CBHC | Colorado Behavioral Healthcare Council

2023 Legislative Wrap-Up

The 2023 legislative session was remarkable for Democrat super-majorities in both chambers, exceptionally high partisan rancor, perhaps the ugliest close to a legislative session in recent memory, noticeable fissures between moderate and progressive Democrats and between many legislative Democrats and the governor's office – and, despite all of that, many bipartisan bills.

Key Democrat priorities included gun control and enhancing abortion protections. And the caucus largely succeeded in passing those priorities, except for a ban on assault weapons that lacked support from moderate Democrats and the governor.

Minority Republicans wielded the only tools they had, the clock and the calendar. Reading bills at length on the floor, filibustering, bringing in hundreds of witnesses to committee hearings were strategies that slowed down the process to a snail's pace. While it is not yet clear exactly how many of the 617 bills introduced died on the calendar – and it appears the tally is not as high as the minority party likely wished – it's undeniable that leadership had to prioritize those that had to move forward and those that had to be sacrificed.

Housing loomed large during the session. Governor Polis and Senate Democrat leadership crafted a high-stakes bill that would have pre-empted local control of zoning with statewide mandates and prohibitions, to make it easier to build lower-cost and multi-family units. After ongoing and vociferous opposition from local elected officials and developers, the sponsor gutted his own bill in the Senate to allay those concerns and secure enough votes to pass. However, progressive Democrats in the House took exception and amended the controversial provisions back into the bill. Ultimately, the Senate sponsor saw no path forward once the revised bill came back to his chamber and allowed it to die on the calendar.

Another top priority for legislative leaders and the governor was property tax relief. However, no legislation was introduced until a Saturday, three days before the legislature was constitutionally required to adjourn. Rapid-fire debate and amendments on the fly made a complicated bill even harder to assess, and Republicans were incensed at what they perceived to be an effort to gut the TABOR amendment.

The final hours of the session were full of drama, with a handful of House Democrats accusing the Speaker of a failure of leadership, the Senate President cutting short debate on the floor and House Republicans walking out of the Chamber with multiple bills still to be discussed and refusing to return. The House was able to finish its work because of the Democrats' super-majority.

Healthcare legislation was dominated by the latest round of efforts to crack down on hospitals. Notable bills included one to eliminate facility fees and another to impose new requirements on hospitals' community benefit calculations, approaches and reporting.

On the behavioral health side, considerable action centered on efforts to expand access to mental health services for youth. As with related bills in previous years, opposition came from parents' rights advocates who – despite expressing concern about rising suicide rates – did not want their children to even be screened for mental health issues without parental knowledge and consent.

Of course, the biggest behavioral health development was the dismissal of BHA Commissioner Medlock just as the BHA update bill was moving through the legislature. The bill had just passed the House, and its Senate committee hearing was delayed as legislators expressed concern about the circumstances behind her departure and what it meant for the future of the BHA. Ultimately, the BHA update bill was amended in the second chamber to extend the implementation timeline even further than was done in the first chamber.

The following summarizes all the bills CBHC was tracking during the session, grouped by those we supported, those we monitored, and those we opposed. We also provide a brief overview of key budget action affecting community mental health centers, and a note about a piece of legislation we expected to see but didn't.

The final totals for the 2023 session were 617 bills, 311 from the House and 306 from the Senate. CBHC took a position on 31 bills this session, a decrease from previous years.

(NOTE: All status updates are as of May 8, the final day of the session)

SUPPORT POSITION

HB 1003, 6th through 12th grade Mental Health Screening Act - Michaelson-Jenet, Cutter

Overview: The introduced version of this bill would have created a mental health assessment program within CDPHE; schools could opt in and offer the service in much the same way they offer hearing and vision screenings. Students would then be referred to I Matter for services if necessary; if the screener believes the student to be at risk of harming themselves or others, the school would be notified immediately.
CBHC supported the concept but was concerned about the implications of the "assessment" terminology. Rep. Michaelson-Jenet was immediately receptive to changing it to "screening." In addition, some CBHC members were concerned about the requirement that students be referred to I Matter, because of existing relationships with schools and scheduling challenges related to I Matter programmatic requirements.
Parents' rights advocates fought the bill hard, and it was extensively amended with additional parental notification and opt-out opportunities. In addition, the program will now be housed at BHA, not CDPHE.

