

Behavioral Health Entities: Phase I Updates, Process Guidance and Q & A with CDPHE

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Objectives

Attendees will develop an understanding of the BHE license, it's background, context and current state.

Attendees will be able to distinguish BHE licensing from OBH regulatory oversight, and will know what to anticipate with the BHE survey process.

Attendees will be provided an overview of the BHE-BHA recommendations.

Agenda

Who We Are and What We Do

BHE Background/Context and Overview

BHE Distinctions

Survey Process

Current State

BHA Creation and Goals

BHE-BHA Recommendations

Q &A



Overview: Who We Are and What We Do

Health Facilities and Emergency Medical Services Division (HFEMSD):

HFEMSD serves to protect the health, safety and welfare of all health care system users and ensure access to quality health care for all Coloradans. HFEMSD includes the following topic areas: EMS and emergency medical responders, EMS and trauma funding, EMS and trauma data, and Health facilities.

The Behavioral Health and Community Services Section: serves to regulate a variety of community-based services, which include services for individuals with intellectual and developmental disabilities, as well as community-based behavioral health services.

BHE Background & Context

- [House Bill 19-1237](#), known as the Behavioral Health Entity (BHE) Licensing bill
- Pre-dates Behavioral Health Task Force (BHTF) and BHA efforts
- Charged CDPHE with creating a single, flexible licensing category for community-based BH to allow for a continuum of care within a single CDPHE licensing chapter

BHE Background & Context cont'd

- Guiding Principles & Intent:
 - Streamlined & consolidated the regulatory structure of behavioral health facilities licensed by CDPHE
 - Intended to resolve duplication & regulatory conflicts between CDPHE & OBH, especially when providing one patient both SUD & MH services
 - Increased parity in the oversight between physical health and behavioral health
- Created the Behavioral Health Entity Implementation & Advisory Committee (BHE-IAC)

BHE Background & Context cont'd

Phase 1: “Regulations in effect by 7/1/2021”...“such a facility will transition to the BHE license by 7/1/2022”:

- Community Mental Health Center
- Community Mental Health Clinic
- Acute Treatment Unit
- Crisis Stabilization Unit

Phase 2: “Such entities shall apply for licensure as a BHE no later than 7/1/2024”:

- Treatment of Substance Use Disorders

How is the BHE license new and different from previous CDPHE licenses?

Previously, CDPHE issued licenses to behavioral health entities in the following ways:

CMHCs and CMHcs:

- Licensed under Chapter 2, General Provisions and Chapter 24, Medication Administration Regulations
- Surveys typically did not occur, due to no service-specific rules having been promulgated.

Acute Treatment Units:

- Licensed under Chapter 2, General Provisions and Chapter 6, Acute Treatment Units, and Chapter 24
- Held to health and safety standards

Crisis Stabilization Units:

- Licensed under Chapter 2, General Provisions, Chapter 9, Community Clinics and Community Clinics and Emergency Centers, and Chapter 24
- The assigned licensing chapter existed for other emergency center facilities and was not specific to behavioral health crisis stabilization services.

How is the BHE license new and different from previous CDPHE licenses?

Presently, those previous facility types are in process to transition to the following licensing structure:

- Licensed under Chapter 2, General Provisions
- Licensed under Chapter 3, Behavioral Health Entities
- Have the option for various endorsements as Behavioral Health Entities:
 - Outpatient Services
 - Walk-in Services
 - 24-Hour/Overnight Acute Treatment Services
 - 24-Hour/Overnight Crisis Stabilization Services
- Adherence to Chapter 24, Medication Administration Regulations

How is this new BHE licensing structure/oversight separate and distinct from OBH licensing?

[BHE Licensing and OBH Designation, Licensing and Contracting Chart](#)

CDPHE

- Pertains to facilities that are considered CMHCs, CMHcs, ATUs and CSUs only.
- Licenses for health and safety
 - Has staff requirements-qualifications
 - Has record content requirements
 - Has requirements regarding ethical considerations and conflicts of interest
 - Includes environmental requirements for 24-Hour/Overnight services
 - Includes food storage, supply, and preparation requirements
 - Includes requirements for laundry services
 - Includes building and safety standards
 - FGI (Facilities Guidelines Institute) Standards
 - Certificate of Compliance
 - Includes requirements for square footage in bedrooms
 - Includes requirements for access to restrooms



OBH-Mental Health Oversight

- OBH designates, or provides program approval, for CMHCs, CMHcs, ATUs, CSUs
- OBH's oversight is primarily focused on treatment standards and quality assurance of services offered
- OBH has the ability to contract (help fund) for services provided in CMHCs, CMHcs, ATUs and CSUs
 - This is done through direct contracts between OBH and providers
 - This is also done through funds OBH allocates to Regional Accountability Entities (RAEs) who then contract with MH providers
- OBH has both rules and contract requirements for service delivery with CMHCs, CMHcs, ATUs, and CSUs
- OBH regulates service-specific programs in CMHCs, to include:
 - Child Youth Mental Health Treatment Act
 - Forensic Community-Based Services
 - Pre-Admission Screening and Resident Review (PASRR)
 - 27-65 Procedures

OBH-Substance Use Disorder Oversight

- OBH licenses, or provides program approval, for Substance Use Disorder (SUD) services
- OBH's oversight is primarily focused on treatment standards and quality assurance of services offered
- SUD licenses are based on ASAM levels
- SUD licenses are service-specific:
 - Gender-Responsive Women's SUD Services
 - Criminal Justice SUD Services
 - Adolescent SUD Services
 - DUI Services
- OBH has the ability to fund SUD services
 - This is done through direct contracts between OBH and providers
 - This is also done through funds OBH allocates to the Managed Service Organizations (MSOs) who then contract with SUD providers

What Can BHE Licensed Providers Anticipate Regarding Oversight?



