in agency organizational charts. A letter written by the agency head states, *"Effective January 13, 2018, Robin Bruck was selected as the PREA Coordinator for the New Mexico Corrections Department. With this appointment she shall have all of the rights, authority, and responsibility necessary to effectively perform the duties of the position. That appointment will remain effective indefinitely. Ms. Bruck will have direct access and report to me, for an PREA related issues."* When interviewed, the PREA Coordinator indicated that she has the time, resources and authority required to manage her responsibilities.

(c) PNM has designated a captain as a full-time facility PREA Compliance Manager. The PCM reports directly to the warden. This position is reflected in facility organizational charts. A letter written by the warden states, *"Effective November 13, 2018, Captain Mike Baca is appointed as the PREA Compliance Manager for the Penitentiary of New Mexico. Captain Mike Baca shall [sic] have responsibility and authority for all matters associated with PREA, as it relates to the functions regarding PREA. Captain Mike Baca will report directly to Warden Gay."* The PCM is part of the larger "PREA Team" for NMCD, which travels to various facilities to conduct mock audits, assist with training and assist during federal

PREA audits. When interviewed, the facility PCM indicated that he has the time to manage all his PREA-related responsibilities.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of zero-tolerance of sexual abuse and sexual harassment, and employment of the PREA Coordinator, as it relates to PREA.

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.12 (a)

- If this agency is public and it contracts for the confinement of its inmates with private agencies or other entities including other government agencies, has the agency included the entity's obligation to comply with the PREA standards in any new contract or contract renewal signed on or after August 20, 2012? (N/A if the agency does not contract with private agencies or other entities for the confinement of inmates.) Yes No NA

115.12 (b)

- Does any new contract or contract renewal signed on or after August 20, 2012 provide for agency contract monitoring to ensure that the contractor is complying with the PREA standards? (N/A if the agency does not contract with private agencies or other entities for the confinement of inmates.) Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- Contracts for the facilities noted
- Published PREA Audit Reports for the facilities noted

(a-b) NMCD has five contracts for confinement with other facilities.

- Guadalupe County Correctional Facility last received a final audit report on September 27, 2017 and was found to be in full compliance. The contract states, *“Prison Rape Elimination Act (PREA) Standards: Any contractor providing services to NMCD 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.”* The contract was executed on March 26, 2018.
- Lea County Correctional Facility last received a final audit report on January 7, 2019 and was found to be in full compliance. The contract states, *“Prison Rape Elimination Act (PREA) Standards: 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.”* The contract was executed on March 8, 2018.
- Northeast New Mexico Detention Facility last received a final audit report on September 17, 2017 and was found to be in full compliance. The contract states, *“Prison Rape Elimination Act (PREA) Standards: Any contractor providing services to NMCD 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.”* The contract was executed on April 25, 2018.
- Northwestern New Mexico Correctional Center last received a final audit report on December 29, 2017 and was found to be in full compliance. The contract states, *“The Contractor shall meet or exceed the following performance measures, or the Department has the discretion to assess the following liquidated damages or penalties with no opportunity to cure, except as otherwise provided below...Maintain Prison Rape Elimination Act (PREA) certification consistent with national standards. The penalty is \$20,000 per PREA audit if certification is not maintained.”* The contract was executed on June 30, 2016.
- Otero County Prison Facility last received a final audit report on March 2, 2017 and was found to be in full compliance. The contract states, *“Prison Rape Elimination Act (PREA) Standards: Any contractor providing services to NMCD 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. The County shall provide for agency contract monitoring to ensure that Otero County is in compliance with the PREA standards.”* The contract was executed on October 16, 2017.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of contracting with other entities for the confinement of inmates, as it relates to PREA.

Standard 115.13: Supervision and monitoring

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.13 (a)

- Does the facility have a documented staffing plan that provides for adequate levels of staffing and, where applicable, video monitoring, to protect inmates against sexual abuse?
 Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Generally accepted detention and correctional practices?
 Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any judicial findings of inadequacy? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any findings of inadequacy from Federal investigative agencies? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any findings of inadequacy from internal or external oversight bodies? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: All components of the facility's physical plant (including "blind-spots" or areas where staff or inmates may be isolated)? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The composition of the inmate population? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The number and placement of supervisory staff?
 Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The institution programs occurring on a particular shift?
 Yes No NA
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any applicable State or local laws, regulations, or standards? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: The prevalence of substantiated and unsubstantiated incidents of sexual abuse? Yes No
- In calculating adequate staffing levels and determining the need for video monitoring, does the staffing plan take into consideration: Any other relevant factors? Yes No

115.13 (b)

- In circumstances where the staffing plan is not complied with, does the facility document and justify all deviations from the plan? (N/A if no deviations from staffing plan.)
 Yes No NA

115.13 (c)

- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The staffing plan established pursuant to paragraph (a) of this section? Yes No
- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The facility's deployment of video monitoring systems and other monitoring technologies? Yes No
- In the past 12 months, has the facility, in consultation with the agency PREA Coordinator, assessed, determined, and documented whether adjustments are needed to: The resources the facility has available to commit to ensure adherence to the staffing plan? Yes No

115.13 (d)

- Has the facility/agency implemented a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment? Yes No
- Is this policy and practice implemented for night shifts as well as day shifts? Yes No
- Does the facility/agency have a policy prohibiting staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- Staffing Plan for PNM
- Investigative reports from 2018 and 2019
- Interview with the warden
- Interview with the PREA Coordinator
- Interview with the PREA Compliance Manager
- Interview with intermediate or higher-level facility staff
- Housing Unit log books
- Staff duty rosters
- Observation of facility operations while onsite

(a) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page 8, “Each facility shall develop, document, and make best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and where applicable, video monitoring to protect inmates against sexual abuse. In calculating adequate staffing levels and determining a need for video monitoring, facilities will take into consideration

- ❖ *Generally accepted detention and correctional practices;*
- ❖ *Any judicial findings of inadequacy;*
- ❖ *Any finding of inadequacy from Federal Investigative agencies;*
- ❖ *Any findings of inadequacy from internal and external oversight bodies; all components of the facility’s physical plant (including blind spots);*
- ❖ *The composition of the inmate population*
- ❖ *The number and placement of supervisory staff; institution programs occurring on a particular shift;*
- ❖ *Any applicable State or Local laws, regulations or standards; the prevalence of substantiated and unsubstantiated incidents of sexual abuse; and*
- ❖ *Any other relevant factors.”*

The facility is required by agency policy to hold a meeting at least once per year, to review the staffing pattern. This auditor reviewed documentation from the most recent staffing pattern meeting, held on October 1, 2019. The meeting was chaired by the facility PCM and attended by the warden, deputy wardens, the Chief of Security, Director of Nursing, the Behavioral Health Supervisor, the Education Supervisor, Human Resource Manager, Plant Manager and Roster Management. The documentation made the following findings related to the critical elements of the standard:

- ❖ *Generally accepted detention and correctional practices – “The Penitentiary of New Mexico Corrections Facility operates and maintains adequate supervision in accordance with the staffing plan for the prevention, safety, and well-being of offenders to the extent reasonably possible to protect offenders from sexual harassment and sexual abuse while under correctional supervision with the statewide corrections best practices and ethical standards.”*
- ❖ *Any judicial findings of inadequacy – “The Penitentiary of New Mexico Correctional Facility reflects no findings or inadequacies.”*
- ❖ *Any findings of inadequacy from Federal investigative agencies – “The Penitentiary of New Mexico Correctional Facility reflects no findings of inadequacies from any Federal investigative agencies.”*

- ❖ Any findings of inadequacy from internal or external oversight bodies – *“The Penitentiary of New Mexico Correctional Facility received an internal finding of Inadequacy from oversight bodies. The (ACA) Compliance Manager conducted a monthly audit on offender screenings at Risk of Sexual Victimization and Sexual aggressive behavior utilizing the New Mexico Department of Corrections PREA audit tool. The findings are as follows: In July 2019 a total of 8 offenders were not assessed within 72 hours of arrival, one offender was not re- assessed within 30 days of arrival. The New Mexico Corrections Department along with the Penitentiary of New Mexico take the findings very seriously. Corrective Action was taken regarding the findings presented. Corrective action includes but not limited to, staff and Supervisor Training and Progressive Discipline.”*
- ❖ All components of the facility’s physical plant, including “blind-spots” or areas where staff or inmates may be isolated – *“There are a total of 527 cameras in place to assist with areas that are prevalent for blind spots. These areas include but not limited to, pathways and areas where inmates may be isolated in and around the physical plant.”*
- ❖ The composition of the inmate population – *“The Penitentiary of New Mexico Correctional Facility consists of three different facilities the South Facility, the North Facility, and the Minimum Restrict Unit.*

The South Facility consists of 6 individual Units, which are divided into 4 pods per Unit, and occupies 12 inmates per Pod and 48 inmates per Unit. For a grand total of 288 individual cells. The South Facility occupies Level 4 custody offenders with 24 being involved in the Reintegration into Population Program (RPP), 94 offenders being SMP (Special Management Program), and 24 offenders in RHU (Restrictive Housing Unit). The South Facility has a total of 247 as of October 2, 2019.

The North Facility consists of 6 individual Units, which are divided into 4 pods per unit, and occupies 12 inmates per pod and 48 inmates per Unit. For a grand total of 288 individual cells. The North Facility also has Unit 4, which is the Death house, which currently does not house any inmates and has one individual cell. The entire North Facility Occupies inmates who are actively enrolled into the Predatory Behavior Management Program (PBMP), 12 of those offenders are in Restrictive Housing and 24 offenders being in Alternate Placement Area (APA). The North Facility as of October 2, 2019 has a total population of 203 offenders.

The Minimum Restrict Unit (MRU) consists of two Units, A-Dorm and B-Dorm, each having 3 individual dorms per side, and houses 144 inmates per Dorm. The Minimum Restrict Unit is a dormitory setting. To qualify for dormitory housing, an inmate’s criminal background and record of behavior indicating that he is able to function in this type of setting without presenting a significant amount of risk to the safety and security of the daily operation of the Institution. This facility has a maximum capacity of 288 bunks, for a current total of 284 inmate as of October 8, 2019.

Vulnerable general population within the facility, of which have been reported include, North Facility 3 Transgender Females, South Facility 1 Transgender Female, South Facility 1 Gay Inmate, North Facility 1 Gay Inmate, South Facility 2 Bi-Sexual Inmates. Currently there are no Intersex inmates housed at PNM. Each inmate’s criminal background and record of Institutional behavior indicates that they may function in a dormitory or single cell pod setting without a significant risk of sexual victimization as indicated in their initial 72 hour and 30-day screening responses. Inmates with other disabilities include South Facility 2 Inmates with Prosthetic Legs, South Facility 1 Inmate Walks with a cane, South Facility 1 in a Wheel Chair, North Facility 2

inmates with a Prosthetic Legs, and the MRU has 1 inmate with a Prosthetic Leg and 1 Hearing impaired inmate.

In addition, the Penitentiary of New Mexico operates below its original planned occupancy rate, which does not create risk to inmate's safety; furthermore, considering the placement of staff to supervise and monitor the inmates allows for the required prevention, detection, and response to sexual abuse."

- ❖ *The number and placement of supervisory staff – "The Penitentiary of New Mexico has a total of 4 shifts, which includes two day watch and two morning watch. Currently we have 97 Vacancies between four shifts with a 28% vacancy rate. To ensure the inmates wellbeing, sexual safety, and continuation of inmate programming, the facility takes into account, vacancies, unplanned absences, Officer's leave and training. An overtime bucket is created daily from shift to shift, the overtime bucket ensures that mandatory posts, no-mandatory I posts, and non-mandatory II posts are covered by supervisory staff through relief staff, on-site, off-site staff volunteer or on a mandatory basis. The Penitentiary of New Mexico Correctional Facility has 1 Warden, 2 Deputy Wardens, 1 Vacant Administrative Deputy Warden, 1 Interim Deputy Warden, 1 Major or Chief of Security, 6 Unit Managers, three of them being in the Interim Capacity, 5 Captains, 25 Lieutenants, 47 Sergeants, 173 Corrections Officers, and 61 Contracted employees. The Penitentiary of New Mexico makes its best efforts to comply on a regular basis with the staffing plan that provides for adequate levels of staffing and were applicable video monitoring to maintain safety in the facility." The hours and staffing for each facility area were noted, as well as any additional staffing required during institutional programming on each shift.*
- ❖ *Applicable State or local laws, regulations or standards – "The Penitentiary of New Mexico facility adheres to all applicable local, state, and federal laws and ordinances. ACA Standards and PREA Standards."*
- ❖ *Prevalence of substantiated and unsubstantiated incidents of sexual abuse – "The Penitentiary of New Mexico [has had one] occurrence, which is an ongoing Investigation, where an inmate reported to be Sexually Abused by a staff member within the past 12 months. There [have] not been any contractor/ volunteer corrective actions regarding acts or sanctions concerning sexual abuse cases at the Penitentiary of New Mexico. The Penitentiary of New Mexico reports there has not been a need for staffing modifications in order to promote sexual safety within the facility."*

There were not any other relevant factors noted. While onsite, the audit team observed enough custody and support staff in all areas of the facility. The interview with the warden indicated there are 84 vacant positions at PNM. To overcome staffing deficiencies, PNM has developed a recruiting team. Vacancy review meetings are held with upper level facility staff on a weekly basis.

(b) PNM has a process in place to fill vacant posts and modify programming as necessary. Any deviation from the staffing plan must be documented by written memorandum to the warden and Deputy Director of Operations. This auditor reviewed three examples of modifications that occurred during the audit documentation review period. The five most common reasons for deviations included the lockdown of the facility, staffing shortages, Type 1 incidents, inclement weather and special tours.

(c) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page 8, *"At the conclusion of the meeting, documentation of the review shall be forwarded to the Agency Level PREA Coordinator for review."* The interview with the agency PREA Coordinator indicated she receives and reviews the facility staffing pattern documentation annually. While onsite, the audit team reviewed all components of the facility's physical plant, to include any areas of limited visibility or areas where staff or inmates may be isolated.

(d) NMCD Procedure CD-150101, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page 1, “Inmates shall be protected from sexual misconduct, personal abuse, corporal or unusual punishment, humiliation, mental abuse, personal injury, disease, property damage, harassment or punitive interference with the daily functions of living, such as eating and sleeping. 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.” This auditor reviewed samples of unannounced rounds provided by the facility PCM with the PAQ, as well as shift post logs while onsite. Interviews with intermediate or higher-level staff indicated they conduct unannounced rounds on all shifts, to detect and deter any staff misconduct, including staff sexual abuse and sexual harassment.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of supervision and monitoring, as it relates to PREA.

Standard 115.14: Youthful inmates

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.14 (a)

- Does the facility place all youthful inmates in housing units that separate them from sight, sound, and physical contact with any adult inmates through use of a shared dayroom or other common space, shower area, or sleeping quarters? (N/A if facility does not have youthful inmates [inmates <18 years old].) Yes No NA

115.14 (b)

- In areas outside of housing units does the agency maintain sight and sound separation between youthful inmates and adult inmates? (N/A if facility does not have youthful inmates [inmates <18 years old].) Yes No NA
- In areas outside of housing units does the agency provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact? (N/A if facility does not have youthful inmates [inmates <18 years old].) Yes No NA

115.14 (c)

- Does the agency make its best efforts to avoid placing youthful inmates in isolation to comply with this provision? (N/A if facility does not have youthful inmates [inmates <18 years old].) Yes No NA
- Does the agency, while complying with this provision, allow youthful inmates daily large-muscle exercise and legally required special education services, except in exigent circumstances? (N/A if facility does not have youthful inmates [inmates <18 years old].) Yes No NA

- Do youthful inmates have access to other programs and work opportunities to the extent possible? (N/A if facility does not have youthful inmates [inmates <18 years old].)
 Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- New Mexico Statute 32A-2-20, *Disposition of a youthful offender*
- PNM population reports
- Interview with the PREA Compliance Manager
- Interviews with random staff and random inmates

New Mexico Statute 32A-2-20, *Disposition of a youthful offender*, allows for a serious youthful offender convicted of first-degree murder to be committed to the New Mexico Corrections Department. If a youthful offender is committed to NMCD, the youthful offender will be housed at Central New Mexico Correctional Facility (CNMCF), which can provide sight and sound separation from adult inmates.

NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page 7, "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."

This auditor reviewed PNM population reports for the last 12 months, sorted by age, and did not find any inmates under the age of 19 listed. The daily population report provided for December 9, 2019 did not include any inmates under the age of 18. An interview with the PCM indicated that a youthful offender has not been sentenced to NMCD prior to their eighteenth birthday since the PREA standards were released. No interviews of staff or inmates indicated a youthful inmate may have been housed at PNM.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of youthful inmates, as it relates to PREA.

Standard 115.15: Limits to cross-gender viewing and searches

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.15 (a)

- Does the facility always refrain from conducting any cross-gender strip or cross-gender visual body cavity searches, except in exigent circumstances or by medical practitioners?
 Yes No

115.15 (b)

- Does the facility always refrain from conducting cross-gender pat-down searches of female inmates, except in exigent circumstances? (N/A if the facility does not have female inmates.)
 Yes No NA
- Does the facility always refrain from restricting female inmates' access to regularly available programming or other out-of-cell opportunities in order to comply with this provision? (N/A if the facility does not have female inmates.) Yes No NA

115.15 (c)

- Does the facility document all cross-gender strip searches and cross-gender visual body cavity searches? Yes No
- Does the facility document all cross-gender pat-down searches of female inmates? (N/A if the facility does not have female inmates.) Yes No NA

115.15 (d)

- Does the facility have policies that enables inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks? Yes No
- Does the facility have procedures that enables inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks? Yes No
- Does the facility require staff of the opposite gender to announce their presence when entering an inmate housing unit? Yes No

115.15 (e)

- Does the facility always refrain from searching or physically examining transgender or intersex inmates for the sole purpose of determining the inmate's genital status? Yes No

- If an inmate's genital status is unknown, does the facility determine genital status during conversations with the inmate, 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? Yes No

115.15 (f)

- Does the facility/agency train security staff in how to conduct cross-gender pat down searches in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs? Yes No
- Does the facility/agency train security staff in how to conduct searches of transgender and intersex inmates in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 130301
- NMCD Policy 150100
- NMCD Policy 150800
- NMCD Lesson Plan for *PREA Academy/Corrections 101*
- Written memorandum re: Use of Body Scanners
- *PNM Inmate Handbook*
- Interviews with random staff and random inmates
- Observation of facility operations while onsite

(a) NMCD Policy CD-130301, *Search Policy Procedure*, states, "Strip searches may be conducted immediately before and/or after an inmate has a significant opportunity to pass or receive contraband, including, but not limited to before and/or after visitation, entering or leaving the facility, entering or leaving a separate area of the facility, or at any time there is reason to suspect the inmate may be in possession of contraband. 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.” Page two states, “Strip searches and visual inspections of inmate body cavities shall only be conducted by correctional employees of the same sex as that of the inmate and shall [be] based on reasonable belief that the inmate is carrying contraband or other prohibited material. Reasonable belief is not required when inmates return from contact with the general public or from outside the institution and shall always be conducted in a location that allows for privacy from external observations other than that of the employees conducting the search. In all cases, these inspections are conducted by trained personnel.”

This auditor reviewed the NMCD *PREA Academy & Corrections 101* Lesson Plan. On page 25, it states, *“All searches, will be performed in a professional manner, in accordance to the policies and procedures established at the facility. Cross-gender searches and cross-gender visual body cavity searches (meaning a search of the anal or genital opening) are prohibited except in exigent circumstances or when performed by medical practitioners.”* The training defines “exigent circumstances” as “any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of the facility”.

While onsite, the audit team observed the use of a body scanner as a tool to search inmates while clothed. The image produced by the body scanner was detailed and provided outlines of breasts, buttocks and genitalia. It did not have a privacy filter that can blur body contours. This auditor was advised that male and female staff were trained and permitted to operate body scanners on male inmates. As a part of corrective action, this auditor required the facility to discontinue use of the body scanner when operated by a staff member of the opposite gender of the inmate being searched.

On December 18, 2019, prior to the issuance of the interim report, the NMCD Director issued a written directive to all warden regarding the use of body scanners, as follows:

“The Major/designee(s) shall ensure staff assigned to the operation of a body scanner device are trained in the proper use of the scanner prior to assignment. The major will work collaboratively with each respective Shift Commander/designee to identify and maintain an adequate contingency of trained staff to cover each shift’s operational needs; coordinate body scanner training; maintain a list of current authorized users. Copies of the listing shall be maintained at each device physical location and in Master Control. Body scanning shall be conducted by a staff member of the same gender as the individual being searched. Staff of the opposite gender shall not be in an area that allows for viewing of the scanner during a body scan. Staff of the opposite gender shall not be in an area that allows for viewing of the scanner during a body scan. Upon request, accommodations for body scanning procedures for transgender and intersex inmates may be approved by the facility’s PREA Coordinator in conjunction with the Warden.”