Status: Passed both chambers on party-line votes (despite the amendments), awaiting leadership signatures before going to governor's desk.

HB 1007, higher education crisis and suicide prevention – Catlin/Amabile

Overview: Maranda Miller, prevention services program manager at Centennial, was instrumental in crafting this bill to require higher education institutions to print Colorado and national crisis and suicide prevention contact information on student identification cards.

Status: Passed both chambers with nearly unanimous support and was signed by the governor March 17; Maranda participated in the signing ceremony.

HB 1009, secondary school substance use – Lindsay, Moreno

Overview: Creates a committee to review existing SBIRT practices for adolescents and make recommendations to the Colorado Dept. of Education by July 1, 2024. The committee must include students, teachers, parents, school administrators, providers with expertise in adolescent SUD and others.

Status: Signed by Governor April 26.

HB 1013, regulating restrictive practices in prisons – Amabile, Fields/Rodriguez

Overview: Designed to prohibit the use of 4-point restraints, the bill requires the Dept. of Corrections to conform to the minimum updated restraint and seclusion standards of the National Commission on Correctional Health Care. Orders for restraints must be signed by the ordering mental health provider, and include the clinical basis for the restraints, an explanation of less-intrusive interventions that were tried first, a description of the immediate circumstances justifying the restraint and the specific behavioral criteria the individual must exhibit for restraint to be terminated. The bill also includes extensive requirements around the use of involuntary medication. DOC must report to the legislature annually regarding the use of clinical restraints and involuntary medications over the previous year.

Status: Passed both chambers, awaiting leadership signatures before going to governor's desk.

HB 1088, mental health services for veterans – Martinez, Hinrichsen

Overview: Establishes a program within the Division of Veterans Affairs to reimburse providers for providing mental health services to veterans. Providers must be available for at least four sessions with each eligible veteran they accept as a client; veterans may receive up to 26 sessions annually. BHA will post on its website a list of participating providers. Reimbursement is TBD but will be the same for both in-person and telehealth appointments.

Status: Passed both chambers, awaiting leadership signatures before going to governor's desk.

HB 1116, contracts between carriers and providers – Hartsook/Daugherty/Ortiz, Rodriguez
Overview: This bill addresses the issue of carriers requiring providers to accept payment by virtual credit card and then imposing a fee on that form of payment, thus reducing their contractual rate. It prohibits carriers from restricting payments to just this method; requires them to notify providers of any fees associated with payment methods and provide instruction on how to select alternative payment methods; and prohibits them from charging a fee if the provider changes preferred payment methods.

Status: Signed by the governor April 10.

HB 1130, prohibiting step therapy for SMI medications – Michaelson-Jenet, Rodriguez/Kolker
Overview: Limits commercial payers to requiring only one alternative to a prescribed SMI medication prior to covering the drug prescribed by a patient's provider; retains criteria under which step therapy is not allowed; requires HCPF to approve any newly available SMI medication for Medicaid coverage within 90 days of the drug's approval by the FDA.

Status: Sent to governor May 5.

HB 1153, Pathways to Behavioral Healthcare – Armagost/Amabile, Pelton B./Rodriguez
Overview: This bipartisan bill creates a feasibility study of promising approaches to keeping individuals with SPMI out of the criminal justice system. Sponsors hope to set the stage for a ballot measure that would fund wellness courts based on those in California. Cali Thole, director of forensic services at SummitStone, testified to the many innovative approaches SummitStone has worked with partners in Larimer to develop, including their groundbreaking wellness and competency courts. We asked the sponsors to amend the bill so the study parameters include an examination of Colorado approaches such as these (as drafted, the study would have looked only at strategies employed in other states). They agreed, and the amendment was adopted in the House Public & Behavioral Health & Human Services committee.

