

Prison Rape Elimination Act (PREA) Audit Report

Adult Prisons & Jails

☐ Interim ☒ Final

Date of Interim Audit Report: 09/10/2021 ☐ N/A

If no Interim Audit Report, select N/A

Date of Final Audit Report: 03/09/2022

Auditor Information

Name: Beth L. Schubach	Email: blschubach1@doc1.wa.gov
Company Name: Washington Department of Corrections	
Mailing Address: PO Box 41131	City, State, Zip: Olympia WA 98504-1131
Telephone: 360-890-0344	Date of Facility Visit: 07/29 through 30/2021

Agency Information

Name of Agency: New Mexico Corrections Department			
Governing Authority or Parent Agency (If Applicable): State of New Mexico, Office of the Governor			
Physical Address: 4337 NM 13		City, State, Zip: Santa Fe, NM 87508	
Mailing Address: PO Box 277116		City, State, Zip: Santa Fe, NM 87502-0116	
The Agency Is:	<input type="checkbox"/> Military	<input type="checkbox"/> Private for Profit	<input type="checkbox"/> Private not for Profit
<input type="checkbox"/> Municipal	<input type="checkbox"/> County	<input checked="" type="checkbox"/> State	<input type="checkbox"/> 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: 575-827-8844

Agency-Wide PREA Coordinator

Name: Jerry Smith	
Email: Jerry.Smith@state.nm.us	Telephone: 505-287-9618
PREA Coordinator Reports to: Former Inspector General (waiting for position to be filled)	Number of Compliance Managers who report to the PREA Coordinator: 7

Facility Information			
Name of Facility: Western New Mexico Correctional Facility			
Physical Address: 2111 North Lobo Canyon Road		City, State, Zip: Grants NM 87020	
Mailing Address (if different from above): PO Drawer 250		City, State, Zip: Grants NM 87020	
The Facility Is:	<input type="checkbox"/> Military	<input type="checkbox"/> Private for Profit	<input type="checkbox"/> Private not for Profit
<input type="checkbox"/> Municipal	<input type="checkbox"/> County	<input type="checkbox"/> State	<input type="checkbox"/> Federal
Facility Type:	<input checked="" type="checkbox"/> Prison	<input type="checkbox"/> Jail	
Facility Website with PREA Information: https://cd.nm.gov/office-of-the-secretary/office-of-inspector-general/prison-rape-elimination-act/			
Has the facility been accredited within the past 3 years? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> 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): <input checked="" type="checkbox"/> ACA <input type="checkbox"/> NCCHC <input type="checkbox"/> CALEA <input type="checkbox"/> Other (please name or describe: Click or tap here to enter text.) <input type="checkbox"/> N/A			
If the facility has completed any internal or external audits other than those that resulted in accreditation, please describe: Not applicable			
Warden/Jail Administrator/Sheriff/Director			
Name: Jessica Vigil-Richards			
Email: Jessica.Vigil3@state.nm.us		Telephone: 505-876-8301	
Facility PREA Compliance Manager			
Name: Angel Lucero			
Email: AngleM.Salazar@state.nm.us		Telephone: 505-383-3365	
Facility Health Service Administrator <input type="checkbox"/> N/A			
Name: Floyd Burress			
Email: Floyd.Burress@wexfordhealth.com		Telephone: 505-876-8379	
Facility Characteristics			
Designated Facility Capacity:		432	
Current Population of Facility:		308	
Average daily population for the past 12 months:		344	
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 checked="" type="checkbox"/> Females <input type="checkbox"/> Males <input type="checkbox"/> Both Females and Males	
Age range of population:	20 – 87 years of age	
Average length of stay or time under supervision:	4.46	
Facility security levels/inmate custody levels:	Level III and Level IV	
Number of inmates admitted to facility during the past 12 months:	584	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 72 hours or more:	578	
Number of inmates admitted to facility during the past 12 months whose length of stay in the facility was for 30 days or more:	465	
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)	Click or tap here to enter text. <input checked="" 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	
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):	<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:	204	
Number of staff hired by the facility during the past 12 months who may have contact with inmates:	26	
Number of contracts in the past 12 months for services with contractors who may have contact with inmates:	18	
Number of individual contractors who have contact with inmates, currently authorized to enter the facility:	34	
Number of volunteers who have contact with inmates, currently authorized to enter the facility:	125	

Physical Plant

Number of buildings: 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.	26 per PAQ
Number of inmate housing units: 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.	11 per PAQ
Number of single cell housing units:	7 per PAQ
Number of multiple occupancy cell housing units:	1 per PAQ
Number of open bay/dorm housing units:	3 per PAQ
Number of segregation cells (for example, administrative, disciplinary, protective custody, etc.):	0
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 type="checkbox"/> Local hospital/clinic <input type="checkbox"/> Rape Crisis Center <input checked="" type="checkbox"/> Other (please name or describe: Albuquerque SANE Collaborative)
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:		0
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?		4
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 (including Audit Methodology)

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.

Beth Schubach, a U.S. Department of Justice (USDOJ) Certified PREA Auditor for adult and juvenile facilities conducted the Prison Rape Elimination Act (PREA) audit of the Western New Mexico Correctional Facility (WNMCF), with the on-site review conducted July 29 through 30, 2021. WNMCF is operated by the New Mexico Corrections Department (NMCD). The audit was conducted with the assistance of support staff Melissa Andrewjeski and Barbara Kopecky. During the course of the audit, Beth Schubach conducted the documentation review, informal interviews with random staff and inmates, formal interviews with random and specialized staff and random and specialized inmates and authored this report. Support Team members conducted informal interviews with staff and formal and informal interviews with random and specialized inmates. The Audit Team conducted the site review together.

The notice of audit posted at WNMCF stated:

During the following period, this facility will be undergoing an audit for compliance with the U.S. Department of Justice's National PREA Standards to Prevent, Detect and Respond to Prison Rape under the Prison Rape Elimination Act (PREA) Standards for Prisons and Jails:
July 29 - 30, 2021

Any person with information relevant to this compliance audit may confidentially* correspond with the auditor by writing to:

Beth Schubach, WADOC PREA Coordinator
PO Box 41131
Olympia WA 98504-1131

*CONFIDENTIALITY: All written and verbal correspondence and disclosures provided to the auditor are confidential and will not be disclosed unless required by law. There are exceptions when confidentiality must legally be breached. Exceptions include, but are not limited to:

If the person is an immediate danger to her/himself or others (e.g., suicide, homicide)
Allegations of suspected child abuse, neglect or mistreatment;

In legal procedures where information has been subpoenaed by a court of appropriate jurisdiction. Any correspondence should be clearly identified as "LEGAL MAIL" and handled per DOC 450.100 Mail for Prison Offenders / DOC 450.110 Mail for Work Release Offenders.

Please note that correspondence with the auditor is limited to the course of the audit, which is within 45 days of the completion of the on-site visit noted above.

The Auditor received email confirmation dated 06/02/2021 that the notice was posted throughout the facility in areas accessible by staff and inmates, to include all housing units, programming areas, the dining hall, and work areas. The Auditor received letters from a total of four (4) inmates between the posting of the notification and the authoring of this report.

The Auditor received proof documents via flash drive on 07/28/2020. During a review of the documentation provided, it was learned that a significant amount of documentation was from the last PREA audit and had not been updated. The PREA Compliance Manager (PCM) was instructed by the PREA Coordinator to redo all documentation and resubmit via a new flash drive. A second drive was received 10/14/2020. The information on the drive contained relevant documentation pertaining to the PREA standards and the audit. This included, but was not limited to, responses to pre-audit questionnaire (PAQ) questions; agency policies; facility procedures; memorandums of understanding and contracts;

inmate posters, brochures and handbooks; compliance memorandums for each standard from the agency PREA Coordinator; and training documentation. Prior to the on-site review, the Auditor reviewed all submitted documentation. In addition, prior to and immediately following the onsite review, the auditor exchanged numerous emails with the PREA Compliance Manager (PCM) and the agency PREA Coordinators as they related to follow up questions and concerns regarding the received documentation. The Auditor also reviewed the WNMCF PREA Audit report from the previous PREA audit, the NMCD public website and related PREA information, the NMCD annual PREA reports and the Annual Assessments and Surveys of Sexual Victimization. The Auditor also conducted a web search for information regarding WNMCF, locating informational publications as well as articles regarding prior allegations of sexual abuse, overcrowding, and a culture of sexual abuse; however, a majority of these articles are several years old and do not appear to represent the positive changes being made at this facility. An introductory telephone conference to discuss processes and logistics was held on 08/05/2020, with the facility Warden and PCM and the agency PREA Coordinator. The Auditor also provided the PCM and PREA Coordinator with an introductory email regarding processes and initial documents requests.

The initial on-site review was scheduled for the week of August 31, 2020. Due to COVID19 restrictions, this on-site review was rescheduled for the week of April 05, 2021 and then delayed again until July 29 – 30, 2021. Due to these delays, an interim process was developed that involved the conduct of all staff, contractor, and volunteer interviews via telephone. Additionally, a system of monthly documentation submission was implemented to allow the Auditor to assess / confirm continued compliance between the initial documentation period and the eventual on-site review. Monthly documentation submissions included the following:

- 115.13 - Documentation of deviations from the staff plan
- 115.13 – Logs documenting unannounced rounds
- 115.15 - Documentation of cross gender strip searches
- 115.16 / 115.33 - Documentation of specialized orientation provided / accommodations to ensure participation in reporting / investigations
- 115.17 – Listing of all new hires and promotions from which the Auditor selected documents for review
- 115.17 – Listing of all new contractors from which the Auditor selected documents for review
- 115.18 - Documentation regarding major physical plant modification and/or additions / modifications to camera systems
- 115.21 - Documentation relative to any forensic medical examinations conducted
- 115.21 - Any revisions to agreements with victim advocacy organizations
- 115.22, 115.71, 115.73, 115.76, 115.77, 115.78, 115.83, 115.86 - Copies of investigations completed, including notifications provided, any disciplinary actions taken, any follow up mental health evaluations, and incident reviews (as applicable)
- 115.31, 115.32 – Confirmation of training completion
- 115.33, 115.41, 115.81 - Listing of all inmates received at the facility during the month from which the Auditor selected documentation for review
- 115.34 - Notification of any newly trained investigators with documentation of training completion
- 115.35 - Listing of all new health services staff and documentation of training completion from which the Auditor selected documents for review
- 115.42 - Documentation of initial and 6-month reviews for transgender and intersex offenders
- 115.43, 115.68 - Documentation of the placement of any vulnerable inmate or alleged victim in segregated housing
- 115.52 - Documentation of any allegations reported via the grievance system
- 115.61, 115.62, 115.64, 115.81, 115.82, 115.83 - Documentation of allegations received and actions taken (e.g., response, crisis and follow up medical care, investigation initiated, added to existing investigation, determined not to be PREA)
- 115.63 - Documentation of allegations received regarding another facility and notification provided
- 115.67 - Documentation of responses to allegations of retaliation and formal retaliation monitoring as associated with investigations

- 115.81 - Documentation of informed consent regarding release of information associated with prior victimization that did not occur in an institutional setting

Compliance assessments and comments are included with the narrative for each standard noted. The Auditor, PREA Coordinator, and PCM remained in continuous communication throughout the period of delay.

Prior to arrival, the Auditor completed all staff, contractor, and volunteer interviews. The Auditor also confirmed prior to the on-site review that staff assigned to specialized roles had not changed, with the exception of intake staff, thereby not indicating the need for additional interviews except for the new intake staff member. In November 2020, the PREA Resource Center issued instruction regarding COVID-postponed site reviews, allowing for the conduct of telephonic interviews only with supervisory and administrative staff. However, an exception was requested and granted based on the compliance assessment process implemented and the requirement to re-interview noted individuals was waived.

At approximately 0800 hours on July 29, 2021, the Team arrived at the facility and processed through the main gate, with the Correctional Officer verifying the identity of each team member and searching the trunk of the vehicle. The Team was then met at public access by the Warden and Deputy Warden. The bags of Team members were searched, and each Team member was processed through a metal detector, followed by each member having their temperature taken in compliance with COVID protocols. At 0900 hours, a short in-brief was held with members of the facility administrative team. Team members were then provided with supporting documents for the on-site review, to include a facility schematic, the 2021 staffing plan review, the facility inmate handbook, lists of all specialty inmates (blind, deaf, hard of hearing, physically disabled, cognitively disabled, LEP, transgender, gay /bisexual, reported abuse, or disclosed abuse during a risk assessment) and a roster of all inmates at the facility on the first day of the on-site review, divided by housing unit and organized by bed number. Team members were also informed that at the time of the on-site review, the facility did not house any inmates in segregation for risk of victimization. Team members selected inmates for specialty and random inmate interviews. The facility count on the first day of the on-site review was 308 inmates. The Team was provided with a synopsis of housing units maintained in the facility along with the division of the facility into two divisions as follows:

- Western Division:
 - Unit 1 – General population, level 3 (medium custody) inmates,
 - Unit 2 – General population, level 3 (medium custody) inmates,
 - Unit 3 – Education, level 3 (medium custody) inmates, and
 - Unit 4 – Mental health designated level 3 (medium custody) inmates,
- RDC Division:
 - Unit 5 – Inmates serving alternative sanction time (disciplinary), level 3 (medium custody) and level 4 (higher custody) inmates,
 - Unit 6 – Intake inmates,
 - Unit 7 – General population, level 3 (medium custody) inmates working in the kitchen and correctional industries,
 - Unit 8 – Residential substance abuse program inmates,
 - Unit 9 – Long Term Care Unit inmates, and
 - Unit 10 – General population, level 3 (medium custody) inmates working details in the laundry and warehouse.

If an inmate attains a lower custody level (minimum), she is transferred to the Springer Correctional Center. However, a small group of minimum custody inmates are housed at WNMCF for outside crews and to clean the administration building.

At approximately 0945 hours, the tour of the facility was initiated, attended by the Warden, two (2) Deputy Wardens, Physical Plant Manager, Human Resources Manager, Major, Unit Manager, Health Services Administrator, PREA Coordinator, PCM, and the Warden's Administrative Assistant. The tour continued until approximately 1200 hours, when Team members began formal inmate interviews. The Team departed the facility at approximately 1730 hours, returning at approximately 0900 hours 07/27/2021 to

complete the tour, complete formal interviews, and conduct follow up informal discussion with identified staff.

While touring, Team members attempted to conduct tests of the ability to contact the agency reporting line, the tollfree and unrecorded advocacy line, and a second advocacy organization posted for which a PIN was required. The Team was informed that the ability to leave a message on the agency reporting line was currently not operational due to a technical issue that telephone companies were attempting to resolve. The Auditor requested that all inmates be informed of the issue and then reformed when the system was again operational (documentation provided and noted with standard 115.51). Test calls to *9999, La Piñon victim advocacy organization, were successful, but calls to the second posted advocacy agency failed as the caller was informed via recording that the number was not on the approved call list of the inmate whose PIN was being used.

Physical Plant Tour

Administration Building:

This building maintains the office of the Warden, conference room, key control, break room, Human Resources, roster, inmate accounts, mailroom, business services, ACA Coordinator, and records. The area is cleaned by a minimum-custody inmate who is supervised by staff working in the area. Supervision is not direct, but the inmate is never permitted to be alone with one staff member. The building also houses Master Control. A sally port provides access to the secure portion of the facility. PREA information was observed painted on walls throughout the facility and the audit notice was located in housing units and inmate-accessible areas (e.g., recreation, food services, programming, etc.). Announcements were consistently made whenever a male staff member entered any of the housing areas, even if a male had just entered the area. Unit logs were checked in multiple housing units, confirming the inclusion of rounds made by intermediate and higher-level supervisors.

Western Division:

The gate into this portion of the facility is controlled by the officer assigned to the tower. All movement between areas of the division are escorted.

- Education – The area maintains the office of the Chief of Security (Major), and offices for the registrar and teachers. Three (3) classrooms, to include a computer lab, are also maintained along with a college classroom. The Auditor requested that a mirror be added to classrooms one and two and the college classroom to address a blind spot. It is noted that a teacher may be in a classroom with one (1) inmate, but the classroom door is required to remain open with the teacher seated in full view of the officer assigned to the building, who is to be posted by the door. Also in the building are an inmate bathroom, staff bathroom, storage and cleaning closets, and library. Mirrors had been installed in the library facing inward, so the librarian has a clear view of all inmates in the library from her office. The Auditor requested that an additional mirror be added facing the hallway to address a blind spot. Storage and cleaning closets are always locked unless unlocked by the officer to access supplies and then immediately relocked.
- Recreation – A hallway off the education area leads to the gymnasium and indoor recreational areas, which maintain a pool table, volleyball / badminton court and ellipticals. In the area is a caustics storage area with an expanded metal door, a storage room that is to always remain locked when not in use, a hobby shop, staff restroom, two (2) staff offices, and equipment storage room. Off the hobby shop is a tool room with interior caustics storage and window visibility into the gymnasium. There is also a barber shop with an expanded metal divider, separating the area into staff and inmate service areas. A hallway leads to additional storage and tool storage along with an inmate restroom that is open to view from the hallway, but a portable screen is in place for inmates to use when using the facilities. The bathroom is also used when strip searches are needed. An officer is assigned to the recreation area whenever it is in use by inmates scheduled by housing unit.
- B Conference Area – This area maintains a conference room with good visibility via windows out onto hallways. Also in the area are the Unit Manager office, hearing office, employment coordinator office, PCM office, staff restroom, multipurpose offices, and activities center which is

used for meetings and peer led groups. The Unit Manager conducts interviews for participation in any of these groups and also oversees the groups, each of which have a staff sponsor. The Auditor requested that the furniture in the PCM office be rearranged and a mirror added to address blind spots.

- B Visiting Room – Currently the facility is conducting visits via Zoom but can do in-person visits if requested. The area maintains an officer's station, play area, two (2) visitor restrooms, and an area for non-contact visits. The facility also conducts various groups in the area. An officer escorts the visitor from the main entrance and the housing unit officer escorts the inmate from her housing unit. PREA postings were observed in the visitor entry to the visiting room.
- Dining Hall – This area served inmates from the Western Division and RDC inmates from housing unit 7 and two (2) pods of housing unit 5. The remainder of the facility is satellite fed. A monitor in the dining area plays inmate-created PowerPoints with educational information (e.g., health, COVID, etc.) and other current affairs information. Audit notes were located on the window into the area. Behind the dining room is a food service area, dish pit, inmate restroom for dining hall workers, and staff restroom. Food is served here but prepared in the main food service area of the facility. An officer is assigned to the area when in use. The Auditor requested that a sign be added to the inmate restroom indicating that only one inmate was permitted to use the bathroom at a time and the tint on the window lowered as it was too high to be effective. The Auditor also requested that a portable milk cooler be moved, and a mirror added to eliminate a blind spot. It is noted that the Milk cooler had been relocated before the Team left the facility.

A total of 178 inmates can be housed in this division in the following housing units:

- Unit 1 is all single celled housing in wet cells. It is sub-divided into four (4) pods of four (4) cells each with a janitor closet and curtained shower in each pod. The Auditor recommended that the facility explore a different shower curtain that would provide a view of the occupant's head and feet while using the shower, once the facility's stock of currently installed curtains is exhausted as the current curtain did not allow view of the occupant's head and the opaque area to see feet was so low, it was very hard to view. The unit's control booth no longer has an officer assigned as a post but is available to the housing unit officer who is required to be out on the floor. The booth is available for completion of paperwork, maintenance of the unit log, and viewing of monitors to which unit cameras feed. The Case Worker's office is accessible from the outside of the unit during open office hours (to hours per day). The Case Worker only sees inmates from Housing Unit 1. The Team was informed that the door was required to remain open whenever an inmate was in the office, but this expectation was not in writing. The Auditor requested that the requirement be put in writing in the form of a Warden directive to ensure understanding and consistency. While in the area, a bookshelf was moved from in front of an exterior window to address a blind spot.
- Unit 2 is laid out in exactly the same manner as Unit 1. The Auditor requested the repair or replacement of the exterior windows in the Case Manager's office to address visibility issues.
- Unit 3 houses education inmates and maintains a Case Worker's office off the main entry. Calendars were removed from exterior windows while the Team was in the unit to address visibility issues. The unit has one main central dayroom with two-person dry cells around the perimeter. Cell doors do not lock, allowing inmates access to the restroom at any time. The unit maintains a center control booth with good visibility of the entire unit. The bathroom has stalled toilets and curtained showers. A window from the control booth into the bathroom has been boarded over, preventing visibility into the area.
- Unit 4 has caged off, individual recreation areas that were in use when the unit was used as restricted housing. These are no longer in use. The unit houses mental health inmates in single cells with eight (8) wet cells in each of three (3) pods, arranged on two (2) floors. I Pod is designated as critical care. J Pod is designated as acute care, one-on-one watches, and housing for county jail holds. K Pod is designated as the therapeutic mental health unit. A psychologist determines placement in I and J pods, but placement in K pod is via an entry application process for inmates who want to address identified behaviors and emotions. Entry into the program is a three (3) week process and a selected inmate can only enter the program when a current inmate graduates or exits for other reasons. The program is comprised of four (4) stages and is self-paced but takes approximately six (6) months to complete. A steel shower is maintained in the

corner of each level of each pod. Designated cells have the top half of the door windows painted to prevent visibility of the toilet from a central control booth. The dayroom in K pod is open and used for group meetings.

Outside each housing unit is a recreation area with picnic tables, a volleyball court, and weight deck.

The Team concluded the first portion of the tour at approximately 1200 hours and began interviews. The Team departed the facility at approximately 1715 hours, returning at approximately 0830 hours on 07/30/2021 to complete the tour and identified interviews.

Reception and Diagnostic Center (RDC) Division

Housing Units:

- Unit 5 houses inmates who are serving alternative disciplinary sanctions. The facility does not maintain any form of restricted housing, to inmates with significant disciplinary issues (e.g., fights) can be sanctioned to this unit, where they are not permitted visiting, phone, electronics, or canteen. These inmates are still provided recreation and tier time out of cells with other inmates on the unit. Unit 5 is accessed from a central entry point with units off a walkway. The unit is made up of three (3) pods (L, M, and N) each with single cells in a two (2) tier design, with eight (8) cells on each level. There is a steel shower in the corner of each level. Due to the custody level of the inmates in the unit, a two-man escort of a cuffed inmate is required whenever the inmate moves anywhere outside the unit. A central dayroom allows for interaction of pod inmates in small groups. A control booth is on the top floor with visibility into all three (3) pods, but the booth is no longer in use and all doors are operated by Master Control. The housing unit also has its own outside recreation area.
- Unit 6 houses intake inmates and its physical plant layout is identical to Unit 5.
- Unit 7 houses kitchen and Correctional Industries workers and its physical layout is identical to Unit 5.
- Unit 8 is accessed through a locked gate and houses inmates in residential substance abuse treatment. The unit is made up of three (3) trailers, each split into two (2) pods with separate entrances. Each pod is a dorm setting with eight (8) bunks and a bathroom with a curtained shower. The center area of one pod is used for group sessions. An additional trailer serves as a Case Worker office with a staff restroom, separated from a common bathroom that is no longer in use but has an enclosed cleaning / caustic storage area that is access when cleaning materials are needed. The area also maintains a laundry area that has not been in use since the area no longer houses the facility's honor inmates. The Auditor requested that a mirror be added to the Case Worker's office to address a blind spot and a lock added to the door of the bathroom / storage area to ensure access is restricted as intended. Telephone booths and a small building that serves as an officer's control booth are also inside the unit's perimeter fence. Off to the side of the unit, outside the unit's fence, is also a trailer used for mental health staff offices, but no inmate is permitted access to the area.
- Unit 9 is the Long-Term Care Unit (LTCU) where a nurses' station and six (6) patient rooms are maintained. Five (5) of the rooms house a single inmate, while the last room can house two (2) and has a shower in the room itself. The remaining rooms access a common shower in the hallway. The Auditor requested that the blinds be removed from the window to the outside and the window be partially frosted or blacked out to eliminate view from maintenance staff who may be working outside or someone in a perimeter patrol vehicle (viewable only a night). Room 3 is a restraint room, with a four-point restraint bed.
- Unit 10 houses detail workers assigned to the laundry and warehouse. Off the main entry is a bathroom with curtained showers and toilets in small rooms with windows in the door. The windows and black out halfway up to ensure privacy for the occupant. The unit is dorm housing with a central dayroom. The unit also maintains a satellite medical office and a staff office wing with four (4) offices, with access from the outside walkway. The Auditor requested that a mirror be added to each of the four (4) offices to address a blind spot.

The RDC division also maintains the following areas accessed by a vehicle and a person sally port, both of which are controlled by an officer stationed in a booth outside the vehicle gate:

- Correctional Industries – Inmates working in the area sew and also manufacture large trash bags. The Auditor requested that a metal locker be relocated to eliminate an issue with lines of sight from the windowed office. The Auditor also requested that the slide lock be removed from inside the staff bathroom.
- Food Services - When entering the kitchen, there is an open corridor straight ahead with prep tables and to the right, a cook area that has a mirror placed to address the blind spot. The area also maintains a dry storage room, janitor closet, inmate restrooms, and staff office. The dry storage and janitor closets are to remain locked when not in use. One (1) freezer and three (3) coolers have recently been installed and will be locked by staff once they are operational. Camera and mirror installations address blind spots.
- Intake – inmates entering the facility are brought into the area, where they are searched, provided facility clothing, processed through medical, and provided PREA orientation via video. Four (4) old one-on-one wet cells are in the area and would only be used in an emergency, at which time an officer would be assigned to the common hallway. Also in the area is a caustics closet, staff restroom, ID office, mental health staff office, and the office of the intake lieutenant. The Auditor requested that two (2) mirrors be added to this office to address significant blind spots. Inmates are seen in a medical intake examination room, where medical staff are required to keep the door open so occupants can be observed by the officer assigned to the area. The room is equipped with a portable folding screen for privacy if needed. If medical intake is being completed by a male medical practitioner, a female medical staff member is also required to be in the room. A body scanner is maintained in a separate room and can only be operated by a limited number of certified staff of the same gender as the inmate being scanned. Scans may periodically be conducted on male inmates from a neighboring facility if needed, so the facility ensures certified male staff are also on site. Before COVID, the facility processed in approximately twenty-four (24) inmate each week. Since COVID restrictions were implemented and court hearings were delayed, the facility has been processing between one (1) and five (5) inmates per week. Also in the intake area is a property distribution area, inside which is a room to hold property for inmates who have temporarily left the facility to go to court. Three (3) staff and two (2) inmates work in the property area. The Auditor requested signage indicating no inmate access and implement procedures to ensure the room is locked when not in use. Off a hallway are four (4) intake holding cells, one of which is currently being used for supplies. The Auditor requested that the window into the cells be partially frosted or blacked out to allow privacy for the inmate using the toilet in the cell.
- Laundry - Generally two (2) to three (3) inmates work in the area at any given time. The Team was informed that at times there have been instances when there have been two (2) inmates alone in the area, but staff are in the area next door and the adjoining door is required to always remain open. The Team was informed that staff are required to make formal checks of the area every thirty (30) minutes and that maintenance staff are usually in and out of the area more frequently. When entering the area, there are dryers on the right-hand side and washers to the front with a large, expanded metal cage to the left. The dryers have open areas behind them. The Auditor requested that the mirror be adjusted to allow a view directly behind the dryers. The Auditor also requested the installation of a window in the sewing room off the laundry.
- Warehouse – Inmates working in the area are required to use the restroom in the ID area and the staff restroom is required to be always locked. All expanded metal storage areas were secured and there was good visibility between all bays in the area. There were no identified manmade barriers. There is an office to the left when entering with another room directly across from the office. The Auditor requested that a mirror be installed in this room and staff ensure that visibility is not blocked by anything hanging in the area.
- Maintenance – All offices in the area maintain windows for visibility. The storage room containing mattresses is accessible only by staff. The Auditor requested that signage is added to tool room doors indicating no inmate access. The Auditor also requested that mirrors are installed in the two (2) general maintenance offices (or rearrange furniture to address blind spots), the locksmith room, and the electronics room and fire and safety room. In the boiler room, there is a closet with a solid door and a staff restroom inside, off to the side. The Auditor requested that the facility either remove the door to the closet or add a window to address blind areas. The Auditor also requested the installation of mirrors to address identified blind spots.

- Medical – the area maintains an office for psychiatry, dental, a psychiatry nurses' area where staff meet with inmates, a pharmacy, an officer's station with visibility into the two (2) holding cell waiting areas, two (2) biohazard rooms, a man down bag room, and the office of the health manager. For an inmate to be seen in dental, both the dentist and hygienist must be present. The Auditor requested that a mirror be added to the room to address a blind spot. The Auditor also requested that an expanded metal door be installed leading to the storage area in the back of the psychiatry nurses' office to restrict access from the isolated area. In the infirmary wing are an optical examination room, and two (2) general examination rooms. The Auditor requested that windows be added to the doors to each of these rooms to address blind spots. The two (2) general examination rooms already have a curtain that can be pulled across for privacy if an inmate being examined is in some state of undress. The Auditor also requested that the biohazard rooms and man down bag rooms have signage added regarding restricted / no inmate access. Finally, the Auditor requested that the frosting on both of the windows in the Health Manager's office be lowered or have a clear edge added to allow staff to see enough to ensure the safety of occupants. There was no PREA information posted in the area, which was recommended by the Auditor as this would be a good area to continue to share information with inmates.

Outside the main perimeter are also a training portable and portable used as a staff gym, to which no inmates are permitted access. There is also a dog kennel area and physical plant equipment / materials stored in open areas outside the main perimeter fence.

While on site, the Auditor was provided with purchase requests for additional mirrors and shower curtains that have a top and bottom view to replace existing ones as they wear out and current stock is depleted to address the items identified on the tour. The Team recommended that staff conduct a complete review of the facility to ensure all areas in which inmates are not permitted are clearly and consistently marked.

At approximately 1500 hours, the Team conducted an out brief, attended by the Warden, Deputy Warden, Business Manager, Physical Plant Manager, Major, PCM, and Human Resources Manager. The Team noted that the facility was very clean and well maintained. The Team observed productive interaction between staff, who were cooperative. The Team also observed productive interaction between inmates, who also appeared cooperative and receptive to interactions with Team members. Based on the interactions between inmates and the Warden, Deputy Wardens, and Unit Manager, it was evident that these individuals frequently toured the facility, interacting with inmates on a conversational basis as well as to address questions and issues.

All inmates interviewed were consistent in their responses. Inmates confirmed provision of information about the facility's rules against sexual abuse and sexual harassment as well as information about their rights to not be sexually harassed or abused and how to report. Each inmate was able to detail several different ways to report PREA allegations to include anonymous and third party. Inmates stated that overall male staff announce their presence prior to entering housing units and they are not seen by staff of the opposite gender while using the toilet, changing clothes, or showering. However, several inmates noted that lieutenants often do not make the required announcements.

The Team discussed themes from inmate interviews, to include issues related to culture. A majority of inmates interviewed expressed a fear of reporting allegations due to retaliation from staff, particularly those on one shift. Inmates reported that in the past, when retaliation was reported, nothing was done to address it. Inmates reported harassment by officers, particularly if the inmate identified as LGBTI or if the inmate is not in "the group" liked by these officers. Several inmates reported that they just want to keep their heads down so they can stay out of trouble so they can avoid the retaliation and harassment and go home. The Warden and her administrative staff are actively taking steps to address these issues, including formal investigations, continuous engagement with the inmate population, and implementation of productive programming opportunities. The Team and members of the out brief group discussed additional options for continuing this work, to include:

- Staff training regarding PREA, communication, etc., to include clear expectations directly from the Warden.
- An inmate generated newsletter with information about reporting and victim advocacy.

- Inmate developed posters regarding advocacy and reporting, something not painted on the walls that looks very different from what is currently posted.
- Superintendent review of all investigations before findings are made.
- Meeting with inmates shortly after or when an investigation finding letter is sent from central office to help them understand the reasons for the findings.
- Development of an intense tracking system for all allegations, including medical and mental health referrals, OPS triage decisions, law enforcement referrals, findings, retaliation monitoring, etc.
- Earlier and more frequent retaliation monitoring done at the facility level in addition to the central office file review to let the inmates know early on in the process what is going on and check in with them about any issues experienced.

Participants were informed of next steps to include final documentation collection and review, assembling all information into the interim report which should be issued within approximately 45 days, followed by the collaborative development of a corrective action plan and a corrective action period of up to 180 days. The final audit report should be issued within approximately 30 days of the end of corrective action. The Team departed the facility at approximately 1400 hours.

Interviews conducted – Western New Mexico Correctional Facility

Staff Category	Number of interviews conducted	
	Primary Role	Secondary Role
Random staff	20	0
Specialized staff	64	42
Selected interviewees based on a listing of all facility staff to ensure representation from a broad spectrum of operational divisions. Also ensure representation from all custody shifts.		
Total staff interviewed	84	42
Agency head or designee	1	0
Warden / Superintendent	1	0
PREA Compliance Manager	1	0
PREA Coordinator	3	0
Contract administrator	3	0
Intermediate or higher-level supervisor	5	10
Interviewees were selected based on position assigned, ensuring representation from all applicable classifications of staff		
Line staff who supervise youthful offenders – not applicable as the facility does not house youthful offenders.	0	0
Education and program staff who work with youthful offenders – not applicable as the facility does not house youthful offenders.	0	0
Medical and mental health staff	8	0
Interviewees were selected based on availability and to ensure representation across disciplines.		
Human resources staff	2	0
The HR manager was selected for interview. Between initial documentation and on-site review, a new manager had been appointed and a second interview was conducted during the on-site review.		
SAFE/SANE staff	1	0
Volunteers who have contact with inmates	3	0
As no volunteers were allowed access to the facility at the time of the on-site review, the Auditor was provided with names of individuals who were willing to be contacted at home.		
Contractors who have contact with inmates	6	6

Staff Category	Number of interviews conducted	
	Primary Role	Secondary Role
Interviewees were selected to ensure representation from clerical, food services, and medical.		
Investigative staff	5	1
Facility investigators - Selected two individuals who had completed investigations that were reviewed along with two who had not. SIU investigators – interviewed those individuals designated to conduct PREA investigations.		
Staff who perform screening for risk of victimization and abusiveness	2	0
Selected individuals who were primarily tasked with responsibility per the PCM.		
Staff who supervise inmates in segregated housing	0	0
The facility does not maintain a restricted housing area / unit.		
Staff on the incident review team	2	6
Conducted either primary or secondary interviews with a majority of the individuals who serve on the incident review team		
Designated staff member charged with retaliation monitoring	1	1
Interviewed the individual at central office responsible for file review as well as the PCM who has responsibility for in—person meetings with identified inmates.		
First responders	4	0
Selected interviewees based on applicable investigation reports reviewed		
Intake staff	1	0
Randomly selected one of the two individuals responsible as identified by the PCM		
Non-medical staff involved in cross-gender strip or visual searches	0	6
Included questions in interviews with selected random male custody staff, as such were counted as secondary rather than primary interviews.		
Representative from the community-based victim advocacy organization	2	0
Interviewed a representative from both organizations identified in materials provided		
Representative from organization that conducts criminal investigations	0	0
No interview conducted as the Auditor received no response to seven (7) messages left at the number provided by the PCM		
Representative from the Transgender Resource Center of New Mexico who provides support to inmates throughout the agency	1	0
Inmate disciplinary hearing officer	1	1
Grievance coordinator	1	1
Mailroom supervisor	1	0
Food Services Manager	1	0
Maintenance Supervisor	1	0
Job Assignments Coordinator	1	0
Facility Training Coordinator	1	0
Volunteer / Contractor coordinator	3	0
Classification Staff	2	0

While on site, the Auditor was informed that new individuals had assumed specialty staff roles as follows:

- Deputy Warden – incident review, unannounced rounds, and investigator
- Deputy Warden – unannounced rounds and incident review
- Human Resources Manager

Interviews for each specialty role was completed to supplement specialty staff reviews already completed.

Inmate Category	Number of interviews conducted
Random inmates – a total of 13 is required by the handbook	14
Inmates were selected for interview by identifying every 23 rd inmate on a listing arranged by unit and bed number. If the identified inmate had been selected for a specialty interview, the next inmate on the list was selected.	
Specialized inmates – a total of 13 is required by the handbook	27
Total inmates interviewed – a total of 26 is required by the handbook	41
Breakdown of specialty inmate interviews conducted – it is noted where there were insufficient inmates were identified for a specific specialized group, additional inmates were interviewed from other specialized categories	
Youthful offenders – handbook requires 3 - not applicable as no youthful offenders were housed at the facility	0
Inmates with a physical disability, blind, deaf, hard of hearing or LEP – handbook requires 1	4
Selected both inmates on the LEP list provided, the second of two on this list of hard of hearing inmates provided, and the middle name on the list of ten (10) disabled inmates provided	
Inmates with a cognitive disability – handbook requires 1	2
Selected the first and seventh inmate from the list of twelve (12) provided.	
Inmates who are gay or bisexual – handbook requires 1	5
Selected every 22 nd inmate on the list of 66 inmates provided plus randomly selected inmates to fill gaps in other specialty categories.	
Transgender or intersex inmates – handbook requires 2	2
At the time of the on-site review, one transgender inmate was housed at the facility; however a second inmates was identified based on information from other inmates interviewed	
Inmates in segregated housing for high risk of sexual victimization – handbook requires 1 – not applicable as facility does not maintain a restricted housing area / unit	0
Inmates who reported sexual abuse – handbook requires 3	7
Selected inmates based on availability (still housed at the facility), and to ensure variety in allegation type and date	
Inmates who disclosed victimization during a risk assessment – handbook requires 2	7
Selected every 32 nd inmate on the list of 164 inmates provided plus two additional randomly selected to fill gaps in other specialty categories	
Inmates who submitted letters to the Auditor	4 included with specialty inmate interviews

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 Western New Mexico Correctional Facility is a level three (3) and four (4) female facility located in Grants, New Mexico. The facility was established in 1984, originally as a female facility along with the agency reception center until its mission changed in 1999. At that time, the facility operated as a medium-security adult male facility until 2016, when the facility reverted to its original mission of housing adult female inmates, including those newly committed to the department. The facility houses Level III and Level IV general population inmates and maintains special management units (alternative sanction unit). Per the agency's public website, the facility's primary focuses are re-entry, education, employment opportunities, and peer education.

The facility has not operated a segregation unit since July 30, 2020. Per information received from the PCM, "WNMCF has an alternative sanction pod in Housing Unit 5 N-pod. The inmates that are placed in this alternative sanction pod are inmates that have received sanctions through the inmate disciplinary process where all privileges have been taken such as visits, phone usage, commissary and including electronics. The length of stay in the alternative sanction pod is depending on how many days the Hearing Officer suspends their sanctions for. The inmates that are housed in Housing Unit 5 N-pod are level III General Population inmates and are still able to come out of their cells, work, program, attend education, walk to the chow hall, and go to their scheduled gym time. The goal of this alternative sanction pod is to deter the inmate's behavior from continuously receiving misconduct reports."

WNMCF offers multiple programs for the inmates housed there, to include residential substance abuse treatment programming and educational programming to include GED and college coursework. Inmates working in Correctional Industries sew and manufacture large trash bags. These inmates have also been making and donating masks during the COVID pandemic. A Therapeutic Behavioral Health Unit (TBHU) was developed as a residential unit to assist inmates in addressing high-risk behaviors to improve functioning in general population. Participants learn to manage distress, slow down impulses, control anger and develop social skills by participating in courses that include responsible parenting, grief and loss, anxiety, dealing with feelings, self-esteem, healthy boundaries, and social skills.

The current Warden started in October 2020 when the former Warden retired. Shortly thereafter, the Deputy Warden also retired. A second Deputy Warden position was added when the agency made the decision to acquire the Northwestern New Mexico Correctional Facility from CoreCivic. The facility will be attached to the current WNMCF facility under the direction of the current Warden. It is anticipated that this will take place sometime in November 2021. A majority of the random inmates interviewed noted that the Warden and her administrative staff were making positive changes to address the culture of the facility and engage inmates in positive and productive interactions. Among these are:

- A quarterly incentive meal program was initiated, in which inmates can order food from a specific local restaurant selected by facility administration. To participate, an inmate has to have remained clear of misconduct for the quarter. The program provided an incentive for good behavior, but also provided support for local business, which was much needed during COVID-related restrictions. The facility has also established a volleyball league and will be implementing a 3-on-3 basketball league and softball league as additional incentive programs.
- A Diabetic Walking Group was launched, helping those inmates with high A1C levels participate in daily exercise with the goal of lowering those levels.
- A Peer Education Program has been initiated, with inmate-developed PowerPoint educational information shared on a channel that inmates can watch throughout the facility. Topics addressed include COVID facts, protection methods, and vaccine information along with diabetic education.

The Team noted that the grounds throughout the facility were manicured and well maintained by inmates who took a great deal of pride in the work they did. Irises are grown in cultivated areas for transplant throughout the facility.

The facility's designed capacity is 432. The average daily population over the twelve (12) months preceding the on-site review was 344 and the population on the first day of the on-site review was 308.

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: 1

List of Standards Exceeded:

- 115.82 Access to emergency medical and mental health services

Standards Met

Number of Standards Met: 44

- 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 standard for administrative investigations
- 115.73 Reporting to inmates
- 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
- 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers
- 115.86 Sexual abuse incident reviews
- 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: not applicable

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.

115.11 (a)

Agency policy CD-150100, 115.12, *PREA* (05/29/2020), section A. (page 4) indicates, “The NMCD [New Mexico Corrections Department] has a ‘zero tolerance’ policy regarding all forms of sexual abuse, sexual misconduct and sexual harassment directed toward offenders.” This policy also outlines prevention, detection, and response expectations with information including hiring requirements, reporting, retaliation prohibition, education for staff and offenders, risk screening and use of related information, investigations, and searches. Attached with this policy are procedural documents with the same name and revision date, but numbered CD-150101 and CD-105102, detailing reporting, response, investigation, referral, medical and mental health care, and after-action review.

It is noted that language regarding sanctions for those found to have participated in prohibited behaviors is included in separate policies specific to staff and offender disciplinary procedures. Definitions of prohibited contact are also maintained on the agency’s public website. These definitions are duplicates of the definitions established by the Department of Justice with the promulgation of the PREA standards. The definitions were updated effective 04/24/2020 to match those included with agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020) and in agency annual PREA reports.

During a review of the definitions included in multiple platforms within the agency (e.g., policy, annual report, staff training, offender publications), it was found that the definitions were inconsistent and did not include all the elements required in the DOJ standard definitions regarding prohibited acts. This causes confusion among stakeholders, both internal and external to the agency and results in the inability to effectively analyze allegation and investigation data.

As a result of the inconsistency in the definitions of prohibited acts across agency platforms and the non-compliance with DOJ PREA definitions, WNMCF was initially assessed as non-compliant with the requirements of this provision. On 07/12/2021 the Auditor was provided with a new policy version that maintained the same revision date but added a new reviewed date of 03/26/2021. The Auditor was informed by the current PREA Coordinator that changes to policy, such as definitions, that do not change the general direction, standards, or expectations of a policy do not result in a change to the effective date of the policy but will only add a new reviewed date. This was confirmed in agency policy CD-000100 *Adoption of Rules, Policies and Procedures* (01/13/2017), Definitions section H. (page 2) that defines a policy review as, “A scheduled review of policy resulting in clerical adjustments that do not change the general direction, standards or expectations of a policy.” The Auditor reviewed the newly issued policy, confirming that definitions included were revised to be consistent with training curriculum, publications, and DOJ definitions of prohibited acts.

Based on this modification, WNMCF is assessed as compliant with this provision.

115.11 (b)

The New Mexico Corrections Department (NMCD) does not specify the PREA Coordinator or PREA Compliance Manager (PCM) in policy, but these positions have been established within agency structure. Within NMCD, the PREA Coordinator reports to the Inspector General, who then reports to the agency Secretary. The Auditor was provided with an agency organizational chart and appointment letter dated 01/03/2018, designating the former PREA Coordinator and detailing Secretary access provided to this individual, noting, that the Coordinator, “...will have direct access and report to me, for any PREA related issues.” The Auditor was provided with the position description of the PREA Coordinator, noting, “The purpose of this position is to be responsible for the development, implementation, and oversight of the department practices in complying with the standards of the Prison Rape Elimination Act (PREA).” It is noted that contact information for the Coordinator is maintained on the agency’s public website.

During an interview, the former PREA Coordinator reported that she regularly communicates with agency PCM’s as well as the PCM’s assigned to private facilities contracted with to house inmates. She noted that all PCM’s participate in all mock and DOJ audits at each facility, with time set aside during these

audits for a general meeting and discussion as well as any needed training. She added that she communicates at least daily with agency PCM's via email and/or telephone. The Auditor was informed that the PCM's take direction from the Coordinator in all matters related to PREA, but day to day supervision (e.g., leave management) is under the direction of the facility. The former PREA Coordinator reported that she has input into selection / hiring decisions along with evaluations.

The former PREA Coordinator indicated that when an issue is identified regarding complying with standard requirements, she generally establishes processes to resolve the issue and monitor continued compliance. She noted the development of monthly audits required by the PCM in each facility that address particular areas of concern and which are included in the agency PREA policy. The same audits are required in private facilities contracting with the agency. The former PREA Coordinator noted that if an issue is facility-specific, she works directly with the facility to resolve, adding that in most instances, the identified resolution is implemented in all facilities as processes are standardized and required in all facilities across the state. She provided an example of a rise in allegations in one facility that led to a 2-to-1 requirement (one staff with at least two inmates or at least two staff with one inmate) and radio notification whenever a staff member is entering a remote area. This requirement was implemented across the state as the standardization of a best practice.

It is noted that the former PREA Coordinator was on leave beginning 12/01/2020 and then retired effective 03/01/2021. A PCM from another facility was identified to respond to requests related to this audit, moving into her office, and monitoring the hotline until either the number is moved or there is a new PREA Coordinator. However, this individual has not been identified as the acting PREA Coordinator. On 03/01/2021, an interim PREA Coordinator was named by the Inspector General. An interview was completed with the identified individual, confirming a sound knowledge of PREA responsibilities and requirements and continuity of processes established by the former PREA Coordinator.

On 05/06/2021 the Auditor was informed that the interim PREA Coordinator had left the position and the Inspector General was also leaving that position effective 05/17/2021. With these moves, there was no agency-level individual overseeing PREA implementation and sustainability. The Auditor was later notified that a new interim PREA Coordinator was named effective 06/14/2021 (referred to in this report as the current PREA Coordinator). The Auditor was also informed that the former Inspector General was still fulfilling that role, to include PREA oversight, until such time as a successor was identified. An interview was conducted with the current PREA Coordinator, confirming an introductory knowledge of PREA standards and requirements. The current PREA Coordinator indicated that he could not confirm sufficient time or authority to manage all PREA-related responsibilities as he has spent a majority of his time since assignment preparing for multiple American Correctional Association (ACA) audits. The Auditor was informed that the position has been modified to now include both PREA and ACA oversight on an agency level.

Based on the above noted changes in the position of PREA Coordinator, with insufficient time for the current PREA Coordinator to learn responsibilities, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development and implementation of a comprehensive training plan for the current PREA Coordinator along with documented interactions / direction provided to agency PCM's and meetings / engagement with those above and below his position in the organizational structure.

Updates:

Throughout the corrective action period, the Auditor was provided with documentation of training provided to and participated in by the PREA Coordinator. The Auditor was also provided with documentation of the PREA Coordinator's involvement in PREA-related functions and communication with agency staff, up and down the organizational structure. Based on these activities, WNMCF is now assessed as compliant with the requirements of this provision.

115.11 (c)

The New Mexico Corrections Department (NMCD) does not specify the PREA Coordinator or PREA Compliance Manager (PCM) in policy, but these positions have been established within agency structure.

The Auditor was provided with a copy of a memorandum from the Warden to the agency PREA Coordinator, dated 07/29/2019, naming the current PCM. The Auditor was also provided with a 12/07/2020 memorandum from the PCM, indicating that he spends approximately 70% of his time on activities related to PREA and 30% of his time on Incident Command Systems for the facility. The memorandum also indicated that the PCM's "role as the PREA Compliance Manager is to oversee implementation of PREA related policies and procedures, and coordinated responses for WNMCF such as:

- Oversight of PREA compliance efforts here at WNMCF
- Point of Contact for the WNMCF as it relates to PREA
- Documentation collection for items such as where PREA standards can be located
- Assists in PREA training
- Conducts PREA investigations including follow-up face to face retaliation monitoring
- Assess PREA compliance within WNMCF
- Works with the state PREA Coordinator, Office of the Inspector General and Facility staff on PREA matters within WNMCF
- Communicates with Warden and other entities with regards to PREA
- Planning and execution of plans with regards to PREA"

During interview, the PCM articulated knowledge of PREA standards and facility procedures. From additional interviews completed, it is clear that the PCM is involved in PREA-related operations and is relied on as a subject matter expert by many staff. He established a system of mock tours and interviews in preparation for this audit that involved supervisory staff, thereby also engaging them in daily PREA-related activities. However, it seems that the application of this knowledge is insufficient to implement and oversee PREA standards and policies at WNMCF. This appears to be based on issues of time and authority as required by the standard.