On May 29, 2020, NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, was revised to include the following language regarding the operation and use of body scanners, on page eight:

“The Chief of Security or designee shall: ensure staff assigned to the operation of a body scanner device are trained in the proper use of the scanner prior to assignment; work collaboratively with each respective Shift Commander/designee to identify and maintain an adequate contingency of trained staff to cover each shift’s operational needs; coordinate body scanner training; maintain a list of current authorized users. Copies of the list shall be maintained at each site where the body scanner is located and in Master Control.

Body scanning shall be conducted by a staff member of the same gender as the individual being scanned.

During a body scan, staff of the opposite gender shall not view the body scanner monitor.

Accommodations can be made for transgender and intersex inmates when requested by the offender. Each request shall be documented by the PREA Coordinator and signed by the requesting offender.”

Interviews with staff and inmates did not indicate that cross-gender strip searches have occurred, nor did the audit team observe any cross-gender strip searches while onsite at PNM.

(b) This auditor reviewed the NMCD *PREA Academy & Corrections 101* Lesson Plan. On page 25, it states, *“Facilities shall fully document and justify all cross-gender strip searches, cross-gender visual body cavity searches; and cross-gender pat down searches of female inmates/detainees. Facilities are encouraged to utilize strip search logs in all areas where inmates/detainees are required to submit to strip searches as a best practice.”* Facilities are required to fully document and justify cross-gender pat down searches of female inmates. Because PNM does not house female inmates, this provision of the standard is not applicable.

(c) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page eight, *“The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches and shall document all cross-gender pat-down searches of female inmates. These types of searches will only be conducted in the most exigent circumstances. In the unlikely event that these occur, an SIR shall be generated documenting the need for the search.”*

This auditor reviewed the NMCD *PREA Academy & Corrections 101* Lesson Plan. On page 25, it states, *“Facilities shall fully document and justify all cross-gender strip searches, cross-gender visual body cavity searches; and cross-gender pat down searches of female inmates/detainees. Facilities are encouraged to utilize strip search logs in all areas where inmates/detainees are required to submit to strip searches as a best practice.”*

Per the facility PCM, there were no cross-gender searches that occurred during the audit period and no documentation for review. Interviews with staff and inmates did not indicate that cross-gender strip searches have occurred, nor did the audit team observe any cross-gender strip searches while onsite at PNM. The facility is not required to document cross-gender pat-down searches of female inmates, as there are no female inmates housed at PNM.

(d) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page nine, *“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 procedures and practices that enable inmates to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks.

On May 29, 2020, NMCD revised the policy to include, *“Inmates shall be afforded the opportunity to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks.”*

The facility has painted signage on doors and walls clearly reminding staff of the requirement to announce their presence when entering an inmate housing unit. The audit team observed announcements taking place as required during the physical plant review and while onsite conducting interviews. Interviews with female staff members indicated they are aware of the requirement to announce their presence when entering an inmate housing unit. Interviews with inmates indicated female staff members announce their presence when entering an inmate housing unit.

During the physical plant review, the audit team looked for potential blind spots in areas accessible to inmates, and areas where cross-gender viewing may occur. In the Minimum Restrict Facility (MRF), the auditor team observed cameras that appeared able to view directly into the toilet and shower areas of the dormitories. This auditor reviewed live video from the camera and noted the facility has taken steps to blur the areas that could show breasts, buttocks or genitalia.

(e) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page eight, *“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-130301, *Search Policy Procedure*, states on page four, *“Facilities shall not search or physically examine a transgender or intersex offender for 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.”*

This auditor reviewed the NMCD *PREA Academy & Corrections 101 Lesson Plan*. On page 17, it states, *“Any discussion of an inmate’s genitals without cause will be considered sexual harassment and staff members will be disciplined according to NMCD policy. Except in rare cases, the genital status of an inmate/detainee is none of your concern. If the genital status is unknown, it may be determined during conversations with the inmate, detainee or resident; by reviewing medical records; or by learning that information as part of a broader medical examination conducted in private by [a] medical practitioner. Facilities shall not search or physically examine a transgender or intersex inmate, detainee or resident for the sole purpose of determining the inmate, detainee or resident’s genital status.”* Strip searches of transgender and/or intersex inmates are to be conducted in private by staff of the same biological gender.

Four transgender female inmates were interviewed by the audit team. None of them indicated they believed they had ever been searched or physically examined for the sole purpose of determining their genital status. Interviews with random staff indicated they are aware that such searches are prohibited by standard and agency policy.

(f) NMCD Policy CD-130301, *Search Policy Procedure*, states on page three, *“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.”*

This auditor reviewed the NMCD *PREA Academy & Corrections 101 Lesson Plan*. Page 17 of the training states, *“NMCD will not tolerate any taunting, teasing or bullying of inmates, regardless of gender status.”* Pages 18 and 19 state, *“Personal feelings and prejudices have no place inside the facility. We are paid to be professionals and must treat every inmate with the same respect. Just as you wouldn’t want an inmate to ask you about your sex life, neither is it ok for you to ask about his or hers. Discuss only what is necessary to do your job.”* On page 26, it states, *“Conduct all searches in a professional and respectful manner (no joking, laughing or making inappropriate comments).”* The technique to be used when searching a male inmate who identifies as female requires the lower body to be searched the same as all male inmates and the upper body to be searched utilizing the back of the hand, as staff would any other female inmate.

Four transgender female inmates were interviewed by the audit team. None of them indicated they had ever been inappropriately pat-searched. Interviews with random staff indicated they were knowledgeable of proper pat-down search techniques.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of limits to cross-gender viewing and searches, as it relates to PREA.

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.16 (a)

- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who are deaf or hard of hearing? Yes No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who are blind or have low vision? Yes No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who have intellectual disabilities? Yes No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who have psychiatric disabilities? Yes No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: inmates who have speech disabilities? Yes No
- Does the agency take appropriate steps to ensure that inmates with disabilities have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including: Other (if "other," please explain in overall determination notes)? Yes No
- Do such steps include, when necessary, ensuring effective communication with inmates who are deaf or hard of hearing? Yes No
- Do such steps include, when necessary, providing access to interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary? Yes No

- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Have intellectual disabilities? Yes No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Have limited reading skills? Yes No
- Does the agency ensure that written materials are provided in formats or through methods that ensure effective communication with inmates with disabilities including inmates who: Are blind or have low vision? Yes No

115.16 (b)

- Does the agency take reasonable steps to ensure meaningful access to all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse and sexual harassment to inmates who are limited English proficient? Yes No
- Do these steps include providing interpreters who can interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary? Yes No

115.16 (c)

- Does the agency always refrain from relying on inmate interpreters, inmate readers, or other types of inmate assistance except in limited circumstances where an extended delay in obtaining an effective interpreter could compromise the inmate's safety, the performance of first-response duties under §115.64, or the investigation of the inmate's allegations? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- *PNM Inmate Handbook* (English and Spanish)
- *Ending Silence: Demanding Safety from Sexual Abuse* publications
- NMCD Contract with Language Line Solutions
- Interview with the PREA Coordinator
- Interview with the PREA Compliance Manager
- Interviews with random staff and random inmates
- Interviews with inmates with disabilities

(a-b) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page eight, “*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.*”

The most commonly used languages at PNM have been identified as English and Spanish. All brochures and pamphlets, including the PNM Inmate Handbook, are available in both languages. The PREA video has audio in English, and Spanish subtitles. If an inmate identifies a language other than English or Spanish, PNM utilizes services through Language Line Solutions. Language Line Solutions provides nationally-certified interpreters, to include signed language. The facility has two TTY phones for inmate with hearing impairments. The facility utilizes a series of three booklets, *Ending Silence: Demanding Safety from Sexual Abuse*, to assist with communicating PREA-related information for inmates with cognitive impairments or limited reading abilities. The painted signage about NMCD’s zero-tolerance for sexual abuse and sexual harassment, reporting information and advocacy services is in English and Spanish. The painted signage includes the use of eye-catching and brightly-colored emojis, such as a yellow frowning face holding up a red stop sign.

Interviews with random staff and random/targeted inmates indicated that inmates with disabilities are afforded additional accommodation to ensure their access to all aspects of the agency’s PREA program.

(c) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page eight, “*The agency shall not use 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 investigation of the inmate’s allegations, is prohibited.*”

A list of staff who are authorized to provide translations services is distributed annually by the warden. Interviews with the facility PCM and random staff indicate that staff translation services are not routinely used for PREA-related matters. Instead, the Language Line is utilized. Interviews with random staff and random inmates did not indicate the use of inmate interpreters, inmate readers, or other types of inmate assistance.

Interviews were conducted with the following targeted populations:

- Four inmates with physical disabilities
- One inmate who is blind, deaf or hard of hearing
- One inmate with a cognitive disability

All interviews with targeted populations indicated they were able to receive information in a format they were able to understand. No interviews indicated another inmate had been used to assist in their

comprehension. There were not any inmates identified by the facility or by the audit team who were not proficient with English.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of inmates with disabilities and inmates who are limited-English proficient, as it relates to PREA.

Standard 115.17: Hiring and promotion decisions

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.17 (a)

- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)? Yes No
- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse? Yes No
- Does the agency prohibit the hiring or promotion of anyone who may have contact with inmates who has been civilly or administratively adjudicated to have engaged in the activity described in the question immediately above? Yes No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with inmates who has engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility, or other institution (as defined in 42 U.S.C. 1997)? Yes No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with inmates who has been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse? Yes No
- Does the agency prohibit the enlistment of services of any contractor who may have contact with inmates who has been civilly or administratively adjudicated to have engaged in the activity described in the question immediately above? Yes No

115.17 (b)

- Does the agency consider any incidents of sexual harassment in determining whether to hire or promote anyone who may have contact with inmates? Yes No
- Does the agency consider any incidents of sexual harassment in determining whether to enlist the services of any contractor who may have contact with inmates? Yes No

115.17 (c)

- Before hiring new employees, who may have contact with inmates, does the agency perform a criminal background records check? Yes No
- Before hiring new employees who may have contact with inmates, does the agency, consistent with Federal, State, and local law, make its best efforts to contact all prior institutional employers for information on substantiated allegations of sexual abuse or any resignation during a pending investigation of an allegation of sexual abuse? Yes No

115.17 (d)

- Does the agency perform a criminal background records check before enlisting the services of any contractor who may have contact with inmates? Yes No

115.17 (e)

- Does the agency either conduct criminal background records checks at least every five years of current employees and contractors who may have contact with inmates or have in place a system for otherwise capturing such information for current employees? Yes No

115.17 (f)

- Does the agency ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions? Yes No
- Does the agency ask all applicants and employees who may have contact with inmates directly about previous misconduct described in paragraph (a) of this section in any interviews or written self-evaluations conducted as part of reviews of current employees? Yes No
- Does the agency impose upon employees a continuing affirmative duty to disclose any such misconduct? Yes No

115.17 (g)

- Does the agency consider material omissions regarding such misconduct, or the provision of materially false information, grounds for termination? Yes No

115.17 (h)

- Does the agency provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from an institutional employer for whom such employee has applied to work? (N/A if providing information on substantiated allegations of sexual abuse or sexual harassment involving a former employee is prohibited by law.) Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 030200
- NMCD Policy 037400
- NMCD Policy 060200
- NMCD Interview Packet
- *NMCD Self-Declaration of Sexual Abuse/Sexual Harassment* form
- *NMCD Prison Rape Elimination Act Questionnaire for Prior Institutional Employers*
- *NMCD Background Information Request* form
- Employee file reviews
- Interview with the agency head/designee
- Interview with the warden
- Interview with Human Resource staff

(a) NMCD Policy CD-037400, *Recruitment*, states on page four, “*Applicants and contractor applicants who have engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution (as defined in 42 U.S.C. 1997); or have been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse, or; have been civilly or administrative adjudicated to have engaged in the activity described above, shall not be hired or promoted.*” The policy continues, “*The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in section J [previously noted above] of this policy in written applications or interviews for hiring or promotions and in any interviews or written self- evaluations conducted as part of reviews of current employees. Employees have a continuing affirmative duty to disclose any such misconduct.*” The policy was most recently revised on April 4, 2017.

(b) NMCD Policy CD-037400, *Recruitment*, states on page four, “*Incidents of sexual harassment shall be considered in determining whether to hire or promote anyone, or to enlist the services of any contractor, who may have contact with inmates.*” Interviews with the warden and Human Resource staff indicated the policy is implemented in practice. The warden indicated she would likely not enlist the services of a contractor who had allegations of sexually harassing inmates.

(c) NMCD Policy CD-030200, *Recruitment, Selection, and Hire of Correctional Officers, Correctional Officer Specialists and Probation and Parole Officers*, states on page two, “In accordance with state and federal statutes, a criminal record check shall be conducted on all new employees, contract personnel, interns, and volunteers prior to assuming their duties to identify whether there are criminal convictions that have a specific relationship to job performance or delivery of services.”

Phase I of the employment screening process includes the collection of background information and forms, and NCIC clearance checks. Applicants must pass all phases of the screening process to be considered for employment.

The agency uses the *NMCD Prison Rape Elimination Act Questionnaire for Prior Institutional Employers* form to determine if applicants have had any substantiated allegations of sexual abuse or sexual harassment, or if they resigned during any pending investigation of sexual abuse or sexual harassment.

This auditor made random selections for file reviews by utilizing an alphabetical list of 289 staff assigned to PNM. To randomly select 25 files, the auditor divided the total number by 25 and highlighted every 11th name on the list. All selected files were reviewed to confirm a criminal background records check had been completed, and any prior institutional employers had been contacted.

(d) NMCD Policy CD-030200, *Recruitment, Selection, and Hire of Correctional Officers, Correctional Officer Specialists and Probation and Parole Officers*, states on page two, “In accordance with state and federal statutes, a criminal record check shall be conducted on all new employees, contract personnel, interns, and volunteers prior to assuming their duties to identify whether there are criminal convictions that have a specific relationship to job performance or delivery of services.” The facility PCM maintains a list of all vendors (contractors), their completed criminal background check and required PREA training.

(e) NMCD conducts criminal background records checks every three years, which exceeds this provision of the standard. This is completed on a schedule. Background checks were completed of all employees in April 2016 and most recently in April/May 2019.

(f) NMCD Policy CD-037400, *Recruitment*, states on page four, “Applicants and contractor applicants who have engaged in sexual abuse in a prison, jail, lockup, community confinement facility, juvenile facility or other institution (as defined in 42 U.S.C. 1997); or have been convicted of engaging or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse, or; have been civilly or administrative adjudicated to have engaged in the activity described above, shall not be hired or promoted.” The policy continues, “The agency shall ask all applicants and employees who may have contact with inmates directly about previous misconduct described in section J [previously noted above] of this policy in written applications or interviews for hiring or promotions and in any interviews or written self- evaluations conducted as part of reviews of current employees. Employees have a continuing affirmative duty to disclose any such misconduct.”

NMCD Policy CD-060200, *Citizen Involvement Volunteers*, states on page three, “A criminal background check shall be conducted by the NMCD Coordinator of Faith-Based Services & Volunteer Programs on all volunteers who have direct, unsupervised contact with inmates.”

Human Resources requires all applicants to fill out and sign the *NMCD Self-Declaration of Sexual Abuse/Sexual Harassment* form. The form states:

“By signing below, you certify that, to the best of your knowledge and believe, the information you provide on this form is true, complete and made in good faith. You certify that your understanding is that material omissions regarding such misconduct, or the provision of materially false or

fraudulent information, you could be disqualified from further consideration for employment or if falsity is discovered after you have become employed, you can be terminated from employment. [sic]

The form requires applicants to answer questions regarding the misconduct described in provision (a) of this standard.

Human Resources requires all applicants to fill out and sign the *Background Information Request* form. The form includes the statement, *“Pursuant to the Prison Rape Elimination Act 28 C.F.R. part 115 (PREA) and as a condition of employment with the Corrections Department, employees must undergo criminal records checks periodically. Please be advised that if the Department finds an arrest or related information during the background checks which has not been previously disclosed by an employee as required by police, the employee may be subject to further investigation and disciplinary action.”*

Per a written memorandum submitted to the auditor by the Director of the New Mexico State Personnel Board, state employees do not complete self-evaluations. NMCD requires supervisors to complete evaluations on employees that they directly supervise. No interviews with staff indicated they had been asked to complete a self-evaluation.

(g) NMCD Policy CD-037400, *Recruitment*, states on page two, *“The NMCD relies upon the accuracy of information contained in the application/résumé, as well as the accuracy of other data presented throughout the hiring process and employment. Any misrepresentations, falsifications or material omissions in any of the information may result in the NMCD's exclusion of the individual from further consideration for employment or, if the person has been hired, disciplinary action up to and including termination.”* An interview with Human Resource staff indicated they would not hire an application who misrepresented or falsified information on their application and would consider the same as grounds for termination of an employee.

(h) A database of all requests, incoming and outgoing, is maintained by the agency PREA Coordinator. This auditor reviewed examples of information provided to institutional employers regarding substantiated allegations of sexual abuse or sexual harassment involving former employees.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of hiring and promotion decisions, as it relates to PREA.

Standard 115.18: Upgrades to facilities and technologies

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.18 (a)

- If the agency designed or acquired any new facility or planned any substantial expansion or modification of existing facilities, did the agency consider the effect of the design, acquisition, expansion, or modification upon the agency’s ability to protect inmates from sexual abuse? (N/A if agency/facility has not acquired a new facility or made a substantial expansion to existing facilities since August 20, 2012, or since the last PREA audit, whichever is later.)
 Yes No NA

115.18 (b)

- If the agency installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology, did the agency consider how such technology may enhance the agency's ability to protect inmates from sexual abuse? (N/A if agency/facility has not installed or updated a video monitoring system, electronic surveillance system, or other monitoring technology since August 20, 2012, or since the last PREA audit, whichever is later.)
 Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- Interview with agency head/designee
- Interview with agency PREA Coordinator
- Interview with the warden
- Interview with the PREA Compliance Manager
- Observation of facility operations while onsite

(a) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page nine, "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." Interviews with the agency head/designee, agency PREA Coordinator, warden and facility PREA Compliance Manager confirmed the agency has not designed or acquired any new facilities, nor planned a substantial expansion or modification of PNM. During the site review, the audit team did not observe any areas that appeared to be under construction for a substantial expansion or modification. The only area that appeared to be under construction was the kitchen in the Level II.

(b) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page nine, "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." During the audit period, the camera system at PNM was upgraded. Interviews with the warden and facility PREA Compliance Manager confirmed that the prevention of sexual abuse and sexual harassment was a factor in determining camera placement and if an upgrade for a specific camera was necessary to aid in detection. Cameras can be moved or augmented upon request by the facility PCM.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of upgrades to facilities and technologies, as it relates to PREA.

RESPONSIVE PLANNING

Standard 115.21: Evidence protocol and forensic medical examinations

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.21 (a)

- If the agency is responsible for investigating allegations of sexual abuse, does the agency follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.)
 Yes No NA

115.21 (b)

- Is this protocol developmentally appropriate for youth where applicable? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.) Yes No NA
- Is this protocol, as appropriate, adapted from or otherwise based on the most recent edition of the U.S. Department of Justice's Office on Violence Against Women publication, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents," or similarly comprehensive and authoritative protocols developed after 2011? (N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations.) Yes No NA

115.21 (c)

- Does the agency offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate? Yes No
- Are such examinations performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible? Yes No

- If SAFEs or SANEs cannot be made available, is the examination performed by other qualified medical practitioners (they must have been specifically trained to conduct sexual assault forensic exams)? Yes No
- Has the agency documented its efforts to provide SAFEs or SANEs? Yes No

115.21 (d)

- Does the agency attempt to make available to the victim a victim advocate from a rape crisis center? Yes No
- If a rape crisis center is not available to provide victim advocate services, does the agency make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member? (N/A if the agency *always* makes a victim advocate from a rape crisis center available to victims.) Yes No NA
- Has the agency documented its efforts to secure services from rape crisis centers? Yes No

115.21 (e)

- As requested by the victim, does the victim advocate, qualified agency staff member, or qualified community-based organization staff member accompany and support the victim through the forensic medical examination process and investigatory interviews? Yes No
- As requested by the victim, does this person provide emotional support, crisis intervention, information, and referrals? Yes No

115.21 (f)

- If the agency itself is not responsible for investigating allegations of sexual abuse, has the agency requested that the investigating agency follow the requirements of paragraphs (a) through (e) of this section? (N/A if the agency/facility is responsible for conducting criminal AND administrative sexual abuse investigations.) Yes No NA

115.21 (g)

- Auditor is not required to audit this provision.

