

Date: May 9, 2011

To: Sara Burgi, Executive Director  
Provider: Maxcare, Inc.  
Address: 1114 Pennsylvania NE  
State/Zip: Albuquerque, New Mexico 87112

E-mail Address: [maxcare@nm.net](mailto:maxcare@nm.net)

Region: Metro  
Original Survey Date: August 23 – 26, 2010  
Verification Date: April 19 – 20, 2011  
Program Surveyed: Developmental Disabilities Waiver  
Service Surveyed: Community Living (Supported Living) & Community Inclusion (Adult Habilitation & Community Access)  
Survey Type: Verification  
Team Leader: Nadine Romero, LBSW, Healthcare Surveyor, Division of Health Improvement/Quality Management Bureau  
Team Members: Stephanie Martinez-Berenger, MBA, Healthcare Surveyor, Division of Health Improvement/Quality Management Bureau

Dear Ms. Burgi,

The Division of Health Improvement/Quality Management Bureau has completed a verification survey of the services identified above. The purpose of the survey was to determine compliance with your Plan of Correction submitted to DHI/DDSD regarding the **Routine Survey on August 23 – 26, 2011**.

These findings will be reviewed by the DOH – Internal Review Committee during an upcoming review meeting. The findings are attached. You will be contacted by the Department for further instructions regarding your plan of correction requirements.

Please call the Plan of Correction Coordinator at 505-222-8647, if you have questions about the survey or the report. Thank you for your cooperation and for the work you perform.

Sincerely,

*Nadine Romero, LBSW*

Nadine Romero, LBSW  
Team Lead/Healthcare Surveyor  
Division of Health Improvement  
Quality Management Bureau



*"Assuring safety and quality of care in New Mexico's health facilities and community-based programs."*

**Roger Gillespie, Acting Division Director • Division of Health Improvement**

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QMB Report of Findings – MaxCare, Inc. - Metro Region – April 19 – 20, 2011

## Survey Process Employed:

Entrance Conference Date: April 19, 2011

Present: **Maxcare, Inc.**  
Anita Fincher, Director of Quality Assurance  
Armida Medina, Program Director

**DOH/DHI/QMB**

Nadine Romero, LBSW, Team Lead/Healthcare Surveyor  
Stephanie Martinez de Berenger, MBA, Healthcare Surveyor

Exit Conference Date: April 20, 2011

Present: **Maxcare, Inc.**  
Anita Fincher, Director of Quality Assurance

**DOH/DHI/QMB**

Nadine Romero, LBSW, Team Lead/Healthcare Surveyor  
Stephanie Martinez de Berenger, MBA, Healthcare Surveyor

Homes Visited Number: 4

• Supported Homes Visited Number: 4

Administrative Locations Visited Number: 1

Total Sample Size Number: 7  
1 - Jackson Class Members  
7 - Non-Jackson Class Members  
5 - Supported Living  
5 - Adult Habilitation  
3 - Community Access

Records Reviewed (Persons Served) Number: 7

Administrative Files Reviewed

- Billing Records
- Medical Records
- Incident Management Records
- Personnel Files
- Training Records
- Agency Policy and Procedure
- Caregiver Criminal History Screening Records
- Employee Abuse Registry
- Human Rights Notes and/or Meeting Minutes
- Nursing personnel files
- Evacuation Drills
- Quality Improvement/Quality Assurance Plan

CC: Distribution List: DOH - Division of Health Improvement  
DOH - Developmental Disabilities Supports Division  
DOH - Office of Internal Audit  
HSD - Medical Assistance Division

## QMB Scope and Severity Matrix

Each deficiency in your Report of Findings is scored on a Scope and Severity Scale. The culmination of each deficiency's Scope and Severity is used to determine degree of compliance to standards and regulations and level of QMB Compliance Determination.

		SCOPE			
		Isolated 01% - 15%	Pattern 16% - 79%	Widespread 80% - 100%	
SEVERITY	High Impact	Immediate Jeopardy to individual health and or safety	J.	K.	L.
		Actual harm	G.	H.	I.
	Medium Impact	No Actual Harm Potential for more than minimal harm	D.	E.	F. (3 or more)
			D. (2 or less)		F. (no conditions of participation)
	Low Impact	No Actual Harm Minimal potential for harm.	A.	B.	C.