Survey Process, Content, & Expectations

Once transitioned to the new Chapter 3 BHE license, licensed facilities and agencies will receive a full on-site CDPHE survey.

- Surveys will focus on compliance with Chapter 2 and Chapter 3*
- Surveys typically occur on an unannounced basis, can last for several days, and may include one or more surveyor staff.

*CDPHE-conducted licensing surveys do not take the place of any OBH designation reviews or OBH licensing visits

Survey Process, Content, & Expectations

- Surveys typically commence with an “entrance” meeting, outlining the plan for survey and the information that will be requested.
- Surveys can include record review, environmental observations, interviews of staff, and observation of service delivery.
- The survey will be educational and focused on transition assistance.
- Surveys typically conclude with an “exit” meeting summarizing findings and providing an opportunity to discuss next steps.

Survey Process, Content, & Expectations

- Any possible areas of non-compliance will be “noted” for correction, instead of initially cited. However, this does not apply if the non-compliance is health and safety related.
- 9999 tag will be used to collect data to inform continued education & training needs.
- Facilities will respond to tags (excluding 9999 tags) through submission of a Plan of Correction (POC).
- Plans of Corrections are reviewed and responded to with either requests for additional information or notification of acceptance.

BHE Website as a Resource

[CDPHE BHE Website](#)



Current State of BHE Rule Development

- Phase 1 regulations complete; adopted by BOH; and effective as of June 14, 2021; CDPHE transition of applicable providers into the BHE licensing chapter fully underway
- CDPHE now has a complete and responsive set of community-based BH regulations and one licensure type with reduced/no regulatory waivers needed by providers (= reduced regulatory burden)
- CDPHE & BHE-IAC have been focused on Phase 1 implementation & “slow pedaling” Phase 2 work pending BHA recommendations so to inform next steps

BHA Creation & Goals

- HB 21-1097 created the BHA to be established by 2022 in CDHS
- “... a single state agency, known as the behavioral health administration, shall be established to lead and promote the state's behavioral health priorities. It is imperative that the behavioral health administration transform the state's current behavioral health system by:
 - (a) coordinating and integrating the delivery of behavioral health services in Colorado;

BHA Creation & Goals cont'd

- “... a single state agency, known as the behavioral health administration, shall be established to lead and promote the state's behavioral health priorities. It is imperative that the behavioral health administration transform the state's current behavioral health system by:
 - (b) setting standards for the behavioral health system to improve the quality and equity of care;
 - ...
 - (d) improving equitable access to, quality of, and affordability of BH services for Coloradans;

BHA Creation & Goals cont'd

- “... a single state agency, known as the behavioral health administration, shall be established to lead and promote the state's behavioral health priorities. It is imperative that the behavioral health administration transform the state's current behavioral health system by:
 - ...
 - (g) eliminating unnecessary fragmentation of service and streamlining access;
 - ...
 - (j) reducing administrative burden on BH care providers so they are able to focus on client care.”

BHE-BHA Recommendations

- **Recommendation**: All Community-Based BH provider types (aka BHE) authority, rulemaking, and administrative/policy setting reside with the BHA. The BHA can leverage CDPHE for its expertise in on-site inspection and review of physical plants (facilities)
 - Minimum health & safety vs. clinical/quality oversight
- Scope not to include hospitals/psych hospitals (e.g., federal CMS certification) as CDPHE is required by law as the state survey agency to complete the work of CMS

BHE-BHA Recommendations cont'd

- Thoughtful collaboration between CDPHE & BHA can occur within an interagency agreement (IA)
- An IA would allow for the proper involvement by CDPHE, e.g., inspection of 24/7 facilities and potentially not others (i.e., less than 24-hour) where differentiated oversight may be appropriate
- Where Fire Safety is necessary, leverage DPS-DFPC involvement via an IA
- BHE-IAC to resume Phase 2 responsibilities & work toward an appropriate structure so to be ready to move to BHA once stood up

BHE-BHA Recommendations cont'd

- Existing precedent for this model (HCPF-CDPHE IA); supports a single accountable agency (BHA) while not duplicating departments' expertise
- Solves the issue of facilities that needed designation from OBH (BHA) in addition to the license from CDPHE
- The work is equally valuable at CDPHE or BHA; important to ensure the past 2+ years BHE-IAC work will be fully incorporated

Current Statutory Considerations

- Phase 1: CDPHE will continue the Phase 1 transition, successfully licensing all BHE providers into a complete/responsive cafeteria licensing package (complete by 7/1/2022)
- Once BHA is operationalized, move BHE regulations over to BHA as deemed appropriate

Current Statutory Considerations

- Phase 2: (SUD providers) - The departments shall seek a legislative extension to the BHE Phase 2 timelines in light of the BHA efforts to allow for a smooth transition and incorporation of SUD providers into BHA concepts/structures (e.g., SB-222, etc.)
- Continue Phase 2 efforts in the meantime with future BHA lens
- HFEMSD conducted an analysis as to what options exist for currently existing BHE statutory deadlines and recommended navigation of such, e.g., Omnibus bill next session for revision of deadlines along with BHA bill

Q & A



Thank you!

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