115.21 (h)

- If the agency uses a qualified agency staff member or a qualified community-based staff member for the purposes of this section, has the individual been screened for appropriateness to serve in this role and received education concerning sexual assault and forensic examination issues in general? (N/A if agency *always* makes a victim advocate from a rape crisis center available to victims.) Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150102
- NMCD Policy 170100
- NMCD Policy 031801
- California Penal Code 830.5
- NMCD Memorandum of Understanding between PNM and Solace Crisis Center
- Written memorandum from New Mexico State Police Training Division
- NMCD *Prison Rape Elimination Act, Inmate Resource Guide*
- Interview with the PREA Compliance Manager
- Interview with SAFE/SANE
- Interviews with medical staff
- Interviews with random staff and random inmates

(a) Per NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, all allegations of sexual abuse and sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. Allegations involving potentially criminal behavior are referred to the New Mexico State Police (NMSP). NMSP officers, agency investigators and facility investigators follow uniform evidence protocols that maximize the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. There are nine facility investigators assigned to PNM.

(b) While the uniform protocol utilized by NMCD investigators and NMSP is developmentally appropriate for youth, PNM does not house youthful inmates. The protocol is adapted from the April 2012 edition of *"A National Protocol for Sexual Assault Medical Forensic Examination"*, published by the US Department of Justice. Interviews with a facility investigator indicated they are knowledgeable on obtaining usable physical evidence.

(c) NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, indicates on page one, *"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 (CD-170100.MM). The purpose of the examination is to determine the patient's stability for transfer to a site*

that provides forensic examinations. The facility examiner is to be mindful of the need to preserve any objective forensic evidence during the examination.”

NMCD Policy 170100, *Medical Clinical Services, Psychiatry Services, Detoxification, Intoxication and Withdrawal*, states on page 12, “Victims of sexual assault are referred under appropriate security provisions to a community health care facility for treatment and gathering of evidence, or if these procedures are performed in-house, the following guidelines are used:

- *A history is taken by health care professional who conduct an examination to document the extent of physical injury and to determine if referral to another medical facility is indicated. With victim’s consent, the examination includes the collection of evidence from victim, using a kit approved by the appropriate authority.*
- *Provision is made for testing of sexually transmitted diseases (i.e. HIV, gonorrhea, hepatitis, etc) and counseling, as appropriate.*
- *Prophylactic treatment and follow-up for sexually transmitted diseases shall be offered to all victims, as appropriate.*
- *Following the physical examination, there is availability of an evaluation by a mental health professional to [assess] the need for crisis intervention counseling and long-term follow-up.*
- *A report shall be made to the facility or program administrator or designee to assure separation of the victim from his or her assailant.”*

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. The following procedure will be followed:

1. *Emergency medical treatment will be provided by medical staff as needed. The Medical director or physician on call will be contacted to authorize referral to a Medical Center Emergency Room.*
2. *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.*
3. *The Medical Director will review the treatment recommendations from the Medical Center and ensure the inmate victim receives the indicated prophylactic treatment and testing.*
4. *A mental health evaluation of the inmate sexual assault victim will be conducted by mental health staff as soon as possible after the assault to assess the need for crisis intervention and long-term follow-up.*
5. *Healthcare staff will interact with the inmate assault victim in a neutral and non- judgmental manner. No circumstantial details will be solicited by the healthcare staff.*
6. *The collection of evidence from the perpetrator by the healthcare staff is not permitted.*
7. *The Health Services Authority or designee shall be responsible to contact the Warden or designee to ensure separation of the assault victim from his assailant.”*

Page five of the NMCD *Prison Rape Elimination Act, Inmate Resource Guide* states, “Victims of sexual abuse may be taken to an outside hospital for a medical forensic examination to collect evidence. You also have the right to refuse the examination. Victims also have access to facility medical and mental health services. Medical forensic examinations by an outside hospital and facility medical and mental health services are provided without charge.”

All forensic medical exams are provided offsite by Sexual Assault Nurse Practitioners, as verified through interview. The PAQ indicated there were no forensic medical exams provided during the audit period, and no inmate interviews indicated they had received a forensic medical exam during the audit period. Interviews with medical staff verified inmates are not financially responsible for forensic medical exams.

(d-e) NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, indicates on page two that upon the initial disclosure within 120 hours of a sexual assault, the shift supervisor will contact the designated victim advocate to provide accompaniment at a forensic medical exam. This step was not listed on NMCD form CD-150102-1, *Facility Response to Sexual Assault Check-list*. The auditor recommended it be added to ensure it is completed.

PNM has a written and signed Memorandum of Understanding (MOU) with Solace Crisis Center that was executed on January 17, 2017. The purpose of the MOU is to *“assure a unified effort between the entities involved to provide incarcerated victims...of sexual assault with confidential emotional support, crisis intervention, information, and referrals related to sexual violence as required by PREA...”*. Solace Crisis Center provides access to advocates via phone, mail, and email, as well as in-person services when resources and staff availability permit.

(f) NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states, *“In PREA investigations, the OPS shall request that the outside law enforcement agency’s investigators follow the requirements of PREA standard 115.21.”*

New Mexico State Police investigate allegations involving potentially criminal behavior. The training division of NMSP provided written verification to this auditor of their training, as follows:

“All New Mexico State Police Officers are required to attend and graduate a police academy in which they learn how to enforce laws and conduct criminal investigations. A variety of topics are taught in the academy to include, but not limited to, Sexual Assault Investigation, Crime Scene Processing/Evidence Preservation, Interview and Interrogation and Internal Affairs. Some of the topics covered in those classes are; legal issues; cultural competency; trauma and victim response; medical and mental health care issues of sexual assault victims; first responder responsibilities, evidence collection/processing and preservation; interviews of victims and interviewing suspects; ensuring proper documentation in the report; working with the District Attorneys and Victim’s Advocates; Miranda rights; and, application of Garrity rights. All New Mexico State Police Officers must successfully complete each block of instruction as well as pass a proficiency exam for each required class.”

These topics follow the requirements of provisions (a)-(e) of the standard.

(g) Auditor is not required to audit this provision.

(h) PNM utilizes confidential, community-based advocacy services as evidenced by the written and signed MOU with Solace Crisis Center. The agency does not utilize a qualified agency staff member or a qualified community-based staff member for advocacy services, to include accompaniment at forensic medical exams.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of evidence protocols and forensic medical examinations, as it relates to PREA.

Standard 115.22: Policies to ensure referrals of allegations for investigations

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.22 (a)

- Does the agency ensure an administrative or criminal investigation is completed for all allegations of sexual abuse? Yes No
- Does the agency ensure an administrative or criminal investigation is completed for all allegations of sexual harassment? Yes No

115.22 (b)

- Does the agency have a policy and practice in place to ensure that allegations of sexual abuse or sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior? Yes No
- Has the agency published such policy on its website or, if it does not have one, made the policy available through other means? Yes No
- Does the agency document all such referrals? Yes No

115.22 (c)

- If a separate entity is responsible for conducting criminal investigations, does the policy describe the responsibilities of both the agency and the investigating entity? (N/A if the agency/facility is responsible for criminal investigations. See 115.21(a).) Yes No NA

115.22 (d)

- Auditor is not required to audit this provision.

115.22 (e)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 150102
- NMCD Policy 0318011
- NMCD Webpage
- Interview with agency head/designee
- Interviews with investigative staff

(a-b) NMCD Policy CD-150101, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page one, *"The Agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment."* Per NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, all allegations of sexual abuse and sexual harassment are referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. Allegations involving potentially criminal behavior are referred to the New Mexico State Police (NMSP). Substantiated allegations are referred to the District Attorney to decide on prosecution.

NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states on page 11, *"When, during the course of an investigation, the Investigations Officer becomes aware that the facts discovered indicate a violation of criminal law, the Investigations Officer shall immediately report the violation to the Bureau Chief of OPS, and the appropriate Disciplinary Authority and CAO. The Bureau Chief of OPS shall consult with the NMCD General Counsel to determine whether reasonable cause exists to believe that a violation of state or federal criminal law has occurred and, if so, shall immediately notify the law enforcement agency with the appropriate jurisdiction."*

Information about the investigation process is available on the agency's webpage, at https://cd.nm.gov/wp-content/uploads/2019/05/The_Investigation_Process.pdf. It reiterates the agency's zero-tolerance policy, outlines the process for investigations and referrals and defines investigatory outcomes.

While onsite, the auditor reviewed two investigative files from 2018 and eight investigative files from 2019, to ensure investigations were completed for allegations of sexual abuse and sexual harassment. Interviews with investigative staff indicated they are knowledgeable of the process for case referral. The interview of the agency head/designee indicated the agency is committed to creating a sexually-safe environment for all inmates and has an established relationship with agency investigators to ensure allegations are investigated and referred properly.

(c) NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, states that all allegations of sexual abuse and sexual harassment are to be referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The policy states on page two, *"All allegations of criminal conduct including criminal sexual penetration of an inmate by a staff member must be reported to the appropriate law enforcement authorities by the investigations officer, (CD-031801.A.4). The investigations officer will serve as the*

liaison between the New Mexico Corrections Department (NMCD) and the appropriate law enforcement agency during the course of any continuing investigation, (CD-031801.G.3).” NMCD Policy CD-031801, Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting, outlines on page six, “If, in the process of conducting an investigation at the Local Level concerning what was believed to be a non-Level-1 matter, it is determined that a more serious offense has occurred, the local investigation must be suspended and contact immediately made with OPS. OPS will determine if an alternative investigation method or assignment is necessary.” All sexual misconduct, with staff or inmate contact, falls under the definition of a Level-1 offense.

(d) Auditor is not required to audit this provision.

(e) Auditor is not required to audit this provision.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is in full compliance with the standard of policies to ensure referrals of allegations for investigations, as it relates to PREA.

TRAINING AND EDUCATION

Standard 115.31: Employee training

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.31 (a)

- Does the agency train all employees who may have contact with inmates on its zero-tolerance policy for sexual abuse and sexual harassment? Yes No
- Does the agency train all employees who may have contact with inmates on how to fulfill their responsibilities under agency sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures? Yes No
- Does the agency train all employees who may have contact with inmates on inmates' right to be free from sexual abuse and sexual harassment Yes No
- Does the agency train all employees who may have contact with inmates on the right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment? Yes No
- Does the agency train all employees who may have contact with inmates on the dynamics of sexual abuse and sexual harassment in confinement? Yes No
- Does the agency train all employees who may have contact with inmates on the common reactions of sexual abuse and sexual harassment victims? Yes No
- Does the agency train all employees who may have contact with inmates on how to detect and respond to signs of threatened and actual sexual abuse? Yes No
- Does the agency train all employees who may have contact with inmates on how to avoid inappropriate relationships with inmates? Yes No
- Does the agency train all employees who may have contact with inmates on how to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates? Yes No
- Does the agency train all employees who may have contact with inmates on how to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities? Yes No

115.31 (b)

- Is such training tailored to the gender of the inmates at the employee's facility? Yes No
- Have employees received additional training if reassigned from a facility that houses only male inmates to a facility that houses only female inmates, or vice versa? Yes No

115.31 (c)

- Have all current employees who may have contact with inmates received such training?
 Yes No
- Does the agency provide each employee with refresher training every two years to ensure that all employees know the agency's current sexual abuse and sexual harassment policies and procedures? Yes No
- In years in which an employee does not receive refresher training, does the agency provide refresher information on current sexual abuse and sexual harassment policies? Yes No

115.31 (d)

- Does the agency document, through employee signature or electronic verification, that employees understand the training they have received? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Staff Training curriculum
- Staff training reports/acknowledgement forms
- Interviews with random staff

(a) NMCD provides four hours of "Corrections 101" training to all security staff during their training academy. Non-security staff are required to attend the same training during their first year of employment but attend 1.5 hours of facility in-service PREA training immediately upon being hired. This auditor reviewed all curriculum to ensure a comprehensive training program that provides detailed information on all ten required elements.

(b) NMCD's training is tailored for male, female and trans genders, as verified through curriculum review by this auditor.

(c) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page nine, "Prior to contact with any inmate, any employee, volunteer and/or contractor will have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection and response policies and procedures." Training is provided annually.

This auditor made random selections for training record reviews by utilizing an alphabetical list of 289 staff assigned to PNM. To randomly select 25 files, the auditor divided the total number by 25 and highlighted every 11th name on the list. All 25 files contained signed and dated training acknowledgement forms. Interviews with randomly selected staff indicate they are aware of the agency's zero-tolerance policy, their responsibilities and inmate rights regarding PREA, as well as interacting professionally and communicating effectively with LGBTI and gender nonconforming inmates.

(d) Each employee is required to sign and date an acknowledgement form stating they understand the training they have received. The form outlines the topics of the training:

1. *"The Prison Rape Elimination Act;*
2. *State Law 33-9-11;*
3. *NMCD's Policy on Zero Tolerance and how to fulfill their responsibilities under sexual abuse and sexual harassment prevention, detection, reporting, and response policies and procedures;*
4. *Inmates Rights to be free from Sexual Abuse and Sexual Harassment;*
5. *The Dynamics of Sexual Abuse in Prison;*
6. *How to detect and respond to signs of threatened and actual sexual abuse;*
7. *The five phases of sexual assault;*
8. *Sexual abuse prevention strategies;*
9. *Reporting incidents of sexual abuse;*
10. *The right of employees and inmates to be free from retaliation for reporting sexual abuse;*
11. *Investigations of incidents of sexual abuse;*
12. *The common reactions of sexual abuse and sexual harassment victims;*
13. *How to avoid inappropriate relationships with inmates;*
14. *Preservation of evidence in Sexual abuse investigations;*
15. *How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates; and,*
16. *How to comply with relevant laws related to mandatory reporting of sexual abuse to outside authorities."*

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of employee training as it relates to PREA.

Standard 115.32: Volunteer and contractor training

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.32 (a)

- Has the agency ensured that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures? Yes No

115.32 (b)

- Have all volunteers and contractors who have contact with inmates been notified of the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and informed how to report such incidents (the level and type of training provided to volunteers and contractors shall be based on the services they provide and level of contact they have with inmates)? Yes No

115.32 (c)

- Does the agency maintain documentation confirming that volunteers and contractors understand the training they have received? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 060200
- NMCD *Handbook for Volunteers*
- Volunteer and Contractor Training Curriculum
- Volunteer and Contractor training records
- Interview with warden

- Interview with Volunteer Coordinator
- Interviews with volunteers and contractors

(a-b) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page nine, “Prior to contact with any inmate, any employee, volunteer and/or contractor will have been trained on their responsibilities under the agency’s sexual abuse and sexual harassment prevention, detection and response policies and procedures.” NMCD Policy CD-060200, *Citizen Involvement Volunteers*, requires volunteers to attend new-hire orientation and training. Page four states, “The orientation session should address the history, policies, and regulations of the institution, as well as an overview of inmate needs, attitudes, misconduct, Prison Rape Elimination Act policies, and the goals of the Department. The training must be completed prior to assignment.” Page five states, “Volunteers will respect and comply with all institution policies, especially as they apply to confidentiality of records or other privileged information and security practices. Volunteers must read and sign the Statement of Understanding attachment.”

NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page five, “All staff, vendors, contractors and volunteers are required to immediately report: (1) any knowledge, suspicion or information regarding an incident of sexual abuse of sexual harassment that occurred in a facility, whether or not it is part of the agency; (2) retaliation against inmates or staff who reported such an incident; and (3) staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. These must immediately be reported to one or more of the following persons: The Secretary of Corrections, the Office of Professional Standards, the Inspector General, the Warden, the Shift Supervisor, the Institutional Investigator, District Supervisor or any other employee of the NMCD. When staff or the agency believes that an inmate is at substantial risk of imminent sexual abuse or sexual harassment, it shall take immediate action to protect the inmate.”

The NMCD *Handbook for Volunteers* is provided to all volunteers. It contains comprehensive information on providing services, good safety and security practices, items that can/cannot be brought into the facility, appropriate attire and how to interact with offenders. Volunteers must fill out a “*Prison Volunteer Guidelines Inventory Sheet*” after reading the handbook to show they understood the material.

Volunteers and contractors sign the NMCD PREA Acknowledgement form, which shows they have received and understood documentation on the following topics: The Prison Rape Elimination Act; State Law 33-9-11; NMCD’s policy on zero-tolerance; the right of inmates to be free from sexual abuse and sexual harassment; the dynamics of sexual abuse in prison; how to identify possible victims of sexual abuse; the five phases of sexual assault; sexual abuse prevention strategies; how to report incidents of sexual abuse; the right of employees of inmates to be free from retaliation for reporting sexual abuse; investigations of incidents of sexual abuse; the preservation of evidence in sexual abuse investigations; and, communicating with LGBTI inmates. Documentation for each volunteer/contractor is maintained by the facility PCM and the Volunteer Coordinator. This auditor reviewed a random sample of files to ensure forms have been completed, while onsite.

NMCD policy permits the warden to limit, postpone, place on probation or discontinue the services of any volunteer or volunteer organization. In an interview with the warden, she indicated she would immediately discontinue the services of any volunteer that she believed violated security procedures, to include engaging in sexual abuse and/or sexual harassment. Interviews with volunteers and contractors indicated they are aware of the agency’s zero-tolerance policy and their reporting responsibilities.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of volunteer and contractor training as it relates to PREA.

Standard 115.33: Inmate education

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.33 (a)

- During intake, do inmates receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment? Yes No
- During intake, do inmates receive information explaining how to report incidents or suspicions of sexual abuse or sexual harassment? Yes No

115.33 (b)

- Within 30 days of intake, does the agency provide comprehensive education to inmates either in person or through video regarding: Their rights to be free from sexual abuse and sexual harassment? Yes No
- Within 30 days of intake, does the agency provide comprehensive education to inmates either in person or through video regarding: Their rights to be free from retaliation for reporting such incidents? Yes No
- Within 30 days of intake, does the agency provide comprehensive education to inmates either in person or through video regarding: Agency policies and procedures for responding to such incidents? Yes No

115.33 (c)

- Have all inmates received the comprehensive education referenced in 115.33(b)?
 Yes No
- Do inmates receive education upon transfer to a different facility to the extent that the policies and procedures of the inmate's new facility differ from those of the previous facility?
 Yes No

115.33 (d)

- Does the agency provide inmate education in formats accessible to all inmates including those who are limited English proficient? Yes No
- Does the agency provide inmate education in formats accessible to all inmates including those who are deaf? Yes No
- Does the agency provide inmate education in formats accessible to all inmates including those who are visually impaired? Yes No
- Does the agency provide inmate education in formats accessible to all inmates including those who are otherwise disabled? Yes No

- Does the agency provide inmate education in formats accessible to all inmates including those who have limited reading skills? Yes No

115.33 (e)

- Does the agency maintain documentation of inmate participation in these education sessions? Yes No

115.33 (f)

- In addition to providing such education, does the agency ensure that key information is continuously and readily available or visible to inmates through posters, inmate handbooks, or other written formats? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 041000
- "Sexual Violence Awareness" brochure
- "Sexual Abuse/Assault – Prevention and Intervention" brochure
- *PNM Inmate Handbook*
- Completed Orientation Checklist forms
- Completed PREA Inmate Education Acknowledgement forms
- NMCD inmate postings within the facility
- Inmate file reviews
- Interview with intake staff
- Interviews with inmates having limited English proficiency or disabilities
- Interviews with random inmates

(a-b) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page five, "The agency shall provide comprehensive education to inmates either 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, and regarding agency policies

and procedures for responding to 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 information shall be communicated orally and in writing, in a language clearly understood by the offender, upon arrival at a facility. Information will be made available to inmates, as needed to include those who are Limited English Proficient, deaf, visually impaired, otherwise disabled and limited in reading skills.” NMCD Policy CD-041000, *Inmate Orientation*, states on page three, “During orientation all inmates shall be provided information about sexual abuse or assault including: prevention and intervention, self-protection, reporting sexual abuse or assault, and treatment and counseling.”

Upon arrival at PNM, new admits receive a PREA Intake Sheet that provides information regarding NMCD’s zero-tolerance policy, options for reporting and sexual abuse advocacy information, as follows:

“New Mexico Corrections Department has zero tolerance for all forms of sexual abuse, sexual misconduct or sexual harassment. The Department will impose disciplinary sanctions on any staff member who engages in, fails to report, or knowingly condones sexual abuse or sexual harassment of another inmate. Sexual Activity between inmates is strictly prohibited. Inmates can and will be disciplined for this behavior. All Allegations will be investigated.

You have the right to be free from sexual abuse and sexual harassment while in this facility. You have the right to be free from retaliation for reporting such incidents.