Receipt of documentation sufficient to demonstrate compliance with standard requirements has not been provided as requested by the Auditor. The initial documentation submitted had a significant number of documents from the previous DOJ PREA audit with dates revised rather than the submission of new / applicable documentation. As a result, the former PREA Coordinator required that all documentation be updated and resubmitted. During the period between initial documentation and on-site review, requests for information and responses to queries were slow in response or not responded to at all. Information / documentation received was frequently incomplete and/or contradictory within the documentation or with other documentation submitted and issues identified as non-compliant not addressed.

The Auditor was not provided with appropriate and/or accurate information to make compliance determinations and, therefore, the agency is not meeting its burden under standard 115.401(e). Additionally, the PCM is not able to exercise time and authority to implement and sustain compliant practices. As a result, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include a review of responsibilities related to the PCM position, the development of clear expectations and the provision of training as indicated.

Updates:

During an out brief with the Warden while on-site, the Auditor was informed that the agency was moving forward with development of a dedicated PREA Compliance Manager position for WNMCF. On 11/09/2021, the Auditor was provided with documentation of appointment of the selected individual to this position. Throughout the remainder of the corrective action period, the Auditor was provided with documentation of the PCM's involvement in PREA-related functions and communication with facility and agency staff, up and down the organizational structure. The PCM conducts regular rounds of all areas of the facility, to facilitate interactions with staff and ensure inmate concerns and needs are addressed.

The Auditor was provided with an opportunity to talk with the new PCM and verified knowledge level and dedication to this position. However, the Auditor was informed that the new PCM has left the position in February 2022. The facility quickly employed the services of and assistance from two seasoned PCM's from other facilities. The Warden also appointed a PCM from another facility as the acting WNMCF PCM until the position could be permanently filled and the individual effectively trained. Support is also provided by the agency PREA Coordinator. Based on these activities, WNMCF is now assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA (05/29/2020)* and reviewed 03/26/2021
- Policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA (05/29/2020)*
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA (05/29/2020)*
- Agency organizational chart
- 01/13/2018 Secretary letter regarding appointment of and access for Coordinator
- PREA Coordinator position description dated 01/05/2018
- 07/29/2019 Warden memo appointing the PCM
- Policy CD-000100 *Adoption of Rules, Policies and Procedures (01/13/2017)*
- Documentation of PREA Coordinator training and PREA-related activities
- Documentation of PCM selection and PREA-related activities
- Documentation of appointment of acting PCM

Interviews conducted:

- PREA compliance manager
- PREA coordinators

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.

115.12 (a)

NMCD employs a Procurement Administrator who oversees all contract development. During an interview, the Auditor was informed that the agency currently maintains contracts with four (4) agencies for the confinement of offenders:

- Lea County – in effect 01/01/1999, with a 2004 amendment noting the contract would remain in effect until 06/30/2005, then automatically renewed each succeeding fiscal year for a period of one (1) year unless the parties mutually agree in writing not to renew the agreement.
- Otero County – in effect 02/01/2013, remaining in effect unless terminated in writing by either party.
- Guadalupe County – in effect 01/01/1999, with a 2004 amendment noting the contract would remain in effect until 06/30/2006, then automatically renewed each succeeding fiscal year for a period of one (1) year unless the parties mutually agree in writing not to renew the agreement.
- CoreCivic which runs the Northwest New Mexico Correctional Center. CoreCivic used to be Corrections Corporation of America, but recently rebranded to the new name - amended 09/01/2020, effective through 06/30/2024.

It is noted that previously, NMCD maintained a contract with the GEO Group for the operation of a facility in Clayton, New Mexico. In 2019, this contract was terminated due to failure to maintain staffing levels. In 2019, NMCD assumed all operations at the Clayton facility, now known as the Northeast New Mexico Correctional Facility.

During a review of the NMCD website, the Auditor located DOJ PREA audit reports for New Mexico Men's Recovery Academy (NMMRA) dated 02/13/2017 and the New Mexico Women's Recovery Academy (NMWRA) dated 02/13/2017. Via communication with the former PREA Coordinator, it was learned that these facilities recently became privately operated under contract. As a result, the number of applicable contracts increased from four (4) to six (6). The Auditor received a copy of the contract with the GEO Group, in effect 06/14/2019 through 06/30/2023. The contract is not specific to the facilities being operated on behalf of NMCD, but per the information received from the Procurement Administrator, "It was in NMCDs best interest to leave it open so as to allow GEO the opportunity to provide services elsewhere as well if the need ever opened up for NMCD during the term of the contract. The RFP and resulting contracts are specific to the services being provided and were never intended to merely lock down a location."

The Auditor was informed by the Procurement Administrator that the New Mexico Department of Finance and Administration develops templates for all contracts initiated by the state. NMCD is required to obtain approval to add the following articles to each contract, to include those for personal services:

- Security clearances and background checks,
- Cooperation with NMCD investigations, and
- PREA.

The approval is valid for one year and ensures the articles are included for every NMCD contract.

The Auditor was provided with contracts for all noted facilities and confirmed inclusion of the noted articles, which read as follows:

- Security clearances and background checks – "The Contractor and its employees, sub-contractors, or their agents who will have access to NMCD properties and inmates are subject to security clearances and/or background checks. Any security clearances and/or background checks required by the Agency for the Contractor's employees, contractor's agents, employees, or other agent must be obtained prior to commencement of the job. User agency reserves the right to deny any employee, agency, or independent agent of the Contractor access to the Agency property should that individual fail the criteria required for security clearance or be found to be in violation of NMCD policies and procedures."
- Cooperation with NMCD investigations – "...the Contractor must furnish all information and reports required by, or pursuant to, the rules, regulations, and policies of the NMCD, and will permit access to, and the interview of, its employees, subcontractors, or other agents as well as the examination any copying of its records, unless such materials are legally privileged or disclosure is otherwise protected by law, by the NMCD Office of Professional Standards Threat Intelligence Unit...and the United State Department of Justice...and will otherwise fully cooperate with any such investigation."
- PREA – "Any Contractor providing services to NMCD ho has direct contact with inmates or parolees who are in the care and custody of the State of New Mexico, shall adhere to and require its employees or other persons performing such services for...DEPARTMENT facilities. Any new contract or contract renewal shall provide for agency contract monitoring to ensure that such persons are complying with PREA standards."

The PREA article was added to the county contracts in 2017 and 2018 when the contracts were amended.

It is noted that NMCD will be assuming operations of the Northwest New Mexico Correctional Center in November 2021. This facility will be annexed to WNMCF and fall under the responsibly of the WNMCF warden, housing male inmates remanded to the agency. As this facility has current PREA audits on file

and the noted assumption of operations occurred after the on-site review was conducted as WNMCF, this facility has not been included in the current audit of WNMCF.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.12 (b)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section HH. (page 9) requires, “Monthly, the Facility Compliance Officer (at Public Facilities) and the Contract Monitor (at Private Facilities), will complete the Screening for Risk of Sexual Victimization & Abusiveness, form CD-150100.2 and return the form to the Agency PREA Coordinator.” The Auditor requested and received the noted monitoring documentation for Guadalupe County for 02/2020, Lea County for 10/2019, Otero County for 12/2019, and Northwest New Mexico Correctional Center for 04/2020, confirming formal monitoring as required.

The Auditor was informed that NMCD maintains all PREA audit reports for contracted facilities on the agency’s public website. The Auditor was able to locate reports for:

- Lea County (operated by the GEO Group) – 01/07/2019 and 09/11/2015.
- Otero County (operated by the Management and Training Corporation) – 03/02/2017 and 03/07/2014.
- Guadalupe County (operated by the GEO Group) – 07/25/2020, 09/24/2017 and 05/28/2014.
- Northwest New Mexico Correctional Center (operated by CoreCivic) – 12/29/2017.
- New Mexico Men’s Recovery Academy (NMMRA) (operated by the GEO Group) - 02/13/2017.
- New Mexico Women’s Recovery Academy (NMWRA) (operated by the GEO Group) - dated 02/13/2017.

Per the former PREA Coordinator, Otero County, the Northwest New Mexico Correctional Center (NNMCC), the New Mexico Men’s Recovery Academy (NMMRA), and the New Mexico Women’s Recovery Academy (NMWRA) were all scheduled for DOJ PREA audits during 2020, but these have been indefinitely postponed due to COVID19-related restrictions.

The Auditor was able to confirm posting of noted reports on applicable agency public websites as well.

Documentation provided to the Auditor indicated that a State of New Mexico Contractor Monitor is housed in each contracted facility, except for the New Mexico Men’s Recovery Academy and the New Mexico Women’s Recovery Academy. The associated position description (Compliance Officer A) indicates the individual is responsible for audit and monitoring-related activities. The Recovery Academies are monitored by the Community Corrections Administrator, whose office is at the agency’s central office. Interviews conducted with the Procurement Administrator and two (2) facility-based Contract Monitors confirmed that compliance monitoring activities are actively ongoing in each facility, to include the review of identified PREA practices as documented in the monthly audit process reports. Monitors reported regularly reviewing rounds, training, orientation, risk assessments, physical barriers / blind spots, and posting of reporting information for inmates. Monitors also reported compliance with DOJ PREA audit requirements, indicating they may be called on to participate in the audits as needed.

It is noted that previously, NMCD maintained a contract with the GEO Group for the operation of a facility in Clayton, New Mexico. In 2019, this contract was terminated due to failure to maintain staffing levels. In 2019, NMCD assumed all operations at the Clayton facility, now known as the Northeast New Mexico Correctional Facility. Previous PREA audit reports for this facility are also maintained on the agency’s public website.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/16/2020 from the PCM addressed to the DOJ Auditor
- Contract with Guadalupe County, in effect until terminated by either party
- Contract with Lea County, in effect until terminated by either party
- Contract with Otero County, in effect until terminated by either party
- Contract 10-77000-20-06469 with CoreCivic, Inc., amended 09/01/2020, effective through 06/30/2024
- Documentation of termination of contract with the GEO Group for facility in Clayton
- Policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020)
- Job description Compliance Officer A
- Identified monthly Screening for Risk of Sexual Victimization and Abusiveness forms

Interviews conducted:

- Agency contract administrator
- Contract monitors

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.

115.13 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section U. (page 7) requires, "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 Auditor was provided with a copy of the P.R.E.A. Staffing Plan, and Facility Compliance Meeting, Western New Mexico Correctional Facility (WNMCF), dated March 11, 2020. The plan articulates each element required in this provision and includes documentation of attendance at the staffing plan meeting. The plan also includes program / activity schedules, and explanatory information regarding each major deviation from the plan.

During interviews, the Warden, PCM and food services and maintenance managers expressed a solid understanding of the facility's staffing plan and the components that make it up. The Warden noted that a recent revision was made to the staffing matrix to move more custody staff out of control centers and on the floor to provide more direct supervision of and interaction with inmates. She also reported moving several administrative staff offices from the administration building out into the compound for the same purpose.

While on-site, the Team identified multiple areas in which blind spots and areas of risk needed to be addressed. These included:

Western Division:

- Installation of mirrors in classrooms one through four and the college classroom. Photographic documentation of installation was received prior to the issuing of the interim report.
- Installation of a mirror in the library. Photographic documentation of installation was received prior to the issuing of the interim report.
- Rearranging of furniture and installation of a mirror in the PCM office. Photographic documentation of installation was received prior to the issuing of the interim report.
- Signage added to and lowering of the tint in the windows of the bathroom in the dining hall.
- Installation of a mirror in the dining hall where the milk cooler had been located.
- Distribution of a directive that the doors to Case Worker's offices are to remain open when inmates are present.
- Repair or replacement of exterior windows in the Unit 2 Case Worker's office.

Reception and Diagnostic Center Division:

- Installation of a mirror in the Case Worker's office in Unit 8. Photographic documentation of installation was received prior to the issuing of the interim report.
- Addition of a lock on the door to the staff bathroom / storage area in Unit 8. Photographic documentation of installation was received prior to the issuing of the interim report.
- Removal of blinds from the window in one of the rooms in Unit 9, along with the addition of frosting.
- Installation of mirrors in each of the four (4) offices in the staff wing outside of Unit 10.

- Relocation of the metal locker in Correctional Industries. Photographic documentation of completion was received prior to the issuing of the interim report.
- Installation of mirrors in the intake lieutenant's office. Photographic documentation of installation was received prior to the issuing of the interim report.
- Signage added regarding restricted inmate access and implementation of formal procedures to ensure the room to hold property for inmates who have temporarily left the facility.
- Partially frosting the windows in the holding cells in intake. Photographic documentation of installation was received prior to the issuing of the interim report.
- Repositioning of the mirror in the laundry to allow sight lines behind the dryers. Photographic documentation of installation was received prior to the issuing of the interim report.
- Installation of a window in the door to the sewing room off the laundry.
- Installation of a mirror in the room across from the office in the warehouse. Photographic documentation of installation was received prior to the issuing of the interim report.
- Installation of mirrors in identified areas within maintenance and the boiler room.
- Installation of a mirror in the dental area. Photographic documentation of installation was received prior to the issuing of the interim report.
- Installation of an expanded metal door leading to the back storage area in the psychiatry nurses' office.
- Installation of windows in the doors to examination rooms in health services.
- Addition of signage regarding restricted access to the biohazard room and man-down bag rooms in health services.
- Adjustments to the frosting on the windows in the Health Manager's office.

Based on the identified blind spots / areas of risk in need of correction, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the completion of noted modifications along with documentation of completion provided to the Auditor.

Updates:

During the corrective action period, the Auditor received photographic documentation of the correction of all identified deficiencies. Based on these actions and associated documentation, WNMCF is now assessed as compliance with the requirements of this provisions.

115.13 (b)

Per information from the PCM, "Any deviation from the Staffing Plan will be documented by memo to the Warden and the Deputy Director of Operations." The Auditor was provided with examples of these memos, which include the length of the closure, the reason for the closure, and actions taken to try to avoid the closure. Examples included moving individuals from non-mandatory posts or pulling in overtime to cover mandatory posts due to absences of the assigned staff as well as shutting down of mandatory posts due to staff shortages during response to an incident. Examples provided included the audit documentation period as well as the period between initial documentation and on-site review. The 2020 staffing plan review indicated that there was a total of 32 deviations from the staffing plan in calendar year 2019. It is noted that the primary reason for such deviations has been staff shortages.

During an interview, the Warden confirmed documentation of all instances in which the staffing plan was not complied with. She noted that When such an instance occurs, a corrective plan to address the deficiency is also developed. These plans may be as simple as the provision of additional training to applicable staff.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.13 (c)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section U. (page 7) requires, "At least one time per year, the facility will hold a meeting to assess, determine and document whether adjustments are needed to the staffing plan,

the facility's deployments of video monitoring systems and other monitoring technologies; and the resources the facility has available to commit to ensure adherence to the staffing plan. At the conclusion of the meeting, documentation of the review shall be forwarded to the Agency Level PREA Coordinator for review."

Per information from the PCM, "The facility PCM is required at least once a year to chair a "Staffing Plan Meeting". The participants of the meeting generally include the PCM, Warden, Deputy Wardens, Chief of Security, Director of Nursing, Behavioral Health Supervisor, Education Supervisor, Human Resource Manager, Plant Manager and Roster Management. During the meeting, a careful analysis is conducted in determining an adequate staffing plan and the need for video monitoring. Each element of this standard is discussed and considered. Participation of the Staffing Plan meeting is documented by a sign in sheet that is attached to the staffing plan, as well as numerous documents which are reviewed and discussed and added to the Staffing Plan. Once the Staffing Plan has been finalized it is sent to the NMCD PREA Coordinator for review, adjustments or approval."

The Auditor was provided with a copy of the staffing plan reviews conducted in 2019 and 2020.

The Auditor was informed that the only documentation of the PREA Coordinator participation in the annual staffing plan review would be the email from the Warden or former PCM submitting the plan. This does not document consultation with the PREA Coordinator in annual reviews as required in the standard. Per information from the former PREA Coordinator, a revision of the process will be implemented requiring review of and signature documenting review on the annual staffing plan review submitted by each facility.

Interviews with the former, interim, and current PREA Coordinators confirmed knowledge of the requirement for annual staffing plan reviews and their role in those reviews.

Based on the lack of documentation of PREA Coordinator consultation in the review, WNMCF was initially assessed as non-compliant with the requirements of this provision. On 12/16/2020, the Auditor received information from the facility that a new staffing plan review was scheduled for completion in February 2021, noting that all plans are sent to the PREA Coordinator for review. On 04/12/2021, the Auditor received the 2021 staffing plan review that included documentation of interim PREA Coordinator involvement in the review process. The Auditor was also informed that PREA Coordinator involvement is now incorporated into this process either in the form of presence in review meetings and/or email review and input.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.13 (d)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section A.1. (page 1) requires, "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."

The Auditor was informed that staff at and above the level of lieutenant are required to conduct unannounced rounds. This would include lieutenants, the captain, major, unit managers, and warden. The Auditor was provided with documentation confirming completion of rounds by designated staff throughout the audit documentation period and during the period between initial documentation and on-site review. The documentation also addressed all shifts and was confirmed in observations while on-site.

Interviews with identified staff who are responsible for unannounced rounds confirmed completion of these rounds, with documentation included in unit and/or master control logs. Interviewees indicated they actively take steps to prevent staff from alerting other staff of rounds, to include irregular schedules, use of keys to enter units at unexpected areas, varying direction of rounds while out, and taking the area officer on rounds to prevent communication. Numerous staff noted that they are out in the facility so often, staff don't notice when they are conducting rounds. It was noted however that there was confusion with a few male staff who thought unannounced rounds also meant they did not announce themselves when they entered female housing units. It is recommended that clarification be provided to ensure an understanding of the difference between unannounced rounds (random and unscheduled) and cross-gender announcements when entering applicable areas.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/10/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- PREA Staffing Plan review, 01/28/2019, 03/11/2020 and 03/11/2021
- Documentation of deviations from the staffing plan
- Examples of logs documenting unannounced rounds
- Photographic documentation of modifications completed to address identified blind spots and related issues

Interviews conducted:

- Food service staff
- Intermediate or higher-level facility staff
- PREA compliance manager
- PREA coordinators
- Warden

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.

115.14 (a)

New Mexico statute NMSA 32A-2-20 details provisions for the imposition of adult sentences with regard to youthful offenders, invoking an adult sentence if, “(1) the child is not amenable to treatment or rehabilitation as a child in available facilities; and (2) the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.” The statute further provides that, “If the court invokes an adult sentence, the court may sentence the child to less than, but shall not exceed the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences.”

Agency policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020) section R. (page 7) requires, “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 the Central New Mexico Correctional Facility. Offenders under the age of eighteen (18) will have direct sight/sound contact with staff in areas outside of the housing unit.”

The Auditor was provided with State v. Jones, 2010-NMSC-012, 148 N.M. 1, 229 P.3d 474, which states, “Amenability hearing is a condition precedent for exercising adult sentencing authority in youthful offender cases. — Only serious youthful offenders charged with first-degree murder can be tried in district court and automatically sentenced as adults if convicted. All others remain in the juvenile system until after adjudication and may be sentenced as adults only after an amenability hearing.” As a result of this litigation, only youthful offenders sentenced for first degree murder can be sentenced to an adult correctional facility. Otherwise, the youthful offender would be housed in a juvenile facility until such time as the individual reaches the age of majority. This was confirmed in discussions with the former PREA Coordinator, who added that the trial and sentencing process in these cases is generally so long that the individual has usually reached the age of majority prior to sentencing and, as a result, very few youthful offenders are actually received by the agency.

The Auditor was provided with a memo from the PCM indicating at WNMCF does not house youthful offenders. The Auditor also received an age report for WNMCF dated 11/14/2020 confirming the facility currently houses no inmate under the age of 20. This was also confirmed during the on-site review. As a result, no interviews were conducted as a part of the review of this provision.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.14 (b)

Agency policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020) section R. (page 7) requires, “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 the Central New Mexico Correctional Facility. Offenders under the age of eighteen (18) will have direct sight/sound contact with staff in areas outside of the housing unit.”

The Auditor was provided with a memo from the PCM indicating at WNMCF does not house youthful offenders. The Auditor also received an age report for WNMCF dated 11/14/2020 confirming the facility currently houses no inmate under the age of 20. This was also confirmed during the on-site review. As a result, no interviews were conducted as a part of the review of this provision.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.14 (c)

Agency policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020) section R. (page 7) requires, “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 the Central New Mexico Correctional Facility. Offenders under the age of eighteen (18) will have direct sight/sound contact with staff in areas outside of the housing unit.”

The Auditor was provided with a memo from the PCM indicating at WNMCF does not house youthful offenders. The Auditor also received an age report for WNMCF dated 11/14/2020 confirming the facility currently houses no inmate under the age of 20. This was also confirmed during the on-site review. As a result, no interviews were conducted as a part of the review of this provision.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/16/2020 from the PCM addressed to the DOJ Auditor
- PCM memo (06/16/2020) reporting that no youthful offenders are housed at WNMCF
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Age Report Western Women’s’ Correctional Facility (11/14/2020)
- 06/16/2020 memo from PCM to DOJ Auditor regarding no youthful offenders
- New Mexico statute NMSA 32A-2-20
- State v. Jones, 2010-NMSC-012, 148 N.M. 1, 229 P.3d 474

Interviews conducted:

- No interviews regarding this standard were conducted as no youthful offenders are housed at this facility

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.

115.15 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section Y. (page 8) requires, "Staff members shall not conduct cross-gender (Male Officer to Female Inmate, or Female Officer to Male Inmate) strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners. The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches. The facility shall not permit cross-gender pat-down searches by male officers of female inmates, absent exigent circumstances. All cross-gender pat-down searches of female inmates will be documented. In the event that these types of searches should occur, an SIR shall be generated documenting the need for the search."

Agency policy CD-130301, *Search Policy* (12/08/06), section A. (page 1), requires, "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."

It is noted that during the audit documentation period and during the period between initial documentation and on-site review, no cross-gender strip or visual body cavity searches were conducted. As a result, no secondary documentation is available for review.

The facility makes use of body scanners to search inmates for contraband. The Auditor was provided with a memo dated 12/18/2019 from the Director of Prisons addressed to all wardens requiring, "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...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." While on-site, the Auditor was informed that if a transgender inmate were to be received by the facility, both a male and female certified scanner would complete the scan based on the physiology of the inmate being scanned (e.g., a female staff could view the scan of the top half of the inmate and a male view the bottom half if the inmate had male genitalia and breasts). The Auditor reviewed Frequently Asked Questions (FAQ's) published on the PREA Resource Center website for guidance regarding this type of arrangement and found the following:

Is it ever appropriate for a transgender or intersex inmate or resident to be searched by both a male officer and a female officer, the male officer searching the parts of the body that are anatomically male and the female officer searching parts of the body that are anatomically female?

06/03/2013 response - No. The gender of the staff member searching a transgender or intersex inmate or resident will depend on the specific needs of the individual inmate or resident and on the operational concerns of the facility. Under most circumstances, this will be a case-by-case determination, which may change over the course of incarceration and should take into consideration the gender expression of the inmate or resident. Making accommodations, if necessary, to search individuals according to gender identity would not violate the prohibitions on cross-gender searches in standards 115.15 (a)-(c) and standards 115.315 (a)-(c). Further, standards 115.15(f) and 115.315(f) state that the agency shall train security staff in how to conduct searches of transgender and intersex inmates or residents in a professional and respectful manner and in the least intrusive manner possible consistent with security needs. Requiring two officers to search transgender inmates or residents would be more intrusive than necessary.

The Auditor consulted with the PREA Resource Center to determine if this FAQ would also apply to scanner searches. The Auditor was informed that the premise of the FAQ would also apply to scanner searches with a recommendation to possibly use the inmate's gender identity to guide the search method or conducting a search based on the inmate's expressed preference.

Interviews of male security staff confirmed that cross-gender strip searches would only be conducted if the situation were a life and death emergency, and no other options were immediately available.

Based on the scanner search process in place per operator interview, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the elimination of the current process for scanner searches of transgender inmates and the implementation of a process in line with the published PREA Resource Center FAQ.

Updates:

On 09/27/2021, the Auditor was provided with training / procedural documentation regarding body scanner processes. The training was attended by individuals trained / certified to conduct body scans. The document notes, "At Western New Mexico Correctional Facility (WNMCF), the Chief of Security/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 Chief of Security/designee(s) 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. A listing of all staff trained shall be maintained at each device physical location and in Master Control. At WNMCF, 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. Upon request, accommodations for body scanning procedures for transgender and intersex inmates may be approved by the facility PREA Compliance Manager in conjunction with the Warden." Based on the establishment of this process, WNMCF is now assessed as compliant with the requirements of this provision.

115.15 (b)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures*, PREA (05/29/2020), section Y. (page 8) requires, "Staff members shall not conduct cross-

gender (Male Officer to Female Inmate, or Female Officer to Male Inmate) strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.”

Agency policy CD-130301, *Search Policy* (12/08/06), section A. (page 1), requires, “Female inmates will only be pat searched by female [officers], with the exception of an emergency.”

All random staff interviewed who were involved in searches confirmed that the inmate would not be denied access to programs and activities, although she may be delayed slightly in order to fulfill search requirements. All but one individual indicated options to include waiting for a female staff who would likely arrive within five (5) minutes, use of scanners or metal detectors, and search of the inmate’s property but not person. Only one custody staff member indicated a search by a male could be conducted with authorization from the shift supervisor and observation by a witness. Prohibitions were reviewed with the interviewee.

None of the inmates interview on-site reported an inability to participate in out of cell activities because female staff was unavailable to conduct any required searches.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.15 (c)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section Y. (page 8) requires, “The facility shall document all strip searches in commonly used areas such but as not limited to booking, receiving, kitchen, medical and conducted food service...The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches. The facility shall not permit cross-gender pat- down searches by male officers of female inmates, absent exigent circumstances. All cross- gender pat-down searches of female inmates will be documented. In the event that these types of searches should occur, an SIR shall be generated documenting the need for the search.”

During the audit documentation period and during the timeframe between initial documentation and on-site review, no cross-gender searches were conducted. As a result, no secondary documentation is available for review. However, male custody staff interviewed noted the need to document any such searches that were conducted in response to exigent circumstances.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.15 (d)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section Z. and AA. (page 8) requires, “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. 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.”

Interviews with random staff confirmed male staff announcing their presence prior to entering a unit or pod. It was noted however that there was confusion with a few male staff who thought unannounced rounds required under standard 11513 also meant they did not announce themselves when they entered female housing units. It is recommended that clarification be provided to ensure an understanding of the difference between unannounced rounds (random and unscheduled) and cross-gender announcements when entering applicable areas. All random staff interviewed also confirmed the ability of inmates to shower, toilet and change cloths without being viewed by male staff by means of cell doors (in wet cells) or covering cell windows when toilets were in use, shower curtains and partitions. Interviewees also

noted that male staff are prohibited from entering restroom areas, particularly those in dormitory housing, unless announcing in advance or in an emergent situation.

A majority of the inmates interviewed reported that male staff generally announced themselves when entering housing units, noting consistency among officer, but inconsistency among lieutenants. All inmates reported that they were never naked in view of male staff. It is recommended that announcement requirements are reviewed with applicable staff as a refresher to ensure compliance. A majority of the inmates who were asked indicated that they change clothes in the shower or restroom areas to ensure privacy. The Team could not locate this requirement in the inmate handbook and therefore are making the recommendation to include specific expectations for inmates in the next handbook revision.

The Auditor was also provided with photographs of the signage on each housing unit entry door reminding staff that opposite gender announcements are required. During the on-site review, Team members confirmed that inmates are able to dress, shower, and toilet without being viewed by staff of the opposite gender. Adequate barriers have been installed to ensure privacy as required.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.15 (e)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section L. (page 6) requires, "Transgender and intersex inmates shall not be searched or examined by non-medical staff for the sole purpose of determining the inmate's genital status. Genital status shall be determined by interviews or medical records reviews."

Agency policy CD-150800, *Transgender Inmates* (09/13/2018), section C. (page 3) requires that, "Transgender and intersex inmates shall not be searched or examined by non-medical staff for the sole purpose of determining the inmate's genital status. If necessary, genital status shall be determined by interviews or medical records reviews."

This prohibition is also included in agency policy CD-130300, *Search Policy* (12/08/2016), section J. (page 4)

All random staff interviewed understood prohibitions associated with the strip search of transgender and intersex inmates. Transgender inmates interviewed confirmed they had no reason to believe that they were strip-searched for the sole purpose of determining genital status.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.15 (f)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section V. (page 7) requires, "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."

Agency policy CD-150800, *Transgender Inmates* (09/13/2018) requires, "All staff, custody and non-custody, will be trained prior to working with the inmate population and annually during annual refresher classes at their respective facility on: how to communicate effectively with LGBTI inmates/offenders and how to properly conduct pat-downs and strip searches of Transgender and Intersex inmates/offenders."

The Auditor was provided with the PowerPoint materials used in annual in-service training, noting inclusion of the following information:

- *How do we conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, detainees and residents in a professional and respectful manner?*

- *Searches will be performed in a professional manner, in accordance to the policies and procedures established at the facility.*
- *Cross-gender pat searches of female inmates/detainees are also prohibited absent exigent circumstances.*
- *Cross-gender strip 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.*
- *Exigent Circumstances: 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.*
- *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.*

The corresponding curriculum guide provides the facilitator with detail to effectively provide training for this portion of the PREA module.

All staff interviewed confirmed completion of search training. Even those who do not conduct searches noted inclusion of search refresher training in annual block training. This was also confirmed in an interview with the Training Coordinator.

The Auditor was provided with documentation of PREA training completion for 46 staff, confirming completion of required training for all staff during the annual 40-hour block training.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/10/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-130300, *Search Policy* (12/08/2016)
- Policy CD-130301, *Search Policy* (12/08/2016)
- Policy CD-150800, *Transgender Inmates* (09/13/2018)
- Prison Rape Elimination Act Staff Training Curriculum as revised 03/2020 and corresponding PowerPoint
- Photographs of signage regarding opposite gender announcements required before entering
- 12/18/2019 email from the Prisons Director regarding use of body scanners
- Training records of select staff
- 09/27/2021 procedure documentation and training regarding use of the body scanner

Interviews conducted:

- Non-medical staff involved in cross-gender strip or visual searches
- Random sample of inmates
- Random sample of staff
- Training coordinator
- Transgender / intersex inmates

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.

115.16 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section S. (page 7) requires, "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."

Agency policy 041001, *Inmate Orientation* (03/05/2015) section B. (page 2 - 3) requires, "Within seven (7) days of admission to a facility other than RDC, inmates will receive Facility Specific Orientation...Inmates will receive written materials and/or translations in their own language. When available, verbal translators may substitute for written translations. When a literacy problem exists, a staff member will assist the inmate with understanding the material."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 12) requires, "All institutional and facility block of inmate education will be available in formats accessible to all inmates including those who are:

- Limited English proficient,
- Deaf,
- Visually impaired,
- Otherwise disabled, and
- Limited in their reading skills.”

The inmate orientation video is closed captioned for those inmates who are deaf or hard of hearing. It is also an audio presentation so that inmates who are visually impaired are able to effectively participate in orientation. Additionally, a TTY is available for use as needed for inmates who are deaf or hard of hearing.

Per information from the former PREA Coordinator, inmates are assessed by education staff at the reception center and on arrival at their first facility. The Auditor requested information regarding internal processes to identify special needs inmates and ensure provision of assistance to ensure identified inmates can effectively participate in orientation, reporting allegations, and investigations. The Auditor was provided with a memo from the PCM indicating, “Western New Mexico Correctional Facility will 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.” The Auditor also received documentation from the PCM indicating that “If there was an inmate that came into WNMCF that is deaf we will utilize the TTY phone. WNMCF has not had any instances of an inmate that is deaf. If there is an inmate that comes in that has mental health or disabilities WNMCF will utilize Behavioral Health to speak with the inmates. Behavioral [health] will also provide follow ups and treatment plans for the inmates. WNMCF also has a Critical Care Unit or Therapeutic Behavioral Health Unit and Long-Term Care Unit that an inmate can be placed and will have observation by security staff and Behavioral Health staff.” The Auditor was also informed that there was no applicable instance during the reporting period.

Per information received from the PCM, staff do not receive formal training in addressing the needs of disabled inmates, but have received training that, “if there is an inmate that is limited English there is a language line that the facility can call so the inmate can speak with someone of that language. We do have our PREA inmate handbooks and trainings in Spanish and English as [these are] the most known language in NM. Staff know we have a TTY phone that gives the deaf and hard of hearing a text-based system for communicating over phone lines among themselves or with hearing individuals.” It is recommended that a formal plan and/or training be developed to identify and assist special needs inmates to ensure these inmates are able to understand and effectively report allegations and participate in investigations.

The Auditor was informed that no documentation of assistance provided to special needs inmates is maintained. As a result, there was no applicable documentation available from the auditor documentation period. However, the Auditor received monthly memos from Health Services and Behavior Health Services managers and the inmate ID Coordinator that between initial documentation and on-site review, no special needs inmates required assistance to effectively participant in orientation, reporting or investigations.

Per information received from interviews with disabled and LEP inmates, they were able to understand the materials provided on arrival and during orientation. Inmates noted assistance provided by interpreters (to include sign language), mental health staff, and inmate mentors / assistants.

While on-site, the Team was not able to observe the intake or orientation process as no inmates were received during this time.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.16 (b)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section S. (page 7) requires, "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."

Agency policy 041001, *Inmate Orientation* (03/05/2015) section B. (page 2 - 3) requires, "Within seven (7) days of admission to a facility other than RDC, inmates will receive Facility Specific Orientation...Inmates will receive written materials and/or translations in their own language. When available, verbal translators may substitute for written translations."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 12) requires, "All institutional and facility block of inmate education will be available in formats accessible to all inmates including those who are:

- Limited English proficient,
- Deaf,
- Visually impaired,
- Otherwise disabled, and
- Limited in their reading skills."

The agency maintains a contract with Language Line Services, Inc. that went into effect in 2009. According to the language of the contract, the agreement is automatically renewed for one-year periods unless cancelled in writing by one of the parties. Most random staff interviewed were aware of the availability of these services.

Per information from the PCM, "The most commonly used and necessary languages throughout NMCD prison facilities are English and Spanish. All brochures, pamphlets and the inmate handbook are available in both English and Spanish. Copies are provided hereto for review. The PREA Video has the option for Spanish subtitles as well." The Auditor was provided with copies of published materials (signage, orientation manual, intake handout, and PREA Inmate Handbook).

The Auditor was provided with documentation of the provision of interpreter services to a WNMCF inmate during the intake process. The Auditor was also received monthly memos from Health Services and Behavior Health Services managers and the inmate ID Coordinator that between initial documentation and on-site review, no special needs inmates required assistance to effectively participant in orientation, reporting or investigations.

Per information received from interviews with disabled and LEP inmates, they were able to understand the materials provided on arrival and during orientation. Inmates noted assistance provided by interpreters (to include sign language), mental health staff, and inmate mentors / assistants.

While on-site, the Team was not able to observe the intake or orientation process as no inmates were received during this time. The Team did observe wall painting regarding PREA were all available in Spanish.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.16 (c)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section S. (page 7) requires, "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."

Seven (7) of the twenty (20) random staff interviewed (35%) indicated they would use an inmate interpreter, most indicating it could occur only under certain conditions (e.g., assigned caretaker inmates, if the inmate brought the other inmate with them to translate, or if the language was something other than Spanish, etc.). All interviewees reported never having actually used or had knowledge of the use of inmate interpreters in matters associated with PREA.

Per information received from interviews with disabled and LEP inmates, they were able to understand the materials provided on arrival and during orientation. Inmates noted assistance provided by interpreters (to include sign language), mental health staff, and inmate mentors / assistants.

Based on the belief by 35% of random staff interviewed that use of an inmate interpreter in PREA-related situations is acceptable, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the provision of refresher information to all staff to ensure a thorough understanding of this prohibition and processes to employ when an interpreter is needed.

Updates:

On 12/13/2021, the Auditor was provided with documentation of training completed with all staff dated 09/24/2021; noted in email was that training was completed with all staff except one who is out on FMLA leave. The training included identification of available staff interpreters and associated languages instruction on use of the language line, and a review of standard provisions. Based on these actions, WNMCF is now assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Contract with Language Line Services, Inc. in effect in 2009 and automatically renewed each year for one-year periods unless cancelled by either of the parties
- Photographs of signage in both English and Spanish
- PREA Inmate Handbook (undated) in Spanish
- Inmate intake handout in English and Spanish
- Prison Rape Elimination Act of 2003 Manual de Orientacion (undated)
- 12/18/2020 PCM memo regarding provision of assistance to special needs inmates
- Documentation of interpreter services training provided to all staff 09/24/2021

Interviews conducted:

- Agency head designee
- Inmates with disabilities or who are LEP
- Random sample of staff

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.

115.17 (a)

The Auditor was provided with a blank New Mexico Corrections Department hiring forms packet, which includes the NMCD Self-Declaration of Sexual Abuse/Sexual Harassment. The form requires the applicant to respond to the following questions:

- Have you ever engaged in sexual abuse in a prison, jail, lockup, community confinement, juvenile facility, or other institutions (as defined in 42 U.S.C 1997);
- Have you ever 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 when the victim did not consent or was unable to consent or refuse?
- Have you ever been civilly or administratively adjudicated to have engaged in the activity described in paragraph (2) above?

Per information from the PCM, "To apply for a position in the Corrections Department, an applicant will fill out an online application, through the New Mexico State Personal Office. Interviews will be set, and the applicants will fill out an additional application packet when they come for an interview...Each applicant will consent to a background check; fill out a PREA Questionnaire regarding prior institutional employment...and a self-disclosure form. The self-disclosure form asks the applicant all questions required by provision (a) of the standard. All applicants are required to sign the form acknowledging that they have a continuing duty to disclose any facts that would change the answers. Prior to any promotions, the employee will undergo a background check and sign a self-disclosure form...All employees and contract staff are required to update and the sign the form during the annual in-service training."

Per information received from the agency Compliance Officer, she also reviews all prior allegation / investigation information for every hire, rehire, and promotion; however, the review is not conducted if the individual has never worked for NMCD before as they wouldn't be in the system. She indicated that the Human Resources office from the facility in which the individual is applying sends an email request for review to her and that office is also responsible for a similar review for any facility the applicant worked for outside of NMCD. The review is of all spreadsheets of investigations conducted prior to 2013, when the IAPRO database was launched, which now maintains all investigation information, not just limited to PREA-related investigations.

The Auditor was provided with a list of 32 new hires between 06/2019 and 10/2020, requesting documentation of sexual misconduct disclosure, criminal background checks, and institutional employer review for five (5) individuals, selecting every sixth name on the list. The Auditor was provided with documentation of sexual misconduct disclosure and internal review of prior allegation / investigation information for these individuals confirming compliance with standard requirements.

The Auditor was provided with documentation of sexual misconduct disclosure and internal review of prior allegation / investigation information for five (5) of the nine (9) promotions during the documentation period as requested by the Auditor, confirming compliance with standard requirements.

The Auditor was informed that the same disclosure is required for any new contract staff member. The Auditor was provided with start dates for all facility contract staff, followed by documentation of sexual misconduct disclosure for six (6) of the thirteen (13) individuals who began work during the documentation period. The Auditor confirmed completion of the required sexual misconduct disclosure prior to the beginning of employment at the facility.

During the time between initial documentation and on-site review, the Auditor was to be provided with monthly lists of new hires, promotions, and new contract staff. Lists of new hires / promotions were not received for one (1) of the twelve (12) months under review and for new contract staff for all twelve (12) months. The following are the results of documentation reviews:

- Staff were hired and/or promoted in six (6) of the months provided. Documentation demonstrated compliance in five (5) of the six (6) months, with the documentation of sexual misconduct disclosure, criminal background check, and review of prior institutional employers completed after the date of hire/promotion for the remaining individual.
- New contract staff initiated the provision of services in eight (8) of the months reviewed. Documentation provided was compliant with standard requirements in only two (2) of these months. Documentation of sexual misconduct disclosure was completed after the serve initiation date in five (5) of these months, and no disclosure was provided for the sixth month.

The standard specifically requires, "The agency shall not hire or promote anyone who may have contact with inmates and shall not enlist the services of any contractor who may have contact with inmates..." who have engaged in identified acts. Completion of disclosure after the date of hire or initiation of services does not meet this requirement.

Based on the completion of noted documentation after the date of hire, promotion, and/or initiation of contracted services, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development and implementation of a system to ensure all required information is obtained and reviewed prior to the start date of the identified individual. The Auditor will continue to monitor new hires, promotions, and new contract staff during the corrective action period.

Updates:

During the corrective action period, the Auditor was provided with monthly lists of new hires, promotes, and newly contracted staff along with documentation of criminal background checks, institutional employer review, and sexual misconduct disclosure. The records for a total of thirty-five (35) individuals were reviewed. The Auditor identified an issue with three (3) of the 105 records provided, two (2) being undated forms and one (1) missing record. Two of the three issues were corrected before the issuing of this final report. From the documentation provided, it is clear that WNMCF has corrected the compliance issues identified in the interim report and are now assessed as compliant with the requirements of this provision.

115.17 (b)

The Auditor was provided with a blank New Mexico Corrections Department hiring forms packet, which includes the NMCD Self-Declaration of Sexual Abuse/Sexual Harassment. The form requires the applicant to respond to the following questions:

- *Has a substantiated allegation of sexual harassment ever been made against you?*

Per information from the PCM, "To apply for a position in the Corrections Department, an applicant will fill out an online application, through the New Mexico State Personal Office. Interviews will be set, and the applicants will fill out an additional application packet when they come for an interview...Each applicant will consent to a background check; fill out a PREA Questionnaire regarding prior institutional employment...and a self-disclosure form. The self-disclosure form asks the applicant all questions required by provision (a) of the standard. All applicants are required to sign the form acknowledging that they have a continuing duty to disclose any facts that would change the answers. Prior to any promotions, the employee will undergo a background check and sign a self-disclosure form...All employees and contract staff are required to update and the sign the form during the annual in-service training." This was confirmed in an interview with Human Resources staff.

Per information received from the agency Compliance Officer, she also reviews all prior allegation / investigation information for every hire, rehire, and promotion; however, the review is not conducted if the individual has never worked for NMCD before as they wouldn't be in the system. She indicated that the Human Resources office from the facility in which the individual is applying sends an email request

for review to her and that office is also responsible for a similar review for any facility the applicant worked for outside of NMCD. The review is of all spreadsheets of investigations conducted prior to 2013, when the IAPRO database was launched, which now maintains all investigation information, not just limited to PREA-related investigations.

The Auditor was provided with a list of 32 new hires between 06/2019 and 10/2020, requesting documentation of sexual misconduct disclosure, criminal background checks, and institutional employer review for five (5) individuals, selecting every sixth name on the list. The Auditor was provided with documentation of sexual misconduct disclosure and internal review of prior allegation / investigation information for these individuals confirming compliance with standard requirements.

The Auditor was provided with documentation of sexual misconduct disclosure and internal review of prior allegation / investigation information for five (5) of the nine (9) promotions during the documentation period, confirming compliance with standard requirements.

The Auditor was informed that the same disclosure is required for any new contract staff member. This was also confirmed in interviews with contractor / volunteer coordinators, who noted that no individual is allowed access to the facility until disclosures and background checks have been completed and cleared.

The Auditor was provided with start dates for all facility contract staff, followed by documentation of sexual misconduct disclosure for six (6) of the thirteen (13) individuals who began work during the documentation period. The Auditor confirmed completion of the required sexual misconduct disclosure prior to the beginning of employment at the facility.

During the time between initial documentation and on-site review, the Auditor was to be provided with monthly lists of new hires, promotions, and new contract staff. Lists of new hires / promotions were not received for one (1) of the twelve (12) months under review and for new contract staff for all twelve (12) months. The following are the results of documentation reviews:

- Staff were hired and/or promoted in six (6) of the months provided. Documentation demonstrated compliance in five (5) of the six (6) months, with the documentation of sexual misconduct disclosure, criminal background check, and review of prior institutional employers completed after the date of hire/promotion for the remaining individual.
- New contract staff initiated the provision of services in eight (8) of the months reviewed. Documentation provided was compliant with standard requirements in only two (2) of these months. Documentation of sexual misconduct disclosure was completed after the serve initiation date in five (5) of these months, and no disclosure was provided for the sixth month.

The standard specifically requires, "The agency shall not hire or promote anyone who may have contact with inmates and shall not enlist the services of any contractor who may have contact with inmates..." who have engaged in identified acts. Completion of disclosure after the date of hire or initiation of services does not meet this requirement.

Based on the completion of noted documentation after the date of hire, promotion, and/or initiation of contracted services, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development and implementation of a system to ensure all required information is obtained and reviewed prior to the start date of the identified individual. The Auditor will continue to monitor new hires, promotions, and new contract staff during the corrective action period.

Updates:

During the corrective action period, the Auditor was provided with monthly lists of new hires, promotes, and newly contracted staff along with documentation of criminal background checks, institutional employer review, and sexual misconduct disclosure. The records for a total of thirty-five (35) individuals were reviewed. The Auditor identified an issue with three (3) of the 105 records provided, two (2) being undated forms and one (1) missing record. Two of the three issues were corrected before the issuing of this final report. From the documentation provided, it is clear that WNMCF has corrected the compliance

issues identified in the interim report and are now assessed as compliant with the requirements of this provision.

115.17 (c)

Agency policy CD-030200 *Recruitment, Selection, and Hire of Correctional Officers, Correctional Officer Specialists and Probation and Parole Officers* (05/14/2020) section E. (page 2) requires, "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 completion of criminal background checks and reviews of prior institutional employers was confirmed in an interview with Human Resources staff. Additionally, the former PREA Coordinator reported the Compliance Officer also reviews all applicable databases and systems for prior allegations and investigations for any hire, promotion, or lateral transfer candidate.

Per information received from the PCM, each applicant is required to complete a PREA questionnaire regarding prior institutional employment. A blank form was included in the application packet provided to the Auditor. The form requests, "Please identify any and all substantiated allegations of sexual abuse or sexual harassment investigation against the above candidate while in your employment. Please provide date of the incident, the nature of the allegation, the findings and any disciplinary action taken. If not applicable please indicate N/A or none."

NMCD Prison Rape Elimination Act Questionnaire for Prior Institutional Employers forms are completed by the HQ Compliance Officer if the prior employer is NMCD. If the employer is outside NMCD, the form is forwarded to the former employer by staff from the local Human Resources office.

The Auditor was provided with a list of 32 new hires between 06/2019 and 10/2020, requesting documentation of sexual misconduct disclosure, criminal background checks, and institutional employer review for five (5) individuals, selecting every sixth name on the list. The Auditor was provided with documentation confirming the completion of required criminal background checks prior to hire for identified individuals. However, the Auditor was not provided with the review of prior institutional employers are required by this provision.

Based on the lack of documentation regarding review of prior institutional employers for new hires, WNMCF was initially assessed as non-compliant with the requirements of this provision. The Auditor was provided with requested documentation 05/06/2021, but all documentation was dated significantly after the start date of the noted employee. During the time between initial documentation and on-site review, the Auditor was provide with compliant, timely documentation of institutional employer review in five (5) of the six (6) months in which an employee was hired or promoted. In the sixth month, the institutional employer review and criminal background check were completed again after the date of hire. Based on the completion of required reviews after the date of hire, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development and implementation of a system to ensure all required information is obtained and reviewed prior to the start date of the identified individual. The Auditor will continue to monitor new hires, promotions, and new contract staff during the corrective action period.

Updates:

During the corrective action period, the Auditor was provided with monthly lists of new hires, promotes, and newly contracted staff along with documentation of criminal background checks, institutional employer review, and sexual misconduct disclosure. The records for a total of thirty-five (35) individuals were reviewed. The Auditor identified an issue with three (3) of the 105 records provided, two (2) being undated forms and one (1) missing record. Two of the three issues were corrected before the issuing of this final report. From the documentation provided, it is clear that WNMCF has corrected the compliance

issues identified in the interim report and are now assessed as compliant with the requirements of this provision.

115.17 (d)

Agency policy CD-030200 *Recruitment, Selection, and Hire of Correctional Officers, Correctional Officer Specialists and Probation and Parole Officers* (05/14/2020) section E. (page 2) requires, "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."

It is noted that Human Resources staff at WNMCF are not involved in the screening and approval process associated with contract staff. However, the Auditor confirmed in interviews with Volunteer / Contractor Coordinators that criminal background checks for these individuals are coordinated out of the Warden's office, with the Warden or Deputy Warden approving all potential contract staff following receipt of a background check. The Auditor was also informed that no contractor is allowed access to the facility until all training is completed, which is not scheduled until a background check is completed and approved.

The Auditor was provided with start dates for all facility contract staff, followed by documentation of the completion and clearance / approval of criminal background checks for six (6) of the thirteen (13) individuals who began work during the documentation period. The Auditor confirmed completion of these checks prior to the beginning of employment at the facility. Documentation provided for new contract staff who initiated service provision between initial documentation and on-site review also demonstrated compliance with standard requirements.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.17 (e)

Per information received from the former PREA Coordinator, periodic background checks are completed for all employees and contract staff every three years. The process is initiated via an email from her to the Human Resources Bureau Chief in Santa Fe and all PCM's. "The Bureau Chief will send out an email to all HR staff in all facilities to begin the process. Normally an NCIC form is attached to the employee paychecks to sign and return. Each [facility] has several staff that are NCIC certified who will run the NCIC. In 2021 we will have to discuss the process, as many do not pick up paychecks or paystubs anymore, it is all electronic. We will begin the process in March and all facilities will have till May to run all employees. This includes our contract staff (medical and food service). Each HR division in the facilities will keep an excel spreadsheet to ensure that the background has been run on all staff." She confirmed that the process was completed in 2016 and 2019, but was not with the agency in 2013, so could not confirm completion at that time.

