

**ADMINISTRATIVE COMPLAINT**  
**Supplemental Filing**

Office for Civil Rights – **Filing Receipt No. 30017390**  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W., Room 509F  
Washington, DC 20201

U.S. Department of Justice – **Reference No. 414820-FJQ**  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, Maryland 21244

**RE: Colorado’s discriminatory provision of case management services to people with disabilities and *request for immediate action* by the federal agencies**

On February 21, 2024, the National Health Law Program (NHLP) and Colorado Center on Law and Policy (CCLP) sent an Administrative Complaint to the above agencies.<sup>1</sup> The complaint alleges discrimination against individuals with disabilities by the Colorado Department of Health Care Policy and Financing (HCPF), arguing that recent changes in HCPF’s case management procedures and software are causing improper Medicaid coverage terminations, service delays, and confusion among enrollees—in particular, those needing long term services and supports (LTSS). This letter shares additional information to support the complaint, as follows:

1. Since filing, we have received copies of letters that establish that the State has been aware of the problems identified in the Administrative Complaint for quite some time. *See* Letter from Stellar Care and Services to Governor Polis and HCPF (Oct. 6, 2023) (Att. A) (noting, among other things, that “provider agencies often are unable to even identify a case manager for weeks at a time”); Letter from Colorado Department of Human Services Directors Association and Colorado Counties, Inc. to Colorado Health Care Policy and Finance (HCPF) (Jan. 10, 2024) (Att. B) (describing concerns that “revolve around the system’s inefficiencies and inability to produce accurate data”). We also attach what appears to be a February 22, 2024 response from HCPF to the January letter (Att. C).
2. On February 23, 2024, advocacy organizations—Colorado Cross-Disability Coalition, Arcs of multiple counties, Family Voices, Association for Community Living, and CCLP—met with HCPF about ongoing problems. Issues included:

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<sup>1</sup> The Administrative Complaint incorrectly cited 45 C.F.R. § 80.7(b) as primary authority when it should have 28 C.F.R. § 35.170 (ADA) and 45 C.F.R. § 84.61 (Rehabilitation Act regulation incorporating § 80.7(b)).

- *Lack of case managers:* There were many reports of individuals who do not have case managers, and some people have tried calling both CMAs contracted in their region, but neither CMA could identify their case manager. One CMA set up a call line with the intent to have a human answer questions and received 1,877 calls in January alone.
  - *IT problems:* There is still a lack of access to the old IT system (which contains patient information and history) except through a multistep workaround. Advocates continue to report this problem although HCPF considers this problem fixed.
  - *Gaps in services:* Service gaps are occurring because level of care (LOC) determinations are not completed timely by the CMAs and the counties. Advocates have identified cases where these delays cannot be addressed to ensure the enrollee with disabilities will avoid a gap in coverage. In a recent case, one advocate noted that the LOC assessment expired November 30th, but the start date for the new assessment was not set by the CMA until December 15. The county did not get the LOC assessment until Jan 2 and did not process it until Jan 26. The individual was uncertain about their services for two months. Luckily, this person has appealed, but any corrective benefits will only go back to December 15, because of the start date inputted by the CMA. This will leave the individual without Medicaid coverage for two weeks, even if they do succeed on appeal.
  - *Heavy caseloads:* We acknowledge that there are caseload limitations set by HCPF, but have learned they are waivable, and multiple CMAs have a waiver due to insufficient staff. There are concerns that there are caseloads of over 120 patients. At least one CMA is using multiple (primary and secondary) case managers. This is creating confusion and hinders relationship building, which is critical to successful case management.
  - *HCBS Waiver:* People are unable to get on home and community based services waivers because of the lack of case managers. There is no or inadequate monitoring of host homes for health and safety. People are falling through the cracks, without food, and are unable to get case management assistance to help address their concerns.
  - *Loss of eligibility:* People are losing eligibility through no fault of their own.
  - *Language access:* One CMA does not have Spanish-language speaking staff available for callers, and one Spanish speaker regularly experiences two hour waits on hold and dropped calls because there is no one available who speaks Spanish. When written communication is taking place, requests for responses in Spanish are met with silence, and the communication ceases.
3. On February 27, 2024, advocacy organizations—Colorado Cross-Disability Coalition, Arcs of multiple counties, Family Voices, Association for Community Living, and CCLP—met again with HCPF about ongoing problems. Issues included:
- *Inadequate staffing at CMAs:* Case managers have reported via email that their caseloads are unmanageable, with one reporting having 97 cases and another reporting that they had to process 15-20 renewals per month rather than the former level of 4-6 per year. HCPF staff acknowledged that agencies involved in the March 1 transition are having trouble hiring staff. When advocates reported hearing from a case manager that caseloads exceeded 100:1, HCPF confirmed that the agency, The Resource Exchange, had not received a waiver of the 65:1 caseload limitation.