What to do if you or someone you know has been sexually abused

1) Report it

- a. Tell any staff member, contractor or volunteer*
- b. Call the NMCD PREA Hotline, 575-523-3303, (free call and is a recorded line)*
- c. File a grievance*
- d. Write to the Statewide PREA Coordinator, P.O. Box 639, Las Cruces, NM 88004*
- e. Tell a third party (family or friend) and ask them to make a report for you. They can call the facility directly or email NMCD-PREAreporting@state.nm.us*
- f. Write to an external third party, PREA Reporting Office, 1250 Academy Park Loop, Colorado Springs, Colorado 80910*
- g. You can remain anonymous*

2) Preserve Evidence

- a. See medical staff before you brush your teeth, shower, use the bathroom or change your clothing, as doing so will destroy valuable evidence.*

3) Support Services

- a. Ask to see medical or behavioral health within the facility*
- b. You can access victim advocacy by dialing *9999 from any inmate phone. This call is free, unrecorded and unmonitored. Everything you say to the person on the other line is confidential.*

4) False Allegations

NMCD takes all allegations seriously. Every allegation will be investigated. Anyone who intentionally provides a false statement of sexual victimization will be held accountable through NMCD policy and procedure and will be subject to disciplinary sanctions for making a false allegation.”

The PREA Intake Sheet is available in English and Spanish.

In addition to the PREA Intake Sheet, each inmate receives a copy of PNM’s *Inmate Handbook*, in English or Spanish. Comprehensive education about PREA can be located on pages 13-15. This includes information on definitions, avoiding victimization, reporting options and advocacy options.

(c) Using inmate rosters for each facility (Level II, North and South) sorted by housing, this auditor divided the total number of inmates by 20 and used the resulting number to randomly select inmates for file reviews. Each file reviewed contained the appropriately signed and dated forms. All inmates interviewed indicated they had received the required information.

Three inmates were housed at PNM since prior to the release of the standards. This auditor verified that all inmates received the required comprehensive education.

The procedure used for inmate education at PNM is directed by policy and implemented statewide.

(d) Because of the high percentage of inmates at PNM who speak Spanish, all documents are available in Spanish or English. Should an inmate speak another language, NMCD has contracted with Language Line Solutions for translation services. Interviews with inmates having limited English proficiency or disabilities indicated they had received PREA-related information in formats they were able to understand.

(e) All inmates sign and date form *CD-041001.1* acknowledging receipt of PREA Inmate Education:

"I, [inmate name] understand that the New Mexico Corrections Department has zero tolerance for all forms of sexual misconduct, including sexual harassment, inmate on inmate sexual assault/abuse, and staff sexual misconduct. I understand that all allegations will be investigated and may be referred to a local law enforcement for a criminal investigation. I am aware that sexual contact between an inmate and staff, including department employees, contractors and volunteers is prohibited. I also understand that neither NMCD or the State of New Mexico recognizes consensual contact between inmates and staff as a defense against allegations of sexual misconduct." Before signing and dating the form, the inmate checks boxes to indicate they have received the PREA Information sheet and Inmate Handbook and viewed the PREA video.

Using inmate rosters for each facility (Level II, North and South) sorted by housing, this auditor divided the total number of inmates by 20 and used the resulting number to randomly select inmates for file reviews. Each file reviewed contained the appropriately signed and dated forms. All inmates interviewed indicated they had received the required information.

(f) Information on the facility's zero-tolerance policy, how to report and advocacy options are stenciled on the wall permanently in English and Spanish and are available in individual inmate handbooks.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of inmate education as it relates to PREA.

Standard 115.34: Specialized training: Investigations

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.34 (a)

- In addition to the general training provided to all employees pursuant to §115.31, does the agency ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators receive training in conducting such investigations in confinement settings? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).) Yes No NA

115.34 (b)

- Does this specialized training include techniques for interviewing sexual abuse victims? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).) Yes No NA
- Does this specialized training include proper use of Miranda and Garrity warnings? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).) Yes No NA
- Does this specialized training include sexual abuse evidence collection in confinement settings? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).) Yes No NA
- Does this specialized training include the criteria and evidence required to substantiate a case for administrative action or prosecution referral? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).) Yes No NA

115.34 (c)

- Does the agency maintain documentation that agency investigators have completed the required specialized training in conducting sexual abuse investigations? (N/A if the agency does not conduct any form of administrative or criminal sexual abuse investigations. See 115.21(a).) Yes No NA

115.34 (d)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD *Investigating Sexual Assaults in a Correctional Setting* curriculum
- Investigative staff training records
- Interviews with investigative staff

(a) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page nine, "Medical, Mental Health, and Investigative Staff must take the training class for their respective specialized areas concerning PREA. The agency will maintain documentation that these specialized staff members have been trained." Facility and agency investigators conduct administrative investigations. Investigations involving potentially criminal behavior are referred to the New Mexico State Police.

(b) This auditor reviewed the curriculum utilized for NMCD's *Investigating Sexual Assaults in a Correctional Setting*. The training includes instruction on interviewing sexual abuse victims, the proper use of Miranda and Garrity warnings, evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. Interviews with investigative staff indicated they were knowledgeable in each aspect of sexual abuse and sexual harassment investigations.

(c) PNM has 13 facility investigators and NMCD has nine agency investigators. This auditor reviewed training certificates for all 19 staff to ensure the required training was received.

(d) This provision is not required to be audited.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of specialized training for investigations as it relates to PREA.

Standard 115.35: Specialized training: Medical and mental health care

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.35 (a)

- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to detect and assess signs of sexual abuse and sexual harassment? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) Yes No NA
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to preserve physical evidence of sexual abuse? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) Yes No NA
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how to respond effectively and professionally to victims of sexual abuse and sexual harassment? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) Yes No NA
- Does the agency ensure that all full- and part-time medical and mental health care practitioners who work regularly in its facilities have been trained in how and to whom to report allegations or suspicions of sexual abuse and sexual harassment? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) Yes No NA

115.35 (b)

- If medical staff employed by the agency conduct forensic examinations, do such medical staff receive appropriate training to conduct such examinations? (N/A if agency medical staff at the facility do not conduct forensic exams or the agency does not employ medical staff.) Yes No NA

115.35 (c)

- Does the agency maintain documentation that medical and mental health practitioners have received the training referenced in this standard either from the agency or elsewhere? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners who work regularly in its facilities.) Yes No NA

115.35 (d)

- Do medical and mental health care practitioners employed by the agency also receive training mandated for employees by §115.31? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners employed by the agency.) Yes No NA

- Do medical and mental health care practitioners contracted by or volunteering for the agency also receive training mandated for contractors and volunteers by §115.32? (N/A if the agency does not have any full- or part-time medical or mental health care practitioners contracted by or volunteering for the agency.) Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD PREA Specialized Training for Medical and Mental Health Staff
- Staff training records
- Interviews with medical and mental health staff

(a) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page nine, "Medical, Mental Health, and Investigative Staff must take the training class for their respective specialized areas concerning PREA. The agency will maintain documentation that these specialized staff members have been trained." The specialized training for medical and mental health staff is "Forensic medical Examinations Training for Correctional Medical and Mental Health Staff" and was last revised on May 9, 2017. This auditor reviewed the curriculum to ensure a comprehensive training program that provides detailed information on how to detect and assess signs of sexual abuse and sexual harassment; how to preserve physical evidence of sexual abuse; how to respond effectively and professionally to victims of sexual abuse and sexual harassment; and how and to whom to report allegations or suspicions of sexual abuse and sexual harassment. Interviews with medical and mental health staff indicated they were knowledgeable of the required elements.

(b) As the agency does not employ medical staff to conduct forensic medical examinations, this subsection of the standard does not apply.

(c) In addition to the PREA training provided to all employees, medical and mental health staff receive additional training specific to their responsibilities with PREA. This auditor reviewed the training module to ensure it provided detailed information on how to detect and assess signs of sexual abuse and sexual harassment; how to preserve physical evidence of sexual abuse; how to respond effectively and professionally to victims of sexual abuse and sexual harassment; and how and to whom to report allegations or suspicions of sexual abuse and sexual harassment. Interviews of medical and mental

health staff indicated they have received the training and are knowledgeable of the required elements. Utilizing a roster of 35 medical and mental health staff at PNM by ten and highlighted every third name until ten files had been selected to review. Each file contained signed and dated documentation of the specialized training required. Interviews with medical and mental health staff indicated they have received the training and are knowledgeable of the required elements.

(d) In addition to the specialized training, all medical and mental health staff receive training mandated for employees by §115.31. Utilizing a roster of 35 medical and mental health staff at PNM, this auditor divided by ten and highlighted every third name until ten files had been selected to review. Each file contained signed and dated documentation of the standard PREA training required.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of specialized training, medical and mental health care as it relates to PREA.

SCREENING FOR RISK OF SEXUAL VICTIMIZATION AND ABUSIVENESS

Standard 115.41: Screening for risk of victimization and abusiveness

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.41 (a)

- Are all inmates assessed during an intake screening for their risk of being sexually abused by other inmates or sexually abusive toward other inmates? Yes No
- Are all inmates assessed upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates? Yes No

115.41 (b)

- Do intake screenings ordinarily take place within 72 hours of arrival at the facility?
 Yes No

115.41 (c)

- Are all PREA screening assessments conducted using an objective screening instrument?
 Yes No

115.41 (d)

- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (1) Whether the inmate has a mental, physical, or developmental disability? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (2) The age of the inmate? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (3) The physical build of the inmate? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (4) Whether the inmate has previously been incarcerated?
 Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (5) Whether the inmate's criminal history is exclusively nonviolent?
 Yes No

- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (6) Whether the inmate has prior convictions for sex offenses against an adult or child? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (7) Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming (the facility affirmatively asks the inmate about his/her sexual orientation and gender identity AND makes a subjective determination based on the screener's perception whether the inmate is gender non-conforming or otherwise may be perceived to be LGBTI)? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (8) Whether the inmate has previously experienced sexual victimization? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (9) The inmate's own perception of vulnerability? Yes No
- Does the intake screening consider, at a minimum, the following criteria to assess inmates for risk of sexual victimization: (10) Whether the inmate is detained solely for civil immigration purposes? Yes No

115.41 (e)

- In assessing inmates for risk of being sexually abusive, does the initial PREA risk screening consider, as known to the agency, prior acts of sexual abuse? Yes No
- In assessing inmates for risk of being sexually abusive, does the initial PREA risk screening consider, as known to the agency, prior convictions for violent offenses? Yes No
- In assessing inmates for risk of being sexually abusive, does the initial PREA risk screening consider, as known to the agency, history of prior institutional violence or sexual abuse? Yes No

115.41 (f)

- Within a set time period not more than 30 days from the inmate's arrival at the facility, does the facility reassess the inmate's risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening? Yes No

115.41 (g)

- Does the facility reassess an inmate's risk level when warranted due to a referral? Yes No
- Does the facility reassess an inmate's risk level when warranted due to a request? Yes No
- Does the facility reassess an inmate's risk level when warranted due to an incident of sexual abuse? Yes No

- Does the facility reassess an inmate's risk level when warranted due to receipt of additional information that bears on the inmate's risk of sexual victimization or abusiveness?
 Yes No

115.41 (h)

- Is it the case that inmates are not ever disciplined for refusing to answer, or for not disclosing complete information in response to, questions asked pursuant to paragraphs (d)(1), (d)(7), (d)(8), or (d)(9) of this section? Yes No

115.41 (i)

- Has the agency implemented appropriate controls on the dissemination within the facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the inmate's detriment by staff or other inmates? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 080102
- NMCD Policy 150100
- CMIS Screening Tool
- Interview with PREA coordinator
- Interview with PREA compliance manager
- Interviews with staff responsible for conducting risk screening
- Interviews with randomly selected inmates
- Inmate file reviews

(a-e) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page six, "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 sexual harassment, 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." Screening staff complete the screening tool in the Criminal Management Information Systems (CMIS). CMIS includes an electronic PREA screening form (*Sexual Risk Indicator Screening*) that contains all ten considerations to assess an inmate's risk for sexual victimization as described in the standard. A second part of the PREA screening form assesses an inmate's risk of sexual abusiveness. Inmates are identified as *"at risk of sexual victimization"* or *"at risk of sexually aggressive behavior"*. Information from the screening form is considered in the final determination of the inmate's housing and program assignments.

NMCD Policy CD-080102, *Institutional Classification*, states on page three, *"Inmates will go through PREA risk screening within seventy-two (72) hours of arrival."* The classification officer is responsible for completing the PREA risk screening form. The classification officer makes a recommendation on housing and programming, which is reviewed by the Unit Manager or Classification Supervisor.

(f) Using inmate rosters for each facility (Level II, North and South) sorted by housing, this auditor divided the total number of inmates by 20 and used the resulting number to randomly select inmates for file reviews. Each inmate had 72-hour and 30-day screenings completed in a timely manner. Interviews with randomly selected inmates indicated they had been asked the screening questions.

(g) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page six, *"Inmates will be reassessed thereafter due to a referral, request, incident of sexual abuse or sexual harassment, 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-080102, *Institutional Classification*, states on page 21, *"Each classification officers shall be responsible for [completing] a PREA risk screening with seventy-two (72) hours of inmates arrival and whenever [and] inmate is involved in a PREA incident."* This auditor reviewed examples of new screening tool assessments made in conjunction with investigative reports to verify completion.

(h) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page six, *"Inmates shall not be disciplined for refusing to participate in the screening process."* Interviews with staff who conduct risk screening indicated that if an inmate refused to answer questions, they would complete the screening with information otherwise available to them. There were no interviews of inmates that indicated they had been disciplined for refusing to answer screening questions.

(i) The logon page for the Criminal Management Information Systems (CMIS) has the following warning: *"You are accessing a confidential information database. This information is for official use only and is restricted to those individuals with a need to know. Unauthorized disclosure of this information is a violation of NMCD policies. By clicking 'Application Logon' I acknowledge and accept full responsibility for the proper use of this information."* Interviews with screening staff indicated they are aware that information obtained during the screening process is to remain confidential unless there is a legitimate need to know.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of screening for risk of sexual victimization and abusiveness as it relates to PREA.

Standard 115.42: Use of screening information

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.42 (a)

- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Housing Assignments? Yes No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Bed assignments? Yes No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Work Assignments? Yes No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Education Assignments? Yes No
- Does the agency use information from the risk screening required by § 115.41, with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive, to inform: Program Assignments? Yes No

115.42 (b)

- Does the agency make individualized determinations about how to ensure the safety of each inmate? Yes No

115.42 (c)

- When deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, does the **agency** consider, on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether a placement would present management or security problems (NOTE: if an agency by policy or practice assigns inmates to a male or female facility on the basis of anatomy alone, that agency is not in compliance with this standard)? Yes No
- When making housing or other program assignments for transgender or intersex inmates, does the agency consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether a placement would present management or security problems? Yes No

115.42 (d)

- Are placement and programming assignments for each transgender or intersex inmate reassessed at least twice each year to review any threats to safety experienced by the inmate?
 Yes No

115.42 (e)

- Are each transgender or intersex inmate's own views with respect to his or her own safety given serious consideration when making facility and housing placement decisions and programming assignments? Yes No

115.42 (f)

- Are transgender and intersex inmates given the opportunity to shower separately from other inmates? Yes No

115.42 (g)

- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing: lesbian, gay, and bisexual inmates in dedicated facilities, units, or wings solely on the basis of such identification or status? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I inmates pursuant to a consent decree, legal settlement, or legal judgement.) Yes No NA
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing: transgender inmates in dedicated facilities, units, or wings solely on the basis of such identification or status? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I inmates pursuant to a consent decree, legal settlement, or legal judgement.) Yes No NA
- Unless placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting lesbian, gay, bisexual, transgender, or intersex inmates, does the agency always refrain from placing: intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status? (N/A if the agency has a dedicated facility, unit, or wing solely for the placement of LGBT or I inmates pursuant to a consent decree, legal settlement, or legal judgement.)
 Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 150800
- Interview with PREA coordinator
- Interview with PREA compliance manager
- Interview with staff responsible for risk screening
- Interview with inmates who identify as transgender, intersex, gay, bisexual
- Inmate file reviews
- Observation of facility operations while onsite

(a-b) Based on the information obtained from the PREA screening tool, the classification officer makes a recommendation on housing and programming, which is reviewed by the Unit Manager or Classification Supervisor before approval and assignment. The audit team interviewed custody staff and work assignment supervisors to determine if inmates at risk of being victimization were appropriately placed and supervised. When the audit team toured work and program locations, they noted that multiple areas had a sufficient number of security mirrors installed to reduce or eliminate blind spots, and doors were properly secured.

(c) NMCD Policy CD-150801, *Transgender Inmates*, states on page one, "Transgender offenders will be placed in male or female facilities as determined on a case-by-case basis. Placement decisions shall not be made solely on the basis of anatomy or sex assigned at birth." Upon entering NMCD custody, transgender inmates are temporarily housed in a single cell for their own protection. NMCD utilizes a Gender Classification Committee to make individualized facility placement decisions for transgender inmates. Committee members include the agency PREA Coordinator, the Director of Adult Prisons, the Health Services Director and the Behavioral Health Director. The committee reviews documentation and decides about placement in an expeditious manner. The inmate's own views of their personal safety are taken into consideration when determining housing and in determining which gender of staff member will perform searches of that inmate. When necessary, the committee will consult with the Transgender Resource Center of New Mexico or another identified member of the LGBTI community to advise on appropriate housing and/or the programs and services needed by the individual.

The Gender Classification Committee considers the following information:

- The inmate's appearance and behavior, and whether it matches the gender marker on the inmate's arresting paperwork or other identification materials;
- The inmate's self-report;
- The inmate's history, if known;
- Any information from the transporting or arresting agency;
- Social gender role in the community prior to incarceration;
- Any past diagnosis or treatment for gender dysphoria; and,
- An assessment by medical and mental health staff of the potential health impact of placement in a male or female setting.

Per a written memorandum provided by the facility PCM, no transgender inmates have requested to be transferred from PNM to facility for female inmates.

(d-e) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page six, "Transgender and Intersex inmates shall be screened every six months." This is also reflected in NMCD Policy CD-150801, *Transgender Inmates*, on page two. Assessments for transgender inmates at PNM take place in June and December.

NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page six, "A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration." NMCD Policy CD-150801, *Transgender Inmates*, states on page one, "A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration."

This auditor reviewed four examples of transgender assessments. Interviews with transgender inmates indicated they meet with a staff member twice a year and feel their own views with respect to their safety are given serious consideration.

(f) The shower configuration in the North and South facilities are of single stall construction with solid doors and a small window with bars in the upper portion of the door. The Level II facility does not have individual showers. If a transgender inmate were to be assigned to the Level II facility, they would be permitted to shower at count time when other inmates are locked down. NMCD Policy CD-150801, *Transgender Inmates*, states on page two, "Transgender inmates who wish to shower separately, in facilities with dorm style showers, must request to do so in writing to the Warden. The Warden will designate, by a memo, two shower times (one morning and one evening) whereas the individual making the request can shower privately during count time. These will be the only permitted count times as documented by the Warden and the PREA Compliance Manager at the facility. A copy of the request and memorandum will be forwarded to the Agency PREA Coordinator."

The facility PCM advised this auditor that no transgender inmates have been assigned to the Level II facility. Interviews with transgender inmates indicated they can shower separately from other inmates.

(g) According to the agency PREA Coordinator, PNM is not subject to a consent decree, legal settlement, or legal judgment for protecting LGBTI inmates, and does not place those inmates in dedicated facilities, units, or wings solely based on such identification. No transgender inmates indicated in their interviews that they had been housed in such a manner.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of use of screening information as it relates to PREA.

Standard 115.43: Protective Custody

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.43 (a)

- Does the facility always refrain from placing inmates at high risk for sexual victimization in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers? Yes No
- If a facility cannot conduct such an assessment immediately, does the facility hold the inmate in involuntary segregated housing for less than 24 hours while completing the assessment? Yes No

115.43 (b)

- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Programs to the extent possible? Yes No
- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Privileges to the extent possible? Yes No
- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Education to the extent possible? Yes No
- Do inmates who are placed in segregated housing because they are at high risk of sexual victimization have access to: Work opportunities to the extent possible? Yes No
- If the facility restricts any access to programs, privileges, education, or work opportunities, does the facility document the opportunities that have been limited? (N/A if the facility *never* restricts access to programs, privileges, education, or work opportunities.) Yes No NA
- If the facility restricts any access to programs, privileges, education, or work opportunities, does the facility document the duration of the limitation? (N/A if the facility *never* restricts access to programs, privileges, education, or work opportunities.) Yes No NA
- If the facility restricts any access to programs, privileges, education, or work opportunities, does the facility document the reasons for such limitations? (N/A if the facility *never* restricts access to programs, privileges, education, or work opportunities.) Yes No NA

115.43 (c)

- Does the facility assign inmates at high risk of sexual victimization to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged? Yes No
- Does such an assignment not ordinarily exceed a period of 30 days? Yes No

115.43 (d)

- If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, does the facility clearly document the basis for the facility's concern for the inmate's safety? Yes No
- If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, does the facility clearly document the reason why no alternative means of separation can be arranged? Yes No

115.43 (e)

- In the case of each inmate who is placed in involuntary segregation because he/she is at high risk of sexual victimization, does the facility afford a review to determine whether there is a continuing need for separation from the general population EVERY 30 DAYS? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 141100
- NMCD Policy 141500
- NMCD Policy 150100
- Inmate housing records
- Interview with warden
- Interview with staff who supervise segregated housing
- Interviews with random inmates

NMCD Policy CD-141100, *Protective Custody Policy*, states on page one, "Inmates with protective custody issues will only be placed in restrictive housing if all other viable alternatives have been exhausted." NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page six, "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 NMCD Special Management Policies."

