



February 10, 2020

Joseph Barela
Executive Director

Colorado Department of Labor & Employment

cc: Scott Moss & Patrick Teegarden, CDLE; Kim Bimestefer, Bonnie Silva, Colin Laughlin, & Candace Bailey, Department of Health Care Policy & Financing; Lauren Larson, Office of State Planning & Budgeting

Re: Requested Delay of COMPS Order for IDD Providers & Other Impacted Providers

Dear Mr. Barela:

Alliance is a nonprofit, statewide association of Community Centered Boards (CCBs) and Program Approved Service Agencies (PASAs) dedicated to strengthening community services and supports for people with intellectual and developmental disabilities. Our members provide home- and community-based services in every Colorado county.

We write today to formally request a delay in implementation of the COMPS Order for CCBs, PASAs, and other impacted Medicaid providers to allow time to work with the departments on strategies to mitigate the harmful unintended consequences of the Order's provisions on recipients of home- and community-based services, as well as the employees who provide them.

Since 2012, CCBs and PASAs have been operating under a good faith understanding that they were exempt from previous Colorado Minimum Wage orders. This understanding stems from the language in the 2012 "Advisory Bulletins & Resource Guide", which remained posted on the Department's website throughout 2019. It also stemmed from an interpretation that the services provided by CCBs and PASAs were not covered by the four industry categories named in previous wage orders. In 2018, a Colorado district court agreed, holding that these services did not fall under the "health and medical" or "retail and service" categories.

As such, the provisions of the COMPS Order represent new requirements for CCBs and PASAs, and there are two specific areas that will impede their ability to provide quality services:

1. The **overtime over 12 hours a day** requirement poses a significant and immediate concern for residential and respite services, which commonly utilize longer shifts of 16-18 hours or 2.5 days to minimize disruption of support in individuals' private homes, make these services financially sustainable, and offer preferred schedules for the employees that provide them.
2. The **rest period requirement** poses significant concern for an array of services that are provided with low staff-to-client ratios and which, due to the nature of the services themselves and the supervision needs of the recipients, cannot practically be designed to guarantee the availability of rest periods as required in the Order. While we appreciate the Department's efforts to provide some exemption language in this section, the language as currently written does not cover all of the impacted services and will result in inequitable application across the provider community.

Due to the disproportionate reliance of CCBs and PASAs on the non-negotiable reimbursement rates set for these services through Medicaid (and, to a lesser extent, other government programs), these providers would be unable to raise revenues to cover the costs related to coming into compliance with the Order's requirements, which would require both additional overtime pay as well as increased staffing and the inherent training and benefits that come along with it.

As a result, we expect that a number of residential homes across the state will need to close, requiring the forced movement of individuals with complex needs to new homes, some of which are likely to be more restrictive settings than their current homes. In addition, the other impacted services are likely to be scaled back to offer fewer integrated activity options, or fewer hours of integration each day, to account for increased costs and liability for providers. This outcome contradicts not only federal and state requirements to offer services in the least restrictive setting and maximize integration, but also the very philosophical foundations on which disability services are designed.

Despite two meetings we have had with CDLE staff, as well as multiple conversations between CDLE and staff from the Department of Health Care Policy & Financing, these issues remain unresolved. **We ask that CDLE issue a formal communication providing a delay of at least six months in the implementation of the COMPS Order for CCBs, PASAs, and other impacted Medicaid providers no later than February 28th to ensure that people are not forced out of their homes and services are not curtailed.** This delay will allow Alliance, CDLE, and HCPF to work on public policy solutions that balance the needs of people receiving home- and community-based services with those of the workforce that supports them.

We look forward to continuing these conversations with you as well as the leadership of the Department of Health Care Policy & Financing to ensure that we can continue to provide person-centered, high-quality services to people with intellectual and developmental disabilities across the state of Colorado.

Sincerely,



Joshua J. Rael, JD, MPA
Executive Director



Cheryl Wicks
Board President

Alliance is a statewide association of Community Centered Boards (CCBs) and Program Approved Service Agencies (PASAs) that provide services and supports to individuals with intellectual and developmental disabilities.

Alliance members serve over 10,000 individuals with IDD and employ 3,200 DSPs and case managers throughout Colorado.
www.AllianceColorado.org