- *Unprecedented numbers of appeals:* Colorado Cross-Disability Coalition and Family Voices reported filing more appeals in the past 1-2 weeks than at any time earlier in the unwind period.
- *Inadequate solutions:* HCPF identified solutions, including a request to the legislature to increase funding for county administration and increased training for county staff. But these responses do not address the urgency of this situation.
- *System limitations:* When advocates asked why terminations of LTSS enrollees could not be paused temporarily, HCPF said they lacked system capability to stop terminations for only that group; thus, advocates asked that HCPF pause terminations for all populations, if necessary to protect the LTSS population, until the serious and growing problems with the case management system are resolved.

Since filing the complaint last week, we have been contacted by multiple individuals—case managers and service providers—who can confirm the concerns raised in the Administrative Complaint. If it would help accelerate your investigation, we will work to obtain their permission for you to contact them directly. In sum, these significant problems are the result of just the first phase of the State’s transition to the revised case management system. The State is set to go live with the next phase on March 1, 2024. As requested in the Administrative Complaint, we are asking the federal agencies to pause terminations for LTSS enrollees during the ongoing implementation of the case management system until these problems are resolved.

Dated: February 28, 2024

Respectfully submitted,

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*Stellar Care and Services, LLC*  
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Att. A

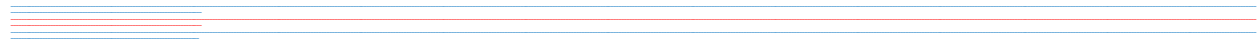
October 6, 2023

Governor Polis, CDHS Director Barnes, HCPF/OCL Director Kaemerer, members of the Joint Budget Committee;

I am writing on behalf of the many adults with intellectual and developmental disabilities (IDD) served through State Waiver services and the challenges that are being presented regarding eligibility and PAR issues due to the PHE unwind as well as the ill prepared release of the State Care and Case Management software, all of which is causing unprecedented billing issues which in turn create significant even crippling hardship to these individuals who depend on their care and supports from provider agencies who are simply not being paid for services delivered.

We were all advised that the PHE unwind would result in people losing their Medicaid services. What we were not prepared for is the following:

- 1) Provider agencies are not able to reach anyone at the County levels to get clear answers as to what the issues are. We are being sent back and forth from County to CCB's for info on eligibility only to face an endless string of auto responders saying they are short staffed and working a flex schedule and/or voicemails that are never returned.
- 2) As a result of the understaffing at CCB's, provider agencies often are unable to even identify a case manager for weeks at a time, as we are not always notified that a case manager has left. We serve high needs individuals who are essentially without a case manager. This makes it virtually impossible for a PASA to request new PARs, etc.
- 3) Without the PARs, provider agencies are having to take calculated risks on continuing to serve based on presumptions that people have turned in all the required documentation and (hopefully) claims will be paid.
- 4) Countless notices from State Medicaid often conflict with one another, which leads to mass confusion and endless amounts of hours spent trying to gain understanding. The language is confusing for professionals to understand, never mind adults with IDD or their aging caregivers. There is no one available to assist...
- 5) County departments without sufficient staffing are strained to manage the renewals in a timely manner.