The facility PCM submitted a written memorandum indicating PNM has not used involuntary segregation as a means of separation or protection for inmates at high risk for sexual victimization. While onsite, this auditor reviewed housing records of those inmates determined to be at high risk of sexual victimization and confirmed that none had been assigned to protective custody housing based on their high risk. There were no inmate interviews that indicated this had been done in the past. Interviews with the warden and staff who supervise segregated housing indicated they were not aware of any times that an inmate at high risk of sexual victimization has been placed in restrictive housing as a means of separation.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of screening for risk of protective custody as it relates to PREA.

REPORTING

Standard 115.51: Inmate reporting

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.51 (a)

- Does the agency provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment? Yes No
- Does the agency provide multiple internal ways for inmates to privately report retaliation by other inmates or staff for reporting sexual abuse and sexual harassment? Yes No
- Does the agency provide multiple internal ways for inmates to privately report staff neglect or violation of responsibilities that may have contributed to such incidents? Yes No

115.51 (b)

- Does the agency also provide at least one way for inmates to report sexual abuse or sexual harassment to a public or private entity or office that is not part of the agency? Yes No
- Is that private entity or office able to receive and immediately forward inmate reports of sexual abuse and sexual harassment to agency officials? Yes No
- Does that private entity or office allow the inmate to remain anonymous upon request? Yes No
- Are inmates detained solely for civil immigration purposes provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security? (N/A if the facility *never* houses inmates detained solely for civil immigration purposes) Yes No NA

115.51 (c)

- Does staff accept reports of sexual abuse and sexual harassment made verbally, in writing, anonymously, and from third parties? Yes No
- Does staff promptly document any verbal reports of sexual abuse and sexual harassment? Yes No

115.51 (d)

- Does the agency provide a method for staff to privately report sexual abuse and sexual harassment of inmates? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150101
- NMCD *Intergovernmental Agreement for PREA Reporting* with CDOC
- NMCD inmate postings/paintings within the facility
- "PREA Fact Sheets" employee posting
- *PNM Inmate Handbook*
- Interview with PREA Compliance Manager
- Interviews with random staff
- Interviews with random contractors and volunteers
- Interviews with random inmates

(a) NMCD inmates have multiple internal mechanisms for reporting. NMCD Policy CD-150101, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, outlines the methods available to inmates to report on page two: "Inmate(s) who are a witness to or the victim of abuse or sexual misconduct, humiliation, personal injury, disease, property damage, harassment or punitive interference with the daily functions are encouraged to immediately report the incident by: reporting the incident to any staff member or employee, correctional officer, contract staff or volunteer; filing a grievance; placing 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); providing the information either verbally or in writing by any means and to any person with whom the inmate is comfortable making the report; and/or, sending the information directly to the Secretary, the Office of Professional Standards, Wardens, Shift Commanders, or District Supervisors and /or Region Managers in the case of probation and parole. All such reports shall be handled in a confidential manner."

Pages 14 and 15 of the *PNM Inmate Handbook* state, "If you have been assaulted, the person(s) who assaulted you can only be disciplined and/or prosecuted if the sexual misconduct is reported. You should immediately report it to a staff member (Correctional Officer, Supervisor, Warden, Unit Manager, Mental Health or Medical Provider); NMCD PREA line 1-575-523-303; or have a family member or friend report it to the facility or via email at NMCD-PREAREporting@state.nm.us. You will be referred for a medical and mental health exam and treatment. You do not have to name the assailant in order to receive medical treatment."

Pages five and six of NMCD's *Prison Rape Elimination Act, Inmate Resource Guide* outlines the methods a victim or witness can use to report a sexual assault: "To report a sexual assault, a victim or witness can: 1. Write directly to the warden or the facility investigator. 2. File a grievance 3. Tell any staff member verbally or by a letter 4. Disclose the assault to a medical or mental health provider. 5. Call the Rape Crisis Center of Central New Mexico at 888-881-8282. 6. Call the facility's sexual assault hotline at 505-523-3303. 7. Have a family member or friend report it to the facility. 8. Your family or outside contacts may also email NMCD-PREAREporting@state.nm.us."

The number for internal reporting from an inmate phone is clearly identified in Spanish and English in the permanent stenciling on the walls of the housing units.

(b) NMCD has a signed Memorandum of Understanding (MOU) with the Colorado Department of Corrections (CDOC) to act as the external reporting option for NMCD inmates. The MOU states, "CDOC will establish a means for NMCD offenders to report claims or allegations of sexual abuse, sexual assault or sexual harassment to CDOC (the 'receiving party'). This Intergovernmental Agreement does not convey or include within its scope any authority for the receiving Party to investigate any reports received from NMCD offenders. The receiving Party's sole function with regard to such reports shall be to immediately forward them to NMC, which shall be responsible for investigating them. Allegations reported by NMCD offenders may be done anonymously. NMCD will create a form that will be provided to offenders or NMCD may use the reporting form attached as Exhibit B: Reporting Form. This form will allow offenders to report issues and allegations of sexual abuse, sexual assault and sexual harassment by mail to CDOC...CDOC will log all reports received, then immediately forward the reported claim or allegation by scanning and emailing it to NMCD, without regard for whether the form is apparently complete or incomplete."

Page 15 of the *PNM Inmate Handbook* states, "If you would prefer reporting to a third party, outside of NMCD, you may write to: PREA Reporting Office, 2862 South Circle Drive, Colorado Springs, Colorado, 80906."

PNM does not detain inmates solely for civil immigration purposes.

Interviews with random inmates indicated they are aware of available reporting mechanisms.

(c) NMCD Policy CD-150101, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page two: "Inmate(s) who are a witness to or the victim of abuse or sexual misconduct, humiliation, personal injury, disease, property damage, harassment or punitive interference with the daily functions are encouraged to immediately report the incident by: ...providing the information either verbally or in writing by any means and to any person with whom the inmate is comfortable making the report...All such reports shall be handled in a confidential manner."

NMCD Policy CD-150101, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page two, "Any employee who witnesses or receives 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."

"PREA Fact Sheets" are posted throughout the facility in staff areas with general information and reminders about PREA, including: "You are required to report any knowledge, suspicion, or information regarding an incident that occurred in the facility; as well as retaliation against inmates and/or staff that

reported an incident. When an inmate alleges sexual abuse can he/she do so verbally, in writing, anonymously, and third party. If an inmate reports sexual abuse or misconduct to you or you observe these acts, you must immediately report.”

Staff are trained on these expectations during PREA-related trainings, as verified by curriculum review and through interviews with random staff.

(d) PNM staff, volunteers and contractors can report sexual abuse and sexual harassment privately to any supervisor. Interviews with staff and contractors did not indicate that any person had concerns with regards to private reporting mechanisms and all stated that they felt comfortable reporting.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of screening for inmate reporting as it relates to PREA.

Standard 115.52: Exhaustion of administrative remedies

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.52 (a)

- Is the agency exempt from this standard? NOTE: The agency is exempt ONLY if it does not have administrative procedures to address inmate grievances regarding sexual abuse. This does not mean the agency is exempt simply because an inmate does not have to or is not ordinarily expected to submit a grievance to report sexual abuse. This means that as a matter of explicit policy, the agency does not have an administrative remedies process to address sexual abuse. Yes No

115.52 (b)

- Does the agency permit inmates to submit a grievance regarding an allegation of sexual abuse without any type of time limits? (The agency may apply otherwise-applicable time limits to any portion of a grievance that does not allege an incident of sexual abuse.) (N/A if agency is exempt from this standard.) Yes No NA
- Does the agency always refrain from requiring an inmate to use any informal grievance process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse? (N/A if agency is exempt from this standard.) Yes No NA

115.52 (c)

- Does the agency ensure that: An inmate who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.) Yes No NA
- Does the agency ensure that: Such grievance is not referred to a staff member who is the subject of the complaint? (N/A if agency is exempt from this standard.) Yes No NA

115.52 (d)

- Does the agency issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance? (Computation of the 90-day time period does not include time consumed by inmates in preparing any administrative appeal.) (N/A if agency is exempt from this standard.) Yes No NA
- If the agency claims the maximum allowable extension of time to respond of up to 70 days per 115.52(d)(3) when the normal time period for response is insufficient to make an appropriate decision, does the agency notify the inmate in writing of any such extension and provide a date by which a decision will be made? (N/A if agency is exempt from this standard.)
 Yes No NA
- At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, may an inmate consider the absence of a response to be a denial at that level? (N/A if agency is exempt from this standard.) Yes No NA

115.52 (e)

- Are third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse? (N/A if agency is exempt from this standard.)
 Yes No NA
- Are those third parties also permitted to file such requests on behalf of inmates? (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.) (N/A if agency is exempt from this standard.) Yes No NA
- If the inmate declines to have the request processed on his or her behalf, does the agency document the inmate's decision? (N/A if agency is exempt from this standard.)
 Yes No NA

115.52 (f)

- Has the agency established procedures for the filing of an emergency grievance alleging that an inmate is subject to a substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.) Yes No NA
- After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, does the agency immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken? (N/A if agency is exempt from this standard.)
 Yes No NA
- After receiving an emergency grievance described above, does the agency provide an initial response within 48 hours? (N/A if agency is exempt from this standard.) Yes No NA

- After receiving an emergency grievance described above, does the agency issue a final agency decision within 5 calendar days? (N/A if agency is exempt from this standard.)
 Yes No NA
- Does the initial response and final agency decision document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse? (N/A if agency is exempt from this standard.) Yes No NA
- Does the initial response document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.) Yes No NA
- Does the agency's final decision document the agency's action(s) taken in response to the emergency grievance? (N/A if agency is exempt from this standard.) Yes No NA

115.52 (g)

- If the agency disciplines an inmate for filing a grievance related to alleged sexual abuse, does it do so ONLY where the agency demonstrates that the inmate filed the grievance in bad faith? (N/A if agency is exempt from this standard.) Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 150500
- *PNM Inmate Handbook*
- Review of completed grievance forms
- Interview with warden
- Interview with grievance coordinator
- Interviews with random inmates

(a) 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 page five, "...the following matters are grievable by inmates: Department personnel sexual misconduct.

This also includes any Prison Rape and Elimination Act, (PREA) [sic]. NMCD inmates are presented with written notification of the inmate grievance procedure upon arriving at the Reception and Diagnostic Center.

An interview with the grievance coordinator indicated no PREA-related grievances had been filed at PNM during the audit period.

(b) NMCD does not have a time limit for inmates to submit PREA-related grievances. NMCD Policy CD-150501, *Inmate Grievances*, states on page three, *“There [are] no time limits imposed on when an inmate may submit a grievance regarding an allegation of sexual abuse. An inmate who files a grievance relating to sexual abuse shall not be required to use any informal process or otherwise be required to attempt to resolve this matter with staff.”*

NMCD Policy CD-150500, *Inmate Grievances*, states on page six, *“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. This will not be subject to this standard and must be treated as emergency formal grievances.”*

(c) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page seven, *“Inmates that are victims of sexual abuse or sexual harassment shall have an option to report the incident to a designated staff member other than an immediate point-of- contact line officer.”*

Page 13 of the *PNM Inmate Handbook* states, *“Inmates filing grievances on Department personnel sexual misconduct must mark the grievance form as ‘Emergency’. All grievances on Department personnel sexual misconduct will be completed in an expedited manner with fairness and consistency. The PREA Captain will notify the Warden or his or her designee within one (1) working day of the verifiable emergency grievance. The PREA Captain shall complete a referral for an OPS investigation on all PREA related grievances. The PREA Captain will immediately respond to the inmate with ‘this grievance has been referred for investigation to the Office of Professional Standards.’ The investigation will be handled by an investigator that has completed special training for sexual assault cases.”*

PREA-related grievances are referred to the Office of Professional Standards, and not a staff member who is the subject of the complaint.

(d) NMCD Policy CD-150500, *Inmate Grievances*, states on page seven, *“Grievances shall be processed in a timely manner. No more than 90 working days will pass from the filing of a grievance by an inmate to the appeal decision. The exception to this is a PREA grievance. A PREA grievance must be completed within ninety (90) days of submission. An extension of time may be requested to respond, of up to seventy (70) days, with documentation showing the need if the normal period for response is insufficient to make an appropriate decision. Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.”* The time period begins when the grievance has been filed with the Grievance Officer. If a grievance is not disposed of within the specified time limits, the inmate shall be deemed to have exhausted administrative remedies for that complaint.

(e) NMCD Policy CD-150500, *Inmate Grievances*, states on page five, *“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 or sexual harassment, and shall also be permitted to file such requests on behalf of the inmates. 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 grievances may be filed on behalf of a third party regarding an alleged victim. If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision."

(f) NMCD Policy CD-150500, Inmate Grievances, states on page eight, "An emergency grievance shall be given priority. All PREA-related grievances shall be considered an emergency grievance. Once it is determined that such factor exists, the grievance will be deemed an emergency grievance and it shall be forwarded without substantive review immediately to the Warden to correcting the situation. Emergency grievances may be immediately appealed to the State-wide Grievance/Disciplinary Appeals Manager if the emergency grievance after investigation and Warden's review cannot resolve the issues presented at their facility level. Documentation must be attached to verify the inability for resolution. Emergency grievances shall receive an expedited response at every level as appropriate to the needs of the emergency situation, but in no event will the time for response exceed three (3) working days from the time the grievance is received by the Grievance Officer. The exceptions are PREA grievances responses which will be completed within forty-eight (48) hours of receipt of the grievance. Inmates filing grievances for Department personnel sexual misconduct must mark the grievance form as "Emergency". All grievances for Department personnel sexual misconduct will be completed in an expedited manner with fairness and consistency. The Grievance Officer will notify the Warden or his or her designee within one (1) working day of the verifiable emergency grievance. The Warden shall complete a referral for an OPS investigation on all PREA related grievances. The grievance officer will immediately respond to the inmate with "this grievance has been referred for investigation to Office of Professional Standards. The investigation will be handled by an investigator that has completed special training for sexual assault cases. After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the agency shall immediately forward the grievance (or any portion thereof that alleges their substantial risk of imminent sexual abuse) to a level of review at which immediate corrective action may be taken, shall provide an initial response with 48 hours, and shall issue a final agency decision with 5 calendar days. The initial response and final agency decision shall document the agency's determination whether the inmate is in substantial risk of imminent sexual abuse and the actions taken in response to the emergency grievance."

An interview with the grievance coordinator indicated that all PREA-related grievances are treated as emergency grievances, and that if she received one, she would document it and immediately provide it to the facility PCM and warden for appropriate referral.

(g) NMCD Policy CD-150500, Inmate Grievances, states on page eight, "Inmates shall not be subject to retaliation, reprisal or discipline for the legitimate use of the grievance procedure." NMCD Policy CD-150501, Inmate Grievances, states on page three, "Inmates filing grievance for alleged staff sexual misconduct shall not be subject to retaliation, reprisal or discipline for the legitimate use of filing...Inmates filing a false complaint will be subject to disciplinary action consistent with current disciplinary policy provisions. The agency may discipline an inmate for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the inmate filed the grievance in bad faith."

An interview with the grievance coordinator indicated that no inmates had been disciplined for filing a PREA-related grievance.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of screening for exhaustion of administrative remedies as it relates to PREA.

Standard 115.53: Inmate access to outside confidential support services

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.53 (a)

- Does the facility provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations? Yes No
- Does the facility provide persons detained solely for civil immigration purposes mailing addresses and telephone numbers, including toll-free hotline numbers where available of local, State, or national immigrant services agencies? (N/A if the facility *never* has persons detained solely for civil immigration purposes.) Yes No NA
- Does the facility enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible? Yes No

115.53 (b)

- Does the facility inform inmates, prior to giving them access, of the extent to which such communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws? Yes No

115.53 (c)

- Does the agency maintain or attempt to enter into memoranda of understanding or other agreements with community service providers that are able to provide inmates with confidential emotional support services related to sexual abuse? Yes No
- Does the agency maintain copies of agreements or documentation showing attempts to enter into such agreements? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- PNM Memorandum of Understanding with Solace Crisis Treatment Center
- *PNM Inmate Handbook*
- *NMCD Prison Rape Elimination Act (PREA) Resource Guide for Inmates*
- Interview with confidential community-based advocate
- Interview with PREA Compliance Manager
- Interviews with random inmates

(a-c) NMCD and PNM has a signed Memorandum of Understanding (MOU) with Solace Crisis Center (SCTC) to “provide incarcerated victims or complainants of sexual assault with confidential emotional support, crisis intervention, information, and referrals related to sexual violence” as required by the PREA standards. SCTC is a non-profit agency located in Santa Fe, New Mexico. SCTC provides all services in English and Spanish, with interpretation services available for other language access needs. SCTC has a 24/7 crisis hotline and a Sexual Assault Nurse Exam Facility onsite. This auditor left two messages but did not have return contact from SCTC. Per the MOU, NMCD will inform inmates, prior to giving them access, of the extent to which communications will be monitored and the extent to which reports of abuse will be forwarded to authorities in accordance with mandatory reporting laws. If confidential information must be disclosed, SCTC and PNM staff will not share any information beyond what is necessary to address the immediate safety concern or to otherwise comply with applicable law. SCTC provides access to an advocate via phone, mail or e-mail, and in-person advocacy when resources and staff availability permit. SCTC is required to maintain confidentiality and ensure that inmates are aware of their right to make an anonymous report. The MOU was executed on August 9, 2019.

Inmates can dial *9999 directly from any inmate phone to reach an advocate at La Pinion. La Pinion is a non-profit sexual assault response agency in Southern New Mexico, providing comprehensive sexual assault recovery services for sexual abuse victims and their families. La Pinion's services include a 24-hour crisis line, victim advocacy, accompaniment at forensic medical exams and prevention education services. NMCD has engaged with an advocate at La Pinion to be the party who answers all incarcerated survivor advocacy calls. La Pinion advised this auditor that they respond to all calls from incarcerated survivors at PNM, access the situation and relays the information provided to the facility PCM or Solace Crisis Treatment Center for further action. La Pinion has had 73 contacts with incarcerated survivors at PNM in 2019.

The Transgender Resource Center of New Mexico (TGRCNM) provides advocacy services specifically for transgender inmates. TGRCNM is a non-profit organization that provides support, community and connection to transgender, gender nonconforming, nonbinary and gender variant people and their families through advocacy, education and direct services. TGRCNM advised this auditor that while they do not have an MOU with NMCD, they have collaborated with the agency to provide training for staff and support services for transgender women at PNM. The center engages incarcerated transgender women through written correspondence, telephonic communication and in-person visits. The center has informally assisted with facilitating communication between incarcerated transgender women and NMCD staff. Staff at TGRCNM did not have any specific concerns related to the sexual safety of transgender women in custody at PNM.

The *NMCD Prison Rape Elimination Act (PREA) Resource Guide for Inmates* states on page 29, “If you are worried about confidentiality, before you share any information, be sure to ask the agency or hotline advocate if you can speak confidentially. Different agencies have different confidentiality policies. You may call the 24/7 rape crisis hotline for emotional support and crisis intervention. These calls are free, confidential and are not recorded.”

The *NMCD Prison Rape Elimination Act (PREA) Resource Guide for Inmates* provides contact information for Just Detention International; 1 in 6; the Gay, Lesbian, Bisexual and Transgender National Help Center; the Project on Addressing Prison Rape; and the Rape, Abuse & Incest National Network.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of inmate access to outside confidential support services as it relates to PREA.