### Scope and Severity Definitions:

- **Isolated:**  
A deficiency that is limited to 1% to 15% of the sample, usually impacting few individuals in the sample.
  
- **Pattern:**  
A deficiency that impacts a number or group of individuals from 16% to 79% of the sample is defined as a pattern finding. Pattern findings suggest the need for system wide corrective actions.
  
- **Widespread:**  
A deficiency that impacts most or all (80% to 100%) of the individuals in the sample is defined as widespread or pervasive. Widespread findings suggest the need for system wide corrective actions as well as the need to implement a Continuous Quality Improvement process to improve or build infrastructure. Widespread findings could be referred to the Internal Review Committee for review and possible actions or sanctions.

## QMB Determinations of Compliance

- “Substantial Compliance with Conditions of Participation”

The QMB determination of “Substantial Compliance with Conditions of Participation” indicates that a provider is in substantial compliance with all ‘Conditions of Participation’ and other standards and regulations. The agency has obtained a level of compliance such that there is a minimal potential for harm to individuals’ health and safety. To qualify for a determination of Substantial Compliance with Conditions of Participation, the provider must be in compliance with all Conditions of Participation.

- “Non-Compliance with Conditions of Participation”

The QMB determination of “Non-Compliance with Conditions of Participation” indicates that a provider is out of compliance with one (1) or more ‘Conditions of Participation.’ This non-compliance, if not corrected, is likely to result in a serious negative outcome or the potential for more than minimal harm to individuals’ health and safety.

Providers receiving a repeat determination of ‘Non-Compliance’ may be referred by QMB to the Internal Review Committee (IRC) for consideration of remedies and possible actions.

- “Sub-Standard Compliance with Conditions of Participation”:

The QMB determination of “Sub-Standard Compliance with Conditions of Participation” indicates a provider is significantly out of compliance with Conditions of Participation and/or has:

- Multiple findings of widespread non-compliance with any standard or regulation with a significant potential for more than minimal harm.
- Any finding of actual harm or Immediate Jeopardy.

Providers receiving a repeat determination of ‘Substandard Compliance’ will be referred by QMB to the Internal Review Committee (IRC) for consideration of remedies and possible actions.

## **Guidelines for the Provider Informal Reconsideration of Finding (IRF) Process**

### **Introduction:**

Throughout the QMB Survey process, surveyors are openly communicating with providers. Open communication means that surveyors have clarified issues and/or requested missing information before completing the review. Regardless, there may still be instances where the provider disagrees with a specific finding. Providers may use the following process to informally dispute a finding.

### **Instructions:**

1. The Informal Reconsideration of the Finding (IRF) request must be in writing to the QMB Deputy Bureau Chief **within 10 working days** of receipt of the final report.
2. The written request for an IRF must be completed on the QMB Request for Informal Reconsideration of Finding Form available on the QMB website: <http://dhi.health.state.nm.us/qmb>
3. The written request for an IRF must specify in detail the request for reconsideration and why the finding is inaccurate.
4. The IRF request must include all supporting documentation or evidence.

### **The following limitations apply to the IRF process:**

- The request for an IRF and all supporting evidence must be received within 10 days.
- Findings based on evidence requested during the survey and not provided may not be subject to reconsideration.
- The supporting documentation must be new evidence not previously reviewed or requested by the survey team.
- Providers must continue to complete their Plan of Correction during the IRF process
- Providers may not request an IRF to challenge the sampling methodology.
- Providers may not request an IRF based on disagreement with the nature of the standard or regulation.
- Providers may not request an IRF to challenge the team composition.
- Providers may not request an IRF to challenge the QMB compliance determination or the length of their DDS provider contract.

A Provider forfeits the right to an IRF if the request is not made within 10 working days of receiving the report and/or does not include all supporting documentation or evidence to show compliance with the standards and regulations.

QMB has 30 working days to complete the review and notify the provider of the decision. The request will be reviewed by the IRF committee. The Provider will be notified in writing of the ruling; no face to face meeting will be conducted.