Per information received from the PCM, a new spreadsheet system to document reviews conducted is in the process of implementation. Prior to this system and as supporting documentation for the system, the request for background check forms are maintained on file. The Auditor requested proof of criminal background check documentation for 2016 and 2019 for fifteen (15) individuals, selecting every 13th name on the list of current employees plus two contract staff. The Auditor was provided with documentation as requested or verification that the individual was not employed by the facility in 2016 for eleven (11) of these individuals. Of the remaining four (4) individuals for who documentation was requested, three (3) were not employed in 2016, but documentation of a check in 2019 was not provided. Documentation for 2016 was provided for the final individual, but nothing for 2019. As a result, a document compliance rate of 73% (11 of 15) was calculated.

During interviews, Human Resources staff and Volunteer / Contractor Coordinators confirmed that criminal background checks are run on all employees and contract staff once every three years. All background checks are review and approved by the Warden or Deputy Warden.

Based on the inability to provide requested documentation of identified 2019 criminal background checks for 4 of 15 records requested (27%), WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include a review of available records and completion of criminal background checks for any identified as missing along with implementation of a document maintenance and tracking system to ensure the ability to document continued compliance.

Updates:

The Auditor was provided with documentation of criminal background checks being completed for all employees and contractors between 11/14/2021 and 12/28/2021, ensuring that all records checks were current. The facility will also ensure that all required records checks are completed every three years moving forward as required by agency procedures, the next one being in 2022. Based on these actions, WNMCF is now assessed as compliant with the requirements of this provision.

115.17 (f)

Compliance with new hire and promotion sexual misconduct disclosures is addressed with provision (a) and (b) of this standard. The Auditor was also informed that each employee is required to complete the sexual misconduct disclosure form each year during annual in-service.

The Auditor was provided with a memo from the Director of the New Mexico State Personnel Board, State Personnel Office, reporting, "Please be advised that State employees do not complete self-evaluations. Supervisors are required to do evaluations on employees they directly supervise." As a result of this information, the self-evaluation portion of this provision is not applicable to WNMCF. However, all participants in annual training is required to sign a new NMCD Self-Declaration of Sexual Abuse/Sexual Harassment statement, confirming the individual has not participated in prohibited behaviors and understands a continuing affirmative duty to disclose any facts that would change the responses provided.

Per information from an interview with Human Resources staff, all employees and contract staff have an affirmative duty to report any applicable misconduct. The Auditor was also informed that each employee and contract staff is required to complete the sexual misconduct disclosure form each year during annual in-service. The Auditor was provided with examples of these annual forms for select individuals. These forms include the statement, "By signing below, I understand that I have a continuing affirmative duty to disclose any facts that would change my answers above" [answers to noted sexual misconduct questions].

Based on the completion of noted documentation after the date of hire and/or promotion as noted with provision (a) and (b), WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development and implementation of a system to ensure all required information is obtained and reviewed prior to the start date of the identified individual. The Auditor will continue to monitor new hires, promotions, and new contract staff during the corrective action period.

Updates:

During the corrective action period, the Auditor was provided with monthly lists of new hires, promotes, and newly contracted staff along with documentation of criminal background checks, institutional employer review, and sexual misconduct disclosure. The records for a total of thirty-five (35) individuals were reviewed. The Auditor identified an issue with three (3) of the 105 records provided, two (2) being undated forms and one (1) missing record. Two of the three issues were corrected before the issuing of this final report. From the documentation provided, it is clear that WNMCF has corrected the compliance issues identified in the interim report and are now assessed as compliant with the requirements of this provision.

115.17 (g)

The Auditor was provided with a blank New Mexico Corrections Department hiring forms packet, which includes the NMCD Self-Declaration of Sexual Abuse/Sexual Harassment. 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 become employed, you can be terminated from employment.”

The Auditor was informed that this disclosure form is required for every hire, promotion and transfer applicant and every new contract staff.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.17 (h)

The central office Compliance Officer confirmed that she provides any prior allegation and/or investigation information contained in available databases and systems in response to any request from other states or agencies with regarding to prior agency employees. Human Resources staff also confirmed the provision of applicable information as requested based on a file review.

Per information from the former PREA Coordinator and the central office Compliance Officer, there have been no such requests regarding a former WNMCF employee. As a result, there is no secondary documentation available for review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/16/2020 from the PCM addressed to the DOJ Auditor
- Agency policy CD-030200 *Recruitment, Selection, and Hire of Correctional Officers, Correctional Officer Specialists and Probation and Parole Officers* (05/14/2020)
- NMCD Prison Rape Elimination Act Questionnaire for Prior Institutional Employers for select individuals
- 07/20/2017 memo from Director, New Mexico State Personnel Board, State Personnel Office
- NMCD Self-Declaration of Sexual Abuse/Sexual Harassment forms for select staff
- Documentation of sexual misconduct disclosure and criminal background checks for select contract staff
- Documentation of sexual misconduct disclosure, criminal background checks and prior institutional employer review for select new hire and promotional staff and new contract staff

Interviews conducted:

- Human resources staff
- Volunteer / contractor coordinator

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.

115.18 (a)

Agency policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020) section BB. (page 8) requires, "When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect the inmates from sexual abuse. When installing or updating a video monitoring system, electronic surveillance system or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse."

Since the facility's last PREA audit (site visit beginning 04/12/2018 and final report dated 08/20/2018), no significant, applicable modifications were made to WNMCF's physical plant. As such, no local documentation was available. However, NMCD assumed responsibility for the operation of the Northeast New Mexico Correctional Facility from the GEO Group. Per the former PREA Coordinator, NMCD has

always owned the facility but had contracted for its operation by the GEO Group, later resuming internal operation in late 2019. As such, this facility is also not applicable to the requirements of this provision.

During an interview with the Secretary's designee, it was reported that modifications would be based on the classification of the facility and its physical design, and on the classification of the inmates being placed in the environment. A complete review is done when moving any population to ensure the facility fits the population to be housed, with accommodations for special populations like sex offenders, those at risk, etc.

The Warden confirmed that there have been no major modifications or additions to the facility's physical plant since the last DOJ PREA audit with the exception of camera system modifications as noted with provision (b).

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.18 (b)

Agency policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020) section BB. (page 8) requires, "When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the agency shall consider the effect of the design, acquisition, expansion, or modification upon the agency's ability to protect the inmates from sexual abuse. When installing or updating a video monitoring system, electronic surveillance system or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse."

Since the facility's last PREA audit (site visit beginning 04/12/2018 and final report dated 08/20/2018), WNMCF installed and upgraded the camera system throughout the facility (June 2019). The Auditor was provided with meeting minutes and an attendance roster documenting PMC involvement in the planning of this modification / upgrade. The Auditor was also provided with planning meeting documentation from the period between initial documentation and on-site review regarding additional camera installation and additional space in the DVR room.

While on-site, the Team reviewed camera locations and images fed to monitors throughout the facility.

During interviews, the Secretary's designee and Warden expressed a thorough knowledge of provision requirements. The Secretary's designee noted that cameras can be used in some areas, but not in others, such as bathrooms. To ensure inmate safety, additional patrols by staff may be implemented along with things like physical barriers in bathrooms that allow staff to see heads and feet while still providing inmates with privacy. The interviewee noted that the agency likes to use technology, but also employs the presence of the officers, rounds, etc. to ensure safety. Additionally, a thorough knowledge of operations and the ability to implement boundaries, some of which may be physical barriers enhances inmate safety. The Warden confirmed expansion and upgrade to the facility's camera system with PREA as the foundational reason for these changes.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020)
- Meeting minutes and attendance roster regarding camera modification / upgrades

Interviews conducted:

- Agency head designee
- Warden

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.

115.21 (a)

NMCD Office of Professional Standards (OPS) training investigators are only authorized to conduct administrative investigations as these specially trained investigators are not certified law enforcement officers. Per the PCM, "If the facility receives an allegation that appears to be criminal in nature, the

scene would be secured and the Department of Public Safety (New Mexico State Police) would be called to the facility to conduct an investigation and obtain evidence.”

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), defines procedures to be followed in the event of a sexual assault, including evidence collection, forensic medical examinations, after action and follow up, and investigation. Procedures are based on *A National Protocol for Sexual Assault Medical Forensic Examinations, Adults / Adolescents* (Second Edition, April 2013). Additionally, the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) page 31 – 32 details evidence collection, to include placement in paper bags, and labeling.

All random staff interview confirmed at least basic knowledge of evidence collection and control protocols. More extensive knowledge was reported based on responsibilities of the interviewee. Basic first responder responsibilities and immediate actions to preserve evidence was confirmed. Most random staff interviewed believed that the PCM was responsible for conducting PREA investigations, which is inaccurate, but did express basic knowledge of the response and investigation processes.

During a review of investigations completed between initial documentation review and the on-site review, the Auditor was informed that videos reviewed as part of the allegation review and investigatory process are maintained as evidence with the Serious Incident Report packet in the Warden’s office. However, it was also learned that these are not managed with a chain of custody form. It is recommended that agency processes be updated to include formal evidence management procedures and documentation with these videos to ensure they are properly retained as formal evidence for use in criminal investigations, disciplinary actions, litigation, and other formal proceedings. The Auditor was later provided with email as documentation of direction from the PCM to all security supervisors, the warden, and deputy warden’s assistant directing all to maintain any video pulled as evidence, to include completion of a Chain of Custody form. It is recommended that this be addressed on an agency level as well.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.21 (b)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), defines procedures to be followed in the event of a sexual assault, including evidence collection, forensic medical examinations, after action and follow up, and investigation. Procedures are based on *A National Protocol for Sexual Assault Medical Forensic Examinations, Adults / Adolescents* (Second Edition, April 2013).

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.21 (c)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section C.1 – 10. (page 3 - 4) requires, “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 consent of the victim shall be required for any routine emergency examination and treatment offered at the community health care facility, which is not otherwise required by law. The examiner will prepare consent forms, etc. for the examination...The examiner will establish the medical forensic history...The examiner will photograph medical evidence...The examiner will perform the examination and collect medical evidence...The examiner will gather toxicology samples for drug testing...The examiner will perform a sexually transmitted infection evaluation and provide for treatment...The examiner will perform a pregnancy risk evaluation and schedule follow-up care...The examiner will provide follow up instructions and release the victim for discharge.”

Per the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 14): "If requested by the inmate, the victim advocacy representative or Department of Mental Health Professional will accompany the victim inmate to the forensic medical examination process and interviews to provide emotional support, crisis intervention, information and referrals." The same document (page 16) reads, "If a SAFE or SANE cannot be made available, the examination can be performed by [another] qualified medical practitioner only after contacting the Warden and the PREA Management Team." Page 39 defines the PREA Management Team as including "...the Inspector General/PREA Coordinator, PREA Administrator, PREA Compliance Managers, PREA/OPS Management Analysts, Executive Assistant." The same manual, page 16, notes, "All forensic medical examinations that are done by someone other than a SANE [or] SAFE shall be documented and forwarded to the PREA Coordinator. This shall, however, rarely if at all be completed in the same manner." Page 31 notes, "Victims must agree to have a forensic exam prior to transporting for the exam. Should an inmate refuse to have the exam, we must document the refusal on a Release of Liability for Refusal of Medical Treatment Form. Forensic examinations will be offered at no cost to the victim. Victims will only be transported for a sexual assault forensic exam if the assault occurred within the 120hr time frame."

All information provided to the Auditor regarding forensic medical exams refers to inmate on inmate abuse. The Auditor asked whether an inmate who is the alleged victim of sexual abuse by an employee, contractor or volunteer that involved penetration or exchange of body fluids within 120 hours also be offered a forensic medical examination and was informed by the former PREA Coordinator, "This includes all sexual abuse allegations. The facility is required to call out State Police, NMCD will defer to State Police if a SANE Exam is needed. However there have been instances, where State Police has not completed a SANE Exam and the facility went ahead and did one." It is recommended that this information be included in future updates to applicable materials.

The provision of all medical and mental health services at no cost to the inmate, including any associated with a PREA allegation, was confirmed in interviews with health services providers.

Per information received from the PCM, "A notification will be made to SANE dispatch by WNMCF. SANE dispatch will then call out or if they have onsite the Sexual Assault Nurse Examiner. SANE also provides an advocate onsite during the visit with SANE." This was confirmed in an interview with the New Mexico SANE Director.

The Auditor conducted interviews with representatives from New Mexico SAFE/SANE organizations, confirming that any inmate requiring a forensic medical examination would be transported to a regional center, where SANE coverage is maintained 24 hours per day. Representatives confirmed that in some areas, SANE's work shifts in the center and are always available. In smaller communities, SANE's are on call and periodically an exam may need to be scheduled out a day or so to ensure the SANE is available; however, exams would always be conducted within established timeframes to ensure the ability to collect possible evidence. The Auditor confirmed that there should be no instance in which a SANE was not available to conduct an exam. The Auditor was also informed that the inmate would need to be medically stable for the exam to be conducted and addressing emergent medical issues would be the first priority, transporting the inmate to an adjacent emergency room first, followed by transfer to the SANE center for the forensic medical examination. Representatives added if the inmate needs to remain at the hospital for medical care, the SANE could conduct the exam at the hospital as all SANE's also have hospital privileges.

No inmate from WNMCF has been the alleged victim of sexual abuse that indicated the need for a forensic medical examination. As a result, there is no secondary documentation available for review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.21 (d)

WNMCF also maintains an MOU with the New Mexico Rape Crisis Center which requires the organization, "Provide access to an advocate via phone, mail, or e-mail to victims of sexual violence who are incarcerated at Western New Mexico Correctional Facility." This MOU expired 08/2020, but per information received from the former PREA Coordinator, the MOU is in the process of being updated and remains in effect until a new MOU is finalized.

The Roswell Correctional Center (RCC) maintains a Memorandum of Understanding with La Piñon, Sexual Assault Recovery Services of Southern New Mexico, which was provided to the Auditor with documentation for an audit of RCC. This MOU went into effect 08/05/2019 and "remains in effect for a period of one year from the effective date for the first calendar year. Upon review, revision as agreed upon by all parties as needed, and signing of all parties after one year, the MOU remains in effect unless terminated by either party..." Per information obtained from the former PREA Coordinator, the MOU is currently under review and revision following discussions with advocates regarding their responsibilities (advocates were making calls for inmates in other facilities). Currently, quarterly discussions are held between the PREA Office and advocates and services detailed in the expired MOU remain in place until an amendment or new MOU is issued. The MOU does not specifically address attendance and provision of support during forensic medical examination and subsequent investigatory interviews, but does require that La Piñon, "Provide in-person advocacy when resources and staff permit availability." Advocacy support during and after forensic examinations was confirmed in an interview with a representative from the community-based advocacy organization. She noted that she has never been called out for such services at WNMCF but would normally be contacted by the facility and then proceed to the hospital where she would meet with the inmate. She noted that transport staff would typically stand outside the room in which the inmate was placed to allow confidentiality of communications between the inmate, the SAFE/SANE and the advocate. She also noted that follow up support services would be provided via telephone calls or mail, adding that currently in-person services at the facility are restricted due to COVID concerns.

It is noted that neither WNMCF nor NMCD maintain a similar MOU with La Piñon, but all inmates are notified of the provision of advocacy support services through La Piñon. WNMCF inmates also receive support from the New Mexico Rape Crisis Center only after connecting with La Piñon and a determination made that additional follow up care, that may include in-person advocacy, is indicated for the inmate. The MOU provided only addresses RCC, which is contradictory to the information provided to inmates.

The Auditor did not locate any information on the Serious Incident Checklist that addresses sexual assault specifically and questioned how Shift Supervisor know they are to contact the advocate before transporting an inmate to the hospital for a forensic medical examination and where such action would be documented. Per information received from the former PREA Coordinator, "The facility is required to call out State Police, NMCD will defer to State Police if a SANE Exam is needed...For WNMCF a call is made to...La Piñon if a SANE Exam is needed. [La Piñon] will also attend the SANE as the victim advocate. A victim advocate is always contacted for a SANE exam." It is recommended that information be added to applicable checklist to provide an area for documentation of advocate notifications as indicated.

During an interview, the PCM confirmed a good working relationship with both advocacy organizations. This was also confirmed in advocacy interviews. The former PREA Coordinator noted that all forensic examinations would be coordinated with the state SANE director, who reported that advocates on call at each SANE facility respond when any individual receives a forensic medical examination. Follow up support is provided based on outreach by the inmate to the partnered advocacy organizations.

During interviews, representatives from both La Piñon and the Rape Crisis Center of New Mexico confirmed the provision of services via telephone, mail and in-person meetings for facility inmates. Inmates are able to dial *9999 to reach an advocate from La Piñon and receive support via unmonitored and toll-free calls. If follow up is needed, the La Piñon advocate can refer the inmate to an advocate from

the Rape Crisis Center of New Mexico by providing the advocate with contact information for the inmate and providing the inmate with the direct telephone number and address of the Rape Crisis Center of New Mexico Advocate. It is noted that calls to this center are recorded and are not toll-free. The Auditor was informed that this is due to limitations of the current inmate telephone system. However, during tests of the telephone line for the Rape Crisis Center of New Mexico while on-site, it was learned that an inmate can telephonically access the center only if the center is included on the list of approved callers for each individual inmate. This negates the ability of any inmate to contact the center as well as any anonymity associated with calls placed. The Auditor was informed that any in-person advocacy for WNMCF inmates is provided by an advocate from the Rape Crisis Center of New Mexico due to proximity. However, it was unclear how this connection could be made if a majority of inmates are unable to contact the center via telephone.

It is also noted that only (1) of the seven (7) inmates who had reported sexual abuse were aware of advocacy support services available or how to connect with them.

Based on the identified issues concerning which organization provides primary advocacy support, the current MOUs, and the inability of most facility inmates to telephonically contact the Rape Crisis Center of New Mexico, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development of an MOU with La Piñon, either on a facility or agency level to address the service provision reportedly already in place. Corrective action should also include revision to the telephone system, or implementation of an alternative system implemented for WNMCF inmates to telephonically contact the Rape Crisis Center of New Mexico. Finally, corrective action should include a system to ensure those inmates who report sexual abuse are made aware of support services available.

Updates:

During the corrective action period, the Auditor was provided with status information regarding a new MOU that was in process between the agency and La Piñon to formalize the provision of victim advocacy support in all facilities. As of 02/09/2022, the MOU was on the desk of the Office of General Counsel for review and approval. As the standard language allows for attempts to make victim advocacy services available, these actions coupled with the actual provision of services by La Piñon to facility inmates, WNMCF is now assessed as compliant with the requirements of this provision.

115.21 (e)

Agency policy CD-031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section E.14.f. (page 13) requires, "Investigators shall accommodate any request from a victim to have a victim advocate, qualified agency staff member or qualified community-based organization staff member present during any and all investigatory interviews."

Information regarding the availability of advocacy support is provided to inmates in the PREA Inmate Handbook (undated), which states, "If you would like advocacy or to talk to someone from your local Rape Crisis Center, you may dial *9999 from any inmate phone." This handbook is available in both English and Spanish. The Prison Rape Elimination Act (PREA) Resource Guide for Inmates (08/23/2019) states, "A sexual assault counselor or victim advocate from a rape crisis center can provide emotional support by being an objective listener (someone who is not directly involved in your situation who can listen without biases). This person can help you make informed choices by providing information about common reactions to the trauma of sexual violence, medical considerations, law enforcement procedures, and other legal issues." Although the resource manual provides procedural information regarding a forensic medical examination, neither publication provides information to the inmate about the process for the advocate presence at such an exam.

As noted above, policy CD-031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) indicates that the onus to contact an advocate for support during an investigatory interview is with the inmate, that the investigator will accommodate inmate requests. The Auditor requested additional information / clarification regarding associated processes,

particularly how inmates have been made aware of the need to make such a request and how this is accomplished if the investigation is being conducted by an outside investigator from a law enforcement agency. No response was received. A representative from La Piñon confirmed the provision of support services during and following a forensic medical examination; however, indicated she was not aware of the ability to provide support services during subsequent investigatory interviews, noting that she has only done so once in another facility. She assumed that the inmate would have to contact her and request such support, which would then be arranged with the facility.

In interviews with the former PREA Coordinator and PCM, it was noted that the advocacy organization directors are responsible for ensuring advocates meet any state and/or federal qualifications.

The issue with the MOU with La Piñon and the ability of inmates to contact the Rape Crisis Center of New Mexico is detailed with provision (d) of this standard.

Based on the lack of information provided to inmates regarding processes for advocacy support during forensic medical examinations, WNMCF was initially assessed as non-compliant with the requirements of this provision. The Auditor was provided with updated versions of the PREA handbook, PREA Orientation Brochure, and PREA Resource Guide (all revised 11/13/2020) along with distribution of these materials to all agency PCM's with instructions for use. These revised materials included the information required by this provision. Per information from the former PREA Coordinator, the updated information is available to current inmates in materials available in the inmate library and in unit manager offices. Additionally, the information is included on one of the inmate playing cards (King of spades). However, three (3) of the four (4) inmates who had reported sexual abuse were not aware of advocacy support services available or how to connect with them. Based on the lack of knowledge of support services expressed by inmate victims of abuse and their inability to telephonically contact the Rape Crisis Center of New Mexico, which is the organization designated to provide in-person support services, WNMCF continues to be assessed as non-complaint with the requirements of this provision. Corrective action should also include revision to the telephone system, or implementation of an alternative system implemented for WNMCF inmates to telephonically contact the Rape Crisis Center of New Mexico. Corrective action should also include a system to ensure those inmates who report sexual abuse are made aware of support services available.

Updates:

During the corrective action period, the Auditor was provided with documentation of training and information provided to all facility inmates. The Auditor was also provided with documentation of training provided to trained investigators to ensure knowledge of standard requirements. Based on these actions, WNMCF is now assessed as compliant with the requirements of this provision.

115.21 (f)

Agency policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section A.4. (page 7) requires, "All allegations of criminal conduct, including any criminal sexual penetration or criminal sexual contact of an inmate by a staff member, must be reported to the appropriate law enforcement authorities, in addition to completing an OPS referral. In addition, during each Prison Rape Elimination Act (PREA) related investigation, the assigned OPS Investigator or designated Investigations Officer shall request the outside law enforcement agency's investigators follow the requirements of PREA standard 115.71."

Criminal investigations are conducted by the New Mexico State Police (NMSP), a division of the Department of Public Safety. Per a 10/02/2019 letter from the Major of the NMSP Standards/Training Bureau, NMSP 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 including, but not limited to Sexual Assault Investigation, Crime Scene Processing/Evidence Preservation, Interview and Interrogation and Internal Affairs." WNMCF collaborates with NMSP for evidence collection, investigation, and the conducting of forensic medical examinations as indicated.

There currently is no memorandum of understanding or interagency agreement between the facility and/or NMCD and the New Mexico State Police regarding the conduct of criminal investigations. However, the Auditor was provided with New Mexico statute 29-11-5, *Sexual crimes prosecution and treatment program* that requires, "The administrator shall develop, with the cooperation of the criminal justice department [corrections department], the New Mexico state police, the New Mexico law enforcement academy, other authorized law enforcement agencies and existing community-based victim treatment programs, a statewide comprehensive plan to train law enforcement officers and criminal justice and medical personnel in the ability to deal with sexual crimes, to develop strategies for the prevention of such crimes, to provide assistance in the assembly of evidence for the facilitation of prosecution of such crimes, and to provide medical and psychological treatment to victims of such crimes...The comprehensive plan shall be implemented throughout the state."

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.21 (g)

Criminal investigations are conducted by the New Mexico State Police (NMSP), a division of the Department of Public Safety. Per a 10/02/2019 letter from the Major of the NMSP Standards/Training Bureau, NMSP 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 including, but not limited to Sexual Assault Investigation, Crime Scene Processing/Evidence Preservation, Interview and Interrogation and Internal Affairs."

Per information from the PCM, "If the facility receives an allegation that appears to be criminal in nature, the scene would be secured and the Department of Public Safety (New Mexico State Police) would be called to the facility to conduct an investigation and obtain evidence...If the NMSP determines a SANE exam is needed the inmate will be transferred to an appropriate agency (rape crisis center or local hospital)..."

There currently is no memorandum of understanding or interagency agreement between the facility and/or NMCD and the New Mexico State Police regarding the conduct of criminal investigations. However, the Auditor was provided with New Mexico statute 29-11-5, *Sexual crimes prosecution and treatment program* that requires, "The administrator shall develop, with the cooperation of the criminal justice department [corrections department], the New Mexico state police, the New Mexico law enforcement academy, other authorized law enforcement agencies and existing community-based victim treatment programs, a statewide comprehensive plan to train law enforcement officers and criminal justice and medical personnel in the ability to deal with sexual crimes, to develop strategies for the prevention of such crimes, to provide assistance in the assembly of evidence for the facilitation of prosecution of such crimes, and to provide medical and psychological treatment to victims of such crimes...The comprehensive plan shall be implemented throughout the state." The statute also details the training for law enforcement officers in treatment of victims, collection of evidence, and coordination between applicable agencies.

No Department of Justice component is responsible for conducting investigations at WNMCF or within NMCD. As a result, WNMCF is assessed as compliant with the requirements of this provision.

115.21 (h)

NMCD secures advocacy support services from community-based advocacy organizations and, therefore, WNMCF staff do not fill this role.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020)
- Policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019)
- 17th A National Protocol for Sexual Assault Medical Forensic Examinations, Adults / Adolescents, Second Edition (April 2013)
- The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- Memorandum of Understanding between the Roswell Corrections Center and La Piñon, Sexual Assault Recovery Services of Southern New Mexico, effective 08/05/2019
- PREA Inmate Handbook English and Spanish (undated) and revised 11/13/2020
- Prison Rape Elimination Act (PREA) Resource Guide for Inmates English and Spanish (08/23/2019) and revised 11/13/2020
- 10/02/2019 letter from the Major of the New Mexico State Police Standards/Training Bureau
- PREA Orientation Brochure in English and Spanish (revised 11/13/2020)
- Memorandum of Understanding with the New Mexico Rape Crisis Center, effective 08/08/2019
- New Mexico statute 29-11-5, *Sexual crimes prosecution and treatment program*
- 05/05/2021 PCM email regarding the handling of video as evidence
- MOU development status information
- Documentation of training provided to facility inmates and trained investigators

Interviews conducted:

- Inmates who reported a sexual abuse
- PREA compliance manager
- Random sample of staff
- Representative from community-based victim advocacy organization
- SAFE/SANE staff

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.

115.22 (a)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section A.2. (page 1) requires, "An investigation shall be conducted and documented whenever a criminal sexual behavior, sexual misconduct or threat is reported." The same policy, section A.5. (page 1) requires, "The Agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 32) "The OPS will review, assign and investigate as promptly, thoroughly and objectively as possible, all reports of inmate sexual harassment, including third-party and anonymous reporting."

Per information received from the former PREA Coordinator, all allegations are referred to OPS for review. During the triage process, if it is determined that the allegation is included in the PREA definitions of prohibited behavior, an investigative case assignment is completed and forwarded to the Warden. The allegation is then formally investigated.

The Auditor was provided with seven (7) investigation reports in response to all the allegations received during the audit documentation period. It is noted that the Pre-Audit Questionnaire (PAQ) notes that there were eight (8) allegations reported during the documentation period, but documentation was provided indicating that one (1) allegation was returned by OPS as informational only, following a determination that the allegation reported was not PREA. The Auditor's initial compliance assessments are based on the seven (7) formal investigations completed.

During the audit documentation period, one (1) allegation was referred to law enforcement for criminal investigation. Documentation was received that law enforcement considered this an "information only" report and did not conduct / will not be conducting a criminal investigation. A second abuse allegation was not referred based on an initial review of all information by the facility, determining that the alleged victim had not been transported out of the facility as reported.

During the period between initial documentation and on-site review, the Auditor was provided with documentation of an allegation of staff sexual abuse that had been evaluated by the central office Compliance Officer and determined to not require a formal investigation based on preliminary information provided by the PCM. Neither of which are trained investigators. The allegation was clearly a violation of prohibited behaviors outlined in agency policy and involved a potentially criminal act. The Auditor questioned this determination and was first informed that a formal investigation would be initiated, and law enforcement referral made. However, while on-site, the Team was informed that the allegation was still determined not to require a formal investigation. Based on that determination, the Auditor assessed this provision as non-compliant as no administrative or criminal investigation was being conducted for an allegation of abuse. The Auditor was then informed that, at the direction of agency General Council, a formal investigation was to be initiated and the investigation conducted by a trained investigator outside of the facility. At the time of the writing of the interim report, the Auditor was awaiting requested documentation of the assignment of this allegation for investigation along with documentation of the related law enforcement referral.

Based on the initial failure to initiate a formal investigation into an allegation of sexual abuse, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action will include the monitoring of the actual conduct of the noted investigation as well as the review of allegations received

during the corrective action period to ensure all allegations of sexual abuse and sexual harassment are formally investigated.

Updates:

During the corrective action period, the Auditor was provided with documentation of the completion of the noted investigation. The Auditor was also provided with documentation of all allegations received and subsequent investigations. Based on this documentation, WNMCF is now assessed as compliant with the requirements of this provision.

115.22 (b)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section A.8. (page 2) requires, "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. All such referrals will be documented." The same policy, section B.5. (page 2) requires, "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." This policy is posted to the agency's public website along with information regarding the investigation process.

Agency policy 031801, *Office of Professional Standards (OPS) Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section D.1., 2. and 4. (page 17) requires, "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 [Chief Administrative Officer]. The Bureau Chief of PS 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...The Bureau Chief of OPS, the NMCD General Counsel, or the CAO may determine that the Investigative Report be submitted to the appropriate law enforcement agency for possible prosecution."

Per information from the PCM, "NMCD-OPS Investigators are not certified law enforcement officers and therefore cannot conduct criminal investigations. NMCD-OPS Investigators do conduct all administrative investigations. NMCD does ensure that all allegations of sexual abuse and sexual harassment are administratively investigated. If the allegation is criminal in nature, the facility is required to call NMSP (New Mexico State Police) to conduct a criminal investigation. An administrative investigation will be completed, once the NMSP has completed their investigation, so that the criminal case is not jeopardized." This was confirmed in interviews with investigative staff.

During the audit documentation period, seven (7) allegations were received, one (1) of which was referred for a criminal investigation. Documentation was received that law enforcement considered this an "information only" report and did not conduct / will not be conducting a criminal investigation. A second abuse allegation was not referred based on an initial review of all information by the facility, determining that the alleged victim had not been transported out of the facility as reported.

During the period between initial documentation and on-site review, the Auditor was provided with documentation of an allegation of staff sexual abuse that had been evaluated by the central office Compliance Officer and determined to not require a formal investigation based on preliminary information provided by the PCM. The allegation was clearly a violation of prohibited behaviors outlined in agency policy and involved a potentially criminal act. The Auditor questioned this determination and was first informed that a formal investigation would be initiated, and law enforcement referral made. However, while on-site, the Team was informed that the allegation was still determined not to require a formal investigation. Based on that determination, the Auditor assessed this provision as non-compliant as no administrative or criminal investigation was being conducted for an allegation of abuse. The Auditor was then informed that, at the direction of agency General Council, a formal investigation was to be initiated

and the investigation conducted by a trained investigator outside of the facility. At the time of the writing of the interim report, the Auditor was awaiting requested documentation of the assignment of this allegation for investigation along with documentation of the related law enforcement referral.

Based on the initial failure to refer a potentially criminal allegation to law enforcement as requires by standard and agency policy, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action will include the monitoring of the actual conduct of the noted investigation as well as the review of allegations received during the corrective action period to ensure all potentially criminal allegations are referred as required.

115.22 (c)

All criminal investigations are conducted by the New Mexico State Police.

Per information from the PCM, "The responsibilities for conducting criminal and administrative investigations are outlined on the agency public website. <https://cd.nm.gov/prea/prea.html> under the Investigation Process tab." The Auditor located and reviewed this posting, which includes information regarding zero tolerance, law enforcement and prosecutorial referrals, administrative investigation processes, and applicable finding options.

There currently is no memorandum of understanding or interagency agreement between the facility and/or NMCD and the New Mexico State Police regarding the conduct of criminal investigations. However, the Auditor was provided with New Mexico statute 29-11-5, *Sexual crimes prosecution and treatment program* that requires, "The administrator shall develop, with the cooperation of the criminal justice department [corrections department], the New Mexico state police, the New Mexico law enforcement academy, other authorized law enforcement agencies and existing community-based victim treatment programs, a statewide comprehensive plan to train law enforcement officers and criminal justice and medical personnel in the ability to deal with sexual crimes, to develop strategies for the prevention of such crimes, to provide assistance in the assembly of evidence for the facilitation of prosecution of such crimes, and to provide medical and psychological treatment to victims of such crimes...The comprehensive plan shall be implemented throughout the state." The statute also details the training for law enforcement officers in treatment of victims, collection of evidence, and coordination between applicable agencies.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.22 (d)

All criminal investigations are conducted by the New Mexico State Police.

Per information from the PCM, "The responsibilities for conducting criminal and administrative investigations are outlined on the agency public website. <https://cd.nm.gov/prea/prea.html> under the Investigation Process tab." The Auditor located and reviewed this posting, which includes information regarding zero tolerance, law enforcement and prosecutorial referrals, administrative investigation processes, and applicable finding options.

There currently is no memorandum of understanding or interagency agreement between the facility and/or NMCD and the New Mexico State Police regarding the conduct of criminal investigations. However, the Auditor was provided with New Mexico statute 29-11-5, *Sexual crimes prosecution and treatment program* that requires, "The administrator shall develop, with the cooperation of the criminal justice department [corrections department], the New Mexico state police, the New Mexico law enforcement academy, other authorized law enforcement agencies and existing community-based victim treatment programs, a statewide comprehensive plan to train law enforcement officers and criminal justice and medical personnel in the ability to deal with sexual crimes, to develop strategies for the prevention of such crimes, to provide assistance in the assembly of evidence for the facilitation of prosecution of such crimes, and to provide medical and psychological treatment to victims of such

crimes...The comprehensive plan shall be implemented throughout the state.” The statute also details the training for law enforcement officers in treatment of victims, collection of evidence, and coordination between applicable agencies.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.22 (e)

No component within the Department of Justice conducts administrative or criminal investigations within NMCD.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy 031801, *Office of Professional Standards (OPS) Personnel investigations and Staff Misconduct Reporting* (06/03/2019)
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- Agency public website
- Applicable investigation reports
- New Mexico statute 29-11-5, *Sexual crimes prosecution and treatment program*

Interviews conducted:

- Agency head designee
- Investigative staff

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.

115.31 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section CC. (page 8) requires, "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."

Agency policy CD-150800, *Transgender Inmates* (09/13/2018) requires, "All staff, custody and non-custody, will be trained prior to working with the inmate population and annually during annual refresher classes at their respective facility on: how to communicate effectively with LGBTI inmates/offenders and how to properly conduct pat-downs and strip searches of Transgender and Intersex inmates/offenders."

The Auditor reviewed the current training curriculum, confirming inclusion of all standard required elements. Additionally, included on the agency's public website is PREA-related information directed to staff. This includes effective communication with inmates as well as the following:

Inmates and staff have the right to be free from retaliation for reporting or participating in an investigation relating to sexual abuse or sexual harassment. Inmates have a right to be free from sexual abuse and harassment. You should always avoid inappropriate relationships with inmates by setting boundaries and remaining consistent with your job duties. Undue familiarity matters will be investigated as PREA matters in most if not all cases. Be confident in your role. If a

situation does not feel right, trust your instincts. REPORT. Inmates involved in incidents may become withdrawn, act out or begin to behave differently. If you notice this, please report and follow up immediately. Victims of sexual abuse or assault, even if it was prior to incarceration, may exhibit signs of PTSD. Report and submit for mental health referrals when necessary.

Per information obtained from the PCM, the agency's training year runs from July 1 through June 30 every year. All staff are required to attend a 40-hour block of training, which includes PREA training. The Auditor was provided with a sample schedule for the 40-hour training, confirming the inclusion of two (2) hours dedicated to PREA.

The PCM reported that "NMCD provides PREA training to all security staff during the academy. Each non-security staff is required to attend Corrections 101 within the first year of employment. However, they are required to attend the facility in-service training immediately after being hired. The PCM at the facility will ensure that each new employee is given the PREA basics, until they can attend in-service training or Corrections 101."

All random staff interviewed confirmed completion of required PREA training, a majority of whom noted the most recent participation within the previous 12 months. It is noted that due to COVID-related restrictions, current staff training has slowed, with limited participants permitted in each training session. Completion of training requirements was also confirmed in interviews with the food services and maintenance managers and the facility training coordinator. All random staff interviewed confirmed inclusion and knowledge of standard required elements in the training provided.

Training records for all staff initially scheduled for interview were reviewed, confirming current completion of general PREA training for 46 out of 46 staff records reviews, providing an overall compliance rate of 100%. The Auditor was also provided with documentation of staff and contractor annual block training completion for the 2020/2021 training year (ending 06/30/2021), demonstrating completion of current training requirements for all but two (2) staff. Per information from the WNMCF training coordinator, these two individuals completed the PREA portion of training but have not completed the full block of training due to extended leave.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.31 (b)

Included on the agency's public website is PREA-related information directed to staff. This includes effective communication with inmates as well as "...dynamics in prisons will differ if you are working in a male facility versus a female. When it comes to relationships in men's prisons, assaults and incidents tend to be based on power and control. In female facilities, we tend to see more nurturing and incidents that are based on personal relationships and perceived friendships."

A review of the general PREA training curriculum provided revealed that information regarding dynamics of both male and female inmates is not included. The Auditor was provided with the curriculum, Dynamics of Female Offenders, which, per the former PREA Coordinator, is required of all staff working in female facilities. It is also required of staff who transfer from a male to a female facility. This training includes, but is not limited to, the following topics:

- Facts about female offenders,
- Women versus men in prison,
- Family background,
- Females and crimes they commit,
- Female behavior in prison,
- Managing female offenders, and
- Gender responsiveness.

The Auditor reviewed training completion records for the 46 staff initially selected for interview and determined that 40 out of 46 records reviewed were compliant with gender-specific training requirements, resulting in an overall compliance rate of 87%. The Auditor was informed that gender specific training was initially provided in 2016 and 2017 training years but was added to in-service and orientation training for all staff during the 2021 training year. During the initial documentation review, an additional five (5) individuals completed the required training (12/2020), raising overall compliance to 45 out of 46 or 98%.

The Auditor was provided with documentation of staff and contractor annual block training completion for the 2020/2021 training year (ending 06/30/2021), which included "gender specific training" in the course listing. Documentation demonstrated completion of current training requirements for all but two (2) staff. Per information from the WNMCF training coordinator, these two individuals completed the PREA portion of training but have not completed the full block of training due to extended leave.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.31 (c)

Generally, WNMCF provides full PREA training in an in-person setting each training year (July through June) as an element of the 40-hour block training. This was confirmed in interviews with the PREA Coordinator, PCM, and the facility Training Officer. The Auditor requested training two consecutive years of training records for the 46 staff initially selected for interview. Of these, only 43 were employed by the agency during the previous year (the remaining 3 were new hires). The Auditor was provided with documentation of prior year general PREA training completion for 43 of these 43 individuals, leaving an overall compliance rate of 100%.

Per the former PREA Coordinator, due to COVID-related in-class participation restrictions, she is implementing the provision of update information to staff in the form of refresher pages were developed by the PREA Resource Center. These address the following:

- PREA basics,
- Effects of abuse,
- Professional communication and boundaries,
- Inmate privacy,
- Ways inmates can report,
- Inmate support services,
- Helping inmates who primarily speak another language,
- Reporting knowledge, suspicion, or information,
- First responder duties,
- Completing an incident report,
- Investigations, and
- Encouraging inmates to report sexual abuse.

If the individual staff member received full training during the 2019/2020 training year, the provision of this refresher training during the 2020/2021 training year meets standard requirements.

The Training Coordinator confirmed that all staff are provided with formal, full PREA training annually based on curriculum provided by the PREA Coordinator. It was also confirmed that all staff are required to complete general PREA training prior to any contact with inmates. The former PREA Coordinator indicated that he has developed a roster to track training completion and will track down individuals who are coming due for annual training to ensure it is completed. He reported that this has intensified since COVID restrictions were implemented, class sizes have been very limited, and he will periodically conduct one-on-one training if needed due to these restrictions. Completion of training requirements is also documented on a disclosure form that requires staff to disclose any applicable misconduct as well as acknowledge an understanding of the training completed. It is noted that the Training Coordinator is very knowledgeable regarding requirements and has a very thorough and comprehensive system to ensure

training is completed as needed. That dedication was observed in the training compliance rates observed with the training documentation reviewed and his prompt response to requests for documentation.

The Auditor was also provided with documentation of staff and contractor annual block training completion for the 2020/2021 training year (ending 06/30/2021), demonstrating completion of current training requirements for all but two (2) staff. Per information from the WNMCF training coordinator, these two individuals completed the PREA portion of training but have not completed the full block of training due to extended leave.

Based on training compliance rates and the systems in place by the Training Coordinator, WNMCF is assessed as exceeding the requirements of this provision.

115.31 (d)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section EE. (page 9) requires, "The agency shall document, through employee signature or electronic verification, that employees understand the training they have received."

Per information received from the PCM, "After the employee has attended PREA training the employee must sign an acknowledgment that they have received training and that they understood the training they had received." This form, the NMCD Staff and Contractor PREA Acknowledgment form, also serves as documentation of attendance in the noted training. The acknowledgment signed by the employee reads, "By signing this document, I am confirming that I understand the training I have received. I am aware that if I do not understand all or a portion of the training, it is my responsibility to speak with the PREA Compliance Manager at the facility."

Training records for all staff initially scheduled for interview were reviewed, confirming current completion of general PREA training and acknowledgment forms for 46 out of 46 staff records reviews, providing an overall compliance rate of 100%.

The Auditor was also provided with documentation of staff and contractor annual block training completion for the 2020/2021 training year (ending 06/30/2021), demonstrating completion of current training requirements for all but two (2) staff. Per information from the WNMCF training coordinator, these two individuals completed the PREA portion of training but have not completed the full block of training due to extended leave.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Training PowerPoint, the Dynamics of Female Offenders
- Policy CD-150800, *Transgender Inmates* (09/13/2018)
- NMCD Presents PREA – Prison Rape Elimination Act training curriculum and PowerPoint
- NMCD Staff and Contractor PREA Acknowledgment forms for select staff
- PRC PREA Refreshers
- Documentation of annual block training completion for the 2020/2021 training year for all staff and contractors

Interviews conducted:

- Food service staff
- Random sample of staff
- Training coordinator

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.

115.32 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures*, PREA (05/29/2020), section CC. (page 8) requires, "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."

Per information received from the former PREA Coordinator, the annual PREA training requirements in place for staff are also required of all contract staff. The Auditor reviewed the current training curriculum, confirming inclusion of all standard required elements. Generally, WNMCF provides full PREA training in an in-person setting each training year (July through June) as an element of the 40-hour block training.

At the time of initial documentation review, WNMCF employed the services of 34 contract staff. The Auditor requested documentation of training completion for the last two (2) training years for the contractors who were interviewed as part of the assessment process. A review of those records

confirmed compliance with training requirements for all twelve (12) individuals. The Auditor was also provided with documentation of contractor annual block training completion for the 2020/2021 training year (ending 06/30/2021), demonstrating completion of current training requirements.

Included on the agency's public website is the form "Prison Rape Elimination Act Volunteer/Limited Service Contractor Training Acknowledgment" which includes the following:

Training previously received and materials given on:

- *The Prison Rape Elimination Act,*
- *NMCD's Policy on Zero Tolerance,*
- *Reporting incidents of sexual abuse,*
- *State law 30-9-11.*

I understand that if I engage in sexual abuse with inmates, I shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and will be reported to relevant licensing bodies.

It is noted that New Mexico State Law 30-9-11 details the definition of Criminal Sexual Penetration and includes the following:

Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated...on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate...

NMCD requires that all prospective volunteers complete an application process followed by a criminal background check. Once cleared, the individual is scheduled for volunteer training, which includes a PREA module. This was confirmed in information received from the PCM and an interview with the Volunteer Coordinator. The Auditor was also informed that volunteers are required to attend an annual PREA refresher training, which uses the same curriculum as the initial training. This training, New Mexico Corrections Department PREA Prison Rape Elimination Act, was reviewed and inclusion of standard elements was confirmed.

WNMCF currently has 125 volunteers. The Auditor requested documentation of training completion for six (6) volunteers, some of whom were included in interviews conducted. Documentation of training completion was received for only two (2) of these individuals. Documentation for one individual was from 2019, with 2020 training postponed due to COVID-related restrictions. Documentation for the second individual was from 2018, which is not compliant with agency requirements. It was also noted by the agency-level volunteer coordinator that one of the individuals for whom records were requested was not located in the volunteer database and no documentation could be located. This individual was initially on the facility's master volunteer roster, but the Auditor was later informed that the individual was no longer an active volunteer.

All contract staff and volunteers interviewed confirmed completion of required PREA training. The Training Coordinator confirmed that training is provided to contract staff annually as with all employees. He maintains tracking spreadsheets to ensure training is completed as required. The Volunteer / Contractor Coordinators also confirmed tracking to ensure training is completed and coordination with the PCM to present training sessions.

All contract staff and volunteers interviewed confirmed completion of training as required, clearly articulating components of that training. Interviewees also confirmed inclusion of the standard required elements and detailed reporting procedures in compliance with policy.

Based on the lack of training documentation for identified volunteers, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include a review of all volunteers to ensure training is complete and records located, with lacking training completed as identified. A review of facility records of volunteers against the agency-level records to ensure accuracy and consistency is should also be included.

Updates:

The Auditor received information / documentation that a complete review of all listed volunteers was being conducted by the newly designated Volunteer Coordinator. All potential volunteers were required to submit new applications, provide proof of COVID vaccination, and recomplete identified PREA training. Process information received by the Auditor noted, "The prospective volunteer will apply. The application will be reviewed and sent off for NCIC clearance. When the application receives clearance, the volunteer will be registered for the next volunteer training. This training will cover the volunteer agreement and PREA. Once training is complete, the volunteers will fill out and submit their training acknowledgements. Once the training documents have been received, the volunteer will be placed on the ACTIVE list in the database." The Auditor was provided with a listing of eighty-six (86) approved volunteers, all of which had a training completion date. The Auditor was also informed that as of 10/31/2021, newly approved and trained volunteers were again being allowed access to the facility. The Auditor requested and received documentation for a total of fifteen (15) volunteers to confirm new training completion dates. Based on the provision of this information and documentation, WMNCF is now assessed as compliant with the requirements of this provision.

115.32 (b)

The training provided to contract staff is the same training provided to agency employees. All contract staff are required to complete training annually. Contractors who serve more as vendors, who provide minimal services pursuant to purchase orders, are not provided formal training as they are under constant escort and do not interact with inmates.

The Auditor was provided with examples of Volunteer / Limited Service Contractor Training Acknowledgment forms for select vendors, confirming compliance with the requirements for this specific classification of individual entering the facility. The individual is provided with materials regarding PREA and acknowledges receipt of these materials along with the statement, "I understand that if I engage in sexual abuse with inmates, I shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and will be reported to relevant licensing bodies."

Volunteers are provided with training annually once they have completed the application and background check process. The Auditor was provided with the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) that provides the following direction (page 11):

- *In any case where a contractor or volunteer has or may have more than 20 hours a week contact with any inmate, that contractor/volunteer will participate in the same and full amount of the mandatory employee block of PREA instruction and must go through the Volunteer training block (4 hours);*
- *In any case where a contractor or volunteer has or may have 19 hours a week or less contact with any inmate, that contractor/volunteer will participate in a condensed form of mandatory PREA contractor/volunteer block of instruction, and must go through the Volunteer training block (4 hours); and*
- *In those cases involving a contractor who may have slight or no contact with an inmate, supervision of the contractor will be maintained the full time the contractor is present in any institution or facility. Those contractors will be provided the PREA policy and sign an acknowledgment of zero-tolerance.*

As noted with provision (a), training completion was confirmed for select contract staff, but not for identified volunteers.

All contract staff and volunteers interviewed were able to articulate an understanding of the training completed, noting key elements such as policy, zero tolerance, response, consequences, red flag behaviors, and confidentiality. All confirmed the requirement to report any information received, indicating the requirement to report to supervisors, the PCM, and/or the Shift Commander.

Based on the lack of training documentation for identified volunteers, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include a review of all volunteers to ensure training is complete and records located, with lacking training completed as identified. A review of facility records of volunteers against the agency-level records to ensure accuracy and consistency is should also be included.

The Auditor received information / documentation that a complete review of all listed volunteers was being conducted by the newly designated Volunteer Coordinator. All potential volunteers were required to submit new applications, provide proof of COVID vaccination, and recomplete identified PREA training. The Auditor was provided with a listing of eighty-six (86) approved volunteers, all of which had a training completion date. The Auditor requested and received documentation for a total of fifteen (15) volunteers to confirm new training completion dates. Based on the provision of this information and documentation, WNMCF is now assessed as compliant with the requirements of this provision.