Standard 115.54: Third-party reporting

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.54 (a)

- Has the agency established a method to receive third-party reports of sexual abuse and sexual harassment? Yes No
- Has the agency distributed publicly information on how to report sexual abuse and sexual harassment on behalf of an inmate? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- Memorandum of Understanding with the Colorado Department of Corrections
- *PNM Inmate Handbook*
- NMCD website

(a) NMCD has a signed Memorandum of Understanding (MOU) with the Colorado Department of Corrections (CDOC) to act as the external reporting option for NMCD inmates. The MOU states, “CDOC will establish a means for NMCD offenders to report claims or allegations of sexual abuse, sexual assault or sexual harassment to CDOC (the ‘receiving party’). This Intergovernmental Agreement does not convey or include within its scope any authority for the receiving Party to investigate any reports received from NMCD offenders. The receiving Party’s sole function with regard to such reports shall be to immediately forward them to NMC, which shall be responsible for investigating them. Allegations reported by NMCD offenders may be done anonymously. NMCD will create a form that will be provided to offenders or NMCD may use the reporting form attached as Exhibit B: Reporting Form. This form will allow offenders to report issues and allegations of sexual abuse, sexual assault and sexual harassment by mail to CDOC...CDOC will log all reports received, them immediately forward the reported claim or allegation by scanning and emailing it to NMCD, without regard for whether the form is apparently complete or incomplete.”

Page 15 of the *PNM Inmate Handbook* states, “If you would prefer reporting to a third party, outside of NMCD, you may write to: PREA Reporting Office, 2862 South Circle Drive, Colorado Springs, Colorado, 80906.”

Information about third-party reporting is available on NMCD’s website at <https://cd.nm.gov/office-of-the-secretary/office-of-inspector-general/prison-rape-elimination-act/>, which states, “Allegations of prison rape can be reported by calling 575.523.3303 or by NMCD-PREAREporting@state.nm.us.”

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of third-party reporting as it relates to PREA.

OFFICIAL RESPONSE FOLLOWING AN INMATE REPORT

Standard 115.61: Staff and agency reporting duties

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.61 (a)

- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency? Yes No
- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding retaliation against inmates or staff who reported an incident of sexual abuse or sexual harassment? Yes No
- Does the agency require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or sexual harassment or retaliation? Yes No

115.61 (b)

- Apart from reporting to designated supervisors or officials, does staff always refrain from revealing any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions? Yes No

115.61 (c)

- Unless otherwise precluded by Federal, State, or local law, are medical and mental health practitioners required to report sexual abuse pursuant to paragraph (a) of this section? Yes No
- Are medical and mental health practitioners required to inform inmates of the practitioner's duty to report, and the limitations of confidentiality, at the initiation of services? Yes No

115.61 (d)

- If the alleged victim is under the age of 18 or considered a vulnerable adult under a State or local vulnerable persons statute, does the agency report the allegation to the designated State or local services agency under applicable mandatory reporting laws? Yes No

115.61 (e)

- Does the facility report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 031801
- Chapter 45, Article 5 NMSA 1978
- NMCD PREA training curriculum
- Interview with warden
- Interview with PREA coordinator
- Interviews with random staff
- Interviews with medical and mental health staff

(a-b, e) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page five, "All staff, vendors, contractors and volunteers are required to immediately report: (1) any knowledge, suspicion or information regarding an incident of sexual abuse of sexual harassment that occurred in a facility, whether or not it is part of the agency; (2) retaliation against inmates or staff who reported such an incident; and (3) staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. These must immediately be reported to one or more of the following persons: The Secretary of Corrections, the Office of Professional Standards, the Inspector General, the Warden, the Shift Supervisor, the Institutional Investigator, District Supervisor or any other employee of the NMCD. When staff or the agency believes that an inmate is at substantial risk of imminent sexual abuse or sexual harassment, it shall take immediate action to protect the inmate." It also states, "Any employee, inmate or other person who in good faith reports abuse or sexual misconduct will not be subject to retaliation by staff or inmates. 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."

NMCD Policy CD-031801, *Office of Professional Standards (OPS) Personnel Investigations & Staff Misconduct Reporting*, states on page one, "All supervisors are responsible for reporting all allegations of staff misconduct or suspected staff misconduct to the applicable Disciplinary Authority. All Disciplinary Authorities are in turn responsible for reporting all Level-1 suspected or alleged misconduct to the applicable Chief Administrative Officer(s) (CAO) and to the Office of Professional Standards (OPS) immediately. OPS will notify the appropriate NMCD Administrative Staff. In those instances when the

Level-1 allegations involve serious or potentially serious criminal conduct, high-ranking NMCD staff, or may generate a high media interest, OPS shall be telephonically apprised by the Disciplinary Authority as soon as possible and ordinarily prior to submission of the written referral. In other unusual or extraordinary circumstances involving the conduct of NMCD Staff, contact with OPS shall be made. If for any reason the Disciplinary Authority is not available to the supervisor, the supervisor shall notify both the CAO and the OPS Bureau Chief of any Level-1 suspected or alleged misconduct. 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 if appropriate.” All sexual misconduct, to include sexual abuse, sexual contact, use of sexually explicit language, kissing, embracing or inappropriate touching, other physical contact of an inmate nature or any sexual activity between staff and inmates, parolees, or probationers is defined as Level-1 misconduct.

NMCD mandated PREA training for staff directs, *“All staff, contract personnel and volunteers shall be considered mandatory reporters and have an affirmative duty to report all allegations or knowledge of sexual abuse, harassment or sexual contact that takes place within any NMCD facility.”*

(c) NMCD medical and mental health staff are required to report information regarding sexual abuse and sexual harassment. Interviews with those staff indicated they are aware of their responsibility. NMCD inmates sign an informed consent form prior to receiving services that states medical and mental health staff will report if inmates disclose that they have been sexually assaulted or harassed by other inmates or staff. The *Rights to Confidentiality and Availability of Services* statement states that information disclosed to medical and mental health staff is confidential and will not be disclosed without the inmate’s consent, with some exceptions, to include allegations that they have been abused by a staff member or by another inmate. The form is signed and dated by the inmate and a witness.

(d) PNM does not house inmates under the age of 18. New Mexico state law defines a vulnerable adult as an *“incapacitated person”*. An *“incapacitated person”* means *“any person who demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he is unable to manage his personal affairs or he is unable to manage his estate or financial affairs or both”*. PNM does not house incapacitated persons. All incapacitated persons under the care of NMCD are housed at the Long-Term Care Unit at Central New Mexico Correctional Facility in Los Lunas.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of staff and agency reporting duties as it relates to PREA.

Standard 115.62: Agency protection duties

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.62 (a)

- When the agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, does it take immediate action to protect the inmate? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD PREA training curriculum
- Interview with warden
- Interview with PREA Compliance Manager
- Interviews with random staff and inmates

NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page five, "All staff, vendors, contractors and volunteers are required to immediately report: (1) any knowledge, suspicion or information regarding an incident of sexual abuse of sexual harassment that occurred in a facility, whether or not it is part of the agency; (2) retaliation against inmates or staff who reported such an incident; and (3) staff neglect or violation of responsibilities that may retaliation. These must immediately be reported to one or have contributed to an incident or more of the following persons: The Secretary of Corrections, the Office of Professional Standards, the Inspector General, the Warden, the Shift Supervisor, the Institutional Investigator, District Supervisor or any other employee of the NMCD. When staff or the agency believes that an inmate is at substantial risk of imminent sexual abuse or sexual harassment, it shall take immediate action to protect the inmate."

NMCD mandatory PREA training for staff includes the directive that "if it comes to your attention that an inmate is at a 'substantial risk' of 'imminent sexual abuse' you must take immediate action to protect the inmate/detainee/resident".

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of agency protection duties as it relates to PREA.

Standard 115.63: Reporting to other confinement facilities

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.63 (a)

- Upon receiving an allegation that an inmate was sexually abused while confined at another facility, does the head of the facility that received the allegation notify the head of the facility or appropriate office of the agency where the alleged abuse occurred? Yes No

115.63 (b)

- Is such notification provided as soon as possible, but no later than 72 hours after receiving the allegation? Yes No

115.63 (c)

- Does the agency document that it has provided such notification? Yes No

115.63 (d)

- Does the facility head or agency office that receives such notification ensure that the allegation is investigated in accordance with these standards? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- Examples of prior confinement facility notifications
- Interview with warden
- Interviews with investigative staff

(a-d) NMCD Policy CD- NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on pages 5-6, “If an inmate reports or staff become aware of any knowledge, suspicion or information regarding an incident of sexual abuse or sexual harassment that occurred in another facility, the 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. If the incident is alleged to have occurred at an agency other than NMCD, that report should be forwarded to the Agency PREA Coordinator, who will immediately (no later than 72 hours) notify the outside agency. The facility must maintain documentation of all notification to other facilities; the PREA Coordinator will maintain documentation of all external notifications.”

In April 2017, the previous agency PREA Coordinator sent a directive to all NMCD wardens, reminding them of their obligation to directly report to the head of the facility where the allegation was reported to have occurred within 72 hours.

An interview with the warden and investigative staff confirmed notifications are taking place as required. This auditor reviewed two examples of prior confinement notifications that were completed as required.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of reporting to other confinement facilities as it relates to PREA.

Standard 115.64: Staff first responder duties

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.64 (a)

- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Separate the alleged victim and abuser?
 Yes No
- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence? Yes No
- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, if the abuse occurred within a time period that still allows for the collection of physical evidence? Yes No

- Upon learning of an allegation that an inmate was sexually abused, is the first security staff member to respond to the report required to: Ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating, if the abuse occurred within a time period that still allows for the collection of physical evidence? Yes No

115.64 (b)

- If the first staff responder is not a security staff member, is the responder required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 150102
- *NMCD Prison Rape Elimination Act, Inmate Resource Guide*
- NMCD PREA Training Curriculum
- Interviews with random staff

(a-b) *NMCD Prison Rape Elimination Act, Inmate Resource Guide* states on page five, "To the extent possible, a victim should take four steps to preserve evidence: 1. Do not shower. 2. Do not brush your teeth. 3. Do not wash your clothes. 4. Do not relieve yourself. Preserving this evidence provides investigators with the evidence necessary to positively identify the predator and establish the crime." The Resource Guide states inmates "should" preserve evidence to the extent possible but does not prohibit them from acting to destroy evidence.

NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, states on page one, "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). The victim will be instructed not to shower, wash their clothes, brush their teeth, or relieve him or herself in order to preserve evidence." This is in contradiction to the standards and to the *NMCD Facility Response to Sexual Assault Checklist* form, that correctly states,

“Request victim not to shower, brush teeth, wash clothes, relieve themselves; ensure the perpetrator does not do any activity to destroy any evidence such as shower, brush teeth, wash clothes, relieve themselves.” There are no directives in the policy regarding action taken with the alleged perpetrator.

As part of corrective action, the agency revised NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, effective May 29, 2020. The revised policy states on page one, *“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). The victim will be asked not to shower, wash their clothes, brush their teeth or relive him or herself in order to preserve evidence.”*

NMCD mandatory PREA training states first responders will *“request alleged victim and ensure abuser don’t take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating. If the first responder is not a Security Staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence; remain with the alleged victim and notify Security Staff.”*

All NMCD and PNM staff (including non-security) are provided with First Responder cards that outline the duties of a first responder, stating, *“Request the alleged victim not to destroy physical evidence, including, as appropriate, washing, brush teeth, changing clothes, urinating, defecating, smoking, drinking or eating.”* Ensure the alleged abuser does not to [sic] destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.”

Interviews with random staff indicated they understood the distinction between first responder duties with a victim and with an alleged perpetrator.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the agency is fully compliant with this standard of staff first responder duties as it relates to PREA.

Standard 115.65: Coordinated response

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.65 (a)

- Has the facility developed a written institutional plan to coordinate actions among staff first responders, medical and mental health practitioners, investigators, and facility leadership taken in response to an incident of sexual abuse? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150102
- PNM Policy 032900

Part of the purpose of NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, is to ensure “all actions taken in response to an incident of sexual assault are coordinated among staff first responders, medical and mental health practitioners, investigators, and facility leadership”.

PNM Policy 032900, *Coordinated Response to Sexual Assaults*, outlines the actions taken by facility staff in response to an incident of sexual assault. Response includes when the initial disclosure is within 120 hours of a sexual assault incident, investigative actions, the forensic examination, after action and follow-up care, court referral/presentation and the after-action review. The policy was most recently revised on May 22, 2019.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of coordinated response as it relates to PREA.

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.66 (a)

- Are both the agency and any other governmental entities responsible for collective bargaining on the agency's behalf prohibited from entering into or renewing any collective bargaining agreement or other agreement that limits the agency's ability to remove alleged staff sexual abusers from contact with any inmates pending the outcome of an investigation or of a determination of whether and to what extent discipline is warranted? Yes No

115.66 (b)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- AFSCME Collective Bargaining Agreement (CBA)
- Interview with agency head/designee
- Interview with warden

NMCD employees are represented by the American Federation of State, County & Municipal Employees (AFSCME). This auditor reviewed the most recent Collective Bargaining Agreement (CBA). Page 108 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. The disciplinary and grievance process outlined in the CBA are consistent with the provisions of 115.72 and 115.76.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of coordinated response as it relates to PREA.

Standard 115.67: Agency protection against retaliation

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.67 (a)

- Has the agency established a policy to protect all inmates and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment investigations from retaliation by other inmates or staff? Yes No
- Has the agency designated which staff members or departments are charged with monitoring retaliation? Yes No

115.67 (b)

- Does the agency employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, removal of alleged staff or inmate abusers from contact with victims, and emotional support services, for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations? Yes No

115.67 (c)

- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor the conduct and treatment of inmates or staff who reported the sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff? Yes No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor the conduct and treatment of inmates who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by inmates or staff? Yes No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Act promptly to remedy any such retaliation? Yes No

- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor any inmate disciplinary reports? Yes No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor inmate housing changes? Yes No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor inmate program changes? Yes No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor negative performance reviews of staff? Yes No
- Except in instances where the agency determines that a report of sexual abuse is unfounded, for at least 90 days following a report of sexual abuse, does the agency: Monitor reassignments of staff? Yes No
- Does the agency continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need? Yes No

115.67 (d)

- In the case of inmates, does such monitoring also include periodic status checks?
 Yes No

115.67 (e)

- If any other individual who cooperates with an investigation expresses a fear of retaliation, does the agency take appropriate measures to protect that individual against retaliation?
 Yes No

115.67 (f)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 150102
- Completed retaliation monitoring forms
- Interview with PREA Compliance Manager
- Interview with staff who conduct retaliation monitoring
- Review of investigative files

(a-e) NMCD Policy CD-150100, Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA, states on page four, "Any employee, inmate or other person who in good faith reports abuse or sexual misconduct will not be subject to retaliation by staff or inmates. 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."

NMCD Policy CD-150102, Coordinated Response to Sexual Assaults, states on page two, "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 from retaliation by other inmates or staff. Retaliation Monitoring will be completed utilizing the Staff Retaliation Monitoring form (CD-150102.2) and once completed at the end of 90 days (or longer when necessary) be sent to the Agency PREA Coordinator This will also include periodic status checks for the inmates who are being monitored."

Beginning in July 2018, the central office PREA staff have taken the lead on all retaliation monitoring. Once an allegation is referred for investigation, the case is placed on a task list for 15 days, 45 days and 90 days. At each monitoring, the retaliation monitor will look at the inmate's disciplinary record, programming and any movement within the facility. If there are changes, the monitor will contact facility staff to inquire about the circumstances around the change. If it is determined that changes are due to possible retaliation, the monitor will intervene to make corrections, which can include the dismissal of disciplinary reports, reinstating a job or programming, or adjusting the inmate's housing. At the 45-day monitoring, the facility PCM has a face-to-face meeting with the inmate.

The retaliation monitor is also responsible for monitoring staff who provide information or cooperate with an investigation.

Interviews with the facility PCM and the agency retaliation monitor indicated they are knowledgeable of the requirements associated with retaliation monitoring. This auditor reviewed two examples of retaliation monitoring to verify compliance.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of agency protection against retaliation as it relates to PREA.

Standard 115.68: Post-allegation protective custody

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.68 (a)

- Is any and all use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse subject to the requirements of § 115.43? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- Interview with PREA Compliance Manager
- Interviews with staff who supervise inmates in segregated housing

(a) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page six, "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 NMCD Special Management policies."

The facility PCM advised this auditor that PNM has not housed any incarcerated survivors in non-disciplinary segregation housing during the audit period. Interviews with staff who supervise segregated housing did not indicate that incarcerated survivors have been housed in non-disciplinary segregation housing during the audit period.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of post-allegation protective custody as it relates to PREA.

INVESTIGATIONS

Standard 115.71: Criminal and administrative agency investigations

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.71 (a)

- When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, does it do so promptly, thoroughly, and objectively? [N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations. See 115.21(a).] Yes No NA
- Does the agency conduct such investigations for all allegations, including third party and anonymous reports? [N/A if the agency/facility is not responsible for conducting any form of criminal OR administrative sexual abuse investigations. See 115.21(a).] Yes No NA

115.71 (b)

- Where sexual abuse is alleged, does the agency use investigators who have received specialized training in sexual abuse investigations as required by 115.34? Yes No

115.71 (c)

- Do investigators gather and preserve direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data? Yes No
- Do investigators interview alleged victims, suspected perpetrators, and witnesses?
 Yes No
- Do investigators review prior reports and complaints of sexual abuse involving the suspected perpetrator? Yes No

115.71 (d)

- When the quality of evidence appears to support criminal prosecution, does the agency conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution? Yes No

115.71 (e)

- Do agency investigators assess the credibility of an alleged victim, suspect, or witness on an individual basis and not on the basis of that individual's status as inmate or staff? Yes No
- Does the agency investigate allegations of sexual abuse without requiring an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding? Yes No

115.71 (f)

- Do administrative investigations include an effort to determine whether staff actions or failures to act contributed to the abuse? Yes No
- Are administrative investigations documented in written reports that include a description of the physical evidence and testimonial evidence, the reasoning behind credibility assessments, and investigative facts and findings? Yes No

115.71 (g)

- Are criminal investigations documented in a written report that contains a thorough description of the physical, testimonial, and documentary evidence and attaches copies of all documentary evidence where feasible? Yes No

115.71 (h)

- Are all substantiated allegations of conduct that appears to be criminal referred for prosecution? Yes No

115.71 (i)

- Does the agency retain all written reports referenced in 115.71(f) and (g) for as long as the alleged abuser is incarcerated or employed by the agency, plus five years? Yes No

115.71 (j)

- Does the agency ensure that the departure of an alleged abuser or victim from the employment or control of the agency does not provide a basis for terminating an investigation? Yes No

115.71 (k)

- Auditor is not required to audit this provision.

115.71 (l)

- When an outside entity investigates sexual abuse, does the facility cooperate with outside investigators and endeavor to remain informed about the progress of the investigation? (N/A if an outside agency does not conduct administrative or criminal sexual abuse investigations. See 115.21(a).) Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150102
- NMCD Policy 031800
- NMCD Policy 031801
- Investigating Sexual Assaults course curriculum
- Interview with PREA Compliance Manager
- Interviews with investigative staff
- Review of administrative and criminal investigations

(a) NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, states that all allegations of sexual abuse and sexual harassment are to be referred for investigation to an agency with the legal authority to conduct criminal investigations, unless the allegation does not involve potentially criminal behavior. The policy states on page two, "*All allegations of criminal conduct including criminal sexual penetration of an inmate by a staff member must be reported to the appropriate law enforcement authorities by the investigations officer, (CD-031801.A.4). The investigations officer will serve as the liaison between the New Mexico Corrections Department (NMCD) and the appropriate law enforcement agency during the course of any continuing investigation, (CD-031801.G.3).*" NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, outlines on page six, "*If, in the process of conducting an investigation at the Local Level concerning what was believed to be a non-Level-1 matter, it is determined that a more serious offense has occurred, the local investigation must be suspended and contact immediately made with OPS. OPS will determine if an alternative investigation method or assignment is necessary.*" All sexual misconduct, with staff or inmate contact, falls under the definition of a Level-1 offense.

(b) This auditor reviewed the curriculum utilized for NMCD's *Investigating Sexual Assaults in a Correctional Setting*. The training includes instruction on interviewing sexual abuse victims, the proper use of Miranda and Garrity warnings, evidence collection in confinement settings, and the criteria and evidence required to substantiate a case for administrative action or prosecution referral. Interviews with investigative staff indicated they were knowledgeable in each aspect of sexual abuse and sexual harassment investigations. PNM has 13 facility investigators and NMCD has nine agency investigators. This auditor reviewed training certificates for all 19 staff to ensure the required training was received.

(c) NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states on page nine, “OPS Investigators shall gather and preserve (or cause to be gathered and preserved) direct and circumstantial evidence, including any available physical and DNA evidence and any available electronic monitoring data; shall interview alleged victims, suspected perpetrators, and witnesses; and shall review prior complaints and reports of sexual abuse involving the suspected perpetrator.”