*Stellar Care and Services, LLC*

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6) We are being asked by DHS to turn in financial documentation that seems to be unearthed from 20+ years ago in some instances when this was never requested prior to the PHE. An example would be a formal letter of termination from a past employer. Even in cases where the employer still exists, they are not held to holding financial records more than 7 years old.

Also complicating this is the fact that the Care and Case Management system that was unveiled in July 2023 is a disaster for Program Approved Service Agencies (PASAs). We are having to wait 8+ weeks and some cases up to 4 months for the processing of service plan revisions, PAR's, etc. In order for a revision to be processed, we are often asked to back bill (give claim payments back to the State to the tune of tens of thousands of dollars) so the system can take months to process the PAR, and we have to wait months before we can re-bill and recoup money. In the meantime, we have staff and providers who need to be paid promptly as soon as they provide the services. This is a broken system.

*There should be a way that **adjustments to claims** can be made rather than forcing agencies to pay everything back and then re-bill, especially when the system that allows for this is, for all intents and purposes, broken. Adjustments to claims used to be allowed but not anymore. Most of the time when revisions are completed, the Program Approved Service Agencies are the last to know. This is the reason why we have to back out billing. If communication from the State level and case management agencies was improved, we could simply not bill and await the revision. Even if this issue was fixed, having to wait months for the processing of a revision is unacceptable and financially crippling to organizations who are on the front-line paying staff for supporting people.*

This is not only happening with changes to Tier levels, Mileage bands, agency Transfers, etc., but we are also experiencing significant delays in receiving plans for New Plan Years (sometimes waiting up to three months+) to obtain the documentation needed to support the people we do.

Example: In a recent incident one individual case went through a tier change as of 7/1/23 from a level 2 to a level 1. All of the person's redetermination information was submitted through the person's peak portal online with nothing showing due. The person has had no changes in benefits information either. We were originally told we couldn't bill from 7/1/23 because of the State system change and the person's plan being delayed along with other revisions. However, DHS has changed the person's status from Long Term Care Medicaid to traditional Medicaid (not buy in program). There was no reason given and no specific indication on what information they didn't receive nor why they would change the person's status and take the person's long term care away. This lack of communication is extremely frustrating for us but it's world changing for the person if the person loses support. The only benefit information we have and did submit for the person was the person's fiduciary account information.

Note: *PASA agencies are expected to pay staff and providers for all support and services while we wait months for the State or County to do their job before claims for payment can be completed. "The system is Broken" and changes do not appear to have been led. Instead the perfect storm has been created with no communicated solution for the near future.*

All of this leads to a huge conundrum. Generally speaking the rules indicate we should not be serving or be billing without a PAR. *However, the State's broken systems would send countless adults with IDD into*

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*situations out of their control to have no services in place.* These issues are fiscally irresponsible as well. If a person goes to see their doctor and their Medicaid has been shut off because "DHS" has not processed it yet" their doctor can deny service until their Medicaid is renewed. PASA's cannot do that. In the case where someone cannot see their doctor, the alternative is to seek care from the ER which as you know comes with inflated costs to the taxpayers, however what other option are they given? None are certainly offered at any level during this crisis. Note: As a PASA we are the most cost efficient, freedom focused alternative to institutionalizing.

Though there are many PASA's and other Medicaid-funded services out there who are doing their best to stay afloat financially and continue to support these at-risk populations in hopes they will one day be paid, this is becoming extremely concerning. If an agency terminates services for a valid reason and someone is ineligible for services even briefly, the chances that another agency will enroll them is very slim. People with IDD who are eligible for HCBS-DD services are a population of at-risk people who NEED and DESERVE to be served and their lives should not be interfered with due to logistical or technical issues at the State and County level that they and their agency have little to no control over. *The State needs to take a close look at these issues and really prioritize where and how to resolve these or the unintended consequences could be devastating to the entire IDD system;* small businesses may begin to fold if they are not already putting people in further jeopardy; our agency is certainly feeling a huge financial strain, which is amplifying every day there is no solution.