When a Provider requests that a finding be reconsidered, it does not stop or delay the Plan of Correction process. **Providers must continue to complete the Plan of Correction, including the finding in dispute regardless of the IRF status.** If a finding is removed or modified, it will be noted and removed or modified from the Report of Findings. It should be noted that in some cases a Plan of Correction may be completed prior to the IRF process being completed. The provider will be notified in writing on the decisions of the IRF committee.

**Agency:** Maxcare, Inc. - Metro Region  
**Program:** Developmental Disabilities Waiver  
**Service:** Community Living (Supported Living) & Community Inclusion (Adult Habilitation & Community Access)  
**Monitoring Type:** Verification Survey  
**Original Survey Date:** August 23 – 26, 2010  
**Verification Date:** April 19 – 20, 2011

Standard of Care	August 23 – 26, 2010 Deficiencies	April 19 – 20, 2011 Verification Survey – New and Repeat Deficiencies
<b>Tag # 1A26 (CoP) COR / EAR</b>	<b>Scope and Severity Rating: E</b>	<b>Scope and Severity: D</b>
<p><b>NMAC 7.1.12.8</b>  <b>REGISTRY ESTABLISHED; PROVIDER INQUIRY REQUIRED:</b> Upon the effective date of this rule, the department has established and maintains an accurate and complete electronic registry that contains the name, date of birth, address, social security number, and other appropriate identifying information of all persons who, while employed by a provider, have been determined by the department, as a result of an investigation of a complaint, to have engaged in a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider. Additions and updates to the registry shall be posted no later than two (2) business days following receipt. Only department staff designated by the custodian may access, maintain and update the data in the registry.</p> <p>A. <b>Provider requirement to inquire of registry.</b> A provider, prior to employing or contracting with an employee, shall inquire of the registry whether the individual under consideration for employment or contracting is listed on the registry.</p> <p>B. <b>Prohibited employment.</b> A provider may not employ or contract with an individual to be an employee if the individual is listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.</p> <p>D. <b>Documentation of inquiry to registry.</b> The</p>	<p>Based on record review, the Agency failed to maintain documentation in the employee's personnel records that evidenced inquiry to the Employee Abuse Registry prior to employment for 13 of 42 Agency Personnel.</p> <p><b>The following Agency personnel records contained no evidence of the Employee Abuse Registry being completed:</b></p> <ul style="list-style-type: none"> <li>• #50 – Date of Hire 5/23/09</li> <li>• #69 – Date of Hire 9/28/09</li> <li>• #74 – Date of Hire 10/12/09</li> </ul> <p><b>The following Agency Personnel records contained evidence that indicated the Employee Abuse Registry was completed after hire:</b></p> <ul style="list-style-type: none"> <li>• #43 – Date of Hire 3/6/06. Completed 12/11/06</li> <li>• #45 – Date of Hire 7/31/07. Completed 8/1/07.</li> <li>• #49 – Date of Hire 4/27/06. Completed 11/12/06.</li> <li>• #53 – Date of Hire 7/10/09. Completed 7/23/09.</li> <li>• #54 – Date of Hire 9/1/08. Completed 10/1/08.</li> <li>• #55 – Date of Hire 6/3/08. Completed 6/5/08.</li> </ul>	<p><b>New and Repeat:</b></p> <p>Based on record review, the Agency failed to maintain documentation in the employee's personnel records that evidenced inquiry to the Employee Abuse Registry prior to employment for 5 of 37 Agency Personnel.</p> <p><b>The following Agency Personnel records contained evidence that indicated the Employee Abuse Registry was completed after hire:</b></p> <ul style="list-style-type: none"> <li>• #83 – Date of Hire 11/22/10. Completed 4/19/11.</li> <li>• #87 – Date of Hire 1/6/11. Completed 1/10/11.</li> <li>• #92 - Date of Hire 12/29/10. Completed 1/10/11.</li> <li>• #93 – Date of Hire 2/25/11. Completed 3/2/11.</li> <li>• #97 – Date of Hire 11/24/10. Completed 3/31/11.</li> </ul>

provider shall maintain documentation in the employee's personnel or employment records that evidences the fact that the provider made an inquiry to the registry concerning that employee prior to employment. Such documentation must include evidence, based on the response to such inquiry received from the custodian by the provider, that the employee was not listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation.