(d) NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states on page ten, “When the quality of evidence appears to support criminal prosecution, the agency shall conduct compelled interviews only after consulting with prosecutors as to whether compelled interviews may be an obstacle for subsequent criminal prosecution.” Interviews with investigative staff indicated they do not conduct compelled interviews; such interviews may be conducted by the New Mexico State Police.

(e) NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, states on page three, “The credibility of an alleged victim, suspect, or witness shall be assessed on an individual basis and shall not be determined by the person’s status as inmate or staff. NMCD will not require an inmate who alleges sexual abuse to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation of such an allegation.” The same directive appears on page nine of NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*.

Interviews with investigative staff indicated they are conducting credibility assessments properly, and do not require incarcerated survivors to submit to a polygraph or other truth-telling device as a condition for investigation.

(f-g) NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states on page ten, “Investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse.” Page nine states, “Upon completion of the investigation, a written report shall be prepared by the OPS Investigator or designated Investigations Officer using the format designated by the OPS Bureau Chief. The report shall detail the allegations made, the facts revealed during the investigation and state which, if any, policies and procedures, rules and regulations, or laws that were violated by the employee.”

A review of investigative reports indicated investigators are documenting the required information.

(h) NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states on page 14, “When, during the course of an investigation, the assigned OPS Investigator or designated Investigations Officer becomes aware that the facts discovered indicate a violation of criminal law, the OPS Investigator or designated Investigations Officer shall immediately report the violation to the OPS Chief Investigator, and the appropriate Disciplinary Authority and CAO. If an OPS Investigator or designated Investigations Officer determines reasonable suspicion or probable cause exists to believe that a violation of state or federal criminal law has occurred, the OPS Chief Investigator shall be notified, and he or she shall direct that the OPS Investigator or designated Investigations Officer immediately notify an appropriate external law enforcement agency having jurisdiction. The OPS Investigator or designated Investigations Officer shall serve as a liaison between the NMCD and the appropriate law enforcement agency during the course of any continuing investigation. The OPS Chief Investigator reserves the right to communicate to external law enforcement agencies primarily through OPS Investigators, as is deemed appropriate. The OPS Chief Investigator, the NMCD General Counsel or the OPS Director may determine that the Investigative Report be submitted to the appropriate law enforcement agency for possible criminal prosecution.”

(i) NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, states on page three, “All written reports pertaining to the administrative or criminal investigation of alleged sexual abuse or sexual harassment are to be retained for as long as the alleged abuser is incarcerated or employed by the agency, plus 5 years, at a minimum.”

NMCD Policy CD-031800, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states on page five, “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 not to rehire any former employee whose allegations of violations of the criminal law are substantiated or who resigned during any investigation. The departure of an inmate from the custody or control of the facility or agency shall not provide a basis for terminating and investigation. All inmate complaints will be accepted and evaluated based on their merit and investigated accordingly in accordance with this policy.”

(j) NMCD Policy CD-150102, *Coordinated Response to Sexual Assaults*, states on page three, “The departure of the alleged abuser or victim from the employment or control of the facility shall not provide a basis for terminating an investigation.”

(k) Auditor is not required to audit this provision.

(l) NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states on page 14, “The OPS Investigator or designated Investigations Officer shall serve as a liaison between the NMCD and the appropriate law enforcement agency during the course of any continuing investigation. The OPS Chief Investigator reserves the right to communicate to external law enforcement agencies primarily through OPS Investigators, as is deemed appropriate.”

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of criminal and administrative agency investigations as it relates to PREA.

Standard 115.72: Evidentiary standard for administrative investigations

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.72 (a)

- Is it true that the agency does not impose a standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 031800
- Interview with the warden
- Interview with investigative staff
- Review of administrative and criminal investigations

(a) NMCD Policy CD-031800, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, defines "preponderance of the evidence" as "the incident being investigated more likely than not occurred. There is a greater than 50% (ex. 51% v. 49%) chance that something is true or that something happened."

Interviews with the warden and investigative staff indicated they are aware of this standard in determining if allegations of sexual abuse or sexual harassment are substantiated, unsubstantiated or unfounded.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of evidentiary standard for administrative investigations as it relates to PREA.

Standard 115.73: Reporting to inmates

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.73 (a)

- Following an investigation into an inmate's allegation that he or she suffered sexual abuse in an agency facility, does the agency inform the inmate as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded? Yes No

115.73 (b)

- If the agency did not conduct the investigation into an inmate's allegation of sexual abuse in an agency facility, does the agency request the relevant information from the investigative agency in order to inform the inmate? (N/A if the agency/facility is responsible for conducting administrative and criminal investigations.) Yes No NA

115.73 (c)

- Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate whenever: The staff member is no longer posted within the inmate's unit? Yes No
- Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate whenever: The staff member is no longer employed at the facility? Yes No
- Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate whenever: The agency learns that the staff member has been indicted on a charge related to sexual abuse in the facility? Yes No
- Following an inmate's allegation that a staff member has committed sexual abuse against the inmate, unless the agency has determined that the allegation is unfounded, or unless the inmate has been released from custody, does the agency subsequently inform the inmate whenever: The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility? Yes No

115.73 (d)

- Following an inmate's allegation that he or she has been sexually abused by another inmate, does the agency subsequently inform the alleged victim whenever: The agency learns that the alleged abuser has been indicted on a charge related to sexual abuse within the facility? Yes No

- Following an inmate’s allegation that he or she has been sexually abused by another inmate, does the agency subsequently inform the alleged victim whenever: The agency learns that the alleged abuser has been convicted on a charge related to sexual abuse within the facility?
 Yes No

115.73 (e)

- Does the agency document all such notifications or attempted notifications? Yes No

115.73 (f)

- Auditor is not required to audit this provision.

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- Review of administrative and criminal investigations
- Interview with PREA Compliance Manager
- Interview with investigative staff

(a, e) The agency PREA Coordinator sends a written letter, certified and processed as legal mail, upon receipt of an allegation that has been referred for investigation to the victim. The letter identifies who is responsible for conducting the investigation, who to contact during the investigation regarding any matter, and options for medical and mental health services and advocacy. A second letter is sent at the conclusion of the investigation, notifying the inmate of the outcome, and reminding them of advocacy options.

(b) NMCD Policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states on page 14, “*The OPS Investigator or designated Investigations Officer shall serve as a liaison between the NMCD and the appropriate law enforcement agency during the course of any continuing investigation. The OPS Chief Investigator reserves the right to communicate to external law enforcement agencies primarily through OPS Investigators, as is deemed appropriate.*”

Interviews with the agency PREA Coordinator, facility PCM and investigative staff indicated they obtain the appropriate information from investigative agencies in order to inform inmates.

(c) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on pages six and seven, “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.” This auditor verified documentation of such notifications to inmates.

(d) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page seven, “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.” This auditor verified documentation of such notifications to inmates.

(e) All notifications to inmates related to this standard are documented in writing. This auditor verified documentation of such notifications to inmates.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with and exceeds this standard of reporting to inmates as it relates to PREA.

DISCIPLINE

Standard 115.76: Disciplinary sanctions for staff

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.76 (a)

- Are staff subject to disciplinary sanctions up to and including termination for violating agency sexual abuse or sexual harassment policies? Yes No

115.76 (b)

- Is termination the presumptive disciplinary sanction for staff who have engaged in sexual abuse? Yes No

115.76 (c)

- Are disciplinary sanctions for violations of agency policies relating to sexual abuse or sexual harassment (other than actually engaging in sexual abuse) commensurate with the nature and circumstances of the acts committed, the staff member's disciplinary history, and the sanctions imposed for comparable offenses by other staff with similar histories? Yes No

115.76 (d)

- Are all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, reported to: Law enforcement agencies (unless the activity was clearly not criminal)? Yes No
- Are all terminations for violations of agency sexual abuse or sexual harassment policies, or resignations by staff who would have been terminated if not for their resignation, reported to: Relevant licensing bodies? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 031800
- NMCD Policy 032201
- NMCD Policy 037800
- PNM Investigative Reports

(a-d) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page seven, “*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. For matters of sexual abuse, termination should be the presumptive disciplinary sanction for staff who engaged in sexual abuse. Licensed professionals engaging in sexual conduct with inmates will be reported to any relevant licensing body.*”

NMCD Policy CD-032201, *Code of Ethics*, states on page six defines “*undue familiarity*” as a “*degree of familiarity with such a person that goes beyond the degree of familiarity necessary for the employee to perform his or her duties on behalf of the NCMCD*”. The policy goes on to state that undue familiarity also includes any “*behavior or act of a sexual nature towards an offender by a NMCD employee, contractor, volunteer, visitor or NMCD representative.*” This includes sexual assault, sexual abuse, sexual contact, conduct of a sexual nature, kissing and/or hugging, sexual gratification of any party, and obscenity or unreasonable invasion of privacy. “*Sexual misconduct also includes conversations or correspondence of a romantic, intimate, or sexual nature between an offender and any NMCD employee, contractor, volunteer, visitor, or NMCD representative. Such conduct compromises the professional relationship personnel have with people under their care, custody, supervision or control that can interfere with proper supervision or compromise security.*”

NMCD Policy CD-037800, *Disciplinary Action for Classified Employees*, states on page three, “*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.*”

NMCD Policy CD-031800, *Office of Professional Standards (OPS), Personnel Investigations & Staff Misconduct Reporting*, states on page five, “*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 not to rehire any former employee whose allegations of violations of the criminal law are substantiated or who resigned during any investigation.*”

This auditor reviewed one investigative report involving a staff member that was substantiated. Appropriate disciplinary actions were taken by the agency and facility.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of disciplinary sanctions for staff as it relates to PREA.

Standard 115.77: Corrective action for contractors and volunteers

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.77 (a)

- Is any contractor or volunteer who engages in sexual abuse prohibited from contact with inmates? Yes No
- Is any contractor or volunteer who engages in sexual abuse reported to: Law enforcement agencies (unless the activity was clearly not criminal)? Yes No
- Is any contractor or volunteer who engages in sexual abuse reported to: Relevant licensing bodies? Yes No

115.77 (b)

- In the case of any other violation of agency sexual abuse or sexual harassment policies by a contractor or volunteer, does the facility take appropriate remedial measures, and consider whether to prohibit further contact with inmates? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 032201
- Interview with the warden
- Interview with Agency PREA Coordinator
- Interview with PREA Compliance Manager
- Interviews with contractors and volunteers

(a-b) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page seven, “*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. For matters of sexual abuse, termination should be the presumptive disciplinary sanction for staff who engaged in sexual abuse. Licensed professionals engaging in sexual conduct with inmates will be reported to any relevant licensing body.*”

NMCD Policy CD-032201, *Code of Ethics*, states on page six defines “*undue familiarity*” as a “*degree of familiarity with such a person that goes beyond the degree of familiarity necessary for the employee to perform his or her duties on behalf of the NCMD*”. The policy goes on to state that undue familiarity also includes any “*behavior or act of a sexual nature towards an offender by a NMCD employee, contractor, volunteer, visitor or NMCD representative.*” This includes sexual assault, sexual abuse, sexual contact, conduct of a sexual nature, kissing and/or hugging, sexual gratification of any party, and obscenity or unreasonable invasion of privacy. “*Sexual misconduct also includes conversations or correspondence of a romantic, intimate, or sexual nature between an offender and any NMCD employee, contractor, volunteer, visitor, or NMCD representative. Such conduct compromises the professional relationship personnel have with people under their care, custody, supervision or control that can interfere with proper supervision or compromise security.*”

Interviews with the warden, Agency PREA Coordinator and facility PCM indicated that any contractor suspected of engaging in any prohibited activity is immediately removed from the facility and prohibited from contact with inmates. Interviews with contractors and volunteers indicated they are aware of the agency’s zero-tolerance policy and action the agency will take if they engage in prohibited conduct.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of corrective action for contractors and volunteers as it relates to PREA.

Standard 115.78: Disciplinary sanctions for inmates

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.78 (a)

- Following an administrative finding that an inmate engaged in inmate-on-inmate sexual abuse, or following a criminal finding of guilt for inmate-on-inmate sexual abuse, are inmates subject to disciplinary sanctions pursuant to a formal disciplinary process? Yes No

115.78 (b)

- Are sanctions commensurate with the nature and circumstances of the abuse committed, the inmate's disciplinary history, and the sanctions imposed for comparable offenses by other inmates with similar histories? Yes No

115.78 (c)

- When determining what types of sanction, if any, should be imposed, does the disciplinary process consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior? Yes No

115.78 (d)

- If the facility offers therapy, counseling, or other interventions designed to address and correct underlying reasons or motivations for the abuse, does the facility consider whether to require the offending inmate to participate in such interventions as a condition of access to programming and other benefits? Yes No

115.78 (e)

- Does the agency discipline an inmate for sexual contact with staff only upon a finding that the staff member did not consent to such contact? Yes No

115.78 (f)

- For the purpose of disciplinary action does a report of sexual abuse made in good faith based upon a reasonable belief that the alleged conduct occurred NOT constitute falsely reporting an incident or lying, even if an investigation does not establish evidence sufficient to substantiate the allegation? Yes No

115.78 (g)

- If the agency prohibits all sexual activity between inmates, does the agency always refrain from considering non-coercive sexual activity between inmates to be sexual abuse? (N/A if the agency does not prohibit all sexual activity between inmates.) Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150101
- NMCD Policy 090100, 090101 and attachments
- Interview with warden
- Interviews with medical and mental health staff
- Inmate misconduct reports

(a) NMCD Policy CD-150101, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page one, "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 sexual harassment or following a criminal finding of guilt for inmate-on-inmate sexual abuse."

Attachment A of NMCD Policy CD-090101, *Inmate Discipline*, defines the Category A offenses of Sexual Misconduct/Sexual Activity and Rape:

- *Sexual Misconduct/Sexual Activity: The inmate commits this when they are:*
 - a. *Touching or having active or passive sexual contact with or fondling of the genitals, mouth, anus, breast or buttocks of another person, and whether or not the person consents to such conduct, regardless of whether the touching or contact is to clothed or unclothed parts of the body;*
 - b. *Displaying one's anus, genitals, buttocks or female breast(s) to another person, regardless of the other person's expressed or implied consent to the accused inmate's conduct; or,*
 - c. *Masturbating in the presence or direct vision of another person, regardless of the other party's expressed or implied consent to the conduct.*
 - d. *Displaying marks consistent with sexual activity and/or sexual actions i.e. hickeys.*
- *Rape: Having sexual intercourse, penetration of or contact with the genitals, hand(s), mouth, vagina or anus of another person,*
 - a. *Having impaired the power of the other person to appraise or control their conduct by administering or employing drugs, intoxicants or similar means; or,*
 - b. *Coercing, compelling or inducing the other person to submit by any force, misrepresentation, violence or threat of violence; or,*

- c. *The other person suffers from a mental disease, defects or inadequacy that is reasonably apparent or known to the accused inmate, which in fact renders the other person incapable of understanding the nature of their conduct or being aware of the nature of the act committed; or,*
- d. *The other person is unconscious or otherwise physically incapable of resisting and has not consented to the act.*
- e. *The Hearing Officer shall have the discretion to modify the charge and convict the inmate of the charge of Sexual Harassment or Sexual Misconduct.*

(b) Category A offenses are considered the most serious and, in some instances may be violations of state or federal criminal law. The hearing officer may recommend to a Deputy Warden or their designee imposition of sanctions to include the loss of all good time, placement in Disciplinary Restrictive Housing, loss of privileges, and other sanctions authorized for Category B offenses. All recommended dispositions are forwarded to a Deputy Warden for review. Within three working days, the Deputy Warden will approve, reduce or modify the decision or reverse the decision and order a new hearing.

Inmates found in violation of misconduct may submit a Warden's Disciplinary Appeal, form CD-090101.15, within fifteen calendar days after receipt of the Deputy Warden's written decision. After reviewing the summary of offense and hearing officer's decision, the warden will ensure time limits were met, proper charges were made, sanctions were proportionate, procedural requirements were met and the decision was based on substantial evidence. The warden can opt to uphold the hearing officer's decision, reduce the misconduct to a minor level report, dismiss the report, order a new hearing or reduce sanctions.

(c) If there are concerns about the inmate's mental health, the hearing officer will request the mental health provider fill out form CD-090101.9, Inmate Misconduct Mental Health Review. The mental health provider indicates if the inmate is currently in treatment, the date of their last encounter with mental health and if the misconduct is due to the inmate's mental illness. The provider information is reviewed by the mental health manager before being returned to the hearing officer, to include any recommendations on how the mental health issues should be considered during the disciplinary hearing. This mental health review takes place within one working day.

(d) Therapy, counseling and other interventions designed to address and correct underlying reasons or motivations for abuse are offered by mental health staff at PNM. Participation is not required as a condition of access to programming or other benefits but is considered.

(e) PNM inmates who are victim of staff sexual misconduct are not disciplined.

(f) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page three, *"If it is found that an allegation of sexual misconduct was false, the case may be referred to law enforcement for prosecution. Any inmate who files a false allegation is subject to disciplinary action."*

Interviews with the agency PREA Coordinator and facility PCM indicated allegations are determined to be in bad faith only when there is conclusive evidence the allegation did not occur, such as through video surveillance records. No inmates were disciplined for bad faith allegations during the audit period.

(g) All sexual activity between inmates is treated as a rule violation. If the sexual activity is not coerced, it is not treated as sexual abuse. Sexual activity rule violations are noted as *"information only"*.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of disciplinary sanctions for inmates as it relates to PREA.

MEDICAL AND MENTAL CARE

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.81 (a)

- If the screening pursuant to § 115.41 indicates that a prison inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, do staff ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening? (N/A if the facility is not a prison.)
 Yes No NA

115.81 (b)

- If the screening pursuant to § 115.41 indicates that a prison inmate has previously perpetrated sexual abuse, whether it occurred in an institutional setting or in the community, do staff ensure that the inmate is offered a follow-up meeting with a mental health practitioner within 14 days of the intake screening? (N/A if the facility is not a prison.) Yes No NA

115.81 (c)

- If the screening pursuant to § 115.41 indicates that a jail inmate has experienced prior sexual victimization, whether it occurred in an institutional setting or in the community, do staff ensure that the inmate is offered a follow-up meeting with a medical or mental health practitioner within 14 days of the intake screening? Yes No

115.81 (d)

- Is any information related to sexual victimization or abusiveness that occurred in an institutional setting strictly limited to medical and mental health practitioners and other staff as necessary to inform treatment plans and security management decisions, including housing, bed, work, education, and program assignments, or as otherwise required by Federal, State, or local law?
 Yes No

115.81 (e)

- Do medical and mental health practitioners obtain informed consent from inmates before reporting information about prior sexual victimization that did not occur in an institutional setting, unless the inmate is under the age of 18? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 040100
- NMCD Policy 176100
- NMCD Policy 180200
- NMCD CD-180101.1, *Consent/Refusal for Treatment*, form
- NMCD CD-180201.1, *Rights to Confidentiality & Availability of Services*, form
- Review of electronic database, Criminal Management Information Systems (CMIS)
- Interviews with staff responsible for risk screening
- Interviews with medical and mental health staff
- Interviews with inmates who disclosed sexual victimization at risk screening
- Review of inmate files

*(a-c) NMCD Policy CD-150100, **Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA**, states on page seven, "Inmates that are identified as high risk with a history of criminally sexual behavior 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. 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."*

Using inmate rosters for each facility (Level II, North and South) sorted by housing, this auditor divided the total number of inmates by 20 and used the resulting number to randomly select inmates for file reviews. Each inmate had 72-hour and 30-day screenings completed in a timely manner, however, verification of referrals to mental health had not been retained. Interviews with inmates who reported previously perpetrating sexual abuse or prior victimization of sexual abuse indicated they had not been offered the opportunity to meet with mental health providers.

As part of corrective action, the facility PCM began using a form to ensure documentation of referrals is maintained. A check box indicates if the inmates is scored high for sexually aggressive behavior or risk

of sexual victimization, convicted of perpetrating sexual abuse or has experienced sexual victimization. The inmate indicates by initials, signature, identification number and date if they would like to participate in a follow up meeting with a mental health practitioner or decline to participate. If they decline the follow up meeting at the time of the screening, they may request a follow up meeting at any other time. This auditor reviewed all the forms (ten in total) completed at the facility during the corrective action period.

(d) NMCD Policy CD-176100, *Patient Rights & Responsibilities*, states on page two, “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.”

With regard to hard files, NMCD Policy 040101, *Institutional Records*, states on page one, “Inmate Records shall be kept in a secure location, safeguarded from unauthorized and improper disclosure, and will not be available to inmates at any time, unless an inmate is authorized by the Warden, or designee, to inspect his or her file or the contents thereof. Every effort shall be made to preserve all inmate records. Access to the file room at facilities will be limited to authorized personnel. During normal operations, the Advanced Records Coordinator or the Records Manager shall determine who has authorized access. After hours access will be determined by the shift supervisor.”