To add fuel to the fire, we are all asked to "be patient due to staffing issues." We are told this by CCB's, DHS, and the State. Yet, if a PASA was surveyed and tried to use the excuse of being short staffed as their reasons for non-compliance, there would be no grace given. This would result in a host of citations and a plan of correction. Subsequently, agencies spend an exorbitant amount of money recruiting and maintaining staff for the needs of those we serve and support. I just don't understand why is it that accountability is lacking at State and County levels? Why is it so hard to easily find answers? and why are the leaders not taking an active role to find expeditious solutions?

Lastly, the intent of this letter is not to merely complain, but to point out significant issues that are adversely affecting a broad spectrum of people and businesses throughout the State of Colorado in the hopes that an expeditious solution can be developed before these broken systems continue to amplify into what is turning out to be a total financial disaster.

We would like to be a part of the solution as this broken system cannot be allowed to continue. With that in mind, *I respectfully request Executive Action to resolve these system issues as expeditiously as possible to prevent further disruptions to the IDD community and those agencies who are valiantly supporting people in need.* Executive Action will allow State and County entities time to get their acts together while the boots on the ground can keep focusing on the needs of the people we serve and support without worrying about how we keep staff paid and the lights turned on... This matter is serious. To ask for our continued patience is insulting to say the very least...

I sincerely appreciate your time addressing this urgent matter,

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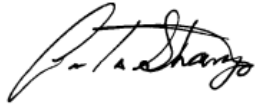
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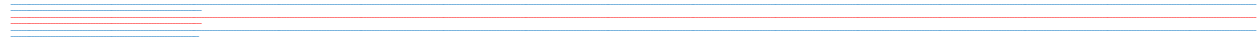
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***To respect and respond to the needs of individual independence***

Thank you,



Paul Strange, MCCC  
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**JEFFERSON**  
COUNTY COLORADO

Att. B

**Legislative Update**  
**February 5, 2024 ▪ 12:00pm – 1:00pm**  
**Virtual (WebEx)**

- 1) Human Services Jenn Cassell/Ed Bowditch
  - a) SB24-059 Children’s Behavioral Health Statewide System of Care
  - b) Urgent Concerns Regarding the Care and Case Management System (CCM)
    - i) Letter to Director Bimestefer (*attached*)
  
- 2) Jefferson County-wide (non-Human Services) Karen Wick & Jason Hopfer
  - a) General Government
    - i) HB24-1114 Pet Animal Facility Requirements Before Euthanasia
    - ii) HB24-1177 County Commissioner Elections
    - iii) SB24-049 Content of Material in Libraries
    - iv) SB24-072 Voting for Confined Eligible Electors
  - b) Land Use & Natural Resources
    - i) HB24-1094 Developer Subdivision Reservation Deposits
    - ii) HB24-1107 Judicial Review of Local Land Use Decision
    - iii) HB24-1108 Insurance Commissioner Study Insurance Market
    - iv) SB24-91 CDOT Fee Schedule for Broadband
    - v) SB24-092 Cost Effective Energy Codes
  - c) Public Health
    - i) HB24-1088 Modifications to the Child Fatality Prevention Act

Legislation Tracking Sheets

- [County-wide \(excluding Human Services\)](#)
- [Human Services](#)

Note: Additional agenda items for which Notice was not possible may be considered.

Join our virtual meeting via WebEx:

<https://jeffco.webex.com/jeffco/j.php?MTID=mbb1e7758cdb60e42585b902cabc02c65>

To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code.

United States Toll: 1-720-650-7664

Webinar Number: 2491 348 8075 • Password: MSbF7TfUE36 (67237838 from phones and video systems)



To: Kim Bimestefer, Executive Director, Colorado Department of Health Care Policy & Financing  
From: Colorado Human Services Directors Association  
Subject: Urgent Concerns Regarding the Care and Case Management System (CCM)  
January 10, 2024

Dear Executive Director Bimestefer,

The Colorado Department of Human Services Directors Association (CHSDA) and Colorado Counties, Inc. (CCI) have ongoing concerns regarding the recent implementation of the new Care and Case Management System (CCM). As key partners deeply invested in the success of the Case Management Agencies to support the welfare of the individuals served, we believe it is crucial to express our profound concerns about the current state of the system.