E. **Documentation for other staff.** With respect to all employed or contracted individuals providing direct care who are licensed health care professionals or certified nurse aides, the provider shall maintain documentation reflecting the individual's current licensure as a health care professional or current certification as a nurse aide.

F. **Consequences of noncompliance.** The department or other governmental agency having regulatory enforcement authority over a provider may sanction a provider in accordance with applicable law if the provider fails to make an appropriate and timely inquiry of the registry, or fails to maintain evidence of such inquiry, in connection with the hiring or contracting of an employee; or for employing or contracting any person to work as an employee who is listed on the registry. Such sanctions may include a directed plan of correction, civil monetary penalty not to exceed five thousand dollars (\$5000) per instance, or termination or non-renewal of any contract with the department or other governmental agency.

Developmental Disabilities (DD) Waiver Service Standards effective 4/1/2007

**Chapter 1.IV. General Provider Requirements. D. Criminal History Screening:** All personnel shall be screened by the Provider Agency in regard to the employee's qualifications, references, and employment history, prior to employment. All Provider Agencies shall comply with the Criminal Records Screening for Caregivers 7.1.12 NMAC and

- #56 – Date of Hire 2/21/10. Completed 6/18/10.
- #70 – Date of Hire 3/13/06. Completed 12/11/06.
- #71 – Date of Hire 4/26/06. Completed 12/11/06.
- #75 – Date of Hire 3/26/07. Completed 3/27/07.

Employee Abuse Registry 7.1.12 NMAC as required by the Department of Health, Division of Health Improvement.



<b>Standard of Care</b>	<b>August 23 – 26, 2010 Scope &amp; Severity</b>	<b>April 19 – 20, 2011 Verification Survey – New and Repeat Deficiencies</b>
Tag # 1A05 (CoP) General Requirements	Scope and Severity Rating: F	Completed
Tag # 1A07 SSI Payments	Scope and Severity Rating: C	Completed
Tag # 1A08 Agency Case File	Scope and Severity Rating: B	Completed
Tag # 1A09 Medication Delivery (MAR) - Routine Medication	Scope and Severity Rating: E	Completed
Tag # 1A09.1 Medication Delivery - PRN Medication	Scope and Severity Rating: E	Completed
Tag # 1A11.1 (CoP) Transportation Training	Scope and Severity Rating: E	Completed
Tag # 1A15.2 Healthcare Documentation	Scope and Severity Rating: E	Completed
Tag # 1A20 DSP Training Documents	Scope and Severity Rating: E	Completed
Tag # 1A22 Staff Competence	Scope and Severity Rating: E	Completed
Tag # 1A27 (CoP) Late & Failure to Report	Scope and Severity Rating: D	Completed
Tag # 1A28.1 (CoP) Incident Mgt. System - Personnel Training	Scope and Severity Rating: E	Completed
Tag # 1A28.2 (CoP) Incident Mgt. System - Parent/Guardian Training	Scope and Severity Rating: E	Completed
Tag # 1A29 Complaints / Grievances – Acknowledgement	Scope and Severity Rating: B	Completed
Tag # 1A33.1 Board of Pharmacy - Lic	Scope and Severity Rating: A	Completed
Tag # 1A37 Individual Specific Training	Scope and Severity Rating: D	Completed

Tag # 5I11 Reporting Requirements (Community Inclusion Quarterly Reports)	Scope and Severity Rating: A	Completed
Tag # 5I36 CA Reimbursement	Scope and Severity Rating: A	Completed
Tag # 5I44 AH Reimbursement	Scope and Severity Rating: C	Completed
Tag # 6L13 (CoP) - CL Healthcare Reqts.	Scope and Severity Rating: E	Completed
Tag # 6L14 Residential Case File	Scope and Severity Rating: E	Completed
Tag # 6L25 (CoP) Residential Health & Safety (Supported Living & Family Living)	Scope and Severity Rating: F	Completed