115.32 (c)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section DD. (page 9) requires, "The agency shall maintain documentation confirming that volunteers and contractors understand the training they have received."

Interviews with the Training Coordinator and Volunteer / Contractor Coordinators confirmed the requirement for all training participants to sign an understanding acknowledgment form at the completion of training.

Per information received from the PCM, "After the employee has attended PREA training the employee must sign an acknowledgment that they have received training and that they understood the training they had received." This form, the NMCD Staff and Contractor PREA Acknowledgment form, also serves as documentation of attendance in the noted training. The acknowledgment signed by the contract staff member reads, "By signing this document, I am confirming that I understand the training I have received. I am aware that if I do not understand all or a portion of the training, it is my responsibility to speak with the PREA Compliance Manager at the facility."

The training acknowledgement forms that were provided to the Auditor confirmed a current acknowledgment of an understanding of training provided for seven of eight contract staff reviewed.

Included on the agency's public website is the form "Prison Rape Elimination Act Volunteer/Limited Service Contractor Training Acknowledgment" which includes the following:

By signing this document I acknowledge that I have received training on my responsibilities under the agency sexual abuse & sexual harassment prevention, detection, response policies & procedures. I also understand that if I want to attend in person training on this topic again, I have the opportunity to ask the facility PREA compliance Staff.

The Auditor was provided with examples of acknowledgment forms that were signed by volunteers. It is noted that the form does not include language whereby the participant acknowledges an understanding of the training completed.

Based on the acknowledgment form for volunteers omitting the acknowledgment of an understanding of the training completed, WNMCF is assessed as non-compliant with the requirements of this provision. It is noted that currently, all volunteer access to the facility is suspended due to COVID-related restrictions and the acknowledgment issue, per the former PREA Coordinator, will be remedied prior to their return. On 10/27/2020, the former PREA Coordinator sent instruction to the agency Volunteer Coordinator instructing the distribution of the correct / complete acknowledgment form to all facility chaplains, noting that every volunteer is required to attend training and sign the form prior to reentry. The Auditor was later provided with the new acknowledgement form for volunteers that now states, "I further acknowledge that I understand the documents and training that I have received." Also provided was a 07/27/2021 email from the current PREA Coordinator distributing the revised form to all applicable stakeholders. During

the corrective action period, the Auditor will monitor and confirm use of the correct acknowledgment form as volunteers are retrained for reentry to the facility for the provision of services.

The Auditor received information / documentation that a complete review of all listed volunteers was being conducted by the newly designated Volunteer Coordinator. All potential volunteers were required to submit new applications, provide proof of COVID vaccination, and recomplete identified PREA training. The Auditor was provided with a listing of eighty-six (86) approved volunteers, all of which had a training completion date. The Auditor requested and received documentation for a total of fifteen (15) volunteers to confirm new training completion dates. Fourteen (14) of the fifteen (15) acknowledgments provided were completed on the updated form, which included a statement regarding an understanding of training completed. The one (1) completed on an old form was redone on the new, revised form and resubmitted to the Auditor. Based on the provision of this information and documentation, WMNCF is now assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/17/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- New Mexico Corrections Department PREA Prison Rape Elimination Act curriculum for volunteers
- PRC PREA Refreshers
- NMCD Staff and Contractor PREA Acknowledgment form for specified contract staff
- Prison Rape Elimination Act Training Acknowledgment form for a sample of volunteers
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- Volunteer / Limited Service Contractor Training Acknowledgment forms for select vendors
- Documentation of training completion for identified contract staff and volunteers
- Documentation of retraining and acknowledgments for identified volunteers
- 11/20/2021 updated listing of all approved facility volunteers

Interviews conducted:

- Training coordinator
- Volunteer / contractor coordinators
- Volunteers and contractors who have contact with inmates

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.

115.33 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section F. (page 5) requires, "Information shall be provided to inmates about sexual abuse, sexual harassment and sexual assault including:

- Prevention/intervention,
- Rights to be free from sexual abuse, sexual harassment and retaliation for reporting such,
- Self-protection,
- How to report,
- Zero Tolerance,
- Reporting sexual abuse/assault, and,
- Treatment/counseling"

Per information from intake staff, all inmates receive a facility handbook on arrival. The Auditor reviewed a copy of the Western New Mexico Correctional Facility Inmate Handbook (revised 08/31/2020) and confirmed inclusion of PREA-related information to include definitions, how to avoid sexual victimization, what to do if you know someone who has been sexually abused, and reporting venues. The handbook includes information in both English and Spanish. Inmates are also provided with the PREA Inmate Handbook (undated) that provides more detailed information, to include zero tolerance and additional reporting options. This was also confirmed in interviews with classification staff.

Inmates interviewed while on site confirmed receipt of printed PREA information and a majority acknowledge viewing of a short video on arrival.

During the on-site review, no inmates were received, so the Team was unable to view the intake process.

Per information from the PCM, "In January 2020, a new process began in which inmate are given a PREA Intake Sheet upon arrival at the facility. This intake sheet gives the inmate all information regarding the zero-tolerance policy, ways to report, and advocacy information." This sheet was reviewed by the Auditor, confirming inclusion of the identified information.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.33 (b)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section G. (page 5) requires, "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."

Agency policy CD-041001, *Inmate Orientation* (03/05/2015), section B. (page 2 – 3) requires, "Within seven (7) days of admission to a facility other than RDC, inmates will receive Facility Specific Orientation. Each inmate shall be provided orientation and given an Inmate Handbook which will include a list of services, list of available policies, and a specific description of an instructions for access to all of the following...Sexual Abuse and/or Assault."

The Auditor requested documentation of arrival date and completion of orientation for a total of 35 inmates, selecting every 17th name on the master list of 584 inmates (from 06/01/2019 through 06/30/2020). The Auditor was provided with documentation illustrating that one (1) of these inmates was discharged prior to the 30-day timeframe and two (2) were noted as going out to court or medical and returning to the facility on the same day. This left a pool of 33 inmates for review. The Auditor was provided with documentation associated with sixteen (16) inmates, fourteen (14) of which demonstrated compliance with standard and policy requirements. The remaining two (2) had issues regarding the dates on the documentation in comparison with the intake dates. The Auditor was informed that this was all the documentation that was available for review.

The Auditor confirmed in interviews with Intake Staff and Classification Staff that inmates are provided with a formal orientation consisting of viewing of the PREA video and an opportunity to ask questions, generally on the day of arrival. They also added that inmates are provided with informational brochures and PREA information is painted on walls all over the facility.

Inmates interviewed while on site confirmed receipt of printed PREA information and a majority acknowledge viewing of a short video on arrival.

During the on-site review, no inmates were received, so the Team was unable to view the intake process.

Based on the lack of documentation regarding completion of orientation, WNMCF was initially assessed as non-compliant with the requirements of this provision. On 03/16/2021, the Auditor was provided with documentation of training provided to the lieutenant overseeing intake regarding document retention. The established process consisted of all documentation being saved to a designated drive with originals provided to designated staff for filing. Responsibilities also included a review of the classification tracking log by the PCM to ensure all documentation is retained / available as required. The lieutenant was responsible for ensuring processes were implemented and all other intake staff were aware of process requirements. During the time between initial documentation and on-site review, the Auditor was provided with lists of inmates received at the facility for eleven (11) of the twelve (12) months identified. No reason was provided for the missing month. The Auditor then requested documentation of date of arrival and formal orientation provision for select inmates, with the Auditor selecting a total of 49 of the 443 inmates received. Documentation of orientation completion within standard required timeframes was

received. Based on the established process and resulting proof of practice documentation, WNMCF is now assessed as compliant with the requirements of this provision.

115.33 (c)

Agency policy CD-041001, *Inmate Orientation* (03/05/2015), section B. (page 2 – 3) requires, “Within seven (7) days of admission to a facility other than RDC, inmates will receive Facility Specific Orientation. Each inmate shall be provided orientation and given an Inmate Handbook which will include a list of services, list of available policies, and a specific description of an instructions for access to all of the following...Sexual Abuse and/or Assault.” The Auditor was informed by Intake Staff that all inmates entering the facility are provided with orientation and PREA printed materials, even if they had been housed at the facility previously.

WNMCF was converted from a male to a female facility, reopening and receiving inmates from other agency operated and contracted facilities in October 2016. Many of these inmates were provided orientation on transfer. However, to ensure all inmates had received the required information, the current PCM, who assumed responsibilities in January 2017, worked in partnership with Unit Managers to provide PREA orientation to all inmates moved during this process. This process started in June 2017. Inmates were required to attend orientation sessions in the gym, scheduled by housing units, and were required to sign the PREA acknowledgment forms at that time. The Auditor was provided with examples of orientation completion by inmates still housed at WNMCF confirming completion of orientation either in October 2016 or June 2017, demonstrating compliance with standard requirements.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.33 (d)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section G. (page 5) requires, “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...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.” Section H. of the same policy requires, “The agency shall provide inmate education in formats accessible to all inmates, including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to inmates who have limited reading skills.”

Agency policy CD-041001, *Inmate Orientation* (03/05/2015), section B. (page 3) requires, “Inmates will receive written materials and/or translations in their own language. When available, verbal translators may substitute for written translations. When a literacy problem exists, a staff member will assist the inmate with understanding the material.”

The Orientation Verification form, required to be signed by all inmates completing orientation along with the facilitating staff member, has an area to document assistance provided to inmates with limited English proficiencies. The form notes, “The above inmate speaks only Spanish or indicated a problem understanding the English language and was assisted by ____.” None of the inmate orientation verification forms requested and reviewed by the Auditor indicated the provision of specialized orientation information. However, the Auditor was provided with documentation of translation assistance provided to an inmate during orientation 09/02/2020.

Per the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 12): “All institutional and facility block of inmate education will be available in formats accessible to all inmates including those who are:

- Limited English proficient,

- Deaf,
- Visually impaired,
- Otherwise disabled, and
- Limited in their reading skills.”

The inmate orientation video is available in Spanish for inmates whose primary language is Spanish. It is also closed captioned for inmates who are deaf or hard of hearing. Inmates who are visually impaired are able to hear the information provided via the video. Additional, educational material in comic book format are available via booklets produced by the PREA Resource Center (*Ending Silence – Don’t Touch Me* and *I Reported*). Those who provide orientation also have access to staff who are fluent in Spanish. The agency also maintains a contract with Language Line Services, Inc. that went into effect in 2009 for use as needed with inmates whose primary language is neither English nor Spanish. According to the language of the contract, the agreement is automatically renewed for one-year periods unless cancelled in writing by one of the parties. Most random staff interviewed were aware of the availability of these services.

During the initial documentation review, the Auditor requested information about processes to identify inmates who are in need of special orientation (e.g., low comprehension, low reading, limited English proficient, etc.) along with documentation of the provision of any special orientation. The Auditor was provided with a memo from the PCM indicating, “If there was an inmate that came into WNMCF that is deaf we will utilize the TTY phone. WNMCF has not had any instances of an inmate that is deaf. If there is an inmate that comes in that has mental health or disabilities WNMCF will utilize Behavioral Health to speak with the inmates. Behavioral [health] will also provide follow ups and treatment plans for the inmates. WNMCF also has a Critical Care Unit or Therapeutic Behavioral Health Unit and Long-Term Care Unit that an inmate can be placed and will have observation by security staff and Behavioral Health staff.” The Auditor was also informed that there was no related instance of assistance during the reporting period. The Auditor also received monthly memos from Health Services and Behavior Health Services managers and the inmate ID Coordinator that between initial documentation and on-site review, no special needs inmates required assistance to effectively participant in orientation, reporting or investigations.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.33 (e)

Agency policy CD-041001, *Inmate Orientation* (06/29/2018), section B. (page 3) requires, “Completion of orientation will be documented and maintained on the Orientation Verification form.”

The Auditor requested documentation of arrival date and completion of orientation for a total of 35 inmates, selecting every 17th name on the master list of 584 inmates (from 06/01/2019 through 06/30/2020). The Auditor was provided with documentation illustrating that one (1) of these inmates was discharged prior to the 30-day timeframe and two (2) were noted as going out to court or medical and returning to the facility on the same day. This left a pool of 33 inmates for review. The Auditor was provided with documentation associated with sixteen (16) of inmates, fourteen (14) of which demonstrated compliance with standard and policy requirements. The remaining two (2) had issues regarding the dates on the documentation in comparison with the intake dates. The Auditor was information that this was all the documentation that was available for review.

Based on the lack of documentation regarding completion of orientation, WNMCF was initially assessed as non-compliant with the requirements of this provision. On 03/16/2021, the Auditor was provided with documentation of training provided to the lieutenant overseeing intake regarding document retention. The established process consisted of all documentation being saved to a designated drive with originals provided to designated staff for filing. Responsibilities also included a review of the classification tracking log by the PCM to ensure all documentation is retained / available as required. The lieutenant was responsible for ensuring processes were implemented and all other intake staff were aware of process

requirements. During the time between initial documentation and on-site review, the Auditor was provided with lists of inmates received at the facility for eleven (11) of the twelve (12) months identified. No reason was provided for the missing month. The Auditor then requested documentation of date of arrival and formal orientation provision for select inmates, with the Auditor selecting a total of 49 of the 443 inmates received. Documentation of orientation completion within standard required timeframes was received. Based on the established process and resulting proof of practice documentation, WNMCF is now assessed as compliant with the requirements of this provision.

115.33 (f)

Signage is available throughout the facility regarding zero tolerance, reporting and advocacy access. These are available in both English and Spanish. The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 12) requires, "Each institution PCM and facility designee will ensure that Posters are maintained within areas that staff and inmates are present and make readily available inmate handbooks for all inmates."

Playing cards containing PREA information are accessible to inmates in their housing units or when requested by inmates. These cards include a variety of PREA-related information, to include roles, advocacy support services, reporting, zero tolerance, investigations, and inmate rights.

Inmates are provided with a variety of PREA informational materials in the inmate library. These include the Prison Rape Elimination Act (PREA) Resource Guide for Inmates (01/01/2015).

While on-site, Team members observed PREA information painted on walls in all housing units. Team members were also provided with the current version of the facility inmate handbook, revised 01/12/2021. The handbook is provided to all inmates on intake and includes information such as avoiding victimization, reporting allegations, zero tolerance, and advocacy support.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/17/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-041001, *Inmate Orientation* (03/05/2015)
- Photographs of PREA zero tolerance, reporting hotline, and advocacy line signage painted on walls
- Western New Mexico Correctional Facility Inmate Handbook (08/31/2020 and revised 01/12/2021)
- New Mexico Corrections Department PREA Inmate Handbook (undated) in both English and Spanish
- PREA Inmate Handbook Acknowledgment Form for selected inmates
- PREA Intake Sheet in English and Spanish
- New Mexico Corrections Department Orientation Verification forms for select inmates
- Inmate orientation video
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- *Ending Silence, I Reported and Don't Touch Me*, and *The Barter* educational material for inmates published by the PREA Resource Center
- Contract with Language Line Services, Inc. in effect in 2009 and automatically renewed each year for one-year periods unless cancelled by either of the parties
- PREA playing cards
- Prison Rape Elimination Act (PREA) Resource Guide for Inmates (01/01/2015)
- 12/18/2020 PCM memo regarding assistance provision to special needs inmates

Interviews conducted:

- Classification staff
- Intake staff
- Random sample of inmates

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.

115.34 (a)

Agency policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA*, (05/29/2020) section FF. (page 9) requires, "Medical, Mental Health, and Investigative Staff must take the training class for their respective specialized areas concerning PREA." Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section A.6. (page 1) requires, "In addition to the general training provided to all employees, the agency shall ensure that to the extent the agency itself conducts sexual abuse investigations, that its investigators have received training in conducting such investigations in confinement settings."

Information contained in the DOJ On-Line Audit System indicated that there are 53 agency and facility investigators. Per information obtained from the former PREA Coordinator, this is the total number of investigators across the agency, including headquarters and every facility and would include individuals who can complete do any investigation, not just those initiating from a PREA allegation. The total number of WNMCF investigators was corrected to three (3) staff who have been trained to conduct PREA investigations. Additionally, currently one (1) individual in the Office of Professional Standards has been designated f for all PREA investigations assigned to that unit. It is noted that agency procedures require that only staff members of the rank of Captain or above are authorized to complete PREA investigations.

The agency's public website details the steps for the completion of a criminal investigation. It also notes the following:

An administrative investigation will [be] conducted on all allegations, even if the inmate is no longer under the Department's jurisdiction. All administrative investigations will be conducted by an investigator, who has been certified through the NMCD Office of Professional Standards (OPS). In addition to the general PREA training provided to all NMCD staff, the investigators receive specialized training in conducting sexual abuse investigations within a confinement setting.

Per information from the former PREA Coordinator, once an allegation is triaged at central office by designated staff, it is assigned to an investigator if the allegation falls within established PREA definitions. If the allegation appears to be criminal, the investigation will be assigned to an investigator out of the Office of Professional Standards (OPS) out of headquarters. Every investigator qualified to conduct PREA investigations has to be OPS certified and have completed specialized training. To be able to participate in such training, a request from the Warden must be approved and the candidate must attend a 40-hour OPS certification class. During this overall investigatory training, specialized training is also conducted regarding the conduct of PREA investigations.

The Auditor was provided with documentation of completion of the identified training (Investigating Sexual Assaults in a Correctional Setting) for the four (4) WNMCF and one (1) OPS investigators.

Completion of specialized training was confirmed in interview with investigative staff, who also noted that the PREA investigation training is a component of a 40-hour training provided by OPS regarding investigations in general. They noted that training included topics such as interviewing, evidence management, mental health support, taking care of the victim, law enforcement collaboration and referral, and identifying witnesses.

During the period between the initial documentation review and on-site review, the Auditor was provided with the report from an investigation completed by an individual who had not completed formal investigator training. The Auditor was informed that investigator certification was granted based on the individual's correctional and investigatory experience as documented by a resume coupled with shadowing of a currently certified investigator. This does not meet standard requirements and, as such, this provision was initially assessed as non-compliant. On 03/04/2021, a memorandum was issued by the Inspector General requiring, "Only investigators who have attended and completed specialized PREA investigations training will investigate allegations of PREA violations." The Auditor monitored all investigations completed since the directive was issued and all were completed by individuals who had completed the required training. It is noted that no new staff completed specialized investigator training between initial documentation and on-site review.

Based on the above, WNMCF is now assessed as compliant with the requirements of this provision.

115.34 (b)

The agency's public website details the steps for the completion of a criminal investigation. It also notes the following:

An administrative investigation will [be] conducted on all allegations, even if the inmate is no longer under the Department's jurisdiction. All administrative investigations will be conducted by an investigator, who has been certified through the NMCD Office of Professional Standards (OPS). In addition to the general PREA training provided to all NMCD staff, the investigators receive specialized training in conducting sexual abuse investigations within a confinement setting. This training includes techniques for interviewing sexual abuse victims, use of Miranda and Garrity warnings, sexual abuse evidence collection in a confinement setting and the criteria and evidence required to substantiate a case for administrative action.

The Auditor was provided with the training curriculum and associated PowerPoint for the *Investigating Sexual Assaults in a Correctional Setting* training. This is a four (4) hour training block that is included in the OPS investigator training. A review of the curriculum supported compliance with standard requirements with the inclusion of the following sections:

- Lack of Inmate Cooperation (page 10 – 11)
- Victim Services (page 26 – 27)
- Investigator Knowledge and Skills
 - Investigator Ethics (page 29 – 30)
- Interviews and Interrogations
 - Identifying Victims (page 35 – 36)
 - Cultural Competency and Victims (page 45)
- Interviews and Interrogations
 - Miranda Warnings (page 36 – 38)
 - Garrity Warnings (page 38)
- Difficulties in Obtaining Evidence (page 11 – 12)
- Evidence (page 46 – 49)
- Investigator Knowledge and Skills
 - Referrals for Prosecution (page 32 – 34)

It is noted that participants are required to pass a written test with a score of 75% or higher in order to successfully complete the training.

All investigators interviewed confirmed inclusion of the required elements in PREA investigations training, able to articulate the meaning of these elements. The training coordinator confirmed that all investigation training is conducted at the agency level out of OPS. Inclusion of standard-required topics was confirmed in interviews with investigative staff.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.34 (c)

Agency policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA*, (05/29/2020) section FF. (page 9) requires, "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 Auditor was provided with documentation of completion of the identified training (Investigating Sexual Assaults in a Correctional Setting) for the four (4) WNMCF and one (1) OPS investigators.

During the period between the initial documentation review and on-site review, the Auditor was provided with the report from an investigation completed by an individual who had not completed formal investigator training. The Auditor was informed that investigator certification was granted based on the individual's correctional and investigatory experience as documented by a resume coupled with shadowing of a currently certified investigator. This does not meet standard requirements and, as such, this provision was initially assessed as non-compliant. On 03/04/2021, a memorandum was issued by the Inspector General requiring, "Only investigators who have attended and completed specialized PREA investigations training will investigate allegations of PREA violations." The Auditor monitored all investigations completed since the directive was issued and all were completed by individuals who had completed the required training. It is noted that no new staff completed specialized investigator training between initial documentation and on-site review.

Based on the above, WNMCF is now assessed as compliant with the requirements of this provision.

115.34 (d)

All potentially criminal allegations are referred first to the New Mexico State Police, which is organizationally under the Department of Public Safety. The Auditor was provided with an 10/02/2019 letter from the Major overseeing the New Mexico State Police Standard/Training Bureaus indicating,

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, including 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 suspects*
- *Ensuring proper report documentation*
- *Working with District Attorneys and Victim Advocates*
- *5th Amendment rights*
- *Application of Garrity rights*

All New Mexico State Police officers must successfully complete each block of instruction and pass a proficiency exam for each required class. These classes are mandated by the New Mexico Law Enforcement Academy Board.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020)
- Policy CD-150101, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020)
- Documentation of investigator training completion
- Investigating Sexual Assaults in a Correctional Setting training curriculum and PowerPoint (revised 01/2015)
- 10/02/2019 letter from the New Mexico Department of Public Safety, Major of the Standards/Training Bureaus to the NMCD PREA Coordinator
- 03/04/2021 Inspector General directive

Interviews conducted:

- Investigative staff
- Training coordinator

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.

115.35 (a)

Agency policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA*, (05/29/2020) section FF. (page 9) requires, "Medical, Mental Health, and Investigative Staff must take the training class for their respective specialized areas concerning PREA."

The Auditor was provided with the curriculum *Behavioral Health and Medical Specialized Training* (undated) which was developed by Just Detention International (JDI) in collaboration with NMCD. The training consists of the following modules:

- *Specialized Training for Mental Health Professionals*
- *The PREA Standards and Reporting*
- *Effective and Professional Response to Sexual Abuse and Sexual Harassment*
- *Respectful Communication with LGBTI Prisoners*
- *Forensic Exams and Rape Crisis Services in New Mexico*

The Auditor was also provided with the curriculum, *Forensic Medical Examinations Training for Correctional Medical and Mental Health Staff* (05/09/2017).

A review of the provided curriculum confirmed inclusion of the following standard-required elements:

- How to detect and assess signs of sexual abuse and sexual harassment – Module 1
- How to preserve physical evidence of sexual abuse – Module 5
- How to respond effectively and professionally to victims of sexual abuse and sexual harassment – Module 2, Module 3, Module 4
- How and to whom to report allegations or suspicions of sexual abuse and sexual harassment – Module 3

Per information received from the former PREA Coordinator, participants complete the training modules in an in-class setting, however, this was converted to on-line with COVID-related restrictions. Upon completion, the participant is required to complete an exam, which is forwarded to the Compliance Officer out of HQ, who is responsible for grading the exams and issuing certificates to all who pass. A participant is required to miss two (2) or less to pass. If they miss three (3) or more, they have to retake the test, not the whole class.

The Auditor initially requested documentation of specialty training completion by seven (7) of the twenty-four (24) medical and three (3) of the eight (8) mental health providers, selecting individuals to ensure representation from all job classifications within the division. (It is noted that clerical support, pharmacy, medical records, and lab tech staff were not included in compliance assessments.) However, based on information obtained in applicable interviews indicating that multiple staff had not completed any specialty

training, the Auditor requested documentation of completion for all 34 applicable medical and mental health staff. A review of the documentation provided indicated the following:

Of the 34 staff members, 17 had completed specialty training by the end of the audit documentation period, resulting in a compliance rate of 50%.

Between the end of the documentation period and final review of the initial documentation, an additional 11 individuals had completed the required training, raising the compliance rate to 82% (28/34).

It is noted that the remaining six (6) individuals are scheduled to complete the required training prior to the end of the calendar year.

It is noted that a majority of the records reviewed demonstrated completion of specialty training in late August 2020. Per the PCM, this is due to the arrival of new staff and a review of all staff to identify those who needed to complete this training. It is recommended that a comprehensive system be established to ensure the identified specialty training is completed within a short time frame of the individual's arrival at the facility.

Of those individuals who acknowledged training completion during interviews, all were able to articulate components of the training and confirmed inclusion of information regarding zero tolerance and reporting requirements. The Training Coordinator and Volunteer / Contractor Coordinators interviewed confirmed that curriculum is provided by agency headquarters and is

Based on the noted training compliance levels, WNMCF was initially assessed as non-compliant with the requirements of this provision. On 01/20/2021, the Auditor was provided with documentation of specialized training completion for the remaining six (6) individuals, confirming completion by all applicable staff. As a result, WNMCF is now assessed as compliance with the requirements of this provision. During the period between initial documentation and on-site review, the Auditor was provided with listings of new medical and mental health staff, from which the Auditor selected individuals for who documentation was requested. All documentation provided confirmed completion of specialty and general PREA training as required. Based on documentation provided, WNMCF is now assessed as compliant with the requirements of this provision.

115.35 (b)

Agency policy CD-150102, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA*, (05/29/20) section A.3. (page 1) requires, "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."

No health services staff within NMCD perform forensic medical examinations. Inmates from WNMCF are transported to the Albuquerque SANE Collaborative for any indicated forensic medical examination. This was confirmed in interviews with six (6) of the eight (8) health services staff interviewed. It is recommended that this provision be reviewed with health services staff to ensure a thorough understanding of policy and protocols.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.35 (c)

Agency policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA*, (05/29/2020) section FF. (page 9) requires, "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."

Per information received from the former PREA Coordinator, participants complete the training modules in the agency's electronic training system and take an exam. The exam is forwarded to the PREA Unit at Headquarters, and a certificate of completion is issued following confirmation that the exam was passed.

The Auditor initially requested documentation of specialty training completion by seven (7) of the twenty-four (24) medical and three (3) of the eight (8) mental health providers, selecting individuals to ensure representation from all job classifications within the division. (It is noted that clerical support, pharmacy, medical records, and lab tech staff were not included in compliance assessments.) However, based on information obtained in applicable interviews indicating that multiple staff had not completed any specialty training, the Auditor requested documentation of completion for all 34 applicable medical and mental health staff. A review of the documentation provided indicated the following:

Of the 34 staff members, 17 had completed specialty training by the end of the audit documentation period, resulting in a compliance rate of 50%.

Between the end of the documentation period and final review of the initial documentation, an additional 11 individuals had completed the required training, raising the compliance rate to 82% (28/34).

It is noted that the remaining six (6) individuals are scheduled to complete the required training prior to the end of the calendar year.

Based on the noted training compliance levels, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the completion of specialty training by the remaining medical and mental health staff along with the development and deployment of a system to ensure training is completed in a timely manner for all individuals newly hired or transferring into applicable positions. On 01/20/2021, the Auditor was provided with documentation of specialized training completion for the remaining six (6) individuals, confirming completion by all applicable staff. As a result, WNMCF is now assessed as compliance with the requirements of this provision. During the period between initial documentation and on-site review, the Auditor was provided with listings of new medical and mental health staff, from which the Auditor selected individuals for who documentation was requested. All documentation provided confirmed completion of specialty and general PREA training as required. Based on documentation provided, WNMCF is now assessed as compliant with the requirements of this provision.

115.35 (d)

Agency policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA*, (05/29/2020) section CC. (page 8) requires, "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." Per information received from the PCM, the general PREA class, known as PREA 101, is taught during annual in-service.

Per information from the former PREA Coordinator, NMCD Staff and Contractor PREA Acknowledgment forms documents completion of the required general PREA training as well as an understanding of the training completed. Per information received from the former PREA Coordinator, the contracted medical service agency was changed 11/25/2019 to the current provider. When the previous agency left, all personnel files were taken with them. As a result, historical documentation of general PREA training is not available for medical providers. Due to the changes in staff and the unavailability of 2018/2019 records, the Auditor assessed compliance with general PREA training only based on the 2019/2020 training year. All selected staff completed general PREA training during the 2019/2020 training year as required. Compliance with specialty training requirements is addressed in provision (a) and (c).

During the period between initial documentation and on-site review, the Auditor was provided with listings of new medical and mental health staff, from which the Auditor selected individuals for who documentation was requested. All documentation provided confirmed completion of specialty and

general PREA training as required. While on site, the Auditor was also provided with documentation of annual block training completion for the 2020/2021 training year (ending 06/30/2021) for all staff and contractors.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo 06/17/2020 dated from the PCM addressed to the DOJ Auditor
- PCM memo dated 06/17/2020 regarding the conduct of forensic medical examinations
- Policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020)
- Policy CD-150102, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020)
- Curriculum *Behavioral Health and Medical Specialized Training* (undated)
- Curriculum Forensic Medical Examinations – Training for Correctional Medical and Mental Health Staff (05/09/2017)
- Documentation of training completion for select applicable staff and contractors
- Documentation of annual block training completion for the 2020/2021 training year for all staff and contractors

Interviews conducted:

- Medical and mental health staff
- Training coordinator

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.

115.41 (a)

Agency policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA*, (05/29/2020) section J. (page 5) requires, "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."

The former PREA Coordinator informed the Auditor that the assessment process was recently updated, not allowing assessors to include notes and narrative information in the assessment being completed; that more recent assessment examples provided should include documentation of this update.

The Auditor was provided with a screening tool manual that details overall access to and use of the risk assessment system and was informed that Unit Managers train new Classification Officers. It is however noted that there is no user manual available detailing how assessments are to be completed (e.g., what component elements mean, what information is to be included, etc.). It is recommended that the agency develop some form of standardized training or access to a user manual to enable assessors across the state to have consistent, complete assessment information and instruction. This will also ensure that assessors are interpreting questions in the same manner (e.g., which criminal offenses are considered violent, what is considered to be a slight build, etc.).

The completion of risk assessments on intake and as a follow up were confirmed in interviews with risk assessors and classification staff. Six (6) of the inmates interviewed reported that they had not / did not recall participating in the initial and/or follow up risk assessment process. The Auditor requested documentation of initial and follow-up risk assessments for these individuals, confirming completion.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.41 (b)

Agency policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020) section J. (page 5) requires, "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."

This same policy, section HH. (page 9) requires, "Monthly, the Facility Compliance Officer (at Public Facilities) and the Contract Monitor (at Private Facilities), will complete the Screening for Risk of Sexual Victimization & Abusiveness, form CD-150100.2 and return the form to the Agency PREA Coordinator." Per information received from the PCM, if non-compliance is discovered during the audit, the Warden is required to take appropriate progressive disciplinary action. The forms for completion of these audits are included with the agency PREA policy. The Auditor reviewed the monthly compliance audits relative to this standard for August 2019, November 2019, March 2020, and August 2020, confirming a regular review of compliance with standard requirements.

The Auditor was informed by the PCM that of the 584 inmates received during the audit documentation period, six (6) left the facility before the 72-hour timeframe.

The Auditor requested documentation of the arrival date and completion of the initial (72-hour) risk assessment for a total of 35 inmates, selecting every 17th name on the master list of 584. A review of the documentation provided indicated that four (4) of these inmates were actually returnees within 24 hours from medical or court and therefore should not have been included in the intake listing. Of the 31 inmates remaining, initial assessments were completed within 72 hours for 29 inmates, giving an overall compliance percentage of 94%. Per the PCM, the two individuals who had assessments completed late arrived at WNMCF from another facility or after hours and were initially missed but were discovered during an audit of the daily change roster and assessments were completed upon discovery. It is noted that one was completed within seven (7) days and one within four (4) days. Additionally, the Auditor reviewed selected samples of monthly audits of select PREA standards, to include review of risk assessment timeframes, confirming continued compliance with standard requirements.

Interviews with risk assessors and classification staff confirmed that initial assessments generally on the day of arrival, before the inmate is placed in a housing unit as a component of the intake process. It was noted that newly arriving inmates are placed in single cells and movement is restricted until the entire intake process has been completed, which includes meeting with intake staff, classification staff and mental health providers. It is however noted that, although substantively compliant with standard requirements, the current processes do not address inmates who may be received after hours, weekends, and holidays when an initial assessment may be delayed due to not having a risk assessor available. It is recommended that this type of situation be addressed and incorporated into procedures to ensure inmates do not receive late initial assessments.

During the period between initial documentation and on-site review, the Auditor was provided with lists of incoming inmates for eleven (11) of the twelve (12) months reviewed. It is uncertain why documentation for the remaining month was not received. During this time period, a total of 443 inmates were received. The Auditor selected a total of 49 inmates for records review, ensuring representation from the entire month under review. Of the records reviewed, initial risk assessments were completed within established timeframes for 48 of the selected inmates (98%).

Six (6) of the inmates interviewed reported that they had not / did not recall participating in the initial and/or follow up risk assessment process. The Auditor requested documentation of initial and follow-up risk assessments for these individuals, confirming completion.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.41 (c)

Risk assessments are completed in a secured component of the Criminal Management Information System (CMIS). The assessment was developed based on standard requirements. All assessors are required to complete all assessments in this system.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.41 (d)

Risk assessments are completed in a secured component of the Criminal Management Information System (CMIS). The system was reviewed, and the Auditor confirmed inclusion of the following elements:

- Mental / physical disability or developmental disability,
- Age,
- Slight build,
- First incarceration,
- Is the inmate's criminal history exclusively non-violent offenses,
- Sexual orientation,
- Prior sexual victimization,
- Inmate perception of vulnerability,
- Prior convictions for sex offender against an adult or child,
- Is detained solely for civil immigration purposes, and
- Does the inmate / offender project a perceived gender status that is non-conforming?

During interviews, staff responsible for risk assessments clearly articulated the elements contained in the assessment. They appeared very comfortable with the information to be collected and ensured confidentiality of the inmate during the assessment process. Each individual acknowledged the sensitive nature of the assessment and reported that they worked to ensure the comfort level of the inmate. Assessors indicated that all inmates are met with personally and are verbally asked all questions on the assessment. Assessors also pulled available and applicable information from the inmate's master record.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.41 (e)

Risk assessments are completed in a secured component of the Criminal Management Information System (CMIS). The system was reviewed, and the Auditor confirmed inclusion of the following elements:

- Current conviction for sex offender,
- Sexual misconduct report,
- Prior conviction for sex offender,
- Prior convictions of violent offenders,
- Prior acts of sexual abuse, and
- History of prior institutional violence or sexual abuse.

During interviews, staff responsible for risk assessments clearly articulated the elements contained in the assessment. They appeared very comfortable with the information to be collected and ensured confidentiality of the inmate during the assessment process. Each individual acknowledged the sensitive nature of the assessment and reported that they worked to ensure the comfort level of the inmate. Assessors indicated that all inmates are met with personally and are verbally asked all questions on the assessment. Assessors also pulled available and applicable information from the inmate's master record.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.41 (f)

Agency policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures*; PREA (05/29/2020) section J. (page 5) requires, "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."

This same policy, section HH. (page 9) requires, "Monthly, the Facility Compliance Officer (at Public Facilities) and the Contract Monitor (at Private Facilities), will complete the Screening for Risk of Sexual Victimization & Abusiveness, form CD-150100.2 and return the form to the Agency PREA Coordinator." Per information received from the PCM, if non-compliance is discovered during the audit, the Warden is required to take appropriate progressive disciplinary action. The forms for completion of these audits are included with the agency PREA policy. The Auditor reviewed the monthly compliance audits relative to this standard for August 2019, November 2019, March 2020, and August 2020, confirming a regular review of compliance with standard requirements.

Per a listing of inmates received between 06/01/2019 and 06/30/2020, WNMCF processed 584 inmates into the facility. The Auditor was informed that of these 584 inmates, 465 remained at the facility for at least 30 days.

The Auditor requested documentation of the arrival date and completion of the follow up (30-day) risk assessment for a total of 35 inmates on the listing of 584 intake inmates, selecting every 17th name on the master list. Of the inmates selected for file review, four (4) were actually returnees within 24 hours from medical or court and therefore should not have been included with intakes. An additional four (4) inmates left the facility before the 30-day timeframe. Of the remaining 27 inmates, all follow-up assessments were completed within timeframes, leaving an overall compliance rate of 100%. Additionally, the Auditor reviewed selected samples of monthly audits of select PREA standards, to include review of with risk assessment timeframes, confirming continued compliance with standard requirements.

Risk assessors and classification staff interviewed confirmed follow up assessment processes in compliance with standard requirements and documents reviewed.

During the period between initial documentation and on-site review, the Auditor was provided with lists of incoming inmates for eleven (11) of the twelve (12) months reviewed. It is uncertain why documentation for the remaining month was not received. During this time period, a total of 443 inmates were received. The Auditor selected a total of 49 inmates for records review, ensuring representation from the entire month under review. Of the records reviewed, follow up risk assessments were completed within established timeframes for 48 of the selected inmates (98%).

Six (6) of the inmates interviewed reported that they had not / did not recall participating in the initial and/or follow up risk assessment process. The Auditor requested documentation of initial and follow-up risk assessments for these individuals, confirming completion.

Based on the assessment completion rates, the monthly audit system in place, and the knowledge level of risk assessors, WNMCF is assessed as exceeding with the requirements of this provision.

115.41 (g)

Agency policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020) section J. (page 5) requires, "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...In the event of an incident, both the inmate perpetrator and/or inmate victim will be re-screened."

The former PREA Coordinator informed the Auditor that the assessment process was recently updated, previously not allowing assessors to include notes and narrative information in the assessment being completed; that more recent assessment examples provided should include documentation of this

update. This revision also included the ability to document the reason for the assessment (e.g., initial, follow-up, for cause, etc.).

Per information received from the PCM, a new “for cause” risk assessment and request for a follow up meeting with a mental health provider each time an allegation of sexual abuse or harassment is received. It was reported that this was requested for both alleged victim and accused inmates, generally being requested from the classification officer within 10 days of allegation receipt, to ensure the inmate is doing well and is housed appropriately. The Auditor observed documentation of these assessments in investigation reports received. However, the Auditor was informed that these are not backed out when the investigation does not substantiate the allegation. As a result, inmates may be assessed as a potential victim or potential perpetrator based on an unfounded or unsubstantiated allegation. It is strongly recommended that this process be reviewed to address this issue to ensure all inmates are accurately assessed.

The Auditor was also able to confirm compliance with standard requirements in interviews with risk assessors and classification staff. It was reported that the PCM collaborates with assessors to ensure needed “for cause” assessments are completed. Additionally, it was reported that classification staff play a significant role in the application of disciplinary sanctions, so would know when there was a non-sexual abuse, but violent infraction that might impact the inmate’s risk identifier and would therefore know to complete a new assessment.

Based on the systems in place to ensure relevant new information is captured, WNMCF is assessed as exceeding the requirements of this provision. However, this is tempered by the lack of a new assessment following unsubstantiated or unfounded investigations as noted above.

115.41 (h)

Agency policy CD-150100 *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020) section K. (page 5 - 6) states, “Inmates shall not be disciplined for refusing to participate in the screening process.”

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 17) specifies,

Facilities and institutions are prohibited from applying any type of administrative disciplinary procedures against inmates who fail to answer questions related to:

- *Any mental, physical or developmental disability,*
- *Whether the inmate is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender non-conforming,*
- *Whether or not the inmate has previously experiences sexual victimization, or*
- *The inmate’s own perception of vulnerability.*

A refusal to answer any of the above identified screening questions must be documented on the screening document. Any refusal by an inmate to answer any other PREA intake screening and reassessment questions could result in institutional disciplinary action as deemed appropriate by the institution or facility.

It is noted that the information contained in the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual is contradictory and confusing in comparison with the information include in agency policy. Per information from the former PREA Coordinator, the manual is being updated to prohibit discipline related to any refusal regarding the assessment process. A copy of the revised manual (revised 11/03/2020) was received 08/18/2021, which now reads,

Facilities and institutions are prohibited from applying any type of administrative disciplinary procedures against inmates who fail to participate in the assessment process. A refusal to answer any of the above identified screening questions must be documented on the screening document. (page 16).

Per information received from the former PREA Coordinator, assessments are printed from the electronic system and placed in a "PREA section" of the inmate's file. If an inmate refuses to participate in the assessment process, a notation will be added to the paper assessment that the inmate refused to participate. The former PREA Coordinator noted that this very rarely happens.

The prohibition of disciplining inmates for refusal to participate in the risk assessment process was confirmed in interviews with risk assessors and classification staff. One individual reported the belief that an inmate might be infraacted for failure to program but detailed actions he could take to ensure assessment completion instead (e.g., waiting for the inmate to adjust and then restart the assessment, requesting assistance from another classification officer or the PCM, etc.), adding that he has never had this happen so wasn't sure of the policy requirements. The prohibition was discussed with this individual for clarification.

Based on the above, WNMCF is assess as compliant with the requirements of this provision.

115.41 (i)

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 18) requires, "All staff is prohibited from dissemination of any PREA screening for risk of victimization and abusiveness except on a need and right to know basis."

Per information received from the former PREA Coordinator, the system in which assessments are completed / maintained electronically is separate from the overall case management system. This confidential component can only be accessed by assessors, which includes classification officers, unit managers, the PCM, and the PREA Coordinator, with the PCM having read only access. Access is gained by user log in and assigned by position. A system access request (SAR) must be submitted and approved by the PREA Coordinator before access beyond these designated positions is granted. There have been no instances in which access beyond identified positions has been requested and, as such, there is no secondary documentation available for review. The risk assessment is completed within the database system with the inmate present. Once complete, the assessment is printed, and the hard copy placed in the PREA section of the inmate's master file. All master files are maintained in a locked file room, to which very limited staff have access. NMCD is currently in the process of relocating inmate master files from each facility to a centralized location.

A hard copy of the risk assessment is maintained in the inmate's master record, which is maintained in a secure file room with restricted access. Agency policy CD-040101, *Inmate Records* (06/09/2016), section B.1. and 2. (page 1) requires, "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 the 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."

When logging into the Criminal Management Information Systems (CMIS), the user receives 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.*

Confidentiality and applicable parameters for the use of related information must be acknowledged each time the user logs in before access to the system is granted.

The confidentiality of information contained in the electronic assessment system as well as restrictions on access were confirmed in interviews with the interim PREA Coordinator, risk assessors and PCM. However, the current PREA Coordinator reported that access to the confidential information in the risk assessment system is available to those who make housing and programming assignments, to include classification staff, intake officers, and sergeants, but indicated there has been discussion of limiting it to just PCM's. The current PREA Coordinator provided the Auditor with policy language and system screen shots that confirm continuation of noted processes since he has assumed the PREA Coordinator position.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/17/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-040101, *Inmate Records* (06/09/2016)
- Examples of completed monthly PREA audit tools
- Examples of initial and follow-up risk assessments
- Screen shot from log on into the Criminal Management Information System (CMIS)
- 10/01/2020 PREA Coordinator email regarding database systems and security
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- PREA Screening Tool Manual (undated)
- Examples of "for cause" risk assessments included in investigation reports
- Policy CD-04000 Information Technology Management (02/04/2021)

Interviews conducted:

- PREA compliance manager
- PREA coordinators
- Random sample of inmates
- Staff responsible for risk screening

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.

115.42 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section N. and O. (page 6) requires, "Inmates with a history of criminally sexual behavior shall be identified, monitored, and counseled... Inmates at risk for sexual victimization shall be identified, monitored, and counseled."

Agency policy CD-080100, *Institutional Classification, Inmate Risk Assessment and Central Office Classification* (08/24/2016), section A. (page 7) requires, "The NMCD shall establish procedures to implement and monitor an inmate's status related to their risk assessment, program assignment, good time and release preparation. This will include consideration of any special needs of the inmate." Policy CD-080102, *Institutional Classification* (08/24/2016) details all classification actions for reception and parent facilities throughout the agency. Classification staff take into account all available information, include PREA risk identifiers, when making decisions regarding an inmate's classification.

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 18) requires, "Any inmate who has an assessment result of PREA high risk of sexual victimization or sexual abusiveness shall have an alert placed on their record. Any inmate that is assessed as a PREA known victim or known predator will have an alert placed on their record." Per information from the former PREA Coordinator, it is possible that an offender score as both a known victim / high victim potential and known abuser / high risk of sexual abusiveness. In the event this were to occur, information regarding both identifiers would be included in the alerts maintained for the inmate and the inmate would be housed accordingly.

Per information received from the former PREA Coordinator, "If an inmate scores high for victimization or abusiveness, [a] note is placed in the 'Caution' section of CMIS [Criminal Management Information System]. All notes regarding housing are located here, such as if an [inmate] claims an enemy there is a caution on both inmates to ensure that they are never housed together. The same as inmates who score high for either. The cautions of all inmates in the pod are required to be reviewed by the housing captain before assigning an inmate to housing area...When an inmate is coming into a facility, the inmate is placed into what we call orientation status for one week. The inmate is placed into a pod, but is not allowed into general population or out with other inmates, until orientation status has been completed. They watch things like how the inmate is getting along with others in the pod...All departments are involved; security, medical/mental health, the inmate, case worker etc., sit in a meeting to determine housing changes, work assignments, programming etc."

Per information received from the PCM, WNMCF currently does not house any inmates who have been assessed as high risk for being abused. Additionally, there are currently nine (9) inmates who score as high risk for abusiveness. Only one (1) of these inmates was received by the facility during the audit documentation period. The Auditor was provided with documentation associated with the review of this inmate regarding housing, programming, and job assignments along with the caution placed on the inmate's master electronic record.

The Auditor was provided with documentation of an update / refresher meeting led by the PCM and attended by supervisors and classification staff. In this meeting, the requirements of this standard were reviewed, including the following direction:

As per my meeting with Deputy Warden...we are to look at several factors when conducting the SRNS [risk assessments]. We are to look at their current charge if they have any violent charges

such as Murder, Gun Charges or Assault Charges question 4 in the SRNS II will be answered "YES". Ensure you are looking at their disciplinary charges, if the inmate has three (3) or more Sexual Misconduct Reports within the year they will be entered as an override and the evaluation override will be determined as high risk for sexually aggressive behavior and the override reason will be offender behavior. If the Inmate has a combination of Assault charges or fighting within the past two (2) years question 6 History of prior institutional Violence or Sexual Abuse will be answered "YES". As far as assignments for work, Inmates scoring high cannot be hired in I.D due to intake and not knowing the status of incoming inmates. At this time we have no inmates scoring high risk for being sexually victimized (SRNS I). An inmate that scores high will be entered into CMIS under cautions, caution description will be special concern or other and caution source will be security, under comments will state "High SRNS II cannot be housed in a dormitory setting due to the likelihood of sexual abuse.

The PCM also noted that the list of inmates with high risk assessment indicators will be monitored monthly and distributed to applicable staff.

Interviews with risk assessors, classification staff and the PCM confirmed a well-rounded knowledge of the requirements and local procedures for ensuring inmate risk identified are taken into account on a case-by-case basis to ensure the safe assignment of inmates to housing, programs, and jobs. The process is overseen by the PCM.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.42 (b)

Based on the documentation of information accessible, reviewed and shared as noted in provision "a" of this standard and the classification actions detailed in agency policy CD-080102, *Institutional Classification* (08/24/2016), the Auditor confirmed that classification and related decisions are made on a case-by-case basis, determined by the needs and risks of each individual inmate. This was also confirmed in interviews with risk assessors and classification staff.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.42 (c)

Agency policy CD-150800, *Transgender Inmates* (09/13/2018), section D. and E. (page 3) requires, "Classification staff shall use the information from the risk screening to determine housing, bed, work, education and program assignments with the goal of keeping separate LGBTI inmates at high risk of being sexually victimized from those at high risk of being sexually abusive...Classification staff shall make individual determinations on how to ensure the safety of each inmate."

Per information received from the PCM, "The agency has formed a Gender Classification Committee, which consists of the PREA Coordinator, the Director of Adult Prisons, [the] Health Services Director and the Behavioral Health Director. The Gender Classification Committee will meet and discuss if the transgender inmate would function better in a male or female setting. Transgender inmates can request transfer and placement would be decided by the committee."

A knowledge of the processes regarding the assignment and review of transgender inmates was confirmed in interviews with classification staff and the PCM. Staff also confirmed regular interactions with the one transgender inmate currently housed at WNMCF to ensure safety and addressing of identified needs.

When arriving on-site, the Team was informed that the facility only housed one (1) transgender inmate. However, during interviews conducted with other inmates, a second transgender inmate was identified. Staff conducted a special review with the identified inmate to ensure appropriate housing and programming assignments. Both transgender inmates interviewed indicated that staff did not ask them questions about their personal safety, but this information is included in the risk assessments completed.