Over the past seven months, local organizations have diligently collaborated with the Department's management and Help Desk teams to address various challenges encountered with the new system. Unfortunately, despite collective efforts, the system's performance continues to fall short of expectations, negatively impacting our ability to meet the needs of members.

Primary concerns revolve around the system's inefficiencies and inability to produce accurate data. A few examples include but are not limited to: the dashboard, a critical tool leveraged to access outstanding tasks, caseload lists and other pertinent information for day to day operations, is largely unusable due to inaccurate data pulled by the system and inaccurate assigned caseloads; user access issues including program supervisors being unable to access critical incident reports, which is negatively impacting members and funding; content entered into the system often disappearing despite following state issued guidance; documents previously auto generated in the old system (such as the 803's and certification pages) are not functioning in the new CCM; provider authorizations not functioning correctly resulting in providers withdrawing services from members' homes due to lack of payment; and reports necessary to identify reimbursable activities are not functioning, and are therefore not available to CMAs without state level intervention. Each attempted resolution seems to give rise to new issues, creating a cycle of frustration and hindering our ability to fulfill our mission effectively. This situation is not only affecting local CMAs but is also contributing to a broader ripple effect that compromises the overall quality of care and support provided by Case Management Agencies.

We recognize the complexity of implementing such large-scale systems and acknowledge the challenges associated with transitioning to new technologies. However, the persisting issues with the CCM have reached a critical juncture, and we believe it is imperative to escalate this matter to your attention. Considering the significant impact on our operations and ramifications for members and the community at large, we request your intervention to assess the current state of the CCM. We believe that a comprehensive review, along with the allocation of additional resources and expertise, is necessary to rectify the existing challenges and ensure the system aligns with the Department's and Case Management Agencies' overarching goals.

While we acknowledge there have been discussions about efforts to enhance the CCM, there is a need for greater clarity on the specific changes and initiatives that will be implemented. It would be beneficial to understand the tangible actions and improvements that will directly address the challenges currently faced with the care and case management system (CCM). Some elements, such as remote signatures

and the new upload feature for providers to upload incident reports, may not address the core issues faced by our case management agencies. Prioritizing the resolution of existing glitches and addressing the accuracy of data in the CCM should be paramount before introducing additional features. We request clarification on the specific areas, including associated timelines, that have been targeted for enhancement. We are committed to collaborating closely with HCPF to implement effective solutions that will not only resolve the current issues but also contribute to the long-term success of the new system ensuring appropriate services to members are available. Our goal is to work in partnership towards a seamless and efficient case management process that upholds our standards of excellence and we would be happy to provide any clarification that would be beneficial. ~~Should you need additional clarification, we are available to participate in a meeting at your earliest convenience to provide further details and insights from our perspective.~~

We request a meeting with you and our Executive Committee at your earliest convenience so that we can better understand HCPF's plan to address these concerns and share further details and insights from our perspective. We look forward to your prompt attention to this matter and are hopeful for a positive resolution that will benefit all stakeholders.

Sincerely,

Mary Berg  
President, CHSDA



February 22, 2024

Director Berg:

Thank you for your outreach to us to share your concerns regarding the county workload, worker morale, and resource constraints. We know you are on the front lines, helping your community each and every day, and we greatly appreciate your leadership and the dedicated public servants within our counties. **You have our commitment to partner with you to navigate through this chapter, in the crafting of both long term and short term initiatives to address identified challenges.**

We would like to suggest that we calendar a call to further discuss these issues as well as implemented solutions, in process solutions, emerging solutions, and newly created solutions in partnership. We can use this letter as a starting point, if you like.

[Jamie.Tidwell@state.co.us](mailto:Jamie.Tidwell@state.co.us) can coordinate the calendaring of this call to include Colorado Human Services Directors Association (CHSDA) leaders and those you wish to include.