Risk screening information is maintained in an electronic database, Criminal Management Information Systems (CMIS). Prior to logging into the CMIS database, a warning screen reads, “You are accessing a confidential information database. This information is for official use only and is restricted to those individuals with a need to know. Unauthorized disclosure of this information is a violation of NMCD policies. By clicking ‘Application Logon’ I acknowledge and accept full responsibility for the proper use of this information.”

Interviews with staff indicated they are aware of and adhere to the requirements around confidentiality.

(e) PNM does not house inmates under the age of 18. Prior to receiving services from a mental health provider, an inmate signs and dates a copy of NMCD form CD-180201.1, *Rights to Confidentiality & Availability of Services*. The form states, “I have been advised of my rights to confidentiality and the limits regarding confidentiality for any services I receive from the Behavioral Health Staff as follows: Generally, statements made by inmates to Behavioral Health Staff are confidential, and will not be disclosed without the inmate’s consent, except as follows: ...Information regarding threats to the lives or well-being of others (to include yourself), or to the direct safety and security of the institution, which must be conveyed immediately to the institution security staff; ...Information concerning the abuse or neglect of any child, which will be reported to social services agencies as required by law; Allegations that you have been abused by a staff member or by another inmate.”

The inmate files reviewed contained signed and dated copies of form CD-180201.1.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of medical and mental care as it relates to PREA.

Standard 115.82: Access to emergency medical and mental health services

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.82 (a)

- Do inmate victims of sexual abuse receive timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment?
 Yes No

115.82 (b)

- If no qualified medical or mental health practitioners are on duty at the time a report of recent sexual abuse is made, do security staff first responders take preliminary steps to protect the victim pursuant to § 115.62? Yes No
- Do security staff first responders immediately notify the appropriate medical and mental health practitioners? Yes No

115.82 (c)

- Are inmate victims of sexual abuse offered timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where medically appropriate? Yes No

115.82 (d)

- Are treatment services provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident?
 Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150102
- NMCD Policy 170101
- Interviews with medical and mental health staff

(a-d) NMCD Policy CD-150102, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page one, *"Within the first 120 hours of a sexual assault incident in the prison population, the following actions will be taken: ...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 examination. The facility examiner is to be mindful of the need to preserve any objective forensic evidence during the examination."*

This policy references NMCD Policy CD-170101, *Clinical Services*. Page 20 states, *"In the event of a sexual assault, health services staff will ensure that the victim receives prompt and appropriate medical intervention. The following procedure will be followed:*

- 1. Emergency medical treatment will be provided by medical staff as needed. The Medical director or physician on call will be contacted to authorize referral to a Medical Center Emergency Room.*
- 2. 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.*
- 3. The Medical Director will review the treatment recommendations from the Medical Center and ensure the inmate victim receives the indicated prophylactic treatment and testing."*

PNM has medical staff at the facility 24-hours a day, seven days a week. NMCD Policy CD-150102, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page three, *"The Warden or designee will ensure that victims of sexual assault are promptly transferred under appropriate security provisions by Emergency Medical Services or NMCD personnel as is medically appropriate to a community health care facility for treatment and gathering of evidence. This will be at no charge to the inmate."*

After the incarcerated survivor is returned to the facility, the warden will develop a victim safety action plan. The facility medical director will initiate the 48-hour medical treatment review, and a facility mental health professional will perform an evaluation to assess the need for crisis intervention, long-term follow-up and access to counseling and advocacy services. Because PNM does not house female inmates, the requirement to provide timely information about and access to emergency contraception is not applicable.

There were no incarcerated survivors at PNM who had received forensic medical exams within the audit period to be interviewed by the audit team. Interviews with medical staff indicated incarcerated survivors are offered sexually transmitted infection prophylaxis medication and treatment during the forensic medical exam and upon their return to the facility. There were no staff who had acted as a first responder during the audit period to be interviewed by the audit team.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of access to emergency medical and mental health services as it relates to PREA.

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

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.83 (a)

- Does the facility offer medical and mental health evaluation and, as appropriate, treatment to all inmates who have been victimized by sexual abuse in any prison, jail, lockup, or juvenile facility? Yes No

115.83 (b)

- Does the evaluation and treatment of such victims include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to, or placement in, other facilities, or their release from custody? Yes No

115.83 (c)

- Does the facility provide such victims with medical and mental health services consistent with the community level of care? Yes No

115.83 (d)

- Are inmate victims of sexually abusive vaginal penetration while incarcerated offered pregnancy tests? (N/A if “all-male” facility. *Note: in “all-male” facilities, there may be inmates who identify as transgender men who may have female genitalia. Auditors should be sure to know whether such individuals may be in the population and whether this provision may apply in specific circumstances.*) Yes No NA

115.83 (e)

- If pregnancy results from the conduct described in paragraph § 115.83(d), do such victims receive timely and comprehensive information about and timely access to all lawful pregnancy-related medical services? (N/A if “all-male” facility. *Note: in “all-male” facilities, there may be inmates who identify as transgender men who may have female genitalia. Auditors should be sure to know whether such individuals may be in the population and whether this provision may apply in specific circumstances.*) Yes No NA

115.83 (f)

- Are inmate victims of sexual abuse while incarcerated offered tests for sexually transmitted infections as medically appropriate? Yes No

115.83 (g)

- Are treatment services provided to the victim without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident?
 Yes No

115.83 (h)

- If the facility is a prison, does it attempt to conduct a mental health evaluation of all known inmate-on-inmate abusers within 60 days of learning of such abuse history and offer treatment when deemed appropriate by mental health practitioners? (NA if the facility is a jail.)
 Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150100
- NMCD Policy 150102
- NMCD Policy 170101
- NMCD Policy 180100
- NMCD *Prison Rape Elimination Act, Inmate Resource Guide*
- Review of inmate files
- Interviews with medical and mental health staff

(a-b) NMCD Policy CD-150100, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page seven, "Inmates that are identified as high risk with a history of criminally sexual behavior 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. 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."

Using inmate rosters for each facility (Level II, North and South) sorted by housing, this auditor divided the total number of inmates by 20 and used the resulting number to randomly select inmates for file reviews. Each inmate had 72-hour and 30-day screenings completed in a timely manner, however, verification of referrals to mental health had not been retained. Interviews with inmates who reported previously perpetrating sexual abuse or prior victimization of sexual abuse indicated they had not been offered the opportunity to meet with mental health providers.

As part of corrective action, the facility PCM began using a form to ensure documentation of referrals is maintained. A check box indicates if the inmates is scored high for sexually aggressive behavior or risk of sexual victimization, convicted of perpetrating sexual abuse or has experienced sexual victimization. The inmate indicates by initials, signature, identification number and date if they would like to participate in a follow up meeting with a mental health practitioner or decline to participate. If they decline the follow up meeting at the time of the screening, they may request a follow up meeting at any other time. This auditor reviewed all the forms (ten in total) completed at the facility during the corrective action period.

(c) Interviews with medical and mental health services staff members indicated ongoing treatment is provided to victims of sexual abuse, as well as to 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, as inmates are scheduled for appointments and do not have to seek these services out on their own.

(d-e) PNM does not have any female inmates who may require pregnancy-related services.

(f) NMCD Policy CD-150102, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page four, "The facility medical director and mental health supervisor will develop a treatment plan for follow-up services." 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."

Interviews with medical staff indicated initial testing for sexually transmitted infections would occur at the hospital during the forensic medical examination, but any follow up testing would occur at the facility. Incarcerated survivors who declined to receive a forensic medical examination would have any testing conducted at the facility, upon their request.

(g) NCMD Policy CD-150102, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page three, "The Warden or designee will ensure that victims of sexual assault are promptly transferred under appropriate security provisions By Emergency Medical Services or NMCD personnel as is medically appropriate to a community health care facility for treatment and gathering of evidence. This will be at no charge to the inmate."

The NMCD *Prison Rape Elimination Act, Inmate Resource Guide* states on page five, "Medical forensic examinations by an outside hospital and facility medical and mental health services are provided without charge."

(h) NMCD Policy 180100, *Behavioral Health Clinical Services*, states on page five, "Inmates identified as high risk with a history of sexually assaultive behavior are assessed by a behavioral health or other qualified professional. Inmates with a history of sexually assaulted behavior are identified, monitored and counseled."

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of ongoing medical and mental health care for sexual abuse victims and abusers as it relates to PREA.

DATA COLLECTION AND REVIEW

Standard 115.86: Sexual abuse incident reviews

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.86 (a)

- Does the facility conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation, including where the allegation has not been substantiated, unless the allegation has been determined to be unfounded? Yes No

115.86 (b)

- Does such review ordinarily occur within 30 days of the conclusion of the investigation? Yes No

115.86 (c)

- Does the review team include upper-level management officials, with input from line supervisors, investigators, and medical or mental health practitioners? Yes No

115.86 (d)

- Does the review team: Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse? Yes No
- Does the review team: Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender, or intersex identification, status, or perceived status; gang affiliation; or other group dynamics at the facility? Yes No
- Does the review team: Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse? Yes No
- Does the review team: Assess the adequacy of staffing levels in that area during different shifts? Yes No
- Does the review team: Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff? Yes No
- Does the review team: Prepare a report of its findings, including but not necessarily limited to determinations made pursuant to §§ 115.86(d)(1) - (d)(5), and any recommendations for improvement and submit such report to the facility head and PREA compliance manager? Yes No

115.86 (e)

- Does the facility implement the recommendations for improvement, or document its reasons for not doing so? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150102
- Review of PNM Sexual Abuse or Assault Incident Review Team documentation
- Interview with the warden
- Interview with the PREA Compliance Manager
- Interview with an incident review team member

(a-e) NMCD Policy CD-150102, Coordinated Response to Sexual Assaults, states on page 5, *"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. The review team shall:*

- Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse;*
- Consider whether the incident or allegation was motivated by race; ethnicity; gender identity; lesbian, gay, bisexual, transgender or intersex identification, status, or perceived status; or gang affiliation; or was motivated or otherwise caused by other group dynamics at the facility;*
- Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse;*
- Assess the adequacy of staffing levels in the area during the different shifts;*
- Assess whether monitoring technology should be deployed or augmented to supplement supervision by staff; and*

- f. Prepare a report of its findings on the Sexual Abuse or Assault Incident Review Team form (CD-150102.3), including but not necessarily limited to determinations made pursuant to paragraphs (2) (a) through (2) (e) of this section;
- g. All staff present during the review will sign a PREA Sexual Abuse Response Team Committee Confidentiality Agreement form (CD-150102.4).

The facility PREA Compliance Manager shall compile and document all PREA incidents on the Monthly PREA Incident Tracking Log, form (CD-15102.5).”

The PNM review team prepares a report of its findings, including but not limited to determinations made and any recommendations for improvement. This auditor reviewed the sexual abuse incident reviews that occurred during the audit period. Review packets included a Sexual Abuse or Assault Incident Review Team form, completed with the lead reviewer’s information, a list of review team members and their title/roles, a summary of the incident details, incident findings and any recommendations.

The complete review packet, signatures, confidentiality agreements and all attachments are sent to the Inspector General PREA Management Team. Any box that has been marked “yes”, indicating one of the considerations was a factor in the sexual abuse/assault must include comments related to the change the committee member believes should be implemented at the facility. The warden shall implement the recommendation for improvement or document the reasons for not doing so. Interviews with the warden, facility PCM and a member of the incident review team indicated the reviews are taking place as directed in agency policy.

In addition to reviewing all substantiated and unsubstantiated allegations of sexual abuse, PNM reviews all substantiated and unsubstantiated allegations of sexual harassment, which this auditor finds to exceed the standard requirements.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with and exceeds this standard of sexual abuse incident reviews as it relates to PREA.

Standard 115.87: Data collection

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.87 (a)

- Does the agency collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions? Yes No

115.87 (b)

- Does the agency aggregate the incident-based sexual abuse data at least annually? Yes No

115.87 (c)

- Does the incident-based data include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice? Yes No

115.87 (d)

- Does the agency maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews? Yes No

115.87 (e)

- Does the agency also obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates? (N/A if agency does not contract for the confinement of its inmates.) Yes No NA

115.87 (f)

- Does the agency, upon request, provide all such data from the previous calendar year to the Department of Justice no later than June 30? (N/A if DOJ has not requested agency data.) Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD website
- 2015, 2016 and 2017 *PREA Annual Reports*

(a-f) The agency and facility utilize an electronic database (IAPro) to collect and secure data, and includes all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. The agency head authorizes access to IAPro for employees with a legitimate need to know. There are currently 19 employees with access in the agency – the agency head, Office of Professional Standards investigators, the legal department and the agency PREA Coordinator. Documents maintained

in IAPro are retained indefinitely and are not purged. Data from the agency's public and privately-operated facilities is maintained in IAPro. This data includes all the information necessary to answer all questions from the most recent version of the Survey of Sexual Victimization conducted by USDOJ.

The annual reports for 2012, 2013, 2014, 2015, 2016, 2017 and 2018 are available on the agency website at <https://cd.nm.gov/office-of-the-secretary/office-of-inspector-general/prison-rape-elimination-act/>.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of data collection as it relates to PREA.

Standard 115.88: Data review for corrective action

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.88 (a)

- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Identifying problem areas? Yes No
- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Taking corrective action on an ongoing basis? Yes No
- Does the agency review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by: Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole? Yes No

115.88 (b)

- Does the agency's annual report include a comparison of the current year's data and corrective actions with those from prior years and provide an assessment of the agency's progress in addressing sexual abuse? Yes No

115.88 (c)

- Is the agency's annual report approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means? Yes No

115.88 (d)

- Does the agency indicate the nature of the material redacted where it redacts specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD website
- 2016, 2017 and 2018 *NMCD PREA Annual Reports*

(a-d) NMCD collects and reviews data to assess and improve the effectiveness of its sexual abuse prevention, detection and response policies, practices and training in order to identify problem areas, take corrective action on an ongoing basis, compare the current year's data/corrective action with data/corrective action from previous years, and assess the agency's progress in addressing sexual abuse within its facilities. The report is prepared by the agency PREA Coordinator and signed by the NMCD Cabinet Secretary. The report includes a brief description of each facility and its mission, with a breakdown of the allegations of sexual abuse and sexual harassment for the calendar year. The case number, category (inmate-on-inmate or staff-on-inmate), allegation type and disposition are listed for each allegation.

The annual reports for 2012, 2013, 2014, 2015, 2016, 2017 and 2018 are available on the agency website at <https://cd.nm.gov/office-of-the-secretary/office-of-inspector-general/prison-rape-elimination-act/>.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of data review for corrective action as it relates to PREA.

Standard 115.89: Data storage, publication, and destruction

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.89 (a)

- Does the agency ensure that data collected pursuant to § 115.87 are securely retained?
 Yes No

115.89 (b)

- Does the agency make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means? Yes No

115.89 (c)

- Does the agency remove all personal identifiers before making aggregated sexual abuse data publicly available? Yes No

115.89 (d)

- Does the agency maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection, unless Federal, State, or local law requires otherwise? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD Policy 150101
- NMCD website
- 2016, 2017 and 2018 NMCD PREA Annual Reports
- Interview with Agency PREA Coordinator

- Interview with Human Resource staff
- Interview with PREA Compliance Manager
- Interviews with investigative staff

(a) The agency and facility utilize an electronic database (IAPro) to collect and secure data, and includes all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews. The agency head authorizes access to IAPro for employees with a legitimate need to know. There are currently 19 employees with access in the agency – the agency head, Office of Professional Standards investigators, the legal department and the agency PREA Coordinator. Documents maintained in IAPro are retained indefinitely and are not purged.

(b) Data from the agency's public and privately-operated facilities is maintained in IAPro. The annual reports for 2012, 2013, 2014, 2015, 2016, 2017 and 2018 are available on the agency website at <https://cd.nm.gov/office-of-the-secretary/office-of-inspector-general/prison-rape-elimination-act/>.

(c) The reports do not contain any personal identifiers.

(d) NMCD Policy CD-150101, *Offender Protection Against Abuse & Sexual Misconduct; Reporting Procedures, PREA*, states on page one, "All case records associated with claims of sexual abuse and sexual harassment, 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."

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard of data storage, publication and destruction as it relates to PREA.

AUDITING AND CORRECTIVE ACTION

Standard 115.401: Frequency and scope of audits

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.401 (a)

- During the prior three-year audit period, did the agency ensure that each facility operated by the agency, or by a private organization on behalf of the agency, was audited at least once? (*Note: The response here is purely informational. A "no" response does not impact overall compliance with this standard.*) Yes No

115.401 (b)

- Is this the first year of the current audit cycle? (*Note: a "no" response does not impact overall compliance with this standard.*) Yes No
- If this is the second year of the current audit cycle, did the agency ensure that at least one-third of each facility type operated by the agency, or by a private organization on behalf of the agency, was audited during the first year of the current audit cycle? (N/A if this is **not** the *second* year of the current audit cycle.) Yes No NA
- If this is the third year of the current audit cycle, did the agency ensure that at least two-thirds of each facility type operated by the agency, or by a private organization on behalf of the agency, were audited during the first two years of the current audit cycle? (N/A if this is **not** the *third* year of the current audit cycle.) Yes No NA

115.401 (h)

- Did the auditor have access to, and the ability to observe, all areas of the audited facility? Yes No

115.401 (i)

- Was the auditor permitted to request and receive copies of any relevant documents (including electronically stored information)? Yes No

115.401 (m)

- Was the auditor permitted to conduct private interviews with inmates, residents, and detainees? Yes No

115.401 (n)

- Were inmates permitted to send confidential information or correspondence to the auditor in the same manner as if they were communicating with legal counsel? Yes No

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD website
- Interview with Agency PREA Coordinator

(a) NMCD operates seven public facilities and four private facilities. The agency began receiving audits in the first year of the first cycle. All audits were completed by DOJ-certified auditors, and all final audit reports have been posted on NMCD's website, available to the public at <https://cd.nm.gov/office-of-the-secretary/office-of-inspector-general/prison-rape-elimination-act/>. During the prior three-year audit period, Cycle Two, the agency ensured that each facility under their control was audited at least once.

(b) This is the first year of Cycle Three.

(h, l, m, n) While onsite at PNM, the audit team was provided with access to, and the ability to observe, all areas of the facility. The auditor received copies of all requested documents and the team was permitted to conduct private interviews with staff and inmates. Inmates were permitted to send confidential correspondence to the auditor, prior to the onsite review. There were no barriers to conducting the audit.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard.

Standard 115.403: Audit contents and findings

All Yes/No Questions Must Be Answered by the Auditor to Complete the Report

115.403 (f)

- The agency has published on its agency website, if it has one, or has otherwise made publicly available, all Final Audit Reports. The review period is for prior audits completed during the past three years PRECEDING THIS AUDIT. The pendency of any agency appeal pursuant to 28 C.F.R. § 115.405 does not excuse noncompliance with this provision. (N/A if there have been no Final Audit Reports issued in the past three years, or in the case of single facility agencies that there has never been a Final Audit Report issued.) Yes No NA

Auditor Overall Compliance Determination

- Exceeds Standard** (*Substantially exceeds requirement of standards*)
- Meets Standard** (*Substantial compliance; complies in all material ways with the standard for the relevant review period*)
- Does Not Meet Standard** (*Requires Corrective Action*)

Instructions for Overall Compliance Determination Narrative

The narrative below must include a comprehensive discussion of all 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 the standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The auditor gathered, analyzed and retained the following evidence related to this standard:

- PNM Pre-Audit Questionnaire (PAQ) responses
- NMCD website
- Interview with Agency PREA Coordinator

(f) NMCD operates seven public facilities and four private facilities. The agency began receiving audits in the first year of the first cycle. All audits were completed by DOJ-certified auditors, and all final audit reports have been posted on NMCD's website, available to the public at <https://cd.nm.gov/office-of-the-secretary/office-of-inspector-general/prison-rape-elimination-act/>.

Conclusion:

Based upon the review and analysis of all available evidence, the auditor has determined that the facility is fully compliant with this standard.

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.

Auditor Instructions:

Type your full name in the text box below for Auditor Signature. This will function as your official electronic signature. Auditors must deliver their final report to the PREA Resource Center as a searchable PDF format to ensure accessibility to people with disabilities. Save this report document into a PDF format prior to submission.¹ Auditors are not permitted to submit audit reports that have been scanned.² See the PREA Auditor Handbook for a full discussion of audit report formatting requirements.

Amanda van Arcken

June 17, 2020

Auditor Signature

Date

¹ See additional instructions here: <https://support.office.com/en-us/article/Save-or-convert-to-PDF-d85416c5-7d77-4fd6-a216-6f4bf7c7c110>.

² See *PREA Auditor Handbook*, Version 1.0, August 2017; Pages 68-69.