An interview was also conducted with a representative from the Transgender Resource Center of New Mexico (TRCNM) as this organization has been intricately involved in support services provided to these inmates across the state. The organization has also been instrumental in the training provided to NMCD staff. The individual noted that the support they are able to provide has been recently limited, primarily due to COVID19-related restrictions and the organization is looking forward to being able to engage with NMCD transgender inmates as soon in the future as it is safe. This interaction and engagement are encouraged in order to provide support to transgender individuals throughout the agency.

The Auditor was provided with risk assessments completed for the transgender inmate currently housed at WNMCF, confirming completion as required by agency policy.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.42 (d)

Per information received from the PCM, "All transgender inmates housed within the facilities are assessed every six months. These assessments normally take place in June and December." The Auditor was provided with multiple risk assessments completed for the transgender inmate currently housed at WNMCF, confirming completion in compliance with agency and standard requirements.

The PCM, risk assessors and classification staff expressed an understanding of the requirements regarding 6-month reviews along with the associated facility process.

The Auditor was provided with documentation of initial and periodic (6-month) reviews for the transgender inmate currently housed at WNMCF. During interviews conducted with other inmates, a second transgender inmate was identified. Staff conducted a special review with the identified inmate to ensure appropriate housing and programming assignments and will ensure that regular reviews are now conducted per standard and policy requirements.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.42 (e)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section L. (page 6) requires, "A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration."

Agency policy CD-150800, *Transgender Inmates* (09/13/2018), section D. (page 3) requires, "A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration."

During the audit documentation period, one transgender inmate was housed at WNMCF. The Auditor was provided with documentation of multiple risk assessments completed per agency requirements, each of which include a review of the inmate's own perception of vulnerability. This was confirmed in interviews with the PCM, risk assessors, and classification staff.

When arriving on-site, the Team was informed that the facility only housed one (1) transgender inmate. However, during interviews conducted with other inmates, a second transgender inmate was identified. Staff conducted a special review with the identified inmate to ensure appropriate housing and programming assignments. Both transgender inmates interviewed indicated that staff did not ask them questions about their personal safety, but this information is included in the risk assessments completed.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.42 (f)

Agency policy CD-150800, *Transgender Inmates* (09/13/2018), section D. (page 3) requires, "A transgender or intersex inmate's own views with respect to his or her own safety shall be given serious consideration."

At the time of initial documentation review, there was one transgender inmate housed at WNMCF. The Auditor was provided with documentation from the PCM notifying the inmate, "Per Policy 150800 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 PREA Compliance Manager at the facility." The document was signed by the inmate. The Auditor was informed by the PCM and multiple classification officers that the transgender inmate did not wish any separate shower times but was comfortable with the shower provisions for the general population. While on-site, the review Team confirmed sufficient privacy available in shower areas to allow for private showers by all inmates. This was also confirmed in interview with transgender inmates while on-site.

The ability for transgender and intersex inmates to shower privately was confirmed in interviews with the PCM, classification staff and risk assessors. It was reported that the current transgender inmate is housed in a unit with single shower stalls with privacy curtains and the inmate has been given the opportunity to shower at a time separate from other inmates if requested. The inmate has also been informed to bring forward any concerns or questions she has regarding showers or other issues to the PCM.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.42 (g)

Per information received from the former PREA Coordinator, NMCD is not currently under a consent decree, legal settlement or legal judgement regarding the housing of LGBTI inmates.

Interviews with the PCM, classification staff and risk assessors indicated that the facility houses based on classification level, programming, and individual need and risk, not on LGBTI status and there is currently no related consent decree. The Auditor was provided with a listing of all WNMCF inmates who scored "yes" to the LGBTI status question on the PREA risk assessment along with housing assignments for each of the 83 inmates identified, confirming that these inmates are housed throughout the facility and not concentrated in one unit or pod.

Interviews with lesbian, bisexual and transgender inmates confirmed that they have never been placed in a housing area only for LGBTI inmates. It is noted that transgender inmates arriving at the facility are temporarily placed in the infirmary until appropriate housing can be determined.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/18/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-080100, *Institutional Classification, Inmate Risk Assessment and Central Office Classification* (08/24/2016)
- CD-080102, *Institutional Classification* (08/24/2016)
- Documentation of the provision of shower options to transgender inmate
- Documentation of 05/27/2020 meeting between PCM, supervisors, and classification staff

Interviews conducted:

- Classification staff
- Lesbian / bisexual inmates
- PREA compliance manager
- PREA coordinators
- Staff responsible for risk screening
- Transgender / intersex inmates

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.

115.43 (a)

Agency policy CD-141100, *Protective Custody Policy* (12/03/2015), section A. (page 1) indicates, "It is the policy of New Mexico Corrections Department that inmates will not be placed in any long-term segregation housing for protective custody reasons.

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section K.D. (page 5) requires, "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."

Per information received from the PCM, "Western New Mexico Correctional Facility (WNMCF) has not operated segregation since July 30, 2020. WNMCF has an alternative sanction pod in Housing Unit 5 N-pod. The inmates that are placed in this alternative sanction pod are inmates that have received sanctions through the inmate disciplinary process where all privileges have been taken such as visits, phone usage, commissary and including electronics. The length of stay in the alternative sanction pod is depending on how many days the Hearing Officer suspends their sanctions for. The inmates that are housed in Housing Unit 5 N-pod are level III General Population inmates and are still able to come out of their cells, work, program, attend education, walk to the chow hall and go to their scheduled gym time.

The goal of this alternative sanction pod is to deter the inmate's behavior from continuously receiving misconduct reports.”

Due to the lack of a segregated housing unit, no interviews were conducted with inmates housed in segregated housing for risk of sexual victimization. An interview was conducted with the individual responsible for oversight of the alternative sanction pod, confirming the purpose and operation of the unit. Additionally, there is no related secondary documentation available for review.

In an interview, the Warden confirmed that the facility does not operate segregated housing but has restricted housing available if needed. She indicated that it has not been used to house inmates at risk for victimization or those who have reported allegations and would not be done unless there were no other options available. The Warden reported other housing options are available to reduce the risk level, to include honor housing, the geriatric pod, the lower functioning area, and the behavioral health unit. Options would be review and identification of an area in which the inmate felt safe and comfortable and met the needs of the facility and inmate.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.43 (b)

Agency policy CD-141100, *Protective Custody Policy* (12/03/2015), section A. (page 1) indicates, “It is the policy of New Mexico Corrections Department that inmates will not be placed in any long-term segregation housing for protective custody reasons.

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section K.D. (page 5) requires, “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.”

Due to the lack of a segregated housing unit, no interviews were conducted with inmates housed in segregated housing for risk of sexual victimization. An interview was conducted with the individual responsible for oversight of the alternative sanction pod, confirming the purpose and operation of the unit. Additionally, there is no related secondary documentation available for review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.43 (c)

Agency policy CD-141100, *Protective Custody Policy* (12/03/2015), section A. (page 1) indicates, “It is the policy of New Mexico Corrections Department that inmates will not be placed in any long-term segregation housing for protective custody reasons.

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section K.D. (page 5) requires, “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.”

During interviews with the Warden and staff who supervise the alternative sanction pod, the Auditor was informed that any form of restricted housing would be an absolutely last resort, one that has not occurred in the recent past. The facility doesn’t operate traditional segregated housing and alternatives to restricted housing are available that would better meet the needs of the inmate and the facility.

Due to the lack of a segregated housing unit, no interviews were conducted with inmates housed in segregated housing for risk of sexual victimization. Additionally, there is no related secondary documentation available for review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.43 (d)

Agency policy CD-141100, *Protective Custody Policy* (12/03/2015), section A. (page 1) indicates, "It is the policy of New Mexico Corrections Department that inmates will not be placed in any long-term segregation housing for protective custody reasons.

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section K.D. (page 5) requires, "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."

Due to the lack of a segregated housing unit, no interviews were conducted with inmates housed in segregated housing for risk of sexual victimization. Additionally, there is no related secondary documentation available for review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.43 (e)

Agency policy CD-141100, *Protective Custody Policy* (12/03/2015), section A. (page 1) indicates, "It is the policy of New Mexico Corrections Department that inmates will not be placed in any long-term segregation housing for protective custody reasons.

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section K.D. (page 5) requires, "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."

Due to the lack of a segregated housing unit, no interviews were conducted with inmates housed in segregated housing for risk of sexual victimization. Additionally, there is no related secondary documentation available for review.

During an interview, staff who supervise the alternative sanction unit reported that formal Behavior Management Team reviews are conducted at 24-hours after placement and then every seven (7) days. Additionally, the unit supervisor conducts daily rounds of the unit if any inmates are housed in the area, checking on inmate perception of safety, issues, etc.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/18/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-141100, *Protective Custody Policy* (12/03/2015)
- Policy CD-150100 *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)

Interviews conducted:

- Staff who supervise inmates in segregated housing
- Warden

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.

115.51 (a)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section C. (page 2 - 3) requires, "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 mailboxes (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.
- 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."

On 03/12/2020, the Auditor received email confirmation from Just Detention International (JDI) that this organization had not received any allegations or reports related to offender sexual safety related to this facility.

The Auditor was provided with the PREA Inmate Handbook, both in English and Spanish, which is provided to all inmates in reception centers and on entry to WNMCF. The handbook Advising a third party (family, friend, attorney) and asking them to report. They may report directly to the facility that you are housed in or by emailing: NMCD-PREAREporting@state.nm.us.is also available in the inmate library.

The handbook notes:

NMCD offers numerous ways to report PREA, both internally and externally. Inmate victims or witnesses can report by:

- *Advising any staff member, contractor or volunteers (verbally or in writing)*
- *Advise Medical or Behavioral Health Staff*
- *Writing an Inmate Request to any staff member*
- *Filing a grievance*
- *Writing to the Statewide PREA Coordinator or any staff member at the agency level to include the secretary of Corrections, the office of Professional Standards, Office of the Director or any other staff member within whom you would feel comfortable. Label mail to identified staff as PREA/Confidential and this mail will be treated as Legal Mail in accordance with Mail Procedures. [Note: The mailing address for the Inspector General is included on the back of*

the handbook. The address for the PREA Coordinator is included on the one-page handout provided to inmates. Per the PREA Coordinator, all PREA-related mail sent to the Inspector General would be forwarded to the PREA Coordinator for action as needed.]

- *Advising a third party (family, friend, attorney) and asking them to report. They may report directly to the facility that you are housed in or be emailing: NMCD-PREAREporting@state.nm.us.*
- *Call the Statewide PREA Reporting Line at 575-523-3303.*
- *Write to a Third Party Reporting Agency (not part of NMCD) at:
PREA Reporting Office
1250 Academy Park Loop
Colorado Springs, Colorado 80910*

The Auditor was also provided with a PREA intake sheet, provided to inmates on intake to any facility. The sheet includes the following information regarding reporting options:

- *Tell any staff member, contractor or volunteer.*
- *Call the NMCD PREA hotline, 575-523-3303, (free call and is a recorded line.)*
- *File a grievance*
- *Write to the Statewide PREA Coordinator, P.O. Box 639, Las Cruces, NM 88004*
- *Tell a third part (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*
- *Write to an external third party, PREA Reporting Office, 1250 Academy Park Loop, Colorado Springs, Colorado 80910.*
- *You can remain anonymous.*

The Auditor was provided with the Western New Mexico Correctional Facility Inmate Handbook as revised 08/31/2020, which details PREA-related information for inmates, to include reporting options as follows:

- *Tell any staff member, contractor or volunteer*
- *Call the NMCD PREA Hotline, 575-523-3303 (free call and is a recorded line)*
- *File a grievance*
- *Write to the Statewide PREA Coordinator, P.O. Box 639, Las Cruces, NM 88004*
- *Tell a third part (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*
- *Write to an external third party, PREA Reporting Office, 1250 Academy Park Loop, Colorado Springs, Colorado 80910.*
- *You can remain anonymous.*

The Auditor was provided with posters that indicate inmates can report by calling 575-523-3303 to report allegations. This information is also included in the one-page handout provided to inmates. Per information received from the former PREA Coordinator, this line rings directly to her office and she is the only individual who answers calls or listens to messages. It is noted that the former PREA Coordinator was on leave effective 12/01/2020 and then retired effective 03/01/2021. A PCM from another facility was identified to monitor the hotline until either the number is moved or there is a new PREA Coordinator. Additionally, the Inspector General had been added to the NMCD PREA reporting email to monitor any reports made to the email posted to the agency's public website. It is noted that the hotline number is not confidential as a PIN is required for use, but an inmate can request to remain anonymous. It is recommended that when materials provided to inmates are updated, the processes for reporting anonymously are clarified.

While on site, it was learned that the hotline to agency central office / PREA Coordinator was not functional. The Auditor was provided documentation of the posting of a notice provided to inmates informing them of the outage and reminding them of other ways to report allegations, to include telling a staff member, telling a third party, filing a grievance, writing to the PREA Coordinator, and submitting information to the Colorado Department of Corrections. The notice was posted in both English and

Spanish. As of the writing of the interim report, the hotline was still down. Inmates were information of the outage and Notice posted in both English and Spanish. The Auditor was later provided with an update when line was again operational. However, on 08/30/2021, the Auditor was provided with notification from the PREA Coordinator that indicated that, "Due to issues with the Prison Rape Elimination Act Hotline (575)523-3303, it has become necessary to change the Prison Rape Elimination Act Hotline number to (505)827-8524. Please update posters, handbooks, etc., as well as inform the inmate population of the recent change." As of the writing of the interim report, the Auditor had not received facility-level revisions to information provided to inmates in the form of posters and facility handbooks, nor had the Auditor received documentation of notification to the inmate population of the noted change. The Auditor also requested documentation from the PREA Coordinator of applicable changes to agency-level publications regarding the change in hotline phone number.

A review of the investigations conducted during the audit documentation period and between initial documentation and on-site review revealed that various methods were used to report PREA allegations.

While on site, Team members observed PREA information painted on walls in all housing units.

All random staff interviewed were able to clearly articulate multiple methods by which an inmate could privately report PREA-related information, to include verbal, written, anonymous, and third-party methods. The grievance coordinator and mailroom staff both confirmed the ability of inmates to confidentially use those methods to report by dropping documentation in the applicable restricted box for processing.

All inmates interviewed while on-site were also able to clearly articulate multiple methods by which they could private report PREA-related information.

While on site, a Team member conducted a test of the ability to report allegations via kite / note dropped in the designated box in food services and a second test of the ability to report via grievance. The Auditor was provided with documentation of the receipt and processing of these test reports.

Based on the lack of hotline availability for inmates as noted above, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include notification to all facility inmates of the hotline number change and revision to all facility and agency-level posters, handbooks, and other publications regarding the new hotline number.

Updates:

The agency established a new PREA hotline and information was provided to inmates in the form of an intake sheet, PREA handbook, PREA posters and training provided to all facility inmates. Based on these actions, WNMCF is now assessed as compliant with the requirements of this provision.

115.51 (b)

The agency maintains an intergovernmental agreement with the Colorado Department of Corrections for the handling of communications with the external reporting entity. This agreement went into effect on 05/01/2019 and is in effect through 05/01/2021. It is noted that this is a non-financial agreement, with neither party seeking compensation for work performed. The agreement notes, "NMCD will establish a means for NMCD offenders to report claims or allegations of sexual abuse or sexual harassment to CDOC...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 NMCD, which shall be responsible for investigating them. Allegations reported by NMCD offenders may be done anonymously in writing. CDOC will log all reports received, them immediately forward the reported claim or allegation by scanning and emailing it to the NMCD PREA Coordinator. NMCD shall utilize local procedures to contact the offender upon receipt of the report, to notify them the report has been received." It is noted that a previous agreement was in place from 01/01/2016 through 01/01/2019. This agreement remained

in effect until the new agreement noted had been issued.

The Auditor was provided with the New Mexico Corrections Department PREA Inmate Handbook (undated) that notifies inmates, "Inmate victims or witnesses can report by...Write to a Third Party Reporting Agency (not part of NMCD) at: PREA Reporting Office, 1250 Academy Park Loop, Colorado Springs, Colorado 80910."

Agency policy CD-151200, *Correspondence Regulations* (10/07/2016) section D. (page 2) defines legal mail as, "Any letters, pleading or legal documents to or from an inmate's attorney of record, a judge, a court of law, or an opposing attorney, to include the NMCD Office of General Counsel. Mail to any other NMCD employee is not considered legal mail." The same policy, section E. (page 2) defines privileged communication as "Any correspondence to or from an attorney from whom the inmate is attempted to retain services; with recognized agencies that provide legal assistance; and law enforcement agents or agencies." Agency policy CD-151201, *Correspondence Regulations* (10/07/2016), section C.1. thru 3. (page 2) requires, "Outgoing letters will be deposited in the designated boxes in each facility...Letters, except legal mail and privileged correspondence, will be deposited unsealed. Inmates shall not modify institutional stationery in any way and the sender's name, number and living quarter's assignment in English must appear on all outgoing mail." The policy then provides direction for the handling and logging of all legal mail and privileged correspondence. Per information received from the former PREA Coordinator, "Currently there is a policy change being incorporated in the Correspondence Policy, which requires any letters going to the Colorado Corrections Department is to be considered 'legal Mail' shall not be opened by staff. In addition, it will state the staff is prohibited from revealing any information regarding outgoing mail to this address, to a PREA Auditor or the PREA Coordinator. Not sure when this will be released, but we should be close."

Per information received from the former PREA Coordinator, "...letters to the auditor and Coordinator are treated like legal mail. This isn't included in the new policy. External reports are also treated like legal mail. Legal mail is inspected by the Unit Manager only for contraband, then sealed by the inmate in front of the Unit Manager, and then put in the mail. The mailroom doesn't open the envelope. Incoming legal mail is opened in front of the inmate by the Unit Manager and examined for contraband; then the envelope is then confiscated due to drugs coming in (seal, stamps, etc.)...The PREA inmate sheet for inmates will also be changed to require inclusion of 'PREA' in front of 'reporting office' in the address of outgoing mail to the external entity. If it doesn't say 'PREA' in the address, they still go and are treated like legal mail, but the requirement is being added to policy to meet the policy requirement of the standard. The new form will be formalized when the policy is signed. The form has English on the front and Spanish on the back."

It is noted that letters submitted to CDOC may be slightly delayed in forwarding due to COVID19-related restrictions regarding applicable personnel in Colorado's access to headquarters to retrieve and forward mail. However, the former PREA Coordinator reported that a total of six (6) inmates have used the reporting venue since inception, so the impact of any unavoidable delays would be minimal. The Auditor determined that this would not impact compliance as the delay is minimal and all other reporting options are still available for inmates.

While on-site, Team members observed information regarding reporting to the designated external report entity included in some of the postings provided.

Interviews with the PCM and mailroom staff confirmed an understanding of the ability of inmates to report to an outside, independent entity via the CDOC. Mailroom staff confirmed that all mail addressed to CDOC is treated as legal mail, not subject to search or review and processed even if the envelope does not include an inmate's name or number.

During interviews conducted while on-site, only four (4) of forty-one (41) total inmates interviewed reported an understanding of their ability to report through Colorado

Per information from the former PREA Coordinator, NMCD does not house any inmate solely for civil immigration purposes. As a result, this portion of the provision is not applicable.

Based on the inmate's reported lack of knowledge regarding this reporting venue, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include provision of refresher information to facility inmates.

Updates:

On 11/05/2021, the Auditor was provided with documentation rounds made to all housing units by the PCM, providing the updated PREA Inmate Handbook, including information regarding external reporting options. Inmates were provided verbal update information and the opportunity to ask questions of the PCM. A roster was created documenting inmate signatures upon receipt of the handbook. It was noted that inmates were provided the handbook even if they refused to sign the roster. Based on these actions, WNMCF is now assessed as compliant with the requirements of this provision.

115.51 (c)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA (05/29/2020)*, section B.1. (page 2) requires, "Any employee who witnesses or received information regarding 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)."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 33) requires, "Staff members will complete a staff report memo and forward to the Shift Supervisor to generate a SIR [serious incident report]."

The Auditor was provided with the curriculum from Prison Rape Elimination Act Staff Training as revised 03/2020 (page 35 and 36), which reinforces policy requirements and adds, "All staff shall immediately report any knowledge, suspicion or information regarding sexual abuse, whether the information was learned by a third party source, anonymous, verbally, or in writing...Any employee who witnesses or received information regarding the physical 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." The same curriculum (page 35) states, "It is mandatory that staff, vendors, volunteers, contractors...immediately report such conduct to one or more of the following persons: The Secretary of Corrections, the Office of Special Investigations and Internal Affairs, the Warden, the Shift Supervisor, PREA Compliance Manager or the PREA Coordinator."

The PREA Facts document for staff also provides the telephone number for the PREA Coordinator, which is also the hotline number inmates can use to make PREA reports, along with the name of the facility PCM.

There is some discrepancy between the policy and training materials regarding who staff are to report allegations to. It is recommended that on the next policy revision, language is updated to allow reporting via the venues provided in other materials provided to staff.

A review of the conducted during the audit documentation period and between initial documentation and on-site review revealed that various methods were used to report PREA allegations.

All random staff interviewed confirmed the ability of inmates to report verbally, in writing, through a third party and anonymously. Avenues to report anonymously included the hotline, kites, grievances, and letters. All staff confirmed the requirement to document and report verbal reports received, noting that

such documentation would occur immediately or as soon as possible following notification to applicable supervisors.

Most of inmates interviewed also confirmed knowledge of the ability to report verbally, in writing, and through a third party.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.51 (d)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA (05/29/2020)*, section B.6. (page 2) requires, "Employees are encouraged to report misconduct to a higher authority if their direct supervisor may be involved or if the report has not been given the appropriate attention at the reported level. Multiple channels will be made available for reporting including, but not limited to, other disciplinary authorities (e.g., Warden, Region Managers, etc.)."

The Auditor was also provided with a one-page information sheet for staff entitled "PREA Facts" that indicates, "You can privately report by calling the NMCD PREA Coordinator, send an email to NMCD-PREAREporting@state.nm.us." Per the former PREA Coordinator, this document is posted in control centers, staff bathrooms and breakrooms. It is also discussed during annual in-service training.

All random staff interviewed clearly articulated options to privately report sexual abuse and harassment, to include the PREA Coordinator, PCM, captain, major, warden, unit managers, and hotline.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/18/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA (05/29/2020)*
- Policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA (05/29/2020)*
- New Mexico Corrections Department PREA Inmate Handbook (in English and Spanish) (undated)
- Posters detailing hotline information
- Reporting handout for inmates
- New Mexico Corrections Department Prison Rape Elimination Act (PREA) Resource Guide for Inmates (revised 01/01/2015)
- Prison Rape Elimination Act Staff Training curriculum as revised 03/2020
- Intergovernmental agreement with the Colorado Department of Corrections in effect 05/01/2019 through 05/01/2021 and 01/01/2016 through 01/01/2019
- Policy CD-151200, *Correspondence Regulations (10/07/2016)*
- Policy CD-151201, *Correspondence Regulations (10/07/2016)*
- PREA Inmate Intake Sheet
- Reports for investigations conducted during the documentation period
- WNMCF PREA Facts Sheet
- Western New Mexico Correctional Facility Inmate Handbook as revised 08/31/2020

Interviews conducted:

- Grievance coordinator
- Mailroom supervisor
- PREA compliance manager
- Random sample of inmates
- Random sample of staff
- Representative from community-based victim advocacy organization

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.

115.52 (a)

NMCD has a formal grievance process as laid out in agency policy CD-150500, *Inmate Grievances* (06/14/2018). Therefore, NMCD is not exempt from the requirements of this standard.

115.52 (b)

Agency policy CD-150500, *Inmate Grievances* (06/14/2018) outlines the agency's grievance system. Section F. (page 6) states, "It is the policy of the Department to resolve grievances at the lowest possible. Level. Informal resolution is used and required in the grievance process. The exception if any PREA grievances. This will not be subject to this standard and must be treated as emergency formal grievances." The same policy, section I.4. (page 7 – 8) states, "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.'"

During interviews with Grievance Coordinators, the Auditor confirmed compliance with standard requirements. Grievances received containing PREA allegations are reviewed, and basic information gathered. Then the grievance is forwarded to the Warden with recommendations for referring the allegation to OPS for formal investigation. The inmate is informed of the actions taken with respect to their grievance. Although inmates are required to use informal complaint processes to attempt to resolve other grievances submitted, this is not a requirement for PREA-related grievances as they are classified as emergency grievances. Coordinators also confirmed that there are no time restrictions for filing PREA-related allegations through the grievance system.

The ability to report PREA allegations via the grievance system is included in the PREA Inmate Handbook. The grievance policy is also available to inmates in both English and Spanish in the inmate library. It is recommended that on its next revision additional information regarding how grievances

alleging PREA prohibited behaviors is added to the handbook, including the removal of the grievance from the grievance system and the ability to report allegations regardless of timeframes.

During the audit documentation period, no PREA allegations were filed using the grievance system. However, one allegation was reported via grievance following the documentation period. The Auditor reviewed all associated documentation, confirming compliance with standard requirements. No additional allegations were reported via grievance between initial documentation and on-site review.

While on-site, a Team member conducted a test of the ability to report allegations via a grievance. The Auditor was provided with documentation of receipt and processing of the test grievance.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.52 (c)

Agency policy CD-150500, *Inmate Grievances* (06/14/2018), section I.4. (page 8) states, "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.'" Grievance Coordinators interviewed confirmed that inmates are able to place grievances in the designated locked boxes or bring them directly to one of the coordinators, without being required to interact with the individual who is the subject of the complaint. Grievances containing PREA-related allegations are not referred to the individual who is the subject of the complaint, but are reviewed by the coordinators and forwarded to the Warden with recommendations for formal referral to OPS for investigation

During the audit documentation period, no PREA allegations were filed using the grievance system. However, one allegation was reported via grievance following the documentation period. The Auditor reviewed all associated documentation, confirming compliance with standard requirements. No additional allegations were reported via grievance between initial documentation and on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.52 (d)

Agency policy CD-150500, *Inmate Grievances* (06/14/2018), section H.1. (page 7), states, "Grievances shall be processed in a timely manner. No more than 90 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 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 same policy, section I.4. (page 8) states, "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.'" Per information from the PCM, "At NMCD and the facility, all PREA related grievances (sexual abuse, sexual assault, sexual activity and sexual harassment) are immediately forwarded to the Office of Professional Standards by the Warden, as a referral. The grievance is removed from the formal grievance process therefore removing the time limits required for a grievance. This will begin a formal investigation."

During the audit documentation period, no PREA allegations were filed using the grievance system. However, one allegation was reported via grievance following the documentation period. The Auditor reviewed all associated documentation, confirming the inmate was notified within six (6) days of receipt of the grievance. No additional allegations were reported via grievance between initial documentation and on-site review.

Information obtained in interviews with Grievance Coordinators confirmed a thorough knowledge of and compliance with standard requirements and related timeframes.

No inmates interviewed while on-site reported sexual abuse allegations using the grievance system. As a result, no information obtained during interviews was applicable to this provision.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.52 (e)

Agency policy CD-150500, *Inmate Grievances* (06/14/2018), section E.e. and f. (page 5) states, "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 in regards to 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."

During interviews with Grievance Coordinators, the Auditor confirmed that other inmates, staff, family, attorneys and others may assist an inmate with the filing of a grievance or file a grievance on an inmate's behalf. It was also confirmed that the inmate who is the aggrieved individual must agree to the filing of the grievance and documentation of any declination is included on the grievance itself, which is subsequently forwarded to the Warden for review.

During the audit documentation period, no PREA allegations were filed using the grievance system. However, one allegation was reported via grievance following the documentation period. The Auditor reviewed all associated documentation, confirming that the inmate filed the grievance on her own, without assistance or intervention by any third party. No additional allegations were reported via grievance between initial documentation and on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.52 (f)

Agency policy CD-150500, *Inmate Grievances* (06/14/2018), section I. outlines agency processes for the handling of emergency grievances. Section I.4. (page 7) states, "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."

Per information obtained in an interview with the Grievance Coordinator, all PREA-related grievances are treated as emergency grievances, with a requirement to respond to the inmate within 48 hours. All grievances containing PREA allegations are forwarded to the Warden with the recommendation of referral to OPS for formal investigation.

During the audit documentation period, no PREA allegations were filed using the grievance system. As a result, no secondary documentation is available for review. However, the Auditor was informed that an allegation had been received via grievance on 09/02/2020. The Auditor was provided with the grievance packet, confirming receipt by a Grievance Coordinator on 09/02/2020, but noting that the response from the Warden wasn't submitted to the inmate until 09/08/2020. The Auditor was also provided with notification to the inmate regarding the initiation of a formal investigation from the HQ Compliance Officer, but this was not dated until 09/10/2020. Both are beyond the 48 hours required in standard and policy.

Based on the failure to meet policy and standard timeframe requirements regarding emergency grievances, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include initiation of a process to ensure future compliance with established timeframes along with monitoring of all allegations received during the corrective action period to ensure compliance for any allegation reported via grievance. It is noted that an emergency grievance was received 07/29/2021 and the Auditor was provided with documentation of handling in accordance with established timeframes. The Auditor will continue to monitor during corrective action.

Updates:

During the corrective action period, the Auditor was provided with documentation of allegations reported via the grievance system, allowing the Auditor to confirm response in compliance with standard timeframes. Based on this documentation, WNMCF is now assessed as compliant with the requirements of this provision.

115.52 (g)

Agency policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020), section C. (page 3) states, "Failure to report or knowingly submitting a false report may result in disciplinary action and will be handled in accordance with Policy CD-150600 Allegations from Inmates against Corrections Department Staff of Other Inmates."

Agency policy CD-150600, *Allegations from Inmates against Corrections Department Staff of Other Inmates* (07/31/2015), section B. (page 2) states, "If the information furnished by the inmate is proven by investigation to be knowingly false, the inmate may be charged with a major offense before the Disciplinary Hearing Officer, under the general principles of inmate discipline which impart that any act, although not specifically listed, is a felony under the Criminal Code of the State of New Mexico and will constitute a major violation of policy."

During the audit documentation period, no PREA allegations were filed using the grievance system. However, one allegation was reported via grievance following the documentation period. The Auditor reviewed all associated documentation, confirming that a formal investigation had been completed.

Grievance Coordinators confirmed that inmates can be infracted for lying about an allegation in a grievance, however, they indicated that this would be a disciplinary process rather than a grievance issue. Disciplinary Hearing Officers reported that an inmate can be infracted for submitting false allegations or lying during a formal investigation, adding that the decision to infract would be at the discretion of the PCM based on a review of the investigation report.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/18/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150500, *Inmate Grievances* (06/14/2018)
- Policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA* (05/29/2020)
- Policy CD-150600, *Allegations from Inmates against Corrections Department Staff of Other Inmates* (07/31/2015)
- New Mexico Corrections Department PREA Inmate Handbook (undated)
- Applicable PREA grievance packet

Interviews conducted:

- Disciplinary hearing officers
- Grievance coordinators

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.

115.53 (a)

WNMCF maintains an MOU with the New Mexico Rape Crisis Center which expired 08/2020, but per information received from the former PREA Coordinator, the MOU is in the process of being updated and remains in effect until a new MOU is finalized. The MOU notes that the advocacy organization will, "Provide access to an advocate via phone, mail, or e-mail to victims of sexual violence who are incarcerated at Western New Mexico Correctional Facility. Provide in-person advocacy when resources and staff availability permit." The Auditor was informed in interviews with representatives from this center that initial support is provided by La Piñon, who then can provide contact information for and referral to the New Mexico Rape Crisis Center as indicated by the specific needs of the inmate.

The Roswell Corrections Center (RCC) maintains a Memorandum of Understanding with La Piñon, Sexual Assault Recovery Services of Southern New Mexico that was provided to the Auditor for the audit of RCC. This MOU went into effect 08/05/2019 and "remains in effect for a period of one year from the effective date for the first calendar year. Upon review, revision as agreed upon by all parties as needed, and signing of all parties after one year, the MOU remains in effect unless terminated by either party..." Per information obtained from the former PREA Coordinator, the MOU is currently under review and revision following discussions with advocates regarding their responsibilities (advocates were making calls for inmates in other facilities). Currently, quarterly discussions are held between the PREA Office and advocates and services detailed in the expired MOU remain in place until an amendment or new MOU is issued. The MOU requires that La Piñon:

- 1) *Provide access to an advocate via phone, mail, or e-mail to victims of sexual violence who are incarcerated at ROSWELL CORRECTIONAL FACILITY.*
- 2) *Provide in-person advocacy when resources and staff availability permit.*

It is noted that neither WNMCF nor NMCD maintain a similar MOU with La Piñon, but all inmates are notified of the provision of advocacy support services through La Piñon. WNMCF inmates also receive support from the New Mexico Rape Crisis Center only after connecting with La Piñon and a determination made that additional follow up care, that may include in-person advocacy, is indicated for the inmate. The MOU provided only addresses RCC, which is contradictory to the information provided to inmates.

NMCD offenders coming through intake are provided with a business card that includes the information for contacting La Piñon, Sexual Assault Recovery Services of Southern New Mexico. The card includes information regarding the ability to dial *9999 from an offender phone, call the organization toll free, or write to the organization, with the physical address included. Information regarding advocacy support services is also provided to inmates in the PREA Inmate Handbook, which states:

*If you would like advocacy or to talk to someone from your local Rape Crisis Center, you may dial *9999 from any inmate phone. This call is free, unmonitored and unrecorded and will not require you to enter your PIN number. These calls and all advocacy calls will be free of charge. Advocacy may be used for previous incidents of sexual assault or abuse even when not related to your incarceration with NMCD. Each inmate Library has a PREA RESOURCE GUIDE which has additional reporting addresses, phone numbers and resources as well as advocacy groups that are available to the inmate population.*

The Prison Rape Elimination Act (PREA) Resource Guide for Inmates as revised 08/23/2019, notes, "You may call the 24/7 rape crisis hotline, *9999 for emotional support a crisis intervention. These calls are free, confidential and not recorded." The guide also provides agency descriptions and addresses for Just Detention International, 1 in 6, Inc., the Project on Addressing Prison Rape, and the Rape, Abuse and Incest National Network (RAINN).

Playing cards containing PREA information are accessible to inmates in their housing units or when requested by inmates. One of these cards notes, "In New Mexico, the Rape Crisis Center who works with your facility will provide advocacy for assaults that may have occurred prior to incarceration." Additional playing cards note:

"You can seek assistance from behavioral health staff and rape crisis advocates for incidents whether they occurred inside or outside of custody."

“To receive unrecorded and unmonitored advocacy, dial *9999 from any inmate phone.”

“If you would like help or advocacy, a Rape Crisis Center Volunteer may meet with you in person, contact you by phone, or correspond with you by mail.”

The New Mexico Corrections Department one-page handout regarding PREA also indicates, “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. You may also send a letter to the Sexual Assault Recovery Services of New Mexico 1t 859 Motel Blvd., Suite B, Las Cruces, New Mexico 88007. Letters sent to the address are treated as legal mail, and are confidential.”

It is noted that all calls made to *9999 connect the inmate to La Piñon, and not the New Mexico Rape Crisis Center. Additionally, the primary address provided for inmates to receive support via mail is for La Piñon, not the New Mexico Rape Crisis Center.

Agency policy CD-151200, *Correspondence Regulations* (10/07/2016) section D. (page 2) defines legal mail as, “Any letters, pleading or legal documents to or from an inmate’s attorney of record, a judge, a court of law, or an opposing attorney, to include the NMCD Office of General Counsel. Mail to any other NMCD employee is not considered legal mail.” The same policy, section E. (page 2) defines privileged communication as “Any correspondence to or from an attorney from whom the inmate is attempted to retain services; with recognized agencies that provide legal assistance; and law enforcement agents or agencies.” Agency policy CD-151201, *Correspondence Regulations* (10/07/2016), section C.1. thru 3. (page 2) requires, “Outgoing letters will be deposited in the designated boxes in each facility...Letters, except legal mail and privileged correspondence, will be deposited unsealed. Inmates shall not modify institutional stationery in any way and the sender’s name, number and living quarter’s assignment in English must appear on all outgoing mail.” The policy then provides direction for the handling and logging of all legal mail and privileged correspondence. Per information from the former PREA Coordinator, this policy is in the process of being revised to address confidentiality of mail associated with PREA information.

In spite of the lack of policy direction, the practice of handling of mail to and from advocacy support organizations as legal mail was confirmed in an interview with mailroom staff.

The Auditor spoke with a representative from La Piñon and confirmed the availability of advocacy support services via telephone and mail. The advocate also noted the ability to meet with the inmate in person at the facility if needed, noting that this has been temporarily discontinued due to COVID-related restrictions. The advocate indicated she receives the calls to *9999 from facilities throughout the state, noting she has received a total of three (3) calls from WNMCF between 01/2019 and 10/2020. She noted that inmates can call about abuse at any time, during incarceration or in the community before they were incarcerated or about family or friends who were abused; that advocates discuss counseling and triggers with inmates. Inmates who are limited English proficient are also provided services either with a bilingual crisis team member or by the advocate use of a language line. She reported no concerns expressed by WNMCF inmates, noting very open communication and cooperation from the facility and the PCM. During interviews, a representative from the Rape Crisis Center of New Mexico also confirmed the provision of services via telephone, mail and in-person meetings for facility inmates. If follow up is needed for an inmate who calls *9999, the La Piñon advocate can refer the inmate to an advocate from the Rape Crisis Center of New Mexico by providing the advocate with contact information for the inmate and providing the inmate with the direct telephone number and address of the Rape Crisis Center of New Mexico Advocate. It is noted that calls to this center are recorded and are not toll-free. The Auditor was informed that this is due to limitations of the current inmate telephone system. However, during tests of the telephone line for the Rape Crisis Center of New Mexico while on-site, it was learned that an inmate can telephonically access the center only if the center is included on the list of approved callers for each individual inmate. This negates the ability of any inmate to contact the center as well as any anonymity associated with calls placed. The Auditor was informed that any in-person advocacy for WNMCF inmates is provided by an advocate from the Rape Crisis Center of New Mexico due to proximity. However, it

was unclear how this connection could be made if a majority of inmates are unable to contact the center via telephone.

Any in-person advocacy is provided by an advocate from the Rape Crisis Center of New Mexico due to proximity. This advocate also noted a very cooperative relationship with the WNMCF PCM, noting that he has arranged contact with the advocate when needed and encourages inmate to contact advocates for support. The Auditor was also informed that plans had been in process for the launching of a class for inmates developed in partnership between the PCM and advocacy organization, however, initiation was postponed due to COVID-related restrictions.

The Auditor was provided with examples of signage posted throughout the facility regarding PREA reporting to NMCD and "For unrecorded, unmonitored and free of charge advocacy, please dial *9999". The signage was provided in both English and Spanish. Signage was also observed while on-site.

Sixteen (16) of the forty-one (41) inmates interviewed did not report knowledge of advocacy support services. Of those who did know about the services, a majority did not report an understanding of services provided, processes for access or times of availability.

Per information received from the former PREA Coordinator, NMCD does not house inmates solely for civil immigration purposes. As a result, the related section of this provision is not applicable.

Based on the identified issues concerning which organization provides primary advocacy support, the current MOUs, and the inability of most facility inmates to telephonically contact the Rape Crisis Center of New Mexico, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development of an MOU with La Piñon, either on a facility or agency level to address the service provision reportedly already in place. Corrective action should also include revision to the telephone system, or implementation of an alternative system implemented for WNMCF inmates to telephonically contact the Rape Crisis Center of New Mexico. Finally, corrective action should include the provision of refresher information to all inmates and a system to ensure inmates who reported abuse are made aware of support services available.

Updates:

During the corrective action period, the Auditor was provided with status information regarding a new MOU that was in process between the agency and La Piñon to formalize the provision of victim advocacy support in all facilities. As of 02/09/2022, the MOU was on the desk of the Office of General Counsel for review and approval. As the standard language allows for attempts to make victim advocacy services available, these actions coupled with the actual provision of services by La Piñon to facility inmates, WNMCF is now assessed as compliant with the requirements of this provision.

115.53 (b)

Per the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 14) requires, "Any services offered to inmate victims from an outside agency shall not be connected to a law enforcement agency and a comparable level of confidentiality as a nongovernmental entity that provides similar victim services."

The New Mexico Corrections Department one-page handout regarding PREA also indicates, "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. You may also send a letter to the Sexual Assault Recovery Services of New Mexico at 850 Motel Blvd., Suite B, Las Cruces, New Mexico 88007. Letters sent to the address are treated as legal mail, and are confidential."

The agency clearly provides inmates with information in advance of system access that interactions with community advocates will not be monitored. However, the Auditor was informed that the information regarding any limits to confidentiality e.g., threats of harm to self or others, escape, etc.) is provided to

the inmate by the advocate when a call is placed. A query was submitted to the PREA Resource for clarification regarding when the confidentiality notification had to be provided to the inmate. The Auditor was informed that, "The facility must be specific about providing that information to inmates, including the extent to which reports of abuse will be forwarded to authorities, prior to them contacting the advocate. The information should be clear and available to the inmate before they place the call, possibly in the handbook and posters around the facility." (10/28/2020 PREA Resource Center email)

In an interview with a representative from La Piñon, the Auditor was informed that at the beginning of each call received from an inmate, she informs them that all information shared with her is confidential with the exception of self-harm ideation or communication that they are going to harm someone else. She secures and logs a verbal release to report any PREA-related information disclosed by the inmate to the facility. The Auditor confirmed that one allegation investigated in 2020 was reported to the advocate, who then verified logged verbal authorization from the inmate before she reported the allegation to the WNMCF PCM.

Only ten (10) of the forty-one (41) inmates interviewed reported an understanding of the confidentiality associated with victim advocacy support services.

As a result of the provision of advocate confidentiality limitations being provided to inmates after access the system rather than in advance of contact, WNMCF was initially assessed as non-compliant with the requirements of this provision. To address the identified deficiency, on 10/30/2020, the former PREA Coordinator distributed an updated intake sheet to all agency PCM's for distribution to all newly arriving inmates. The revised intake sheet reads, "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. However, victim advocates are mandatory reporters under State Law and must file a report if you disclose to them you are going to hurt yourself or others." All PCM's were also instructed to have control officers make an announcement in the housing units and document the announcement in the control log. The Auditor received documentation of this announcement. Additionally, the Auditor was provided with a revised PREA Orientation Brochure in both English and Spanish (11/02/2020) that now states, "You can confidentially speak to a victim advocate by dialing *9999 from any inmate phone. All calls using *9999 are unmonitored and unrecorded. One thing to remember, all conversations with the victim advocate [are] confidential, however a victim [advocate] is required by law to report to authorities if you are going to hurt yourself or someone else." The same information was added to the PREA Inmate Handbook as revised 11/02/2020. The Auditor was provided with an email from the former PREA Coordinator to all agency PCM's directing the distribution of the updated materials to all applicable staff and provision to all inmates during orientation. Based on the lack of knowledge of support services expressed by inmates interviewed, particularly inmate victims of abuse and their inability to telephonically contact the Rape Crisis Center of New Mexico, which is the organization designated to provide in-person support services, WNMCF continues to be assessed as non-compliant with the requirements of this provision. Corrective action should also include revision to the telephone system, or implementation of an alternative system implemented for WNMCF inmates to telephonically contact the Rape Crisis Center of New Mexico. Corrective action should also include a system to ensure those inmates who report sexual abuse are made aware of support services available.

Updates:

During the corrective action period, the Auditor was provided with documentation of training and information provided to all facility inmates. The Auditor was also provided with documentation of training provided to trained investigators to ensure knowledge of standard requirements. Based on these actions, WNMCF is now assessed as compliant with the requirements of this provision.

115.53 (c)

WNMCF also maintains an MOU with the New Mexico Rape Crisis Center which requires the organization, "Provide access to an advocate via phone, mail, or e-mail to victims of sexual violence who are incarcerated at Western New Mexico Correctional Facility." This MOU expired 08/2020, but per

information received from the former PREA Coordinator, the MOU is in the process of being updated and remains in effect until a new MOU is finalized. The MOU notes that the advocacy organization will, "Provide access to an advocate via phone, mail, or e-mail to victims of sexual violence who are incarcerated at Western New Mexico Correctional Facility. Provide in-person advocacy when resources and staff availability permit."

As noted in standard provision (a), the Roswell Corrections Center (RCC) maintains a Memorandum of Understanding with La Piñon, Sexual Assault Recovery Services of Southern New Mexico. This MOU went into effect 08/05/2019 and "remains in effect for a period of one year from the effective date for the first calendar year. Upon review, revision as agreed upon by all parties as needed, and signing of all parties after one year, the MOU remains in effect unless terminated by either party..." Per information obtained from the former PREA Coordinator, the MOU is currently under review and revision following discussions with advocates regarding their responsibilities (advocates were making calls for inmates in other facilities). Currently, quarterly discussions are held between the PREA Office and advocates and services detailed in the expired MOU remain in place until an amendment or new MOU is issued. It is noted that neither WNMCF nor NMCD maintain a similar MOU with La Piñon, but all inmates are notified of the provision of advocacy support services through La Piñon. WNMCF inmates also receive support from the New Mexico Rape Crisis Center only after connecting with La Piñon and a determination made that additional follow up care, that may include in-person advocacy, is indicated for the inmate. The MOU provided only addresses RCC, which is contradictory to the information provided to inmates.

Based on the identified issues concerning which organization provides primary advocacy support and the current MOU's, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development of an MOU with La Piñon, either on a facility or agency level to address the service provision already in place.

Updates:

During the corrective action period, the Auditor was provided with status information regarding a new MOU that was in process between the agency and La Piñon to formalize the provision of victim advocacy support in all facilities. As of 02/09/2022, the MOU was on the desk of the Office of General Counsel for review and approval. As the standard language allows for attempts to make victim advocacy services available, these actions coupled with the actual provision of services by La Piñon to facility inmates, WNMCF is now assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/18/2020 from the PCM addressed to the DOJ Auditor
- PREA playing cards
- New Mexico Corrections Department PREA Inmate Handbook (undated)
- Advocacy and reporting business card
- New Mexico Corrections Department one-page inmate information sheet
- Policy CD-151200, *Correspondence Regulations* (10/07/2016)
- Policy CD-151201, *Correspondence Regulations* (10/07/2016)
- Prints of signage and posters regarding reporting and advocacy
- Report of the number of calls placed via the advocacy line and facility location (07/2019 through 06/2020)
- New Mexico Corrections Department Prison Rape Elimination Act (PREA) Resource Guide for Inmates (08/23/2019)
- Memorandum of Understanding between RCC and La Piñon, Sexual Assault Recovery Services of Southern New Mexico, effective 08/05/2019
- Memorandum of Understanding with the Rape Crisis Center of Central New Mexico
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- PREA Orientation Brochure in both English and Spanish (11/02/2020)
- PREA Inmate Handbook in both English and Spanish (11/02/2020)
- Documentation of provision of updated advocate information to PCM's and inmates

- MOU development status information
- Documentation of training provided to inmates and trained investigators

Interviews conducted:

- Inmates who reported a sexual abuse
- Random sample of inmates
- Representative from community-based victim advocacy organization

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.

115.54

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures*, PREA (05/29/2020), attachment 115.101, section B.4. (page 2) requires, "The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility's designated investigators."

The Auditor was provided with the New Mexico Corrections Department PREA Inmate Handbook (revised 06/2019) that informs offenders that "...victims or witnesses can report by...advising a third party (family, friend, attorney) and asking them to report. They may report directly to the facility that you are housed in or by emailing NMCD-PREAREporting@state.nm.us." The same information is also included in the Prison Rape Elimination Act (PREA) Resource Guide for Inmates (revised 08/23/2019). Both documents are provided to inmates on intake at a reception center and are also available in the inmate library.

During intake, inmates are also provided with an intake PREA sheet (undated), a one-page document (English on one side and Spanish on the other) that contains the same information as noted above.

The Auditor was also provided with "A family and friends guide to sexual abuse and sexual assault awareness Summary and Overview, for family and friends of incarcerated persons" (no revision date) that includes information about reporting related information to "...any staff member, contractor or volunteer; Tell the Warden; Send email to PREAREporting@state.nm.us." The one-page document also includes information about the PREA act, how offenders can report, what happens after a report is received, and how the family / friend can help. The provision of noted information was observed in the inmate visiting room during the on-site review.

The Auditor located information regarding PREA reporting on the agency's public website:

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

The site includes information specifically about how to report, that indicates:

How can I make a report? New Mexico Corrections Department provides several ways to make a report of an allegation of sexual abuse or sexual harassment. If you have a family member or friend incarcerated in one of the department facilities, that you believe has suffered from sexual abuse or sexual harassment, you can make a report in the following ways.

- *Call the facility, where the inmate is being housed*
- *Call the NMCD PREA Hotline, 575-523-3303*
- *Write a letter to the NMCD PREA Coordinator at P.O. Box 639, Las Cruces, New Mexico 88004*
- *Make a report via email at nmcd-preareporting@state.nm.us*

Please provide as much detail as possible

- *Inmate's name and NMCD number*
- *Perpetrator's name (if known)*
- *Facility where the incident occurred (date, time, location –i.e. cell, showers, chow hall)*
- *Description of the incident*
- *Your name, contact number and relationship to the inmate (the report will be investigated, even if you do not provide your name)*

The Auditor conducted tests of the reporting venues available as noted on the NMCD public website.