**HCPF and CDHS are committed to supporting our county partners and to help ensure Coloradans get access to SNAP, Medicaid, CHP+ and our safety net programs.**

As an update, please note that HCPF's February 15 forecast shows a net reduction in membership of 519,000 this fiscal year, significantly reducing renewals beginning with March notices and May renewals. We recognize that many county workers work across eligibility programs and are committed to tracking county workload holistically, especially in light of continued growth in demand for SNAP. Below are a few specific strategies we are implementing to support counties in this critical work.

First, HCPF will be implementing ex parte up to 100% of the Federal Poverty Level in April. That will help improve ex parte rates, which is a specific request of the counties. We expect further increases in ex parte post this transition PHE year as membership stabilizes. As such, we are working on other solutions to further improve those rates.

Second, regarding the call center telephonic support gap, HCPF has had resources available to provide that technical assistance and will continue to do so for many counties and medical assistance sites. Feel free to forward those county requests to [hcpf\\_countyrelations@state.co.us](mailto:hcpf_countyrelations@state.co.us) and our County Relations team will facilitate the response and connect counties to needed support.

Third, HCPF is working with our case management agencies (CMAs) to address some specific Long Term Services and Supports (LTSS) challenges in an effort to reduce county workload and downstream county impacts. Moreover, thank you for your feedback on our renewal process and requesting additional information from members; after incorporating your feedback, we prioritized for implementation this summer the combination of the verification checklist and the renewal packets to reduce member confusion and reduce county workload driven by that confusion.

Regarding funding and support for counties, we were pleased to hear the JBC staff recommendation regarding CDHS administrative funding for counties, in complement to HCPF's already approved additional funding. Additionally, CDHS is committed to working in partnership with counties on strategies to maximize federal drawdown of county administration funding.

CDHS has also dedicated more internal resources such as project management, data analytics and executive leadership to this urgent issue. This includes implementing a "tier 1 project" which is the highest level of support and prioritization a project can have at CDHS. The tier 1 project will result in co-designed, targeted technical assistance for counties to provide the needed support to ensure Coloradans receive timely access to SNAP.

CDHS recently implemented two new technical solutions to help decrease county workload. First, we are partnering with counties to utilize ICR (Intelligent Character Recognition). ICR has been implemented in several counties and will continue to automate more processes, save worker time and increase accuracy.

The new IVR (Interactive Voice Recognition) solution helps reduce the number of calls to counties, both saving valuable worker time. We are excited that the new IVR system diverted 89,686 calls from counties to CDHS in 2023, and we are continuing to find ways for IVR to lessen county workload. This includes the IVR system capturing telephonic signatures for 70% of clients who were missing signatures on required verifications and documents. Additionally, state staff will continue to alleviate county workers' time on client calls as much as possible. In 2023, an additional 47,000 calls

were taken by state SNAP that would have otherwise been a burden on county workers.

Relative to additional emerging opportunities, we've directed our HCPF and CDHS staff to work closely with you, through the Strikeforce and other venues, to identify those projects that are high impact while maintaining compliance with federal and state mandates. These high impact projects must consider our available system capacity and positively impact the member experience. We are glad to work with you to create some shared communications to both county workers and to external stakeholders to clarify the challenges and steps being taken to address them.

Further, please know that we've directed our teams to be thoughtful about rolling out any new requirements at this time, emphasizing the extension process available to cure any of our internal audit findings. HCPF will continue our ME review process on both the fiscal and programmatic areas to ensure we find and address anything together before our federal partners flag items for us – with potential disallowances tied to them.

Finally, to get from yesterday to tomorrow, both HCPF and CDHS will continue driving forward the SB 22-235 work to align best practices and consider an appropriate funding model that supports all counties, providing meaningful technical assistance and implementing efficiencies wherever possible. Efficiencies include continued expansion of technology solutions that further automate processes and reduce the need for high-touch worker intervention that has the potential to have the greatest impact in timeliness.

Thank you for sharing the quotes from families impacted by our programs and from the staff who work hard every day to help Coloradans apply for and continue to receive benefits for which they qualify.

In partnership,



Michelle Barnes  
Executive Director  
Dept. of Human Services  
Financing



Kim Bimestefer  
Executive Director  
Dept. of Health Care Policy &  
Financing