- On 04/16/2020 an email was sent to the email address noted, with a response received from the former PREA Coordinator on the same day, noting, "In the event that this had been an actual allegation, I would have forwarded the email to the facility warden and PCM, where the allegation occurred with instructions to submit a referral to OPS (Office of Professional Standards). Once the referral has been completed, a review of the allegation would be done. If the allegation, is determined to be a PREA allegation, the facility would receive notification of a case number and case assignment (investigator assigned). An investigation will begin. These steps are done immediately. This is the same process for all calls made to the PREA Hotline 575-523-3303. This is my office direct line." Due to COVID-related delays and a change in PREA Coordinator assignment, a second test was conducted 03/07/2021. On 03/08/2021 it was learned that the interim PREA Coordinator did not have the access needed to retrieve these messages. Access was granted internally, and a second test was sent 03/08/2021. Confirmation of the receipt of this second test was received 03/09/2021.
- On 04/16/2020, a member of the audit team called the telephone number posted and spoke with the former PREA Coordinator. She confirmed the information provided above on the call and in a confirmation email of the same date. Due to COVID-related delays and a change in PREA Coordinator assignment, a second test was conducted 03/07/2021 with a message left on the designated phone line. Email confirmation of receipt of the message was received 03/08/2021 along with confirmation that, had this been an actual PREA allegation, an investigation would be initiated by a trained investigator along with formal retaliation monitoring and a case opening letter send to the alleged victim.
- On 09/03/2020, the Auditor sent a letter to the agency PREA Coordinator at the address posted to the public website. On 09/09/2020 the Auditor received email verification of receipt. The former PREA Coordinator noted, "I have received your letter dated September 3, 2020. If this had been an actual PREA Allegation, I would have taken the following steps.
 - 1) Look up the inmate to determine his/her location
 - 2) An email/phone call would have been sent to the PREA Compliance Manager, Facility Warden and the Deputy Director, with instructions to ensure the safety of the inmate, initiate all protocols based on the allegation such as contact State Police (if needed) and file a referral for investigation.
 - 3) The PREA Coordinator is cc'd on all referrals for investigations and is included on all steps taken moving forward to include referral, case assignment, retaliation monitoring, investigation and final report.

- 4) If the letter was received via email, I would respond to the writer that the information has been received.
- 5) This process is utilized regardless if the inmate is at a public facility or a private facility in the State of New Mexico.

It is noted that the option to submit information via mail was deleted from the agency's public website when it was updated in late 2020.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 11/02/2020 from the PCM addressed to the DOJ Auditor
- New Mexico Corrections Department PREA Inmate Handbook (revised 06/2019) in both English and Spanish
- Prison Rape Elimination Act (PREA) Resource Guide for Inmates (revised 08/23/2019)
- Intake PREA sheet (undated)

Interviews conducted:

- None were indicated in the DOJ Auditor Compliance Tool or interview templates

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.

115.61 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section E. (page 4) requires, "All staff, vendors, contractors and volunteers are required to immediately report: (1) 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; (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."

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section B.1. (page 2) requires, "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)." The same policy, section B.2. (page 2) requires, "All employees are required to report immediately 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; retaliation against inmates or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. All reports shall be forwarded to applicable disciplinary authority (e.g., Warden, Region Manager, Bureau Chief, or Division Director) and the Office of Professional Standards (OPS)." The same policy, section B.5. (page 2) requires, "Failure to report or knowingly submitting a false report may result in disciplinary action, up to and including dismissal."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 20) requires:

The standard of conduct for employees of the New Mexico Corrections Department (NMCD) is outlined in CD 032200, Code of Conduct. The policy states in part

- *Applicable personnel are expected to perform their assignments in a manner that reflects professional judgement, honesty, prudence and sincere interest in the State and the NMCD. Any Department employee who becomes aware of any alleged act of misconduct by another Department employee is required to immediately report the information to his or her supervisor. It will then be forwarded, by the Wardens office to the Office of the Inspector General and the Office of Professional Standards.*

All Department staff have the affirmative duty to immediately report any retaliation against inmates or staff who reported any knowledge, suspicion, or information regarding an incident of inmate on inmate or staff/contractor/volunteer on inmate sexual abuse or inmate on inmate or staff/contractor/volunteer on inmate sexual harassment.

All Department staff have the affirmative duty to immediately report any staff neglect or violation of responsibilities that may have contributed to any incident of inmate on inmate or staff/contractor/volunteer on inmate sexual abuse or inmate on inmate or staff/contractor/volunteer on inmate sexual harassment or retaliation for reporting of an allegation by other staff or inmates.

The requirements for reporting any PREA-related allegation and information is included in training provided to all staff and contract staff:

It is mandatory that staff, vendors, volunteers, contractors or any offenders who witness or are the subject of abuse or sexual misconduct must immediately report such conduct to one or more of the following persons: The Secretary of Corrections, the Office of Special Investigations and Internal Affairs, the Warden, the Shift Supervisor, PREA Compliance Manager or the PREA Coordinator. All staff shall immediately report any knowledge, suspicion or information regarding sexual abuse...

A review of investigation reports from the audit documentation period confirmed immediate response to allegations received and reporting of allegation information as required.

It is recommended that on its next revision, the agency's PREA policy is revised to correct what appears to be an inconsistency between policies 150100 and 150101 as one allows reporting only to the individual's direct supervisor while the other allows for reporting to any NMCD employee. It is also recommended that the information included in staff training materials is revised to match the final policy language and include the requirement to report retaliation and staff neglect or violation of responsibilities.

All random staff interviewed confirmed policy and standard requirements to report all PREA-related information received. Additionally, all reported specific individuals and/or positions within the facility to whom they would report, compliant with policy requirements.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.61 (b)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section B.3. (page 2) requires, "Apart from reporting to designated supervisors or officials, staff shall not reveal 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."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 33) requires, "Staff are prohibited from revealing, disseminating, or discussing any information related to a sexual abuse report to anyone, unless and except as necessary in conjunction with official Department duties in support of the sexual abuse allegation and/or report." The same manual (page 38) also requires, "All case records with claims of sexual assault, sexual activity, sexual misconduct or any attempt thereof, including written reports, investigation reports, evidence, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling are confidential. Violations of confidentiality regulations and procedures may result in disciplinary actions."

All random staff interviewed articulated the confidentiality associated with PREA-related information.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.61 (c)

Agency policy CD-180201, *Behavioral Health Reception and Diagnosis Center (RDC)* (02/16/2015), section A.1. (page 1) requires, "The following protocols are completed for each inmate on the date of arrival at the respective male or female Reception and Diagnostic Unit. (a) Rights to Confidentiality and Availability of Services form (CD-1800201.1)..." This form states, "Generally, statements made by inmates to Behavioral Health Staff are confidential, and will not be disclosed without the inmate's consent, except as follows...Allegations that you have been abused by a staff member or by another inmate..." This form appears to only be applicable to mental health providers and does not include sexual harassment. However, per information received in interviews with medical and mental health providers, inmates are informed of their duty to report any PREA-related information during the intake process. The Auditor was provided with the Inmate Acknowledgment of Behavior Health Orientation form, which is provided to all inmates on intake to the facility. The form includes an intake section about "What I can expect in the way of confidentiality". The Auditor was informed by mental health providers that this is the portion of intake where the inmate is notified of their requirement to report any PREA-related allegations. All inmates are required to sign the form on the completion of mental health orientation. Upon review of the available forms and processes, it was determined that inmates were not adequately informed of the limits to confidentiality of medical and mental health providers prior to the initiation of services.

Interviews with seven (7) of the eight (8) health service staff interviewed confirmed provision of information to inmates regarding limits to confidentiality and reporting requirements prior to the provision of services, either during intake on arrival at the facility and/or during health services encounters. The provision was reviewed with the individual who was not aware of the requirement. All eight individuals interviewed reported a thorough knowledge of reporting requirements.

A review of investigation reports from the audit documentation period confirmed that allegation information provided to health services practitioners was reported in accordance with policy and standard requirements. Additionally, the reports confirmed immediate response to all allegations received and reporting of allegation information as required.

Based on the lack of provision of information regarding the reporting requirements of medical and mental health providers prior to the initiation of services, WNMCF was initially assessed as non-compliant with the requirements of this provision. To address the deficiency, the PREA Inmate Handbook was revised 11/02/2020 to include the following information: "Inmate victims or witnesses can report by...advise Medical or Behavioral Health Staff (keep in mind medical and behavioral Health Staff are mandatory reporters and are required to report any knowledge, suspicion or information regarding sexual abuse)." The Auditor received documentation of an announcement to all current inmates regarding policy revisions. The Auditor was also provided with an email from the former PREA Coordinator to all agency PCM's directing the distribution of the updated materials to all applicable staff and provision to all inmates during orientation. As a result of these actions, this provision is now assessed as compliant.

115.61 (d)

Per standard 115.14, any youthful offender received by NMCD would be housed at Youthful Offenders Management Unit at the Central New Mexico Correctional Facility. As a result, no inmate under the age of 18 has been housed at WNMCF. The Warden confirmed that if any information were to be received by an adult inmate that involved an allegation while the inmate was a juvenile, a referral would be made to the State Police and the Child/Youth/Family Division. No such allegations were received during the audit documentation period.

Per information received from the PCM, "New Mexico law uses the term 'incapacitated adult' to identify vulnerable adults. An incapacitated adult is one with a mental, physical or developmental condition that subsequently impairs their ability to provide adequately for their own care or protections. Per information received by the PCM, "An inmate that is classified as a vulnerable adult would be housed at WNMCF Long Term Care Unit...During intake the inmate is evaluated by mental health and medical. A briefing

would be conducted between the PCM and the shift commander and an appropriate plan to house this inmate in LTCU would be put in place. If there is an inmate 18 and under and is vulnerable or a victim, CYFD would be contacted, and Adult Services would be contacted for an adult. How adult inmates are identified as vulnerable is through the Mental Health exam. Mental Health has a series of questions they ask the inmate; they will look to see how they answer each [question] and what their response is they look to see if they have suicide history or if they have been sexually victimized as a child or adult. They will then notify myself and the Shift Commander so that we can house this inmate appropriately [and] Mental Health meeting and Unit Management meeting will occur at this time and treatment plans and security plans will be put in place.”

During interviews, the Warden and the former, interim, and current PREA Coordinators confirmed that allegations involving inmates officially classified as vulnerable adults would be reported to the Children, Youth and Family Division and the New Mexico State Police. The Warden also reported that the inmate’s legal guardian would also be notified as applicable. Although the facility currently does not house any juvenile inmates, interviewees also reported that should an adult inmate report abuse that allegedly occurred while the inmate was a juvenile, the information would be referred to the Children, Youth and Family Division and the state police.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.61 (e)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section B.4. (page 2) requires, “The facility shall report all allegations of sexual abuse and sexual harassment, including third-party and anonymous reports, to the facility’s designated investigators.”

Agency policy CD-031801, *Office of Professional Standards (OPS), Personnel Investigations and Staff Misconduct Reporting* (06/03/2019), section A. (page 1), requires, “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 misbehavior 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.” The policy further defines Level-1 allegations to include all sexual misconduct.

A review of investigation reports during the audit documentation period confirmed a referral of allegations as required by policy and standards. Standard and policy requirements were also confirmed in an interview with the Warden.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/22/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-180201, *Behavioral Health Reception and Diagnosis Center (RDC)* (02/16/2015)
- Rights to Confidentiality and Availability of Services form (CD-1800201.1)
- Prison Rape Elimination Act Staff Training curriculum (revised March 2020)
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- PREA Inmate Handbook in both English and Spanish as revised 11/02/2020

- Documentation of distribution of health services provider reporting requirements to inmates and PCM's

Interviews conducted:

- Medical and mental health staff
- PREA coordinators
- Random sample of staff
- Warden

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.

115.62

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures*, PREA (05/29/2020), section D. (page 4) requires, "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."

Agency policy CD-141100, *Protective Custody* (12/03/2015), section A. through C. (page 1) states, "It is the policy of New Mexico Corrections Department that inmates will not be placed in any long-term segregation housing for protective custody reasons. Inmates with protective custody issues will only be placed in restrictive housing if all other viable alternatives have been exhausted. Protective custody issues will be thoroughly and properly investigated." Agency policy CD-141101, *Protective Custody Procedure* (12/03/2015), section F. (page 2) requires, "As a result of these investigations, predatory inmates will be held accountable."

The initial documentation provided and documentation for the period between initial documentation and on-site review indicated that no WNMCF inmate had been determined to be at substantial risk of imminent abuse. Appropriate actions were taken per investigation reports and interviews to separate the alleged victim from the accused.

During an interview, the Secretary's designee reported that addressing the needs of an inmate who has been determined to be at imminent risk of sexual abuse starts with a risk assessment in which specially trained staff conduct detailed interviews. He also reported that NMCD does not prescribe to protective custody but with protection cases, points are used to assess classification and identify risks, with the goal of placing the inmate with other like inmates instead of separating or segregating them.

All random staff interviewed clearly articulated actions to be taken when an allegation is reported or an at-risk inmate identified, adding that actions would be taken immediately. Actions included ensure the

inmate is safe, separating the inmate from the accused, preservation of crime scenes, provision of medical assistance, referral for mental health support, notification to applicable supervisors, and requesting the alleged victim not take actions that might destroy evidence. These actions were also confirmed in an interview with the Warden.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-141100, *Protective Custody Status* (12/03/2015)
- Policy CD-141101, *Protective Custody Procedure* (12/03/2015)

Interviews conducted:

- Agency head designee
- Random sample of staff
- Warden

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.

115.63 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures*, PREA (05/29/2020), section I. (page 5) requires, "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 Auditor was provided with PREA Standard 115.63 Reporting to Other Confinement Agencies handbook for Wardens (undated), which was developed in response to non-compliance findings in

previous DOJ PREA audits. Included in the handbook is a 03/12/2015 memo from the previous Acting PREA Coordinator stating, "Effective immediately, upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where he alleged abuse occurred." The handbook also contains contact information for each NMCD facility, internal affairs teams, and the PREA Coordinators for each adult correctional agency in the country, as well as the New Mexico Association of Counties Membership Directory 2017. This was developed as a resource manual for Wardens who needed to make cross facility / organization notifications. It is recommended that this handbook be updated as much of the contact information is from 2017 and is likely outdated.

During the audit documentation period, WNMCF received four (4) allegations about abuse at another facility or jurisdiction. The Auditor was provided with documentation of notification to the applicable facility head via either letter or email within 72 hours as required by standard and policy. The Auditor was also provided with documentation of cross facility / jurisdiction notification for the two (2) applicable allegations received during the time between initial documentation and on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.63 (b)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section I. (page 5) requires, "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 PREA Standard 115.63 Reporting to Other Confinement Agencies handbook for Wardens (undated) includes instruction that all "...notifications are to be provided as soon as possible, but not longer than seventy-two (72) hours after receiving the allegation."

During the audit documentation period, WNMCF received four (4) allegations about abuse at another facility or jurisdiction. The Auditor was provided with documentation of notification to the applicable facility head via either letter or email within 72 hours as required by standard and policy. The Auditor was also provided with documentation of cross facility / jurisdiction notification for the two (2) applicable allegations received during the time between initial documentation and on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.63 (c)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section I. (page 5) requires, "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 notifications to other facilities; the PREA Coordinator will maintain documentation of all external notifications."

The PREA Standard 115.63 Reporting to Other Confinement Agencies handbook for Wardens (undated) includes instruction that all "The agency head shall document that it has provided such notification."

During the audit documentation period, WNMCF received four (4) allegations about abuse at another facility or jurisdiction. The Auditor was provided with documentation of notification to the applicable facility head via either letter or email within 72 hours as required by standard and policy. The Auditor was also provided with documentation of cross facility / jurisdiction notification for the two (2) applicable allegations received during the time between initial documentation and on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.63 (d)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section A.2. (page 1) requires, "An investigation shall be conducted and documented whenever a criminal sexual behavior, sexual misconduct or threat is reported." The same policy, section A.5. (page 1) requires, "The Agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment."

The PREA Standard 115.63 Reporting to Other Confinement Agencies handbook for Wardens (undated) includes instruction that all "The facility head or agency that receives such notification shall ensure that the allegation is investigated in accordance with PREA standards."

During the audit documentation period, WNMCF received two (2) allegations that had been reported to another facility or agency. Documentation was provided that confirmed comprehensive review by the facility, with one allegation having been previously investigated and the second a report that was determined to not fall within definitions of prohibited behavior and therefore not requiring a formal investigation. During the time between initial documentation and on-site review, an additional allegation was received from another agency facility. The Auditor was provided with documentation of the subsequent response by WNMCF.

The requirement to conduct formal investigations for each allegation received, regardless of the method or source of the report, was confirmed in interviews with the Secretary's designee and Warden. The agency PREA Coordinator is informally designed as the point of contact for the reporting of allegations from facilities outside NMCD.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/24/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- PREA Standard 115.63 Reporting to Other Confinement Agencies handbook for Wardens (undated)
- Documentation of notification to other facilities / jurisdictions
- Documentation of actions taken in response to allegations received from other jurisdictions

Interviews conducted:

- Agency head designee
- Warden

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.

115.64 (a)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct PREA* (05/29/2020), section A.7. (page 2) requires, "The Shift Supervisor shall complete section I of the Facility Response to Sexual Assault Checklist form (CD-150102.1) and submit to the Warden's office. The Warden should complete sections II and III of the checklist and submit it to the Director of Adult Prisons or designee within seven (7) calendar days after the incident." The Facility Response to Sexual Assault Checklist details the following steps to be performed / overseen by the Shift Supervisor:

Place unit on Type-I lockdown and suspend programming...

Shift Supervisor separate victim from assailant...

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...

Escort victim to medical for acute injury evaluation and treatment...

Shift Supervisor report incident immediately to Warden and Facility PREA Compliance Manager...

If requested by the victim, the Shift Commander will call a Victim Advocate...

If the victim is transported for a SANE Exam, the Shift Commander will call a Victim Advocate...

These actions are to be taken in response to an allegation of sexual assault that occurred within 120 hours of the report.

Although not specifically articulated in policy or the response checklist, all security staff interviewed expressed an understanding of the need to secure the crime scene in the event an allegation of sexual assault were reported. It is recommended that this requirement be added to the checklist on its next revision. It is also recommended that the requirement to ensure the alleged abuser not take any actions that might destroy evidence is added to the checklist.

Regarding inmate-on-inmate sexual abuse incidents that have allegedly occurred within 120 hours, the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 30 - 31) requires,

When custody staff is made aware that a sexual assault or any attempt has occurred, the following steps shall be taken: (A.)...If the staff member is a security staff member, they shall request that the alleged victim not take any actions that could destroy physical evidence and ensure the alleged perpetrator not take any actions that could destroy physical evidence. (B.) Ensure the victim is safe and kept separated from the aggressor. (C.) Notify supervisor. (D.) Begin crime scene identification and protection measures until released by investigating body. (E.) Escort the victim to the nearest department medical unit, collect clothing and provide an orange jumpsuit to the inmate. Ensure each item of clothing is bagged separately in brown paper bags and booked into evidence. (F.) Temporarily place the suspect in a cell and immediately collect the suspect's clothing prior to being left alone, we do not want evidence destroyed, whether or not there is a wash basin. After clothing is collected, issue an orange jumpsuit to the suspect. Ensure each clothing item is bagged separately in brown paper bags and booked into evidence. (G.) Escort suspect to infirmary after victim has been assessed. The suspect should not be placed/housed, even temporarily, in the same area as the victim and they will have no contact at any time. (H.) Collect any other evidence and log it with the appropriate chain of evidence form.

Regarding inmate-on-inmate sexual abuse incidents that occurred outside of the 120-hour timeframe, the same manual requires (page 34):

When custody staff is made aware that a sexual assault or any attempt thereof has occurred or is reported as occurred, the following steps shall be taken: (A.) Ensure the victim is safe and kept separate from the aggressor. (B.) Notify supervisor. (C.) Escort the victim to the nearest department medical unit. (D.) Collect evidence (if any) and book it with the appropriate chain of evidence form. (E.) Place suspect in administrative segregation pending investigation.

It is noted that the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual lays out first responder duties in the event of inmate-on-inmate sexual abuse, both within and beyond 120 hours.

For both situations, the instruction provided is to escort the alleged victim to the nearest department medical unit. Per information from the PCM, "Our medical unit is not 24 hour but Wexford [contract medical staff] always has someone on call...Our nurses are here within the hour but immediately start advising the Security staff of things that they can be doing until they arrive...[Most] all inmates are taken to Control Center to the temporary holding cells that are there. We have an extra office that Medical uses to treat inmates for most things, if needed, they are walked across the compound to the Medical area. Worst case scenarios (PREA sexual abuse cases with injuries that cannot wait, a terrible fight with injuries, overdoses, etc.) if the inmate needs immediate attention faster and we cannot wait for the on-call nurse to get here, emergency services would be called and an ambulance would come out to WNMCF within 15 minutes."

All staff have been issued a Sexual Abuse First Responder Duties reminder card that can be carried on their person or attached to their identification card. The card reads as follows:

- *Separate the alleged Victim and Abuser.*
- *Immediately notify the On Duty Supervisor and remain at the scene until relieved by responding personnel.*
- *Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence.*
- *Request the alleged victim not to destroy physical evidence including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.*
- *Ensure the alleged abuser does not [take any action] to destroy physical evidence including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating.*
- *If the first responder is not Security Staff, remain with the victim until Security Staff arrives.*
- *Apart from reporting to designated supervisors, the staff shall not reveal any information related to the incident to anyone other than to staff involved with the investigation of the incident.*

Prison Rape Elimination Act Staff Training (revised 03/2020) includes information regarding first responder duties, to include:

Call for back up, separate the inmates, seek medical attention, preserve and protect the crime scene then document...

In the case of sexual assault, request the victim and ensure the abuser are instructed not to shower brush their teeth, relieve themselves or wash their clothes in order to preserve latent evidence.

This information is included in the annual training provided to all employees and contract staff.

The Auditor reviewed all investigations conducted during the audit documentation period and confirmed first responder duties completed in compliance with policy and standard.

Interviews with first responders to recorded incidents confirmed knowledge of associated responsibilities. Responders were both security and non-security staff classifications. Three (3) of the seven (7) inmates who reported sexual abuse confirmed in interviews a prompt facility response. Three (3) additional inmates indicated they had not the reported allegations, that reports were made by other inmates. The final inmate indicated no response was received; however, this is contradictory with documentation provided.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.64 (b)

With regard to inmate-on-inmate sexual abuse allegations that occurred within 120 hours, the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 30) requires, "If the first staff responder is not a custody staff member, the first responder shall request the alleged victim not to take any actions that could destroy physical evidence, and then immediately notify the first custody staff member available."

The Sexual Abuse First Responder Duties reminder card includes the requirement to make immediate notification to the Shift Supervisor and request the alleged victim and ensure the alleged abuser not take any actions that might destroy evidence. This is followed by, "If the first responder is not Security Staff, remain with the alleged victim until Security Staff arrives."

The Auditor reviewed all investigations conducted during the audit documentation period and confirmed first responder duties completed in compliance with policy and standard.

All random staff interviewed clearly articulated actions to be taken when an allegation is reported or an at-risk inmate identified, adding that actions would be taken immediately. Actions included ensure the inmate is safe, separating the inmate from the accused, preservation of crime scenes, provision of medical assistance, referral for mental health support, notification to applicable supervisors, and requesting the alleged victim not take actions that might destroy evidence. These actions were also confirmed in an interview with the Warden and staff who have acted as first responders.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/29/2020 from the PCM addressed to the DOJ Auditor
- Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct PREA* (05/29/2020)
- Sexual Abuse First Responder Duties reminder card
- Prison Rape Elimination Act Staff Training (revised 03/2020)
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- Investigation reports

Interviews conducted:

- Inmates who reported a sexual abuse
- Random sample of staff
- Security and non-security staff first responders
- Volunteer / contractor coordinators

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.

115.65

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct PREA* (05/29/2020), section A. (page 1 - 2) requires, "Within the first 120 hours of a sexual assault incident in the prison population, the following actions will be taken: (1) The affected unit shall be placed on a Type I lock-down and suspension of program services for an appropriate time, (CD-070701.K.b). (2) Upon identification of the victim and assailant(s), the facility or program administrator will assure the separation of the victim from his or her assailant(s) (CD- 170100.S. 7.). The victim will be asked not to shower, wash their clothes, brush their teeth, or relieve him or herself in order to preserve evidence. (3) 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. (4) The shift supervisor shall make an immediate verbal report to the Warden, and the Warden shall in turn make an immediate report to the PREA Coordinator, the Director of Adult Prisons and the Director of Health Services (CD-070701.A.1, CD-070701.E). The Warden will also complete the Referral for Investigation form to Office of Professional Standards (OPS) as a Level I investigation (CD-031801.A). (5) The shift supervisor will use the Serious Incident Checklist (CD-070701.5) form to ensure that all pertinent documentation of a major incident is completed. (6) The shift supervisor will contact the designated victim advocate in accordance with the *National Protocol for Sexual Assault Medical Forensic Examinations Adult/Adolescent*. (7) The shift supervisor shall complete section I of the Facility Response to Sexual Assault Checklist form (CD-150102.1) and submit to the Warden's office. The Warden should complete sections II and III of the checklist and submit it to the Director of Adult Prisons or designee within seven (7) calendar days after the incident."

The Auditor was provided with the WNMCF procedure (06/02/2020) detailing response protocols to be followed in the event that the initial assault disclosure was within 120 hours of the incident, which includes response requirements, investigation, forensic examinations, court referrals and prosecutions, and after-action review. This duplicates the requirements outlined in agency policy. Employees and contract staff are training in response requirements during annual in-service training.

The coordinated response plan was confirmed in an interview with the Warden. Additionally, from information obtained in interviews with random staff, it was very clear that all staff are very aware of and comfortable with this plan and their associated responsibilities.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/29/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct, PREA* (05/29/2020)
- WNMCF procedure detailing response protocols (06/02/2020)

Interviews conducted:

- Warden

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.

115.66 (a)

The NMCD currently has a collective bargaining agreement with the American Federation of State, County and Municipal Employees (AFSCME). The Auditor was provided a copy of the collective bargaining agreement that went into effect 12/23/2009 and expired 12/31/2011. Per information received from the former PREA Coordinator, no new agreement has been established, but the current agreement has an "evergreen clause" which allows it to remain the "operative version until new terms are negotiated and approved by all parties." Page 106 of the current agreement (included in the Miscellaneous Provisions Applicable to all Post/Post Packages Posts section, provision 1) 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." Additionally, Appendix D, Section 2 Temporary Assignment (page 124) that applies to all health care staff states, "The Employer retains the right to temporarily reassign employees under investigation to alternate units, shifts, or other work assignments, unrelated to seniority rights when the Employer determines there is a need to do so pending the conclusion of internal investigation. Temporary reassignment shall not exceed forty-five (45) calendar days unless the internal investigation is not concluded in which case the reassignment shall extend until the conclusion of the investigation."

The Auditor was also provided with examples of staff reassignments and/or restriction of direct contact with alleged victims pending the completion of a related investigation along with reinstatement following a finding of either unfounded or unsubstantiated.

The above information was confirmed in an interview with the Agency Secretary designee.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.66 (b)

No additional review is required. The 2009 – 2011 Collective Bargaining Agreements between the State Of New Mexico and the American Federation of State, County, and Municipal Employees, Council 18 is consistent with standards 115.72 and 115.76. Per information received from the former PREA Coordinator, no new agreement has been established, but the current agreement has an “evergreen clause” which allows it to remain the “operative version until new terms are negotiated and approved by all parties.”

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 06/29/2020 from the PCM addressed to the DOJ Auditor
- Collective Bargaining Agreement between the State of New Mexico and the American Federation of State, County and Municipal Employees, Council 18, effective 12/23/2009 through 12/31/2011
- Documentation of staff reassignments / restrictions following allegation

Interviews conducted:

- Agency head designee

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.

115.67 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section D. (page 4) requires, "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."

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section A.9. (page 2) requires, "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."

Agency policy 031800, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019), section C. (page 3) requires, "There is a zero tolerance policy prohibiting any retaliatory acts against anyone who has reported allegations of staff misconduct or criminal acts. Any employee who engages in substantiated retaliatory behavior is subject to dismissal."

Per the HQ Compliance Officer, she oversees statewide retaliation monitoring, reviewing file information every 15, 45 and 90 days. At the 45-day mark, she sends the facility an email, requesting the PCM meet personally with the inmate and provide her with a follow up confirmation email, which is added to the master case file. She noted that formal monitoring begins the day the case assignment is made out of headquarters.

Per information from interviews with the PREA Office Compliance Officer and facility staff charged with retaliation monitoring, only the alleged victim would be formally monitored for possible retaliation. It was indicated that the reporter, if different from the alleged victim, would not be monitored, adding a hope that these inmates know to report any retaliation if it is occurring, but since reporters are not a part of the investigation, they would not be monitored. The Human Resources staff member who would be charged with monitoring of any staff reporter indicated that she was not aware of this requirement or her related responsibilities, but when questioned, was able to articulate standard requirements based on what she believed was common sense.

The Auditor received a copy of all investigations completed during the audit documentation period, confirming inclusion of documentation of retaliation monitoring in all applicable investigations in which participants were identified and still under agency jurisdiction, with the exception of 19-0405 (reporter not monitored).

It is noted that NMCD requires formal retaliation monitoring in all PREA-related investigations, to include harassment, which exceeds the requirements of the standard.

Based on the failure to incorporate the monitoring of inmate and staff reporters into current practices, WNMCF was initially assessed as non-compliant with the requirements of this provision. To address the identified deficiency, the former PREA Coordinator distributed direction to all agency PCM's and the central office Compliance Officer on 10/26/2020, directing, "...we must monitor the reporter as well. Example: if you received an allegation from Inmate A that Inmate B is being sexually abused, you must provide retaliation monitoring for both Inmate A (reporter) and Inmate B (victim). We must provide retaliation monitoring for staff who report an allegation. Monitoring should include, have they received a letter of counseling or other discipline, have they been removed from their post or other adverse actions that may have occurred. HR staff should be trained in monitoring staff for these types of actions. An example when to monitor: if an officer reports to you, that he believes he saw a supervisor kissing an inmate, we must monitor that officer for a period of 90 days, monitoring can stop if there is an unfounded finding. (this does not include monitoring staff that report an allegation, because an inmate reported to them...)" Based on this direction / training, WNMCF is now assessed as compliant with the requirements of this provision.

Updates:

During the corrective action period, the Auditor was provided with documentation of formal retaliation monitoring in compliance with standard and policy requirements. Additionally, the facility established a system in which the PCM personally met with all individuals being monitored rather than relying on a file review for some monitoring requirements. Based on these actions and documentation provided, WNMCF is now assessed as compliant with the requirements of this provision.

115.67 (b)

The Auditor reviewed documentation of formal retaliation monitoring for the eight (8) investigations conducted in 2019 and 2020. In only one instance was an issue regarding perceived retaliation was reported in an in-person meeting with the alleged victim. A review of this was conducted and it was determined that the reported concern (a transfer in retaliation for reporting) was unsupported based on documentation and disciplinary information. However, a review of investigations initiated between initial documentation and on-site review resulted in the identification of three (3) additional issues of possible retaliation raised by inmates, only one (1) of which appears to have been addressed (movement of the applicable inmate to another housing unit). A second one was not reviewed when the inmate refused to submit a written statement and the last was dismissed based on a report by the PCM that what the inmate feared was not possible.

During an interview, the Secretary's designee confirmed the initiation of formal investigations to address any reports or suspicions of retaliation, adding that addressing allegations and retaliation issues begins with open communication and the inmate's ability to report. This was also confirmed in interviews with the Warden and staff charged with retaliation monitoring.

During interviews of inmates who reported abuse, one (1) indicated that she did not feel safe at the facility due to possible retaliation-related issues. A second inmate reported that she does not feel protected against possible revenge from staff for reporting.

During interviews with random inmates, many reported feeling safe currently at the facility based on engagement and actions taken by the Warden, who is relatively new to the position. Many reported that they are afraid to report allegations due to retaliation from staff, particularly from one shift. Several inmates reported that when retaliation is reported, nothing is done about it and several pointed to an investigation noted above as a case in point. Several inmates reported that when an allegation is made, the accused is not the one who retaliates against them, but the friends of the accused will retaliate on the accused's behalf. Many inmates reported that they just want to keep their heads down and stay out of trouble to get out and go home.

It is noted that the interview template for inmates in segregated housing for those who allege to have suffered sexual abuse was not used during this audit as the facility does not maintained segregated housing.

Based on the lack of response to 50% of the retaliation -related issues reported and the information obtained in interviews with random inmates, WNMCF is assessed as non-compliant with the requirements of this provision. There appears to be a perceived culture of retaliation in the facility that needs action to address. Corrective action should include the development and implementation of a monitoring system that tracks and documents all reports of possible retaliation and subsequent actions taken. The Team also discussed possible actions that might address cultural perceptions, to include face to face engagement with applicable inmates much earlier in the monitoring process than outlined in policy. Retaliation monitoring done at the facility level to supplement the central office file review earlier and more frequently to let the inmates know early on in the process what is going on and check in with them about any issues experienced would be helpful to begin to address this issue along with staff training to clearly articulate Warden expectations regarding staff behavior and interactions with inmates.

Updates:

During the corrective action period, the Auditor was provided with documentation of formal retaliation monitoring in compliance with standard and policy requirements. Additionally, the facility established a system in which the PCM personally met with all individuals being monitored rather than relying on a file review for some monitoring requirements. Based on these actions and documentation provided, WNMCF is now assessed as compliant with the requirements of this provision.

115.67 (c)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section D.4. (page 4) requires, "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." It is noted that this requirement in policy does not address the monitoring of alleged victims. This process is in place, but it is recommended that the language be added on the next policy revision.

Per information received from the PCM, effective July 2018, "the PREA Office [HQ] took lead on all retaliation monitoring. When an allegation is referred for investigation, the case is placed on a task list for 15 days, 45 days and 90 days. At the 15 day [mark], the PREA Office will look at the inmate's disciplinary, programming and movement in the facility. If there are changes in any of the above areas, an email or phone call will be made to the facility to inquiry the circumstances of the change. If it is determined that change is due to retaliation, the PREA Office will take steps to rectify the situation, whether it be a dismissal of a report, reinstating a job or programming or adjustments to the [inmate's] housing. The same will be done at 45 days and at 90 days if the case has not been completed."

The Auditor reviewed documentation of formal retaliation monitoring for all applicable investigations completed during the audit documentation period and no reports of retaliation-related issues or indications of retaliation were identified.

Per information received from the HQ Compliance Officer, monitoring continues until the investigation is closed as complete, unless the investigation was closed as substantiated. In the even that investigation was closed as unfounded or unsubstantiated, all monitoring would stop even if the 90-day timeframe had not expired. During an interview, the PREA Office Compliance Officer indicated that if an investigation is closed as substantiated, she will continue file reviews for another 30 days, adding that if any indicators were identified, she would again continue monitoring for another 30 days. She also reported that if inmates expressed retaliation-related issues with unsubstantiated or unfounded investigations, she would add on to the 90-day timeframe. This information was confirmed in an interview with the WNMCF staff also charged with retaliation monitoring.

In an interview, the Warden confirmed immediate investigation in response to allegations or signs of retaliation, with options to relocate the inmate or reassign staff as needed.

Based on the ending of retaliation monitoring at the closure of the investigation, even if the 90-day timeframe had not yet expired, WNMCF was initially assessed as non-compliant with the requirements of this provision. To address the identified deficiency, the former PREA Coordinator distributed direction to all agency PCM's and the central office Compliance Officer on 10/26/2020, directing, "Victims must be monitored for a period of 90 days or when there is an unfounded final report. If the case is substantiated or unsubstantiated, we must monitor the victim for a period of 90 days. If there are circumstances that warrant monitoring beyond the 90 days, we will go beyond the 90 days. I think there is come confusion and belief that we only monitor the substantiated, after the conclusion of the investigation. This is not the case." As noted with provision (a), the former PREA Coordinator also directed the monitoring of staff and inmate reporters for 90 days unless the investigation is closed as unfounded. A review of investigations provided between the time of this directive and the on-site review revealed that monitoring has been completed as directed as associated with seven (7) of nine (9) allegation reports. In one (1) of the remaining two, final monitoring was not conducted until reminded by the Auditor during monthly documentation submission. In the final incident, monitoring was not completed and was therefore extended another 90 days by the PCM once the error was identified. Based on the failure to complete formal monitoring in 23% of reviewed allegations, WNMCF continues to be assessed as non-compliant with the requirements of this provision. Corrective action should include the development and implementation of a tracking / monitoring system to ensure all formal monitoring is completed within policy-established timeframes. The Auditor will review during the corrective action period.

Updates:

During the corrective action period, the Auditor was provided with documentation of formal retaliation monitoring in compliance with standard and policy requirements. Additionally, the facility established a system in which the PCM personally met with all individuals being monitored rather than relying on a file review for some monitoring requirements. Based on these actions and documentation provided, WNMCF is now assessed as compliant with the requirements of this provision.

115.67 (d)

Agency policy addressing PREA-related retaliation monitoring does not include the provision that formal monitoring includes a periodic meeting with inmates to conduct a status check. It is recommended that this language be added to the applicable policy(ies) during any future revision.

Per the HQ Compliance Officer, she oversees statewide retaliation monitoring, reviewing file information every 15, 45 and 90 days. At the 45-day mark, she sends the facility an email, requesting the PCM meet personally with the inmate and provide her with a follow up confirmation email, which is added to the master case file. She noted that formal monitoring begins the day the case assignment is made from central office. The Auditor reviewed retaliation monitoring for all investigations conducted during the audit documentation period, confirming personal meetings with applicable inmates as required, unless the inmate was no longer housed at the facility.

During interviews with staff charged with retaliation monitoring, it was confirmed that some of the elements reviewed include housing assignments, movement, disciplinary history, work history, and any reassignments. File reviews are conducted by the central office Compliance Officer and in-person meetings are conducted by the PCM, who reports meeting formally with identified inmates at least once at the 45-day mark, but informally on a continuous basis. As noted with provision (b) of this standard, it is recommended that, based on reports of fear of retaliation by many of the random inmates interviewed, face to face engagement with applicable inmates much earlier in the monitoring process than outlined in policy to let the inmates know early on in the process what is going on and check in with them about any issues experienced would be helpful to begin to address the issues identified.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.67 (e)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section D.4. (page 4) requires, "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."

During the audit documentation period and between initial documentation and on-site review, there were no reports of possible retaliation from individuals who participated in investigations. As a result, there is no secondary documentation available for review. Issues reported during formal monitoring of alleged victims and the perceived culture of retaliation are addressed in provision (b) of this standard.

During an interview, the Secretary's designee reported that all allegations and indications of possible retaliation are taken seriously. He added that the facility would first reassign the accused to another housing area while it is being investigated, assuring the inmate alleging retaliation that they are being heard and are protected. The Warden also confirmed immediate investigation of any allegations or signs of possible retaliation.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.67 (f)

This standard provision is currently not included in agency PREA policies. It is recommended that this provision be added to applicable policies on any future revision.

Per information received from staff charged with retaliation monitoring, monitoring continues until the investigation is closed as complete, unless the investigation was closed as substantiated. In the event that investigation was closed as unfounded or unsubstantiated, all monitoring would stop even if the 90-day timeframe had not expired.

Based on the cessation of monitoring when the investigation is closed, WNMCF was initially assessed as non-compliant with the requirements of this provision. As noted in provisions (a) and (c), to address this non-compliant finding, the former PREA Coordinator distributed direction to all agency PCM's and the HQ Compliance Officer, directing monitoring of all alleged victims and staff and inmate reporters for a period of 90 days unless the investigation is closed as unfounded. The former PREA Coordinator also directed, "If an inmate witness or staff member (witness), expresses fear of retaliation for cooperating with an ongoing investigation, we must monitor that inmate or staff for [a] period of 90 days or an unfounded finding." A review of investigations provided between the time of this directive and the on-site review revealed that monitoring has been completed as directed as associated with seven (7) of nine (9) allegation reports. In one (1) of the remaining two, final monitoring was not conducted until reminded by the Auditor during monthly documentation submission. In the final incident, monitoring was not completed and was therefore extended another 90 days by the PCM once the error was identified. Based on the failure to complete formal monitoring in 23% of reviewed allegations, WNMCF continues to be assessed as non-compliant with the requirements of this provision. Corrective action should include the development and implementation of a tracking / monitoring system to ensure all formal monitoring is completed within policy-established timeframes. The Auditor will review during the corrective action period.

Updates:

During the corrective action period, the Auditor was provided with documentation of formal retaliation monitoring in compliance with standard and policy requirements. Additionally, the facility established a system in which the PCM personally met with all individuals being monitored rather than relying on a file review for some monitoring requirements. Based on these actions and documentation provided, WNMCF is now assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/17/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy 031800, *Office of Professional Standards (OPS) Personnel investigations and Staff Misconduct Reporting* (06/03/2019)
- Documentation of formal retaliation monitoring associated with applicable investigations
- 10/26/2020 email from PREA Coordinator to all PCM's and HQ Compliance Officer providing direction regarding retaliation monitoring

Interviews conducted:

- Agency head designee
- Designated staff member charged with monitoring retaliation
- Inmates in segregated housing for risk of sexual victimization or who alleged to have suffered sexual abuse
- Inmates who reported a sexual abuse
- Warden

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.

115.68

Agency policy CD-141100, *Protective Custody Policy* (12/03/2015), section A. (page 1) indicates, "It is the policy of New Mexico Corrections Department that inmates will not be placed in any long-term segregation housing for protective custody reasons.

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section K.D. (page 5) requires, "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."

Per information received from the PCM, "Western New Mexico Correctional Facility (WNMCF) has not operated segregation since July 30, 2020. WNMCF has an alternative sanction pod in Housing Unit 5 N-pod. The inmates that are placed in this alternative sanction pod are inmates that have received sanctions through the inmate disciplinary process where all privileges have been taken such as visits, phone usage, commissary and including electronics. The length of stay in the alternative sanction pod is depending on how many days the Hearing Officer suspends their sanctions for. The inmates that are housed in Housing Unit 5 N-pod are level III General Population inmates and are still able to come out of their cells, work, program, attend education, walk to the chow hall and go to their scheduled gym time. The goal of this alternative sanction pod is to deter the inmate's behavior from continuously receiving misconduct reports."

Due to the lack of a segregated housing unit, no interviews were conducted with inmates housed in segregated housing for risk of sexual victimization. An interview was conducted with the individual responsible for oversight of the alternative sanction pod, confirming the purpose and operation of the unit. Additionally, there is no related secondary documentation available for review.

In an interview, the Warden confirmed that the facility does not operate segregated housing but has restricted housing available if needed. She indicated that it has not been used to house inmates at risk for victimization or those who have reported allegations and would not be done unless there were no other options available. The Warden reported other housing options are available to reduce the risk level, to include honor housing, the geriatric pod, the lower functioning area, and the behavioral health unit. Options would be reviewed and an area identified in which the inmate felt safe and comfortable and met the needs of the facility and inmate.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 07/01/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-141100, *Protective Custody Policy* (12/03/2015)
- Policy CD-150100 *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)

Interviews conducted:

- Staff who supervise inmates in segregated housing
- Warden

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.

115.71 (a)

It is noted that the Pre-Audit Questionnaire (PAQ) notes that there were eight (8) allegations reported during the documentation period, but documentation was provided indicating that one (1) allegation was returned by OPS as informational only, following a determination that the allegation reported was not PREA. The Auditor's initial compliance assessments are based on the seven (7) formal investigations completed.

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section B.1. (page 2) requires, "A prompt, thorough and objective investigation of an incident involving sexual misconduct shall be completed by an assigned investigator." The same policy, section B.7. (page 3) requires, "The assigned investigator will complete the investigation report, form (CD-031801.2) within twenty-three (23) calendar days..." This requirement is echoed in the Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 32).

Investigative staff interviewed reported initiation of investigations immediately following the receipt of an allegation, that steps are initiated on the facility level to ensure the safety of the alleged victim and preservation of evidence. They also reported that the referral to OPS and formal initiation of an investigation is generally a one-day turn around and the formal investigation is initiated immediately. Investigative staff also confirmed that all allegations are taken seriously and investigated, regardless of the manner in which they are received.

It is noted that five (5) investigations that were open at the onset of the documentation period were closed prior to the on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.71 (b)

Agency policy CD-150100, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures; PREA*, (05/29/2020) section FF. (page 9) requires, "Medical, Mental Health, and Investigative Staff must take the training class for their respective specialized areas concerning PREA." Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section A.6. (page 1) requires, "In addition to the general training provided to all employees, the agency shall ensure that to the extent the agency itself conducts sexual abuse investigations, that its investigators have received training in conducting such investigations in confinement settings."

Agency policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019), section C.2. (page 9) requires, "Within the Adult Prisons Division, no uniformed personnel below the rank of Correctional Officer Captain at public/non-contracted NMCD facilities may be utilized as Investigations Officers where staff involvement is known or suspected."

The Auditor was provided with certificates of completion of the identified training (Investigating Sexual Assaults in a Correctional Setting) for the four (4) current WNMCF investigators and one (1) OPS investigator. The Auditor also reviewed all investigations conducted during the audit documentation period and requested documentation of training completion for an additional facility investigator who retired as of July 2020, but who completed three (3) of these seven (7) investigations. The Auditor was informed that this documentation could not be located.

Interviews with current investigative staff confirmed completion of the required specialty training and a comprehensive knowledge of that training.

During the period between the initial documentation review and on-site review, the Auditor was provided with the report from an investigation completed by an individual who had not completed formal investigator training. The Auditor was informed that investigator certification was granted based on the individual's correctional and investigatory experience as documented by a resume coupled with shadowing of a currently certified investigator. This does not meet standard requirements and, as such, this provision was initially assessed as non-compliant. On 03/04/2021, a memorandum was issued by the Inspector General requiring, "Only investigators who have attended and completed specialized PREA investigations training will investigate allegations of PREA violations." The Auditor monitored all investigations completed since the directive was issued and all were completed by individuals who had completed the required training. It is noted that no new staff completed specialized investigator training between initial documentation and on-site review.

It is noted that during the corrective action period, an investigation was completed by an individual who shadowed another investigator, who had not completed formal investigator training. The Auditor was informed by the PCM that, "Upon assignment of a PREA OPS Investigation to the Facility Investigator, the PCM will verify the investigators certification through the Training Coordinator at the NMCD Central Office. This will ensure that the proper credentials are met in order to maintain the credibility and integrity of all investigations in the future." Based on these actions, WNMCF continues to retain a substantively compliant assessment with the requirements of this provision.

Based on the above, WNMCF is now assessed as compliant with the requirements of this provision.

115.71 (c)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section B. 2 and 3. (page 2) requires, "The assigned investigator shall gather and examine all physical and documentary evidence including reports, records, photographs, equipment, or any other pertinent information. The assigned investigator will contact all witnesses and schedule an interview with them. The interviews shall be conducted in a thorough, predetermined, and systematic manner regarding all of the allegations."

Agency policy 031800, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section E.1. and 9. (page 10 - 11) requires, "Upon determination that an investigation is to be conducted, all witnesses, victims, and others who may have information related to the incident or allegations are to be interviewed...The Investigator shall gather and examine all physical and documentary evidence including reports, records, photographs, equipment, or any other pertinent information."

Agency policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section E.14.a. (page 13) requires, "OPS Investigators shall gather and preserve(or cause to be gathered and preserved) direct and circumstantial, 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."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 32) "All investigations will include collection, preservation and documentation of any direct and/or circumstantial evidence. All sources of available electronic or other type of information and/or intelligence will be reviewed for applicability to the investigation, including review of previous complaints and reports of sexual harassment involving the suspected perpetrator or accuser. All alleged victims, suspected perpetrators and witnesses will be interviewed and the results of the interview documented." It is noted

that this manual only addresses prior reports of sexual harassment, not abuse as required in the standard. It is recommended that this is revised on the next manual revision.

Per information received from the former PREA Coordinator, "OPS Investigators have access to I-APRO [electronic system for tracking all investigations and serving as document retention, to include all PREA investigations]. Facilities investigators do not have access. Any investigations alleging sexual abuse, the investigator is required to staff the case with me, as a SME (Subject Matter Expert) and we will discuss previous allegations. Anytime it a sexual abuse allegation and there has been more than one allegation against the officer/inmate, I request the case not be handled by the facility investigator and it is assigned to an OPS Investigator...A PCM can only see cases that he/she is entered as the PCM. If a PCM leaves our IT Department on the backend of the program will add the new PCM to all open cases, for their facility."

Investigators interviewed all clearly articulated the investigation process and evidence they might collect and/or review as part of the investigation.

The Auditor was provided with reports from the seven (7) WNMCF investigations completed during the audit documentation period. A review of these reports indicated that none contained information regarding witness credibility assessments or a review of prior complaints and reports of sexual abuse involving the suspected perpetrator as required by standard provisions. It is noted that none of the investigations completed between initial documentation and on-site review, since this deficiency was identified, have included the noted information.

Based on a review of these investigation report and lack of documentation of review of prior complaints and reports, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include refresher training regarding investigation requirements and expectations with provision of all investigations completed during the corrective action period to the Auditor for review.

Updates:

During corrective action, received a total of twenty-seven (27) investigations. While a number of them had to be returned for amendments / addendums for inclusion of standard required elements. The facility has established PCM review processes to ensure all required information continues to be included. Training was also completed for all facility and agency trained PREA investigators regarding investigation and report content requirements. Based on these actions, WNMCF is now assessed as substantively compliant with the requirements of this provision.

115.71 (d)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section E. (page 5) requires, "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 violations to the Bureau Chief of OPS, and the appropriate disciplinary authority and Deputy Secretary of Operations, (CD- 031801.G.1). Upon a belief that probable cause for criminal prosecution exists, the Bureau Chief of OPS shall conduct a review to determine the admissibility of compelled statements (CD-031801). If, upon completion of review for probable cause and the admissibility of compelled statements, the investigator believes a referral can be made for prosecution, the Bureau Chief of OPS shall consult with the NMCD General Counsel to determine."

Agency policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section E.14.d. (page 13) requires, "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."

Specifications regarding NMCD investigations is posted to the agency's public website and includes the requirement that, "Law enforcement agencies will refer all applicable investigations to the Prosecutor's Office for review."

Four (4) of the five (5) investigative staff interviewed indicated the need to make a referral to law enforcement if, during the course of an investigation, information was received that indicated a possible crime. Staff reported that the administrative investigation would be placed on hold pending the outcome of that referral as the criminal investigation would take precedence. Interviewees also indicated that consultation with prosecutors would fall within the responsibilities of law enforcement officials. One individual reported that such a discovery would not impact the administrative investigation, but that the investigation would continue to determine if there was sufficient evidence to proceed with discipline, which would have nothing to do with law enforcement. The stipulations regarding compelled interviews were explained during the interview.

None of the investigation reports reviewed indicated the discovery of potentially criminal behavior during the course of the investigation. The investigations that addressed possibly criminal behavior did not include compelled interviews and therefore does not demonstrate non-compliance with the requirements of this provision.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.71 (e)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section B.11. (page 3) requires, "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."

Agency policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section E.14.b. (page 13) requires, "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."

Agency policy 031800, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section E. (page 4) states, "The use of polygraph examinations shall occur only after witness interviews and all other investigative techniques have been used. The use of this investigative tool shall remain at the sole discretion of NMCD for seeking resolution in any matters involving any allegations of misconduct." Agency policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section G.5. (page 16) states, "After all other reasonable investigative techniques have been exhausted the complainant may, in the Department's discretion, be required to submit to a polygraph examination to verify the allegations raised against the employee. If the complainant refuses to submit to a polygraph examination, the administrative action will be terminated unless the Officer of OPS determine that other sufficient, credible evidence exists to pursue the administrative action further. (This section does not apply to complainants who are inmates/offenders that have made a PREA complaint against a staff member.)" The same policy, section E.14.b. (page 13) requires, "No agency shall 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." Although the policy language does prohibit the use of polygraphs as required in the standard, the three differing references to polygraphs in this policy are confusing. It is recommended that this is clarified on the next policy revision.

The Auditor was provided with reports from WNMCF investigations completed during the audit documentation period and between initial documentation and on-site review. None of these contained information regarding witness credibility assessments or a review of prior complaints and reports of

sexual abuse involving the suspected perpetrator. There were no investigations in which any individual was subject to a polygraph examination.

Investigative staff interviewed confirmed that an alleged victim would never be required to submit to a polygraph as a condition for continuing with an investigation. It was noted that, with proper authorization, a request may be made to a participant in an investigation, but it would never be a requirement. Investigative staff were also able to articulate factors they would take into consideration when assessing witness credibility, to include interview behavior, testimony supported by available facts, consistency across time, body language, and history of providing credible information. None reported that credibility would be assessed based on the individual's status as an inmate or staff.

Interviews with inmates who reported sexual abuse confirmed that they were not subject to a polygraph examination as part of the investigatory process.

Based on a review of the investigation reports and lack of documentation regarding credibility of witnesses, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include refresher training regarding investigation requirements and expectations with provision of all investigations completed during the corrective action period to the Auditor for review.

Updates:

During corrective action, received a total of twenty-seven (27) investigations. While a number of them had to be returned for amendments / addendums for inclusion of standard required elements. The facility has established PCM review processes to ensure all required information continues to be included. Training was also completed for all facility and agency trained PREA investigators regarding investigation and report content requirements. Based on these actions, WNMCF is now assessed as substantively compliant with the requirements of this provision.

115.71 (f)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section B.7. (page 3) requires, "The assigned investigator will complete the investigation report, form (CD-031801.2) within twenty-three (23) calendar days..."

Agency policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section E.14.c. (page 13) requires, "Investigations shall include an effort to determine whether staff actions or failures to act contributed to the abuse." The same policy, section K.5. (page 20) requires, "During the investigation, if an investigations Officer determines that an employee violated an NMCD Policy not alleged in the initial allegations, said misconduct shall be documented as 'Misconduct noted' and a finding shall be made for such misconduct." The policy then provides an example for clarification.

Policy 031801 also requires (section E.13.; page 12 – 13) requires, "Upon completion of the investigation, a written report shall be prepared by the Investigator using the format set out in Attachment C [investigation report template]. The Report shall detail the allegations made, the facts revealed during the investigation and state any policies and procedures, rules and regulations, or laws that were violated by the employee, if any."

Per information received from the former PREA Coordinator, "Investigators can only investigate the issue / allegation in the original referral. If they find other issues / contributing issues (e.g., the officer left the door open), the report for the original allegation will state 'misconduct noted' and there will be a separate investigation addressing that contributing behavior." The Auditor reviewed reports from the investigations conducted in 2019 and 2020 and found such a review. This was also confirmed in interviews with investigators.

Investigators are required to follow a prescribed template in the completion of investigation reports. This template is used for all investigations completed by OPS investigators, to include PREA investigations, and includes the following elements:

- Allegation(s),
- Date, time, and location of incident,
- Type of incident,
- Reporting party / complainant,
- Identification of employee, inmate, contract staff and other witnesses,
- Summary,
- Interviews,
- Investigative actions (e.g., photographs / video take, evidence collected, intelligence gathered, etc.),
- Investigator's impressions,
- Findings, and
- Misconduct noted.

All investigators interviewed confirmed the required completion of a report and articulated many of the elements included in the report template. All also confirmed the requirement to evaluate staff actions or failure to act that may have contributed to the incident, documenting the same in the investigation report as other misconduct. However, none of the investigation reports reviewed included information regarding credibility assessments of individuals who participated as witnesses. Additionally, the information contained in one investigation report (20-0071) included an allegation that the alleged victims attempted to report the allegation to several staff before calling the hotline, but these staff allegedly failed to take the report or report the information as required by policy. The potential "other misconduct" was not addressed in the investigation, nor were the applicable staff members interviewed as part of the investigation.

Based on the lack of documentation in reports regarding credibility of witnesses and the failure to explore potential other misconduct as noted above, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include refresher training regarding investigation requirements and expectations with provision of all investigations completed during the corrective action period to the Auditor for review.

Updates:

During corrective action, received a total of twenty-seven (27) investigations. While a number of them had to be returned for amendments / addendums for inclusion of standard required elements. The facility has established PCM review processes to ensure all required information continues to be included. Training was also completed for all facility and agency trained PREA investigators regarding investigation and report content requirements. Based on these actions, WNMCF is now assessed as substantively compliant with the requirements of this provision.

115.71 (g)

Specifications regarding NMCD investigations is posted to the agency's public website and includes the requirement that, "Law enforcement agencies will document their findings in a written report that contains a thorough description of physical, testimonial, and documentary evidence."

The requirement to receive a report for all criminal investigations conducted by law enforcement was confirmed in interviews with investigators. Interviewees also reported that the elements of these reports would be very similar to those of an administrative investigation, noting that the criminal investigation report would be included with the administrative investigation report.

Criminal investigation reports were included with applicable administrative investigation reports reviewed (in which a referral to law enforcement was made), confirming compliance with standard requirements.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.71 (h)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section E. (page 5) requires, "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 violations to the Bureau Chief of OPS, and the appropriate disciplinary authority and Deputy Secretary of Operations, (CD- 031801.G.1). Upon a belief that probable cause for criminal prosecution exists, the Bureau Chief of OPS shall conduct a review to determine the admissibility of compelled statements (CD-031801). If, upon completion of review for probable cause and the admissibility of compelled statements, the investigator believes a referral can be made for prosecution, the Bureau Chief of OPS shall consult with the NMCD General Counsel to determine."

Agency policy 031800, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section D. (page 3) requires, "Employee conduct involving allegations of sexual misconduct, sexual assault or any other alleged violations of criminal law shall be referred to local law enforcement for consideration for prosecution."

Agency policy 031801, *Office of Professional Standards (OPS) Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section D.1., 2., and 4. (page 17) requires, "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 [Chief Administrative Officer]. The Bureau Chief of PS 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...The Bureau Chief of OPS, the NMCD General Counsel, or the CAO may determine that the Investigative Report be submitted to the appropriate law enforcement agency for possible prosecution."

Specifications regarding NMCD investigations is posted to the agency's public website and includes the requirement that, "Law enforcement agencies will refer all applicable investigations to the Prosecutor's Office for review."

All investigatory staff interviewed reported the requirement to refer all criminal allegations to the New Mexico State Police, who would then be responsible for applicable prosecutorial referral.

Since the last DOJ PREA audit, three (3) previously substantiated investigations were referred for criminal prosecution. One individual was sentenced to probation and the two remaining are pending trial, which have been delayed due to COVID restrictions.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.71 (i)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section B.9. (page 3) requires, "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."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 33) "All completed investigations and their applicable reports, documentation and written information will be retained by the IG PMT [Inspector General PREA Management Team] division of the Department as long as the alleged abuser is under the control of the Department plus (10) years." The manual appears to only address inmates and not employees. Additionally, the ten (10) year retention requirement exceeds

standard requirements but is contradictory with policy specifications. As a result, it is recommended that the manual be corrected on its next revision and update information provided to all stakeholders.

Per information from the former PREA Coordinator, "I-Apro is the official Internal Affairs computer system. This system is not ever purged. The system has been active since I believe 2013...This [system] stores all the videos and recordings of interviews and all other evidence." The Auditor was able to review the information and documentation retained in this system, confirming compliance with standard requirements. The Auditor was also provided with a 03/03/2017 memo from the OPS Management Analyst attesting "...that our database is never purged. All cases are maintained electronically, and hard copies are also available."

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.71 (j)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section B.10. (page 3) requires, "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."

Agency policy 031800, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section D (page 3 – 4) requires, "Employee conduct involving allegations of sexual misconduct, sexual assault or any other alleged violation 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."

The requirement to complete investigations to their fullest was regardless of the status of the employee, contract staff or volunteer or the location of the alleged victim was confirmed in interviews with investigators. Investigators noted the ability to employ additional resources, such as outside law enforcement, probation and parole staff, and investigators from other facilities as applicable to ensure investigation completion.

Reports from the investigations conducted during the documentation period confirmed continuation and completion of investigations even when alleged victims and/or accused are no longer at the facility (e.g., transferred, deceased, etc.)

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.71 (k)

The New Mexico State Police is responsible for the conduct of any criminal investigations referred by WNMCF. There currently is no memorandum of understanding or interagency agreement between the facility and/or NMCD and the New Mexico State Police regarding the conduct of criminal investigations. However, the Auditor was provided with New Mexico statute 29-11-5, *Sexual crimes prosecution and treatment program* that requires, "The administrator shall develop, with the cooperation of the criminal justice department [corrections department], the New Mexico state police, the New Mexico law enforcement academy, other authorized law enforcement agencies and existing community-based victim treatment programs, a statewide comprehensive plan to train law enforcement officers and criminal justice and medical personnel in the ability to deal with sexual crimes, to develop strategies for the prevention of such crimes, to provide assistance in the assembly of evidence for the facilitation of prosecution of such crimes, and to provide medical and psychological treatment to victims of such crimes...The comprehensive plan shall be implemented throughout the state." The statute also details the training for law enforcement officers in treatment of victims, collection of evidence, and coordination between applicable agencies.

The Auditor was provided with a contact telephone number for the New Mexico State Police, which provides an option to connect with the detectives' division. Seven (7) attempts were made to make

contact to obtain procedural information, with messages left on multiple occasions. No direct connection was made and no response to messages was received. The PCM also attempted contact with similar outcomes. It is noted that if the facility were to make a referral to the New Mexico State Police for a criminal investigation, administrators would be provided contact information for the specific detective assigned, thereby ensuring the ability to remain current on the status of the investigation.

No Department of Justice component is responsible for conducting investigations at WNMCF or within NMCD.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.71 (I)

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section B.5. (page 2) requires, "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."

Agency policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section C.5. (page 9) requires, "Any and all inquiries into open and active cases of external law enforcement agencies, with the exception of the Secretary Corrections and his or her Deputy Secretaries shall be made only by authorized OPS or STIU [Security Threat Intelligence Unit] personnel."

Serving in a liaison role regarding law enforcement investigations was confirmed in interviews with investigative staff. This role was also confirmed in interviews with the Warden, the former, interim, and current PREA Coordinator, and PCM.

During the period between initial documentation and on-site review, the Auditor requested documents associated with criminal investigations of multiple allegations. The PCM was not able to provide status information and, many times, could not produce status information or applicable reports following multiple reported contacts with law enforcement officials. The PCM informed that Auditor that information / documentation regarding criminal investigations is obtained from the IPRA Coordinator of the New Mexico State Police, who oversees the Inspection of Public Records Act. Obtaining complete investigation reports through public records after the fact does not meet standard requirements of remaining informed about the process of a criminal investigation.

Based on the lack of communication between the facility and law enforcement officials regarding criminal investigations. WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include collaboration between the facility, SIU, and representatives of the New Mexico State Police to develop procedures for status updates and receipt of applicable investigatory reports. The Auditor will continue to monitor the ability to obtain criminal investigation status and reports throughout the corrective action period.

Updates:

Following the designation of the new PCM in November 2021, the Auditor was provided with consistent documentation of communication between the facility (via the PCM) and the New Mexico State Police (NMSP). The PCM established a pattern of regular communication and information sharing, both to and from NMSP, receiving update and status information and providing applicable information to the designated investigator. Based on these actions, WNMCF is now assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/17/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy 031800, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019)
- Certificates of investigator training completion
- Investigating Sexual Assaults in a Correctional Setting training curriculum and PowerPoint (revised 01/2015)
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- Specified investigation reports
- 03/03/2017 memo from the OPS Management Analyst regarding record retention
- Documentation of criminal charges / sentencing for applicable individuals
- New Mexico statute 29-11-5, *Sexual crimes prosecution and treatment program*
- 03/04/2021 Inspector General directive

Interviews conducted:

- Inmates who reported a sexual abuse
- Investigative staff
- PREA compliance manager
- PREA coordinators
- Warden

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.

115.72

Per information from the former PREA Coordinator, the language regarding level of proof had been included in agency policy CD-031800, *Office of Professional Standards (OPS), Personnel Investigations and Staff Misconduct Reporting* but this language had been deleted on the most recent policy revision (06/03/2019). The current policy has no language regarding inmate-on-inmate investigations and only addresses investigations of alleged staff misconduct. The only reference to any level of proof is currently included in the definition section of the policy, which contains definitions of probable cause and reasonable suspicion. Additionally, this policy includes the following as finding options for each allegation (section G.4., page 19):

- a. *Sustained: The administrative investigation determined that the employee violated NMCD Policy as alleged...*
- b. *Inconclusive: The administrative investigation produced insufficient information to clearly prove or disprove the allegation;*
- c. *Exonerated: The administrative investigation clearly established that the actions of the employee did not violate any NMCD policy; or*
- d. *Unfounded: The administrative investigation clearly established that the allegation is not true.*

Although investigative staff interviewed were able to clearly articulate the level of proof needed to substantiated allegations, there is no clear policy direction regarding this requirement and finding options are not consistent with standard required options and definitions. A review of the investigator training PowerPoint (slide 17) states:

Standards of Evidence:

- a. Preponderance of evidence is used in civil trials.
- b. Evidence beyond a reasonable doubt is used in criminal trials.
- c. Meeting this standard of evidence not only establishes the crime, but also established criminal intent.

The training materials do not clearly articulate expectations for administrative investigations regarding the level of proof required to substantiate an allegation. Additionally, nowhere in the training is there a listing of finding options, nor are there definitions of the same.

Per information from the former PREA Coordinator, since OPS finding options are different from those detailed in the PREA standards, investigators of PREA allegations are to note under the OPS finding what the comparable PREA finding would be. A review reports from the seven (7) investigations completed during the documentation period revealed that one (1) did not include the "PREA findings" as required.

The Auditor reviewed reports from the seven (7) investigations completed during the documentation period and found that the report supported findings in five (5) of the two (2) investigations. The Auditor was provided additional clarifying information from the former PREA Coordinator that supported the findings, information that was included in the electronic case file, but not the investigation report. It is recommended that investigators receive additional support and/or training to ensure all applicable information is included in the final report to allow it to stand on its own. It is noted that the Pre-Audit Questionnaire (PAQ) notes that there were eight (8) allegations reported during the documentation period, but documentation was provided indicating that one (1) allegation was returned by OPS as informational only, following a determination that the allegation reported was not PREA. The Auditor's initial compliance assessments are based on the seven (7) formal investigations completed.

An additional six (6) investigations completed between initial documentation and on-site review were provided with the Auditor finding that the reports supported findings in four (4) of these investigations. The following were finding issues identified with these investigations:

- In one of the reports, findings were noted as "sustained" rather than "substantiated" with the PCM providing comments that this will be addressed in corrective action. This same incident resulted in both the alleged victim and accused inmate being infraacted for the behavior addressed in the allegation, noting that the behavior was consensual and involved both inmates, which is not supported by a substantiated finding regarding inmate sexual abuse. Neither the investigation report nor disciplinary documentation were revised prior to the issuing of the interim report.
- In one of the reports, the accused was infraacted for alleged behavior prior to the completion of the report, which was closed as unsubstantiated. Also, in this investigation, only the alleged victim and accused were interviewed and there was no information included regarding attempts to identify any additional possible witnesses.
- An unsubstantiated investigation resulted in the infraction of the accused inmate for actions included in the allegation.

Based on the lack of direction regarding levels of proof and findings, to include definitions and the above noted deficiencies related to findings, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include a revision to the applicable policy and investigation report template along with distribution of applicable information to investigative staff. The noted language needs to address both staff-on-inmate and inmate-on-inmate investigations. The Auditor will also review investigations completed during the corrective action period to ensure compliance with standard requirements regarding level of proof and findings. It is also recommended that PREA finding options are added to the OPS report template to ensure the standard-required findings are documented for every PREA investigation.

Updates:

During the corrective action period, the Auditor was provided with copies of all investigations completed, confirming compliance with standard proof requirements. Additionally, the Auditor was provided with documentation of refresher information provided to all investigators. Based on these actions and documentation provided, WNMCF is now assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 07/06/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-031800, *Office of Professional Standards (OPS), Personnel Investigations and Staff Misconduct Reporting* (06/03/2019)
- Investigation reports

Interviews conducted:

- Investigative staff

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.

115.73 (a)

Per information received from the PCM, "When an allegation is referred to OPS for an investigation, the PREA office sends the alleged victim a letter, notifying them of the investigation...The opening letter informs the inmate he/she may seek counseling from behavioral health staff at no cost, provides the address for Just Detention International and advocacy services available through *9999 from any inmate phone. The letter advises the inmate what to do if they feel they are suffering from retaliation due to reporting this allegation. At the conclusion of the investigation, the PREA Office will send the inmate a closing letter to inform him/her of the results of the investigation...If the investigation is substantiated or unsubstantiated, the letter will inform the inmate about seeking behavior health, how to obtain advocacy through letters or the inmate phones. NMCD will insert a business card with NMCD PREA Coordinator and Rape Crisis information in the event that they desire follow up with an advocate or to report further information, such as retaliation...[If the inmate is released] NMCD will send a closing letter to the inmate's last known address." All letters are signed by the PREA Coordinator.

Based on the letters informing alleged victims of the opening as well as closing of any investigation and the inclusion of allegations of harassment in all notifications, NMCD and WNMCF exceed the requirements of this standard.

Agency policy CD-151200, *Correspondence Regulations* (10/07/2016) section D. (page 2) defines legal mail as, "Any letters, pleading or legal documents to or from an inmate's attorney of record, a judge, a court of law, or an opposing attorney, to include the NMCD Office of General Counsel. Mail to any other NMCD employee is not considered legal mail." The same policy, section E. (page 2) defines privileged communication as "Any correspondence to or from an attorney from whom the inmate is attempted to retain services; with recognized agencies that provide legal assistance; and law enforcement agents or agencies." Despite of conflicting policy language, the Auditor confirmed that all notifications provided to inmates by the PREA Coordinator are sent via legal mail and, therefore, handled in a confidential manner. Per information from the PREA Coordinator, the inmate mail policy is current in the revision process. It

is strongly recommended that language be added to ensure all mail from the PREA Coordinator is included in provisions for legal mail or privileged communication.

The Auditor reviewed all investigations conducted during the audit documentation period and confirmed notification to the alleged victims of the outcome of the investigation.

Four (4) of the five (5) investigative staff interviewed confirmed notification as required by the standard following completion of the investigation. [Note – the fifth individual was informed of the requirement during the interview.] The Warden also confirmed notification to applicable inmates via letters from the PREA Coordinator, also confirming that these letters are handled as legal mail.

During interviews, two (2) of the seven (7) inmates who reported abuse acknowledged receipt of investigation outcome information. However, closure notification letters were included in all applicable investigation reports. It is recommended that someone from the facility actually meet with the inmate once an investigation is closed to ensure notification is received and provide answers to any questions the inmate may have.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.73 (b)

Per information received by the former PREA Coordinator, if a criminal investigation is conducted, once complete, NMCD will also complete an administrative investigation. NMCD would receive a copy of the criminal investigation report for inclusion in the administrative investigation as applicable. The alleged victim would be notified of the outcome once the administrative investigation is complete.

During the audit documentation period, no criminal investigations were conducted. As a result, there is no secondary documentation available for review. However, during initial documentation review, an allegation of inmate-on-inmate abuse was reported and referred for a criminal investigation. The Auditor was provided with documentation that the law enforcement referral was returned as informational only as the named victim declined to press charges. As a result, no formal criminal investigation was conducted. The inability to obtain case information and criminal investigation reports from the New Mexico State Police is addressed as a compliance issue with standard 115.71.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.73 (c)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures*, PREA (05/29/2020), section M. (page 6) requires, “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.”

During 2019 and 2020, there were no inmates who were victims in substantiated investigations of staff-on-inmate sexual abuse. As a result, no inmates who reported allegations were applicable for inclusion in interviews for this provision.

Per information received from Department of Justice / PREA Resource Center and PREA Management Office, the requirement to notify the alleged victim is ongoing, and is not applicable only to the current documentation period or since the last DOJ PREA audit. Per information received from the former PREA

Coordinator, there is no tracking system applicable to ongoing notification requirements and all notifications cease once the investigation is closed.

Based on the lack of an ongoing notification tracking system and the ceasing of all notifications on the closure of the investigation, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development of an effective tracking system that meets standard requirements. The final tracking system will be required to include a historical review of all applicable cases to ensure those with possible on-going notification requirements are included.

Updates:

During corrective action, the PCM consulted with stakeholders and resources both internal and external to the agency, developing a comprehensive investigation tracking system. Included in this system is tracking for the on-going notifications applicable to this provision. The tracker includes all investigations from 2021 and will be expanded as needed to include any ongoing notification requirements associated with older investigations that may still be applicable. The PCM also established a process whereby he receives applicable staff assignment and inmate release information along with a system to review any indictments and/or convictions applicable to this standard. Based on the comprehensive system established WNMCF is now assessed as substantively compliant with the requirements of this provision.

115.73 (d)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section M. (page 6) requires, "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."

During the audit documentation period and the time between initial documentation and on-site review, no inmates were indicted for or convicted of a charge related to sexual abuse within the facility. As a result, no inmates who reported allegations were applicable for inclusion in interviews for this provision.

Per information received from Department of Justice / PREA Resource Center and PREA Management Office, the requirement to notify the alleged victim is ongoing, and is not applicable only to the current documentation period or since the last DOJ PREA audit. Per information received from the former PREA Coordinator, there is no tracking system applicable to ongoing notification requirements and all notifications cease once the investigation is closed.

Based on the lack of an ongoing notification tracking system and the ceasing of all notifications on the closure of the investigation, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development of an effective tracking system that meets standard requirements. The final tracking system will be required to include a historical review of all applicable cases to ensure those with possible on-going notification requirements are included.

Updates:

During corrective action, the PCM consulted with stakeholders and resources both internal and external to the agency, developing a comprehensive investigation tracking system. Included in this system is tracking for the on-going notifications applicable to this provision. The tracker includes all investigations from 2021 and will be expanded as needed to include any ongoing notification requirements associated with older investigations that may still be applicable. The PCM also established a process whereby he receives applicable staff assignment and inmate release information along with a system to review any indictments and/or convictions applicable to this standard. Based on the comprehensive system established WNMCF is now assessed as substantively compliant with the requirements of this provision.

115.73 (e)

Agency PREA-policies do not include language applicable to this provision. However, per the PREA Coordinator, all notifications provided to inmates are done in writing and are maintained with the investigation case file.

Although case closure notifications are provided to alleged victims, as noted previously, the agency and WNMCF have no tracking systems in place regarding on-going notifications.

Based on the lack of an ongoing notification tracking system and the ceasing of all notifications on the closure of the investigation, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development of an effective tracking system that meets standard requirements.

Updates:

During corrective action, the PCM consulted with stakeholders and resources both internal and external to the agency, developing a comprehensive investigation tracking system. Included in this system is tracking for the on-going notifications applicable to this provision. The tracker includes all investigations from 2021 and will be expanded as needed to include any ongoing notification requirements associated with older investigations that may still be applicable. The PCM also established a process whereby he receives applicable staff assignment and inmate release information along with a system to review any indictments and/or convictions applicable to this standard. Based on the comprehensive system established WNMCF is now assessed as substantively compliant with the requirements of this provision.

115.73 (f)

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 33) Specifies, "Departure of the inmate victim from the control of the Department terminate NMCD's obligation to report under this section."

As noted previously, the agency and WNMCF have no tracking systems in place regarding on-going notifications.

Based on the lack of an ongoing notification tracking system and the ceasing of all notifications on the closure of the investigation, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development of an effective tracking system that meets standard requirements.

Documentation provided for this standard:

- Compliance memo dated 09/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-151200, *Correspondence Regulations* (10/07/2016)
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- WNMCF investigation reports
- Criminal complaint 20-0664 Cibola County Sheriff
- Documentation of investigation tracking system established

Interviews conducted:

- Inmates who reported a sexual abuse
- Investigative staff
- Warden

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.

115.76 (a)

Agency policy CD-032201, *Code of Ethics* (08/13/2015) section B.10. (page 5 – 6) states, “Personnel will not become unduly familiar with any probationer, parolee, inmate or detainee or their immediate families, agents or close friends, excepting interactions incidental to, and necessary for, the operation of the Returning Citizen Program...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 but is not limited to:

- Sexual assault.
- Sexual abuse.
- Sexual contact.
- Conduct of a sexual nature.
- Kissing or hugging.
- Sexual gratification of any party.
- 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.”

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section P. (page 6) states, “Sexual conduct between staff and inmates, volunteers, or contract personnel and inmates, regardless of consensual status, is prohibited and subject to administrative discipline, up to and including termination, and criminal sanctions and referred to local law enforcement authorities for possible criminal prosecution. For matters of sexual abuse, termination should be the presumptive disciplinary sanction for staff who engaged in sexual abuse.”

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section B.7. (page 2) requires, “Where abuse is found to have occurred, appropriate administrative action against the offending party will be initiated, up to and including dismissal.”

Additionally, the agency’s public website states, “NMCD has zero tolerance for sexual misconduct of any kind and will impose discipline for all substantiated allegations, which can include up to dismissal of staff and a serious infraction for offenders who victimize other inmates.”

There have been two (2) investigations of staff sexual harassment and three (3) of sexual abuse reported in the 2018, and 2019 annual PREA reports. The Auditor was provided with documentation that the accused in the abuse investigations were either terminated or resigned in lieu of discipline and/or termination and referred for criminal prosecution, which are currently pending. The Auditor was also provided with documentation of discipline or resignation in lieu of discipline and/or termination for the harassment investigations.

It was learned that an additional investigation substantiating sexual harassment that had been open during the audit documentation period had closed between initial documentation and on-site review. The Auditor was provided with documentation of the requirement and completion of specialty training as a result of this substantiation.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.76 (b)

Agency policy CD-037800, *Disciplinary Action for Classified Employees* (03/04/2015), section A. (page 3) states, “The Corrections Department promotes the concept of progressive discipline and corrective action whenever appropriate. Individuals shall normally be dismissed only after efforts have been made

to help that person correct any deficiencies in work performance or behavior. However, some misconduct is so severe as to not warrant progressive discipline and immediate dismissal is the only appropriate action. Furthermore, misconduct may justify the dismissal of a probationary employee.”

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section P. (page 6) states, “Sexual conduct between staff and inmates, volunteers, or contract personnel and inmates, regardless of consensual status, is prohibited and subject to administrative discipline, up to and including termination, and criminal sanctions and referred to local law enforcement authorities for possible criminal prosecution. For matters of sexual abuse, termination should be the presumptive disciplinary sanction for staff who engaged in sexual abuse.”

There have been three (3) allegations of sexual abuse perpetrated by staff since 2018. The Auditor was provided with documentation that the accused in the abuse investigations were either terminated or resigned in lieu of discipline and/or termination and referred for criminal prosecution, which are currently pending. There were no additional substantiated investigations of staff abuse between initial documentation and on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.76 (c)

Agency policy CD-037800, *Disciplinary Action for Classified Employees* (03/04/2015), section A. (page 3) states, “The Corrections Department promotes the concept of progressive discipline and corrective action whenever appropriate. Individuals shall normally be dismissed only after efforts have been made to help that person correct any deficiencies in work performance or behavior. However, some misconduct is so severe as to not warrant progressive discipline and immediate dismissal is the only appropriate action. Furthermore, misconduct may justify the dismissal of a probationary employee.”

There have been two (2) investigations of staff sexual harassment and three (3) of sexual abuse reported in the 2018, and 2019 annual PREA reports. The Auditor was provided with documentation that the accused in the abuse investigations were either terminated or resigned in lieu of discipline and/or termination and referred for criminal prosecution, which are currently pending. The Auditor was also provided with documentation of discipline or resignation in lieu of discipline and/or termination for the harassment investigations.

It was learned that an additional investigation substantiating sexual harassment that had been open during the audit documentation period had closed between initial documentation and on-site review. The Auditor was provided with documentation of the requirement and completion of specialty training as a result of this substantiation.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.76 (d)

Agency policy CD-031800 *Office of Professional Standards (OPS), Personnel Investigations and Staff Misconduct Reporting* (06/03/2019) section D. (page 3 – 4) states, “Employee conduct involving allegations of sexual misconduct 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.”

Agency policy 031801, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019) section E.14.e. (page 13) requires, “Investigators shall ensure that any employee, contractor or volunteer who engaged in sexual abuse is prohibited from contact with inmates and is reported to law enforcement agencies, unless the activity was clearly not criminal, and to relevant licensing bodies as appropriate. Any complaint made to a licensing body shall be noted in the

investigative report and the documentation of the complaint shall be included with the investigative case file.”

There have been three (3) allegations of sexual abuse perpetrated by staff since 2018. The Auditor was provided with documentation that the accused in the abuse investigations were either terminated or resigned in lieu of discipline and/or termination and referred for criminal prosecution, which are currently pending. There were no additional substantiated investigations of staff abuse between initial documentation and on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 07/06/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-032201, *Code of Ethics* (08/13/2015)
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-031800, *Office of Professional Standards (OPS), Personnel Investigations and Staff Misconduct Reporting* (06/03/2019)
- Policy CD-037800, *Disciplinary Action for Classified Employees* (03/04/2015)
- Policy CD-031800, *Office of Professional Standards (OPS), Personnel investigations and Staff Misconduct Reporting* (06/03/2019)
- Agency annual PREA reports from 2018, and 2019
- Applicable investigation report, law enforcement referrals and documentation of discipline and/or resignation

Interviews conducted:

- None were indicated in the DOJ Auditor Compliance Tool or interview templates

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.

115.77 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section P. (page 6) states, "Sexual conduct between staff and inmates, volunteers, or contract personnel and inmates, regardless of consensual status, is prohibited and subject to administrative discipline, up to and including termination, and criminal sanctions and referred to local law enforcement authorities for possible criminal prosecution."

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section B.7. (page 2) requires, "Where abuse is found to have occurred, appropriate administrative action against the offending party will be initiated, up to and including dismissal."

Agency policy CD-060201, *Citizen Involvement and Volunteers*, (06/07/2017), section E.3. (page 3) states, "Any volunteer who has or develops a relationship with an inmate other than required for the

specific program for which approval was granted as a volunteer will be denied or removed from volunteer status.:

The ability to restrict contract access to inmates is not currently included in agency policy. However, the following language is included in all applicable contracts:

Agency reserves the right to escort any employee, subcontractor or other agent of the Contractor off the Agency property for any inappropriate conduct or actions that jeopardizes the safety, security, or well being of the facility. If such conduct or action should occur, then, this agreement may be terminated immediately.

Per the Procurement Administrator, the language has been approved by the New Mexico Department of Finance and Administration for inclusion in the blanket template for all NMCD contracts. The auditor confirmed inclusion in an example of a personal services contract. It is recommended that applicable language be included in the next PREA policy revision.

Included on the agency's public website is the form "Prison Rape Elimination Act Volunteer/Limited Service Contractor Training Acknowledgment" which includes the following:

Training previously received and materials given on:

- 1. The Prison Rape Elimination Act;*
- 2. NMCD's Policy on Zero Tolerance;*
- 3. Reporting incidents of sexual abuse;*
- 4. State law 30-9-11.*

I understand that if I engage in sexual abuse with inmates, I shall be prohibited from contact with inmates and shall be reported to law enforcement agencies, unless the activity was clearly not criminal, and will be reported to relevant licensing bodies.

It is noted that New Mexico State Law 30-9-11 details the definition of Criminal Sexual Penetration and includes the following:

Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated...on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate..."

Per information from the PCM and a review of investigation reports, there has not been an allegation of sexual misconduct or sexual harassment involving a contractor or volunteer at WNMCF during the audit documentation period. However, it was learned that an additional investigation substantiating PREA-related retaliation in which a contractor was the accused had been open during the audit documentation period but had closed between initial documentation and on-site review. The Auditor was provided with documentation of the requirement and completion of specialty training as a result of this substantiation.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.77 (b)

The policy language regarding the management of contractors and volunteers is outlined with provision (a) above.

Per information from the PCM and a review of investigation reports, there has not been an allegation of sexual misconduct or sexual harassment involving a contractor or volunteer at WNMCF during the audit documentation period. However, it was learned that an additional investigation substantiating PREA-related retaliation in which a contractor was the accused had been open during the audit documentation period but had closed between initial documentation and on-site review. The Auditor was provided with documentation of the requirement and completion of specialty training as a result of this substantiation.

In an interview, the Warden reported that any allegations involving a contractor or volunteer would be immediately investigated and the individual's clearance to the facility terminated, even based on a suspicion, until an investigation was completed.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 07/07/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-060201, *Citizen Involvement and Volunteers*, (06/07/2017)
- Example of a personal services contract
- Certificate of NIC training completion for applicable contract staff

Interviews conducted:

- Warden

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.

115.78 (a)

Agency policy CD-150101, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures, PREA* (05/29/2020), section A.7., (page 1) requires, "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."

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section B.7. (page 2) requires, "Where abuse is found to have occurred, appropriate administrative action against the offending party will be initiated, up to and including dismissal."

These policies are available to all inmates in the library in both English and Spanish.

The agency's public website states, "NMCD has zero tolerance for sexual misconduct of any kind and will impose discipline for all substantiated allegations, which can include up to dismissal of staff and a serious infraction for offenders who victimize other inmates."

Agency policy CD-090100 and CD-090101, *Inmate Discipline*, (05/28/2019) details the disciplinary process for inmates, to include investigation and review, conduct of hearings, range of sanctions, and appeals.

A facility handbook outlining the disciplinary process is also provided to each inmate. The handbook is also available in Spanish.

During interviews conducted, Disciplinary Hearing Officers clearly articulated the disciplinary process as outlined in agency policy. They have both received training from prior hearing officers and the Central Office level hearing officer, both in process and in use of the established sanctions matrix.

Per information from the PCM and a review of investigation reports, there has not been an allegation of sexual assault, sexual abuse, or sexual harassment perpetrated by an inmate during the audit documentation period. A review of annual report documentation indicates there was one (1) substantiated investigation of inmate harassment in 2018. The Auditor was provided with documentation of the disciplinary hearing associated with this investigation, confirming compliance with standard requirements.

Additionally, during 2020, following the documentation period but during the initial documentation review, an allegation of inmate sexual abuse was reported. The Auditor was provided with the disciplinary hearing packet associated with this investigation, but also learned that the inmate was infracted and sanctioned prior to the completion of either an administrative or criminal investigation. The Auditor was informed that the infraction and subsequent guilty finding were based on available video evidence rather than the required investigation, which violates both policy and standard requirements.

During the time between initial documentation and on-site review, the Auditor was provided with an investigation report that had been closed as substantiated but was then provided with documentation that both the accused and alleged victim were infracted for related behavior. Information provided was a belief that the alleged victim made the allegation to avoid disciplinary action; however, no information was provided regarding either revision to the status of the infractions or to the investigation report.

Based on the above noted deficiencies regarding inmate disciplinary procedures related to PREA investigations, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include addressing the noted hearings in violation of policy / contradictory to a formal investigation report, provision of training for applicable staff regarding policy requirements, and monitoring of investigations and disciplinary processes during the corrective action period to ensure future compliance.

Updates:

During the corrective action period, the Auditor was provided with documentation of training provided to applicable facility staff (disciplinary hearing officer, deputy warden, and unit manager) regarding disciplinary processes in compliance with standard and policy requirements. During the corrective action period, one investigation substantiated inmate misconduct and supporting documentation in compliance with standard provisions was provided. Based on training and documentation provided, WNMCF is now assessed as compliant with the requirements of this provision.

115.78 (b)

Agency policy CD-090101, *Inmate Discipline* includes division of all offenses inmates can be disciplined for into category "a" and category "b". "Category 'A' offenses are considered the most serious and, in some instances may be violations of state or federal criminal law...A Category 'B' offense is considered less serious than a Category 'A' offense." (page 2). The policy includes a sanctioning chart detailing maximum sanctions for all listed offenses in each category.

It is noted that a Category "B" offense can be elevated if one of the identified factors is found to be present during the related investigation. It is noted that sexual misconduct related to PREA, rape, and sexual harassment are classified as Category "A" offenses with maximum sanctions of:

- 365 days loss of privileges,
- 30 days disciplinary housing restriction, and
- Loss of all good time.

Interviews with the Warden and Disciplinary Hearing Officers confirmed the implementing of applicable sanctions following a formal disciplinary hearing, with sanctions proportionate to the nature and circumstances of the abuse, the inmate's disciplinary history, and within the provisions of the formal disciplinary sanctioning grid.

Per information from the PCM and a review of investigation reports, there has not been an allegation of sexual assault, sexual abuse, or sexual harassment perpetrated by an inmate during the audit documentation period. A review of annual report documentation indicates there was one (1) substantiated investigation of inmate harassment in 2018. The Auditor was provided with documentation of the disciplinary hearing associated with this investigation and confirmed compliance with the sanctioning matrix, with the hearing officer also documenting review of the inmate's related disciplinary history.

Additionally, during 2020, following the documentation period but during the initial documentation review, an allegation of inmate sexual abuse was reported. Although the disciplinary process violated policy and standard requirements as noted in provision (a), the sanctions imposed were consistent with the sanctioning matrix.

During the time between initial documentation and on-site review, the Auditor was provided with an investigation report that had been closed as substantiated but was then provided with documentation that both the accused and alleged victim were infracted for related behavior. Information provided was a belief that the alleged victim made the allegation to avoid disciplinary action; however, no information was provided regarding either revision to the status of the infractions or to the investigation report.

Based on the noted sanctioning of an inmate contradictory to the formal investigation report noted above, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include addressing the noted hearing, provision of training for applicable staff regarding policy requirements, and monitoring of investigations and disciplinary processes during the corrective action period to ensure future compliance.

Updates:

During the corrective action period, the Auditor was provided with documentation of training provided to applicable facility staff (disciplinary hearing officer, deputy warden, and unit manager) regarding disciplinary processes in compliance with standard and policy requirements. During the corrective action period, no investigations substantiated inmate misconduct and, as such, no secondary documentation was available for review. However, based on training provided, WNMCF is now assessed as compliant with the requirements of this provision.

115.78 (c)

Agency policy CD-090101, *Inmate Discipline*, (05/28/2019), section D.4. (page 6) requires, "For inmates in Special Management, APA [Alternative Placement Area] and MHTC [Mental Health Treatment Center located at the Central New Mexico Correctional Facility], the Disciplinary Officer will submit the Inmate Misconduct Mental Health Review for (CD-090101.9) and a copy of the misconduct reports to the Facility Mental Health Manager. The Facility Mental Health Manager will determine: (a) Whether there are or are no mental health issues; and, (b) Recommend how the mental health issues should be considered during the disciplinary hearing. The Facility Mental Health Manager will then advise the Disciplinary Officer in writing in the Inmate Misconduct Mental Health Review form (CD-090101.9) within one (1) working day." The former PREA Coordinator noted that APA is a designated living area for inmates who have a special management housing designation and who meet specified mental health criteria.

During an interview, the Warden reported that the inmate being of sound mind when committing acts is an essential part of the disciplinary process. However, information received from the PCM and Disciplinary Hearing Officers along with a review of investigation reports, there has not been an allegation of sexual assault, sexual abuse, or sexual harassment perpetrated by an inmate during the audit documentation period. A review of annual report documentation indicates there was one (1) substantiated investigation of inmate harassment in 2018. A review of the disciplinary documentation associated with this investigation revealed that the accused inmate was housed in general population at the time of the hearing and therefore did not qualify as needing mental health provider involvement in the disciplinary process, per agency policy. The Auditor submitted a query to the PREA Resource Center regarding the limitation of mental health status consideration only to specially designated inmates meeting the requirements of this provision. The Auditor was informed, "Standard provision (c) states that the disciplinary process shall consider whether an inmate's mental disabilities or mental illness contributed to his or her behavior when determining what type of sanction, if any, should be imposed. This standard applies to any/all inmates with a finding that the inmate engaged in inmate-on-inmate sexual abuse. This would be regardless of whether the inmate is already housed in any type of special population or management unit or whether the inmate already has a diagnosis of mental illness or some

other mental disability. All disciplinary sanctions related to inmate-on-inmate sexual abuse must take this factor into consideration.” Based on this information, the disciplinary process currently in place does not meet provision requirements.

Based on the limitation of the inclusion of mental health factors only to specifically designated inmates, WNMCF was initially assessed as non-compliant with the requirements of this provision. To address the deficiency, the following reminder information was sent out to all agency PCM's and Disciplinary Hearing Officers by the Internal Audits and Standards Compliance Bureau Chief (12/09/2020):

*Please see the attached policy, in particular page 6 of 090101 (highlighted portions). The policy has four offenses which require Disciplinary Officers to forward the **Inmate Misconduct Mental Health Review** form (CD-090101.9) and a copy of the misconduct reports to the Facility Mental Health Manager:*

- A (21) Sexual Misconduct / Sexual Activity (PREA)
- A (22) Rape
- A (40) Sexual Harassment
- A (44) False PREA Allegation / Statement
- B (34) Self-mutilation.

This process will ensure NMCD remains compliant with PREA Standard 115.78...Due to ongoing COVID restrictions preventing in-person training, please read policy CD-090100 Inmate Discipline thoroughly. Upon completion, sign the attached acknowledgement form. Please ensure that a copy of this acknowledgement is returned to me, and also placed into your training file.

The Auditor was provided with a copy of the noted policy, confirming inclusion of the noted mental health review as noted along with acknowledgements from the PCM and Disciplinary Hearing Officers confirming review of policy requirements as requested. As a result, WNMCF is now assessed as compliant with the requirements of this provision.

115.78 (d)

During interviews, the Auditor was informed that there is a Predatory Behavior Management Program at WNMCF, which is a residential program intended to address inmates displaying sexual and physical predatory and/or manipulative / aggressive behavior. An inmate can be referred to the program as part of a classification action, but not as a disciplinary sanction. Final placement decisions are approved at the central office level. Inmates in the program are offered mental health services, participation in which are voluntary; however, housing in the special unit is not optional for the inmate. The Auditor was informed that one inmate was referred to the program as a result of a disciplinary finding of guilt related to sexual abuse, but the inmate was not approved for the program based on a resulting increase in custody level. This was confirmed in interviews with mental health providers.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.78 (e)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section C. (page 3) states, “Failure to report or knowingly submitting a false report may result in disciplinary action and will be handled in accordance with Policy CD-150600 Allegations from Inmates against Corrections Department Staff of Other Inmates.”

Agency policy CD-150600, *Allegations from Inmates against Corrections Department Staff of Other Inmates* (07/31/2015), section B. (page 2) states, “If the information furnished by the inmate is proven by investigation to be knowingly false, the inmate may be charged with a major offense before the Disciplinary Hearing Officer, under the general principles of inmate discipline which impart that any act, although not specifically listed, is a felony under the Criminal Code of the State of New Mexico and will constitute a major violation of policy.”

There is a category A rule violation “attempt or engaging in a personal relationship with a member of staff, etc.”. The definition of the violation reads, “An inmate commits this when he or she attempts to engage in or engages in any personal or romantic relationship with a staff member, contract employee, volunteer, etc. whether it be verbally, physically, or in writing.” Per information from the former PREA Coordinator, there is currently nothing in policy that this infraction is only when the staff member, contractor, or volunteer did not consent to the relationship; “...however the disciplinary hearing officers have been trained on it. In [addition] there are safeguards in place, such as retaliation monitoring, the inmate is monitored at 15, 45 and 90 days. All disciplinary reports are reviewed, if determined that the victim was written up, the monitor or myself will call the disciplinary officer to have the report dismissed. If there has already been a hearing, the report is dismissed on appeal.” Per the former PREA Coordinator, there have been no WNMCF inmates infracted for attempting or engaging in a relationship with a staff member.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.78 (f)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section C. (page 3) requires, “Failure to report or knowingly submitting a false report may result in disciplinary action and will be handled in accordance with Policy CD-150600 Allegations from Inmates against Corrections Department Staff or Other Inmates.”

Agency policy CD-090101, *Inmate Discipline*, (05/28/2019), attachment A “Category ‘A’ Offenses” identifies a violation of “False PREA Allegation/Statement”. The attachment further defines the violation as “(1) making a false PREA allegation or (2) Making a false statement during a PREA investigation.”

Agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section B.8. (page 3) requires, “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.”

Per information received from the former PREA Coordinator, all disciplinary reports are reviewed and if infractions have been written that do not comply with standard and policy requirements, the infraction would be dismissed or dismissed on appeal.

Per information from the former PREA Coordinator, record indicate that three (3) WNMCF inmates have been infracted for filing intentionally false PREA allegations. The Auditor was provided with the associated investigation reports and found that the reports supported these infractions.

During interviews, Disciplinary Hearing Officers reported that inmates can be infracted for providing false allegations or lying during a formal investigation. It was also reported that this infraction would be initiated by the PCM following a review of the investigation report, which would be used to support the infraction. Both noted that there would be a high standard to be able to support such a disciplinary charge.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.78 (g)

Per information provided by the former PREA Coordinator, if an inmate engages in consensual sexual behavior with another inmate, the inmates could be infracted for an A-21 rule violation, which is a comprehensive violation involving both PREA and non-PREA related behaviors. If such an allegation of consensual sexual activity were to be received, it would be deemed to be not PREA and not investigated or addressed under current PREA protocols.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 07/07/2020 from the PCM addressed to the DOJ Auditor
- PCM memo dated 07/27/2020 regarding lack of inmate discipline
- Policy CD-150101, *Offender Protection Against Abuse; Sexual Misconduct; Reporting Procedures, PREA* (05/29/2020)
- Policy CD-090100 and CD-090101, *Inmate Discipline*, (05/28/2019)
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150600, *Allegations from Inmates against Corrections Department Staff of Other Inmates* (07/31/2015)
- Investigation reports associated with infractions for false reporting
- Applicable disciplinary hearing packets
- 12/09/2020 direction from Internal Audits and Standards Compliance Bureau Chief regarding mental health involvement in disciplinary processes
- Documentation of training provided regarding disciplinary processes

Interviews conducted:

- Disciplinary hearing officers
- Medical and mental health staff
- Warden

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.

115.81 (a) and (c)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section M. (page 6) requires, "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."

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section C. (page 4) requires, "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."

Agency policy CD-180200, *Behavioral Health Reception and Diagnosis Center (RDC)*, 02/16/2015, section N. (page 4 – 5) requires, "All intersystem transfers will undergo a mental health appraisal by a qualified mental health person with 14 days of admission to a facility. If there is documented evidence of a mental health appraisal within the previous 90 days, a new mental health appraisal is not required, except as determined by the designated mental health authority. Mental health appraisals include, but are not limited to...review history of sexual abuse-victimization and predatory behavior."

Per information from the former PREA Coordinator, inmates have the option of declining a follow up meeting with a mental health provider. Any declination is documented in the inmate file.

The Auditor was also provided with a blank referral form (updated 11/05/2020), which provides the following options for the assessor:

- Inmate has scored high for sexually aggressive behavior.
- Inmate has scored high for risk of sexual victimization.
- Inmate has been convicted of perpetrating sexual abuse.
- Inmate has experienced prior sexual victimization.

Per information from the former PREA Coordinator, this revised form was put in effect 11/05/2020 and will be included as an official form on the next revision to the applicable policy.

The Auditor was provided with reports and documentation of inmates who scored "yes" regarding the risk assessment question related to prior victimization. Of the sixteen (16) inmates selected, fourteen (14) declined the follow up meeting with a mental health provider. Two (2) inmates accepted the meeting; one was released before the follow up meeting could be scheduled, and the remaining inmate was seen by a provider thirteen (13) days following the completion of the assessment.

During the period between initial documentation and on-site review, the Auditor was provided with lists of incoming inmates for eleven (11) of the twelve (12) months reviewed. It is uncertain why documentation for the remaining month was not received. During this time period, a total of 443 inmates were received. The Auditor selected a total of 49 inmates for records review, ensuring representation from the entire month under review. Of the records reviewed, initial risk assessments indicated either prior victimization and/or perpetration for sixteen (16) inmates. The Auditor was provided with documentation of the declination or timely completion of the follow up meeting with a mental health provider for fourteen (14) of these individuals. The remaining two (2) (12%) either did not have the meeting or the meeting was completed beyond the 14-day timeframe established in the standard.

Of the seven (7) inmates who disclosed abuse during an assessment who were interviewed while on-site, four (4) confirmed the offender of a follow up meeting, one (1) could not remember if such a meeting was offered, one (1) reported that a follow up meeting did not occur, and one (1) indicated she was not a prior victim.

Six (6) of the inmates interviewed reported that they had not / did not recall participating in the initial and/or follow up risk assessment process. The Auditor requested documentation of initial and follow-up risk assessments for these individuals along with documentation of any applicable follow up meeting with a mental health provider as indicated by the assessment. Four (4) of the six (6) inmates whose records were reviewed had assessments that indicated a follow up meeting with a mental health provider. The Auditor was informed in an email from the PCM that, per information from the Behavior Health Administrator, "...the inmates were initially seen upon intake but there were no referrals for follow ups."

A summary of the review of documents provided indicates the following:

- Initial documentation – compliance demonstrated in 16 of 16 records reviewed
- Monthly documentation – compliance demonstrated in 14 of 16 records reviewed
- Documentation from random inmates interviewed – compliance demonstrated in 0 of 4 records reviewed

This leaves a compliance rate of 30 of 36 records reviewed or 83%.

Based on the overall compliance rate noted above, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include a review of current processes as the compliance rate appears to be slipping over time. A system of review to ensure completion of meetings / declination per standard requirements should be implemented. The Auditor will monitor compliance over the corrective action period.

Updates:

During the corrective action period, a process of monthly compliance audits regarding risk assessment completion along with referrals and follow up mental health meetings was established by the ACA and Quality Assurance Administrator. Through this process, the facility was able to demonstrate increasing compliance with standard requirements, bringing compliance consistently to 100%. Based on these actions, WNMCF is now assessed as compliant with the requirement of this provision. The facility is strongly encouraged to continue these audits into the future to ensure sustainability of the compliance levels achieved.

115.81 (b)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section N. (page 6) requires, "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."

Agency policy CD-150102, *Offender Protection Against Sexual Abuse and Sexual Misconduct* (05/29/2020), section D.8. (page 4) requires, “An inmate identified as high risk for sexually assaultive behavior or who has a history of sexually assaultive behavior will be assessed by a mental health or other qualified professional...Inmates with a history of sexually assaultive behavior will be identified, monitored, and counseled.”

Agency policy CD-180200, Behavioral Health Reception and Diagnosis Center (RDC), 02/16/2015, section N. (page 4 – 5) requires, “All intersystem transfers will undergo a mental health appraisal by a qualified mental health person with 14 days of admission to a facility. If there is documented evidence of a mental health appraisal within the previous 90 days, a new mental health appraisal is not required, except as determined by the designated mental health authority. Mental health appraisals include but are not limited to...review history of sexual abuse-victimization and predatory behavior.”

The Auditor was provided with a blank referral form (updated 11/05/2020), which provides the following options for the assessor:

- Inmate has scored high for sexually aggressive behavior.
- Inmate has scored high for risk of sexual victimization.
- Inmate has been convicted of perpetrating sexual abuse.
- Inmate has experienced prior sexual victimization.

Per information from the former PREA Coordinator, this revised form was put in effect 11/05/2020 and will be included as an official form on the next revision to the applicable policy.

Risk assessors interviewed confirmed a thorough knowledge of standard requirements and facility procedures, noting submission of required forms to both mental health and the PCM to ensure follow up and document retention. Interviewees also noted that follow up by mental health providers is very prompt, sometimes on the same day, but generally within five (5) days of request.

The Auditor was provided with reports and documentation of inmates who scored “yes” regarding the risk assessment question related to prior perpetration of abuse. Of the five (5) inmates identified, four (4) declined the follow up meeting with a mental health provider. One (1) inmate accepted the meeting and was seen by a provider thirteen (13) days following the completion of the assessment.

During the period between initial documentation and on-site review, the Auditor was provided with lists of incoming inmates for eleven (11) of the twelve (12) months reviewed. It is uncertain why documentation for the remaining month was not received. During this time period, a total of 443 inmates were received. The Auditor selected a total of 49 inmates for records review, ensuring representation from the entire month under review. Of the records reviewed, initial risk assessments indicated either prior victimization and/or perpetration for sixteen (16) inmates. The Auditor was provided with documentation of the declination or timely completion of the follow up meeting with a mental health provider for fourteen (14) of these individuals. The remaining two (2) (12%) either did not have the meeting or the meeting was completed beyond the 14-day timeframe established in the standard.

Six (6) of the inmates interviewed reported that they had not / did not recall participating in the initial and/or follow up risk assessment process. The Auditor requested documentation of initial and follow-up risk assessments for these individuals along with documentation of any applicable follow up meeting with a mental health provider as indicated by the assessment. Four (4) of the six (6) inmates whose records were reviewed had assessments that indicated a follow up meeting with a mental health provider. The Auditor was informed in an email from the PCM that, per information from the Behavior Health Administrator, “...the inmates were initially seen upon intake but there were no referrals for follow ups.”

A summary of the review of documents provided indicates the following:

- Initial documentation – compliance demonstrated in 16 of 16 records reviewed
- Monthly documentation – compliance demonstrated in 14 of 16 records reviewed

- Documentation from random inmates interviewed – compliance demonstrated in 0 of 4 records reviewed

This leaves a compliance rate of 30 of 36 records reviewed or 83%.

Based on the overall compliance rate noted above, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include a review of current processes as the compliance rate appears to be slipping over time. A system of review to ensure completion of meetings / declination per standard requirements should be implemented. The Auditor will monitor compliance over the corrective action period.

Updates:

During the corrective action period, a process of monthly compliance audits regarding risk assessment completion along with referrals and follow up mental health meetings was established by the ACA and Quality Assurance Administrator. Through this process, the facility was able to demonstrate increasing compliance with standard requirements, bringing compliance consistently to 100%. Based on these actions, WNMCF is now assessed as compliant with the requirement of this provision. The facility is strongly encouraged to continue these audits into the future to ensure sustainability of the compliance levels achieved.

115.81 (d)

As previously noted with standard 115.41, all detail information regarding inmate risk assessments is highly restricted with access approved by the PREA Coordinator. Information regarding the final risk indicator is available in various local tracking documents to those individuals who are responsible for housing and program assignments.

A hard copy of the risk assessment is maintained in the inmate's master record, which is maintained in a secure file room with restricted access. Agency policy CD-040101, *Inmate Records* (06/09/2016), section B.1. and 2. (page 1) requires, "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 the 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."

The Auditor was provided with a review of the risk assessment system in place via a zoom meeting with the former PREA Coordinator. The Auditor confirmed that all risk assessment information is maintained in a restricted component within the Correctional Management Information System (CMIS) that is only accessible by approved users. In a subcomponent housing all assessments, access is granted by type of assessment (e.g., PREA risk assessment, educational assessments, etc.) with individuals who access the system able to see when each type of assessment was completed, but only able to view the details of the assessments to which access has been granted.

The confidentiality of information contained in the electronic assessment system as well as restrictions on access were confirmed in interviews with the interim PREA Coordinator, risk assessors and all PCM's. However, the current PREA Coordinator reported that access to the confidential information in the risk assessment system is available to those who make housing and programming assignments, to include classification staff, intake officers, and sergeants, but indicated there has been discussion of limiting it to just PCM's. The current PREA Coordinator provided the Auditor with policy language and system screen shots that confirm continuation of noted processes since he has assumed the PREA Coordinator position.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.81 (e)

Agency policy CD-176100, *Patients Rights and Responsibilities* (02/16/2015), section A.2. (page 2), requires, "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." The Auditor was informed in the memo from the PCM that medical and mental health staff use form CD-180201.1, *New Mexico Corrections Department Rights to Confidentiality and Availability of Services* form to notify inmates regarding which information is confidential, which will be disclosed, and which will not be disclosed without consent. The form indicates, "Generally, statements made by inmates to Behavioral Health Staff are confidential, and will not be disclosed without the inmate's consent, except as follows...Allegations that you have been abused by a staff member or another inmate."

During the audit documentation period, there have been no reports of prior abuse, outside of incarceration, that were reported following consent by the inmate. As a result, there is no secondary documentation available for review.

In interviews with medical and mental health providers, the Auditor received confirmation from four (4) of eight (8) interviewees confirmed that informed consent is required for release of information regarding allegation of abuse in the community. The remaining individuals indicated that they had never encountered the situation but would likely consult with supervisors if such an incident was to occur. The specifications of the standard were also discussed. It is also recommended that standard requirements regarding this type of allegation information be reviewed with all health services staff to ensure a thorough understanding.

However, during review of documentation between the initial documents provided and the on-site review, the Auditor was informed that medical does not use any form for consent to release information and mental health only has a form that is completed on intake. There is no process or form applicable to specific incidences of disclosures of prior abuse outside of incarceration.

WNMCF does not house youthful offenders and, as such, there is no separate informed consent process of inmates under the age of 18.

Based on the lack of an established process, applicable documentation, and staff knowledge, WNMCF was initially assessed as non-compliant with the requirements of this provision. On 03/23/2021, the Auditor was provided with the New Mexico Corrections Department Consent to Release Medical Information (CD-171401.6, revised 02/16/2015), which health services staff were instructed to use when obtaining applicable releases prior to release of information regarding allegations that took place outside of incarceration. Prior to the issuing of the interim report, all applicable medical and mental health staff were provided training regarding standard requirements and use of the identified form. There have been no examples of the release of related information since the beginning of the audit documentation period. As such, there is no additional secondary documentation available for review.

Based on the above, WNMCF is now assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 07/07/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-180200, Behavioral Health Reception and Diagnosis Center (RDC), 02/16/2015
- Policy CD-040101, *Inmate Records* (06/09/2016)
- Policy CD-176100, *Patients Rights and Responsibilities* (02/16/2015)
- Blank sexual risk indicator screening referral form

- Documentation of acceptance or declination of mental health follow up along with documentation of meetings with mental health providers for select inmates
- Documentation of training provided to medical and mental health staff regarding consent to release information
- Policy CD-171401.6 *New Mexico Corrections Department Consent to Release Medical Information* (revised 02/16/2015)
- Documentation of training provided to health services staff regarding provision (e)
- Policy CD-044000 *Information Technology Management* (02/04/2021)
- Monthly quality audits of risk assessments and follow up meetings with mental health

Interviews conducted:

- Inmates who disclosed sexual victimization at risk screening
- Medical and mental health staff
- Staff responsible for risk screening

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.

115.82 (a)

Agency policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures*, PREA (05/29/2020), section 3. (page 1) requires, "Victims receive all necessary immediate and ongoing medical, mental health, and support services."

Agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section A.3. (page 1) requires, "A facility health care professional will take a history and conduct an examination to determine 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 examinations."

Agency policy CD-170101, *Medical Clinical Services, Psychiatry Services, Detoxification, Intoxication and Withdrawal* (06/09/2016), section S. (page 20) requires, "In the event of a sexual assault, health services 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. 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."

The Auditor was provided with thirteen (13) investigation reports closed during the audit documentation period or the period between initial documentation and on-site review. Documentation was included noting referral to medical in ten (10) of those investigations and to mental health in twelve (12). A victim was not identified in the final investigation. It is noted that medical and mental health care was considered crisis-related in only one of these investigations. The remainder appear to be more applicable to standard 115.83.

The provision of prompt medical and mental evaluation and treatment was also confirmed in interviews with providers, noting that each time an allegation is made, the alleged victim is escorted to health services, generally within a very short period of time, based on the specific circumstances of the incident (e.g., need to secure the scene, provide custody support, etc.). Providers also confirmed that the nature and scope of care given is determined by the provider's professional judgement, but also ensuring compliance with established medical protocols.

Six (6) of the seven (7) inmates who reported abuse confirmed provision of mental health support in interviews conducted while on site.

Based on the provision of medical and mental health evaluation and support regardless of the level of allegation reported, WNMCF is assessed as exceeding the requirements of this provision.

115.82 (b)

Per information obtained in interviews with medical and mental health providers, WNMCF operates an on-site health care facility that is available 24-hours per day. Mental health providers are generally on duty during business hours, but a system of on-call providers is in place so prompt access to crisis intervention and support services is continuously available.

The Auditor was provided with thirteen (13) investigation reports closed during the audit documentation period or the period between initial documentation and on-site review. Documentation was included noting referral to medical in ten (10) of those investigations and to mental health in twelve (12). A victim was not identified in the final investigation. It is noted that medical and mental health care was considered crisis-related in only one of these investigations. The remainder appear to be more applicable to standard 115.83.

During interviews, security and no-security staff clearly articulated steps required in response to an allegation, to include ensuring the safety of the alleged victim with separation from the accused, asking the victim and ensuring the accused not take actions that might destroy evidence, securing the area, and contact with security staff, medical and mental health provider to provide support and assistance.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.82 (c)

Regarding procedures to be followed during forensic medical examinations, agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section C.8 and 9. (page 4) requires, "The examiner will perform [a] sexually transmitted infection evaluation and provide for treatment...The examiner will perform a pregnancy risk evaluation and schedule follow-up care."

Agency policy CD-170101, *Medical Clinical Services, Psychiatry Services, Detoxification, Intoxication and Withdrawal* (06/09/2016), section S.3. (page 20), requires, "The Medical Director will review the treatment recommendations from the Medical Center and ensure the inmate victim receives the indicated prophylactic treatment and testing."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 36) requires, "The Medical Department shall counsel the inmate(s) regarding health risks of sexual activity. Regardless of when an allegation of vaginal/oral/anal penetration occurred, the facility physician shall ensure that testing for sexually transmitted diseases is completed." The manual then lists out a number of related tests that are to be included. The same manual (page 36), requires, "The alleged victim and the alleged perpetrator will receive prophylaxis treatment in the form of antibiotics to cover at a minimum: (A.) Chlamydia; (B.) Gonorrhea; (C.) Trichomoniasis; and (D.) BV – bacterial Vaginosis (females only)."

During the audit documentation period or the period between initial documentation and on-site review, no allegations were reported that indicated the need for emergency contraception or sexually transmitted infection prophylaxis. As a result, no secondary documentation was available for review. However, the requirement to provide such treatment was confirmed in interviews with medical providers.

Two (2) of the seven (7) inmates who alleged abuse confirmed the provision of noted medical services even though none of the allegations reported indicated the need for identified medical care.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.82 (d)

Agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section C.1. (page 3) requires, "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, (CD-170100.OO). This will be at no charge to the inmate."

The provision of all medical and mental health treatment with no copay or other charge to the inmate was confirmed in interviews with medical and mental health staff. The provision is not applicable only to PREA-related care, but all health services care provided.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 07/07/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150100, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-170101, *Medical Clinical Services, Psychiatry Services, Detoxification, Intoxication and Withdrawal* (06/09/2016)
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- Medical and mental health care provision as included in investigation reports

Interviews conducted:

- Inmates who reported a sexual abuse
- Medical and mental health staff
- Security staff and non-security staff first responders

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.

115.83 (a)

Agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section D. 2, 3, 4, and 6. (page 4) requires, "The facility medical director will initiate the 48-hour medical treatment review of the victim... A facility mental health professional will perform an evaluation to assess the need for crisis intervention and long-term follow-up...The facility medical director and mental health supervisor will develop a treatment plan for follow-up services...The assigned mental health provider will provide access to counseling and advocacy services." The same policy, section G. (page 5) requires, "A written individual treatment plan is required for inmates requiring close medical supervision...This plan includes directions to health care and other personnel regarding their roles in the care and supervision of the inmate and is developed by the appropriate health care practitioner for each inmate requiring a treatment plan.:

Agency policy CD-170101, *Medical Clinical Services, Psychiatry Services, Detoxification, Intoxication and Withdrawal* (06/09/2016), (entire policy) provides direction for the health services to be provided to all inmates, to include evaluation, treatment planning, health education, and continuity of care.

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 36 – 37) requires, "Psychology staff / Behavior Health shall be responsible for interviewing all reported victims of sexual contact or others as referred by medical or institutional administration...If indicated, ongoing treatment shall be provided to remediate potential mental health consequences." The Auditor was provided with thirteen (13) investigation reports closed during the audit documentation period or the period between initial documentation and on-site review. Documentation was included noting referral to medical in ten (10) of those investigations and to mental health in twelve (12). A victim was not identified in the final investigation.

Based on the provision of medical and mental health evaluation and support regardless of the level of allegation reported, WNMCF is assessed as exceeding the requirements of this provision.

115.83 (b)

Agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section D. 3, 4, and 6. (page 4) requires, "A facility mental health professional will perform an evaluation to assess the need for crisis intervention and long-term follow-up...The facility medical director and mental health supervisor will develop a treatment plan for follow-up services...The assigned mental health provider will provide access to counseling and advocacy services."

Agency policy CD-170101, *Medical Clinical Services, Psychiatry Services, Detoxification, Intoxication and Withdrawal* (06/09/2016), (entire policy) provides direction for the health services to be provided to all inmates, to include evaluation, treatment planning, health education, and continuity of care.

During interviews with medical and mental health providers, it was reported that evaluation and treatment of alleged abuse victims was comprehensive, including, but not limited to assessment of critical care medical needs and mental health stability, treatment of injuries, development of treatment plans and follow up schedules, consultation with specialists, and referral to available, applicable resources.

Five (5) of the seven (7) inmates who alleged abuse confirmed the provision of mental health support following report.

The Auditor was provided with thirteen (13) investigation reports closed during the audit documentation period or the period between initial documentation and on-site review. Documentation was included noting referral to medical in ten (10) of those investigations and to mental health in twelve (12). A victim was not identified in the final investigation.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.83 (c)

The Auditor was provided with documentation confirming that each inmate who was the alleged victim of abuse or harassment was provided with medical and mental health follow up care as indicated for each alleged victim.

During interviews, seven (7) of eight (8) health service providers confirmed the provision of care comparable to or better than that provided in the community. The remaining one (1) individual reported a belief that care in the community would be better due to more resources and equipment but confirmed that it was not believed that the care provided to inmate victims was in any way substandard.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.83 (d)

Regarding procedures associated with forensic medical examinations, agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section C.9. (page 4) requires, "The examiner will perform a pregnancy risk evaluation and schedule follow-up care."

During the audit documentation period and the period between initial documentation and on-site review, no allegations were received that indicated the need for pregnancy care. As such, no secondary documentation was available for review. Additionally, no applicable inmates were available for interview.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.83 (e)

Regarding procedures associated with forensic medical examinations, agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020),

section C.9. (page 4) requires, "The examiner will perform a pregnancy risk evaluation and schedule follow-up care."

Interviews with medical providers confirmed that, when applicable, the inmate would be provided with access to all lawful pregnancy-related services and that these services would be explained and initiated immediately.

During the audit documentation period and the period between initial documentation and on-site review, no allegations were received that indicated the need for pregnancy care. As such, no secondary documentation was available for review. Additionally, no applicable inmates were available for interview.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.83 (f)

Regarding procedures associated with forensic medical examinations, agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section C.8. (page 4) requires, "The examiner will perform [a] sexually transmitted infection evaluation and provide for treatment."

Agency policy CD-170101, *Medical Clinical Services, Psychiatry Services, Detoxification, Intoxication and Withdrawal* (06/09/2016), section S.3. (page 20), requires, "The Medical Director will review the treatment recommendations from the Medical Center and ensure the inmate victim receives the indicated prophylactic treatment and testing."

The Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) (page 36) requires, "The Medical Department shall counsel the inmate(s) regarding health risks of sexual activity. Regardless of when an allegation of vaginal/oral/anal penetration occurred, the facility physician shall ensure that testing for sexually transmitted diseases is completed." The manual then lists out a number of related tests that are to be included. The same manual (page 36), requires, "The alleged victim and the alleged perpetrator will receive prophylaxis treatment in the form of antibiotics to cover at a minimum: (A.) Chlamydia; (B.) Gonorrhea; (C.) Trichomoniasis; and (D.) BV – bacterial Vaginosis (females only)."

During the audit documentation period and the period between initial documentation and on-site review, no allegations were received that indicated the need for pregnancy care. As such, no secondary documentation was available for review. Additionally, no applicable inmates were applicable for interview.

The provision of information of and applicable treatment of sexually transmitted infection was confirmed in interviews with medical providers.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.83 (g)

Regarding procedures associated with forensic medical examinations, agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section C.1. (page 3) requires, "This will be at no charge to the inmate."

The provision of all medical and mental health treatment with no copay or other charge to the inmate was confirmed in interviews with medical and mental health staff. The provision is not applicable only to PREA-related care, but all health services care provided.

All inmates who reported abuse also confirmed the provision of care without cost.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.83 (h)

Agency policy CD-180100 *Behavioral Health Clinical Services* (07/12/2017), section C. (page 5) requires, "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 assaultive behavior are identified, monitored, and counseled."

To address the lack of specific policy language, per information from the former PREA Coordinator, "...a request has been made to adjust the policy. The mental health referral has been updated and will be sent out to all facilities." The former PREA Coordinator distributed a revised referral form with the following direction, "Attached is a revised referral form for behavior health. Inmates that are known inmate on inmate abusers shall be referred to mental health for an evaluation regardless if the inmate declines. If the inmates does not want treatment, he must decline with the mental health staff and documented in his/her mental health file. Please ensure that your staff are only utilizing this form and provide training to them so they under it. Your mental health staff should also be trained that they must attempt to conduct a mental health evaluation within 60 days."

The requirements associated with indicted mental health evaluations was confirmed in interviews with mental health providers.

The Auditor was provided with documentation of the attempt to conduct a mental health evaluation with the one inmate who had been infracted for sexual abuse of another inmate. The Auditor was provided with documentation that a referral was made to mental health following the inmate's involvement in a PREA-related incident, which the Auditor was informed is standard practice regardless of the findings of the formal investigation. The inmate refused the meeting with mental health providers; however, the Auditor was informed that the inmate was offered additional follow up or individual treatment, in which case a plan would be developed and followed. The Behavior Health manager also informed the Auditor that, "when behavioral health has been made aware of an inmate abuser they will [conduct] a mental health evaluation including a clinical assessment with diagnosis and treatment recommendations...unless the inmate refuses the evaluation within 60 days. A treatment plan will be developed to meet...the needs of the inmate following the assessment that will address treatment needs identified."

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Policy CD-180100 *Behavioral Health Clinical Services* (07/12/2017)
- Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- Screen print from the PREA Management Information System (PMIS)
- Documentation of the provision of medical and mental health care

Interviews conducted:

- Inmates who reported a sexual abuse
- Medical and mental health staff

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.

115.86 (a)

Agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section F.2. (page 5 - 6) requires, "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)."

Per information received in a memo from the PCM, "NMCD and the facility reviews all substantiated [investigations]".

During the audit documentation period, there was one (1) investigation completed that required an incident review by policy and/or standard requirements. The Auditor was provided with documentation of that review confirming completion as required. During the period between initial documentation and on-site review, three (3) additional investigations were closed that indicated an incident review, each of which were completed, and documentation provided.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.86 (b)

Although not specified in agency policy, the New Mexico Department of Corrections Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) requires, "The review should occur within 30 days of the conclusion of the investigation..."

During the audit documentation period, there was one (1) investigation completed that required an incident review by policy and/or standard requirements. The Auditor was provided with documentation of that review confirming completion as required. During the period between initial documentation and on-site review, three (3) additional investigations were closed that indicated an incident review, two (2) of which were completed within the 30-day timeframe, but the third of which was completed at the 56-day mark. This leaves an overall compliance rate of 75%.

Based on the timeframes associated with 1/4 of the required incident reviews, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should the implementation of a tracking system to ensure completion within required timeframes and submission to the Auditor of any applicable documentation during the corrective action period.

Updates:

During the corrective action period, three (3) investigations were completed that were under the authority of the Warden / facility that indicated the requirement for an incident review based on allegation type and finding. These were all completed within required timeframes. There has been some confusion regarding the official investigation completion date as the closure process has again been revised. Per the PREA Coordinator, the investigation is not considered complete until (1) the PREA Coordinator has signed off on the investigation of inmate-on-inmate allegations or (2) the General Counsel has signed off on the investigation of staff-on-inmate allegations. The completion of these three (3) incident reviews were compliant with these revised completion parameters. Completion specifications were share with the Auditor as well as all agency facilities. The PCM has also established tracking mechanisms to ensure all incident reviews are completed as required. Based on these actions and related documentation, WNMCF is now assessed as compliant with the requirements of this provision.

115.86 (c)

Agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section F.2. (page 5) requires, "The review team shall include upper-level management officials, with input from line supervisors, investigators, and medical/mental health practitioners." Inclusion of the PCM, Unit Managers, the Captain, Lieutenants, and medical and mental health staff was confirmed in an interview with the Warden.

During the audit documentation period, there was one (1) investigation completed that required an incident review by policy and/or standard requirements. During the period between initial documentation and on-site review, three (3) additional investigations were closed that indicated an incident review. The Auditor was provided with documentation of these reviews confirming participation of the PCM, deputy warden, mental health provider, unit manager, medical provider, lieutenant, and warden's assistant.

The establishment of a facility incident review team which includes members and/or input from individuals identified in the standard was confirmed in an interview with the Warden.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.86 (d)

Agency policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section F.2. (page 5 - 6) requires, "The review team shall (a) Consider whether the allegation or investigation indicates a need to change policy or practice to better prevent, detect, or respond to sexual abuse; (b) 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; (c) Examine the area in the facility where the incident allegedly occurred to assess whether physical barriers in the area may enable abuse; (d) Assess the adequacy of staffing levels in the area during the different shifts; (e) 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 for (CD-150102.3)..." The Auditor reviewed the noted review form, confirming inclusion of all standard elements.

Confirmation of the review of all standard-required elements along with supplementation from daily unannounced rounds was confirmed in interviews with the Warden, PCM and members of the incident review team.

During the audit documentation period, there was one (1) investigation completed that required an incident review by policy and/or standard requirements. During the period between initial documentation and on-site review, three (3) additional investigations were closed that indicated an incident review. The Auditor was provided with documentation of these review confirming completion as required and review of standard-identified elements.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.86 (e)

Specific language regarding recommendations for improvement as identified in incident reviews is not currently included in agency policy. However, the New Mexico Department of Corrections Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated) requires, "The review team shall prepare a report of its findings, including but not limited to determinations made and any recommendations for improvement...Any box marked Yes [referencing the analysis of causal factors] should also include comments related to the change that the SAR [sexual assault response] participant believes needs improvement at the institution or facility. The Warden shall implement the recommendations for improvement or document the reasons for not doing so."

The Sexual Assault or Abuse Incident Review Team form includes an area for recommendations, noting, "List all recommended changes in policies, procedures, and/or practices identified through the questions above, and describe exactly how each recommendation was implemented." The language in the form implies that all identified corrective actions are completed at the time of the incident review, which may not be possible with actions such as policy revisions that may take more than 30 days to implement. The form does not include a traditional corrective action plan format for such activities that may require longer timeframes to achieve implementation. Additionally, the form does not include documentation of Warden approval or declination of recommendations made or reasons for denying recommendations. It is recommended that the incident review form be updated to more clearly document these activities.

During the audit documentation period, there was one (1) investigation completed that required an incident review by policy and/or standard requirements. The Auditor was provided with documentation that the review team made a recommendation that, if an area is not under video surveillance, staff have back up and are not one-on-one with inmates. Per the PCM, this recommendation was communicated via email and verbally with shift commanders, but documentation could not be located. It was confirmed however that this was the preferred practice in an interview with two area managers. It is recommended that this recommendation be put in the form of an official directive issued by the Warden along with training as needed.

During the period between initial documentation and on-site review, three (3) additional investigations were closed that indicated an incident review, both of which were completed, and documentation provided. Documentation for one (1) of these reviews included a recommendation for training to be provided to all supervisory staff of actions to take if they are unable to access the camera system. The Auditor was provided with a copy of an email sent to all security supervisors by the PCM, requiring these individuals to sign and date a memo from the PCM acknowledging an understanding of the information provided. The Auditor was never provided with documentation of supervisory staff acknowledgment as required by the incident review.

Based on the lack of documentation associated with incident review recommendations, WNMCF is assessed as non-compliant with the requirements of this provision. Corrective action should include the development and implementation of an action plan tracking system and associated documentation retention process. The Auditor will monitor incident reviews completed during the corrective action period.

Updates:

During the corrective action period, three (3) investigations were completed that were under the authority of the Warden / facility that indicated the requirement for an incident review based on allegation type and finding. Documentation included review team recommendations and the Auditor was able to confirm completion of any recommendations made. Additionally, the PCM developed and implemented a tracking system to ensure incident review compliance with all standard requirements. Based on these actions, WNMCF is now assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150102, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- 2018 and 2019 annual agency PREA reports as posted to the public website
- New Mexico Department of Corrections Prison Rape Elimination Act Sexual Assault Response Team PREA Manual (undated)
- Documentation of sexual assault incident review

Interviews conducted:

- Incident review team
- PREA compliance manager
- Warden

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.

115.87 (a) and (c)

Per information received via email from the former PREA Coordinator, "PREA Management System (PIMS) is located in the CIMS Web extension of our CMIS [Criminal Management Information System – the encompassing database system for all inmate information]...It is designed to answer all the questions on the SSV. The system does interact with our CMIS, so basically when you enter an inmate in as a victim or witness, it will pull all available information from the case management system, i.e. NMCD number, DOB [etc.]. It all pulls information we have for staff, as well. There are several different security levels with this system. Starting with PREA General, Sgts and above are PREA General. Basically what happens is when an allegation is reported, the shift commander or designee is the first to enter the case into PIMS immediately. Once all information is entered, the system will automatically produce the SIR [serious incident report] and the referral to OPS, which is given to the Warden to submit for investigation. The system is designed to 'not save' until all information required has been entered. The next security level is facility PCM, once the PCM enters his/her name as the PCM, all PREA General is locked out and can no longer see the case. The only people who can view the case at this point is the facility PCM, PREA Coordinator, [the Compliance Officer], Warden or the Director. A PCM at one facility cannot see cases at another facility, unless they are added into the system as a PCM on that case. We [used] to have to do this for retaliation monitoring when the PCMs were conducting it, because if the inmate or witness was moved to another facility, the PCM at that facility would have to complete the retaliation monitoring...Super User Access, is only the PREA Coordinator and [Compliance Officer]. We can see ALL cases. We can edit ALL cases, if needed. The PIMS Systems contains retaliation monitoring, SANE Information, Law Enforcement Info, SART Reviews and all case information. The system went Live for two facilities in October 2017 (PNM and SNMCF) This was done to work out all kinks and problems prior to going live statewide. In January 2018 all public facilities went live. Private facilities could not [go] live as there were issues because staff info is not in our CMIS so changes had to be made that the information could be manually entered. The private facilities went live in May 2018. Each facility was required to enter all allegations from January 2018 so we would have a complete year for 2018...Prior to the PIMS system all PREA data was kept in an access database [with limited access]. All PREA data from 2016, 2017, 2018, 2019 is stored in the database. We maintained the PREA database, for two years 2018, and 2019, to ensure that all cases were being entered in the PIMS system. Once we were sure that the PIMS was being utilized as required, we discontinued the use of the database in January 2020."

During a review of the definitions included in multiple platforms within the agency (e.g., policy, annual report, staff training, offender publications), it was found that the definitions were inconsistent and did not include all the elements required in the DOJ standard definitions regarding prohibited acts. This causes confusion among stakeholders, both internal and external to the agency and results in the inability to effectively analyze allegation and investigation data.

The Auditor received Survey of Sexual Violence reports for calendar years 2018 and 2019 confirming that the agency collects data sufficient to complete these requests from the Department of Justice.

As a result of the inconsistency in the definitions of prohibited acts across agency platforms and the non-compliance with DOJ PREA definitions, WNMCF was initially assessed as non-compliant with the requirements of this provision. On 03/08/2021, the Auditor reviewed a revised annual report with the 2020 draft report, which includes all required elements to bring this into compliance. On 05/24/2021, the Auditor received a pdf of signed 2020 annual report with notation that the Inspector General is sending a request to the IT department to post it on the NMCD website. Once posting is confirmed, this item can

be closed as compliant. On 06/01/2021, the Auditor confirmed posting of new annual report to agency public website.

Based on the above noted actions, WNMCF is assessed as compliant with the requirements of this provision.

115.87 (b)

A review of historical PREA reports (2012 through 2018) revealed inconsistency in data, with report detailing allegations such as “sexual activity”, “sexual allegation” and “undue familiarity” and findings such as “sustained” and “informational only”. The former PREA Coordinator informed the Auditor that these reports were completed before her tenure and that prior reports included consensual sexual behavior between offenders and allegations that were determined not to fall within established definitions of prohibited behavior. She also reported that in previous years, those who determined findings had used terms such as “inconclusive” and “exonerated”, adding that these issues have since been addressed and standard-compliant processes put in place. The Auditor located the 2019 annual report on the agency’s public website that had been added during the pre-audit phase of this review. This report includes aggregate data for the agency for the current as well as prior years as required by the standard.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.87 (d)

Per information received via email from the former PREA Coordinator, “PREA Management System (PIMS) is located in the CIMS Web extension of our CMIS...The system does interact with our CMIS [Criminal Management Information System – the encompassing database system for all inmate information], so basically when you enter an inmate in as a victim or witness, it will pull all available information from the case management system, i.e. NMCD number, DOB [etc.]. It all pulls information we have for staff, as well. The PIMS Systems contains retaliation monitoring, SANE Information, Law Enforcement Info, SART Reviews and all case information.”

During a Zoom meeting, the former PREA Coordinator was able to demonstrate all electronic systems associated with PREA, confirming compliance with data collection and retention requirements.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.87 (e)

Per information received via email from the former PREA Coordinator, “PREA Management System (PIMS) is located in the CIMS Web extension of our CMIS [Criminal Management Information System] ...It is designed to answer all the questions on the SSV. The system went Live for two facilities in October 2017 (PNM and SNMCF) This was done to work out all kinks and problems prior to going live statewide. In January 2018 all public facilities went live. Private facilities could not [go] live as there were issues because staff info is not in our CMIS so changes had to be made that the information could be manually entered. The private facilities went live in May 2018.” The Auditor also confirmed inclusion of data from private, contracted facilities in the agency’s annual PREA report.

The annual report for 2019 was reviewed as it was determined that earlier versions of the report did not meet standard requirements. The 2019 report included information from all privately contracted facilities with the exception of the New Mexico Men’s Recovery Academy and the New Mexico Women’s Recovery Academy (NMWRA). Per the former PREA Coordinator, the data is available but had not previously been included in agency annual reports, which is the platform the agency uses to consolidate all incident data.

Based on the omission of the noted two facilities in the agency annual reports, WNMCF was initially assessed as non-compliant with the requirements of this provision. On 03/08/2021, the Auditor reviewed a revised annual report with the 2020 draft report, which includes all required elements to bring this into compliance. On 05/24/2021, the Auditor received a pdf of signed 2020 annual report with notation that

the Inspector General is sending a request to the IT department to post it on the NMCD website. Once posting is confirmed, this item can be closed as compliant. On 06/01/2021, the Auditor confirmed posting of new annual report to agency public website.

Based on the above noted actions, WNMCF is assessed as compliant with the requirements of this provision.

115.87 (f)

The Auditor was provided with Survey of Sexual Violence summary and detail reports for 2018 and 2019, demonstrating compliance with the submission requirements of the standard. It is noted that as of the writing of the interim report, the 2020 summary has not yet been distributed by the Department of Justice.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/16/2020 from the PCM addressed to the DOJ Auditor
- Screen shot of the agency's public website
- Annual agency PREA reports 2012 through 2020 as posted to the agency's public website
- 2018 and 2019 Survey of Sexual Violence reports submitted to the Department of Justice

Interviews conducted:

- None were indicated in the DOJ Auditor Compliance Tool or interview templates

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.

115.88 (a)

The Auditor reviewed agency annual PREA reports for 2012, 2013, 2014, 2015, 2016, 2017, and 2018. These reports evolved over the years and all detail aggregated data for the agency. Annual reports for 2012 through 2015 included agency plans for moving forward. However, this was removed from the report beginning with 2016. No problem identification or corrective action was detailed in the 2018 report for the agency as a whole.

Beginning with the 2014 annual report, detailed allegation and planning information was included for each agency facility. This was revised in the 2016 annual report to include facility data and accomplishments; however, this was again revised in the 2018 report to only include facility descriptions and data. No problem identification or corrective action was detailed in the 2018 report for this facility. These historical deficiencies were discussed with the former PREA Coordinator and are to be addressed in future reports.

The Auditor was also able to review the 2019 annual agency PREA report as recently posted to the agency's public website. The report now includes detail of agency accomplishments to summarize the PREA-related activities and achievements during the 2019 calendar year. The annual report also includes aggregate data for the current calendar year as well as a comparison of that data with prior years. The report includes a corrective action section, separated by allegation type, with a summary of the actions the agency plans to take moving forward, as follows:

- Continue ongoing review of operational practices to improve the sexual safety within all facilities.
- Maintain compliance with §115.401 Frequency and Scope of Audits and ensure that all facilities are audited within the three-year cycle.
- The PREA Coordinator will work with the IT Department to establish reports in PMS.
- Continue to enhance training for staff, contract staff, contractors, volunteers, and inmates.

The information included in the annual report for WNMCF is as follows:

- Dedicated A Captain position, to serve as the facility PREA Compliance Manager (PCM),
- Sends the PCM on technical reviews and facility assessments throughout the state to help gain Agency level compliance.
- Has successfully been determined to be compliant of all PREA standards, during two Department of Justice PREA Audits (2016, 2019).

These are basically the same accomplishments provided for each NMCD facility. The most current annual report does not include corrective action on the facility level with the exception of a letter of counseling and additional PREA training in response to a substantiated investigation of staff sexual harassment. The Auditor reviewed standard requirements with the former PREA Coordinator and PREA Resource Center and is able to assess the annual report as substantively compliant. However, the Auditor recommends that future reports include facility-specific corrective action planning to continue to address gaps and improve overall PREA implementation, sustainability, and culture.

All individuals interviewed (Secretary's designee, PREA Coordinators, and PCM) confirmed a review of all available data to assess and improve the effectiveness of the agency's sexual abuse prevention, detection, and response policies, and training. There appears to be good communication regarding this review and the agency appears to be responsive with regard to issues identified. It is noted that the current PREA Coordinator has not yet been involved in the annual review of data and may need direction from applicable stakeholders when this review comes due again.

Based on the above, WNMCF is assessed as substantively compliant with the requirements of this provision.

115.88 (b)

The Auditor reviewed agency annual PREA reports for 2012, 2013, 2014, 2015, 2016, 2017, and 2018. These reports evolved over the years and all detail aggregated data for the agency. Annual reports for 2012 through 2015 included agency plans for moving forward. However, this was removed from the report beginning with 2016.

The Auditor was also able to review the 2019 annual agency PREA report as recently posted to the agency's public website. The report now includes detail of agency accomplishments to summarize the PREA-related activities and achievements during the 2019 calendar year. The annual report also includes aggregate data for the current calendar year as well as a comparison of that data with prior years. The report includes a corrective action section, separated by allegation type, with a summary of the actions the agency plans to take moving forward, as follows:

- Continue ongoing review of operational practices to improve the sexual safety within all facilities.
- Maintain compliance with §115.401 Frequency and Scope of Audits and ensure that all facilities are audited within the three-year cycle.
- The PREA Coordinator will work with the IT Department to establish reports in PMS.
- Continue to enhance training for staff, contract staff, contractors, volunteers, and inmates.

It is noted that the 2019 annual report does not include a comparison of corrective action for the current year with that of previous years as the prior annual reports did not include corrective action information. The former PREA Coordinator added this information to the 2019 report and will include comparison of the 2019 information with 2020 information once that report is developed.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.88 (c)

The Auditor located annual PREA reports from 2012 through 2019 on the agency's public website at: <https://cd.nm.gov/prea/prea/prea/html>

The reports are signed by the agency Cabinet Secretary.

An interview with the Secretary's designee confirmed the approval of these reports, through the PREA Coordinator to the Inspector General.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.88 (d)

A review of the annual reports confirmed the lack of any personally identifying information. In an interview, the former PREA Coordinator confirmed that data maintained for the annual report does not include any personally identifying information and therefore, there has been no need for redaction. This was also confirmed in interviews with the interim and current PREA Coordinators.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/16/2020 from the PCM addressed to the DOJ Auditor
- Annual agency PREA reports 2012 through 2019 as posted to the agency's public website

Interviews conducted:

- Agency head designee
- PREA compliance manager
- PREA coordinators

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.

115.89 (a)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section A.3. (page 1) requires, "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..."

Per information received via email from the former PREA Coordinator, "PREA Management System (PIMS) is located in the CIMS Web extension of our CMIS...It is designed to answer all the questions on

the SSV. The system does interact with our CMIS [Criminal Management Information System], so basically when you enter an inmate in as a victim or witness, it will pull all available information from the case management system, i.e. NMCD number, DOB [etc.]. It all pulls information we have for staff, as well. There are several different security levels with this system. Starting with PREA General, Sgts and above are PREA General...The next security level is facility PCM, once the PCM enters his/her name as the PCM, all PREA General is locked out and can no longer see the case. The only people who can view the case at this point is the facility PCM, PREA Coordinator, [the Compliance Officer], Warden or the Director. A PCM at one facility cannot see cases at another facility, unless they are added into the system as a PCM on that case. We use to have to do this for retaliation monitoring when the PCMs were conducting it, because if the inmate or witness was moved to another facility, the PCM at that facility would have to complete the retaliation monitoring...Super User Access, is only the PREA Coordinator and [Compliance Officer]. We can see ALL cases. We can edit ALL cases, if needed."

Secure retention of all PREA-related data was also confirmed in an interview with the interim and current PREA Coordinators.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.89 (b)

The Auditor located annual PREA reports from 2012 through 2019 on the agency's public website at: <https://cd.nm.gov/prea/prea/prea/html>

A review of annual reports from 2012 through 2019 confirmed inclusion of information regarding the facilities under the agency's direct control as well as the private facilities with the exception of the New Mexico Men's Recovery Academy and the New Mexico Women's Recovery Academy (NMWRA). Per the former PREA Coordinator, the data is available but had not previously been included in agency annual report, which is the platform the agency uses to consolidate all incident data.

Based on the omission of the noted two facilities in the agency annual reports, WNMCF was initially assessed as non-compliant with the requirements of this provision. On 03/08/2021, the Auditor reviewed a revised annual report with the 2020 draft report, which includes all required elements to bring this into compliance. On 05/24/2021, the Auditor received a pdf of signed 2020 annual report with notation that the Inspector General is sending a request to the IT department to post it on the NMCD website. Once posting is confirmed, this item can be closed as compliant. On 06/01/2021, the Auditor confirmed posting of new annual report to agency public website.

Based on the above noted actions, WNMCF is assessed as compliant with the requirements of this provision.

115.89 (c)

A review of the annual reports confirmed the lack of any personally identifying information. In interviews, the former, interim, and current PREA Coordinators confirmed that data maintained for the annual report does not include any personally identifying information and therefore, there has been no need for redaction.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.89 (d)

Agency policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020), section A.3. (page 1) requires, "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."

Per information received via email from the former PREA Coordinator, "PREA Management System (PIMS) is located in the CIMS Web extension of our CMIS [Criminal Management Information System]...The system went Live...in October 2017 (PNM and SNMCF) This was done to work out all kinks and problems prior to going live statewide...Prior to the PIMS system all PREA data was kept in an access database [with limited access]. All PREA data from 2016, 2017, 2018, 2019 is stored in the database. We maintained the PREA database, for two years 2018, and 2019, to ensure that all cases were being entered in the PIMS system. Once we were sure that the PIMS was being utilized as required, we discontinued the use of the database in January 2020."

As it has not yet been ten (10) years since the implementation of PREA standard requirements, no data has yet been deleted from existing data systems.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

Documentation provided for this standard:

- Compliance memo dated 09/16/2020 from the PCM addressed to the DOJ Auditor
- Policy CD-150101, *Offender Protection Against Abuse, Sexual Misconduct, Reporting Procedures, PREA* (05/29/2020)
- Annual agency PREA reports 2012 through 2020 as posted to the agency's public website

Interviews conducted:

- PREA coordinators

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.

115.401 (a)

NMCD currently operate seven (7) state-owned adult prison facilities. It is noted that this increased from six (6) during 2020 with the transition of one facility from a privately operated to a state operated prison. This facility was incorporated into the agency audit schedule for the 2020/2021 audit cycle. The Auditor confirmed via review of the agency's public website that audits have been conducted each year in 1/3 of the state operated prison facilities, beginning in 2015.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.401 (b)

NMCD currently only operates adult prison facilities. The Auditor confirmed via review of the agency's public website that audits have been conducted each year in 1/3 of the state operated prison facilities, beginning in 2015. Additionally, the agency ensures that all privately operated facilities are audited every three years based on the schedule of the private organization. It is noted that many of the private facilities are operated by the GEO Group and are therefore incorporated into that organization's national audit schedule. It is also noted that audits scheduled for the 2019/2020 audit cycle have been postponed due to COVID-related restrictions and will be completed as soon as operations allow.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.401 (h)

Although under supervision as a facility visitor, the Auditor was allowed free access to every part of the facility. The on-site team was provided escorted access to all areas of the facility, both during the formal tour as well as throughout the on-site review. Staff were very open to showing the Team any area asked about and took members back to areas to observe physical plant modifications completed or as needed to answer any additional questions the Team had during the on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.401 (i)

During initial documentation review, the Auditor was able to request agency level documentation from the former PREA Coordinator and facility level documentation from the PCM. Both individuals were included in all email communications. The Auditor received prompt response from both individuals. Where requested documents were not provided, it was learned that they were not available and/or maintained rather than a lack of response from the PCM and/or Coordinator. These gaps were addressed in applicable standard compliance findings.

However, during the period between initial documentation and on-site review, the Auditor was not provided with documentation and information needed to effectively assess compliance, to include monthly pre-scheduled documentation submission. Often, when documentation was provided, it was incomplete, contradictory, or did not answer the Auditor's question / request.

Based on the above, WNMCF is assessed as non-compliant with the requirements of this provision. Provision of a formal corrective action plan with specific timelines will be requested by the Auditor and this provision will be reassessed throughout the corrective action period based on the formal plan developed.

During the initial corrective action period, receipt of requested documents and information was significantly delayed or not responded to. However, as noted with the narrative for standard 115.11, the facility hired a new PCM. This individual was prompt and thorough in response to all Auditor requests. Additionally, the Auditor was able to participate in multiple remote meetings with facility administration and was able to confirm involvement of all facility administrators in the corrective action process. The communication and involvement has significantly been enhanced with the PCM appointment. With these actions and response requests, WNMCF is now assessed as compliant with the requirements of this provision.

115.401 (m)

All members of the on-site team were provided areas in the facility in which private interviews with staff and inmates were conducted. Interviews were conducted in various offices and conference rooms.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

115.401 (n)

On 06/02/2021, the Auditor was provided with photographs of the audit notice posting from various locations within the facility. Although the photographs were not date stamped, the email confirmed posting 57 days in advance of the on-site review. The email also indicated the remainder of locations within the facility that notices were posted, to include areas accessible by inmates, staff, and the public. The Auditor received six (6) letters from inmates but no letters from any other individual associated with or regarding this audit. All inmates who remained at the facility were interviewed during the on-site review.

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

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.

115.403

The Auditor located all final PREA audit reports for all public and private facilities on the agency's public website at:

<https://cd.nm.gov/divisions/administrative-support/office-of-inspector-general/prison-rape-elimination-act/>

Based on the above, WNMCF is assessed as compliant with the requirements of this provision.

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.

Beth L. Schubach

03/09/2022

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.