Status: Passed both chambers with nearly unanimous support; awaiting leadership signatures before going to the governor's desk.

HB 1167, reporting overdose events in good faith – DeGruy Kennedy/Sharbini, Rodriguez
Overview: Expands Colorado's Good Samaritan law to cover individuals who help or seek help for a person who has experienced an overdose; reduces penalties for simple possession and drug sharing.

Status: Signed by governor May 1.

HB 1202, overdose prevention centers authorization – Epps/Willford, Priola/Gonzales
Overview: The bill would have allowed – but not required – local governments to authorize overdose prevention sites (sometimes called safe injection sites) as a means of reducing deaths related to fentanyl and other street drugs. CBHC supported it because of our long-standing policy supporting harm reduction efforts.

Status: Postponed indefinitely by Senate Health & Human Services Committee April 26.

HB 1204, recovery residence discharge policy – Lindstedt/Weinberg, Priola

Overview: CBHC supporting this legislation brought forward by the Colorado Providers Association (COPA), this bill distinguishes a "recovery residence" from a private residence and other types of treatment residences for the purposes of requiring recovery residences to establish client discharge and transfer policy and procedures.

Status: Signed by governor May 1.

HB 1236, BHA implementation update - Young/Amabile, Kolker/Simpson

Overview: Originally drafted as largely technical clean-ups, the introduced version of the bill included some important components, notably the requirement for essential community providers to perform more than just one service. However, as discussions around rulemaking and BHASOs heated up, and BHA Commissioner Medlock departed, important changes were made. Critically important elements of the final bill that is on its way to the governor:

- The effective date of safety net and BHE licensure rules was pushed to January 2024 (from the October 2023 date we had previously negotiated).
- BHASO implementation deadline was pushed out a year (to 2025).
- Clarifies that only comprehensive and essential providers need safety net licensure – providers may contract with Medicaid without pursuing one of those license types, they simply won't qualify for enhanced reimbursement. This was an area of considerable confusion in the rulemaking.
- Clarifies that essential providers must furnish more than just one of the "safety net" services to qualify for enhanced reimbursement.
- Changes the existing statutory language about designated BHASO regions to "community-informed structure for a behavioral health administrative service organization." BHA says this does not necessarily mean there will be only one BHASO and that they are still exploring options. We will dig into this further with BHA staff.
- A typo in the bill that creates overlapping CDPHE/BHA oversight of BHEs for a period of time was not spotted until just a few days before the end of session. BHA received a legal opinion that the legislative intent of the bill gives BHA clear jurisdiction over CDPHE despite the overlap, meaning that BHEs will not be subject to duplicate oversight. We have requested a written opinion from BHA's legal team on this matter.

Throughout discussions and testimony on the bill, CBHC worked collaboratively with BHA, sponsors and stakeholders while zealously standing up for CMHCs' critical role in the safety net. Our members' thoughtful analysis of the BHA draft rules' and BHASOs' potential impact on access because of impediments to their ability to serve and coordinate care for vulnerable patients laid an inescapable foundation for pushing back those timelines.

Status: Passed both chambers; awaiting leadership signatures before going to the governor's desk.

HB 1249, reduce justice involvement for young children – Armagost/Gonzales-Gutierrez, Simpson/Coleman

Overview: Led by Healthier Colorado, this bill was drafted after several years of stakeholder efforts to exclude 10–12-year-olds from the juvenile justice system. To do this the bill proposed to strengthen Colorado's Collaborative Management Programs (CMPs). Despite having bipartisan sponsorship, the bill was heavily opposed by Republicans and was heavily amended through both chambers. After it appeared that the bill might not pass the Senate it was amended a final time to continue to remove the language that would have raised the age of prosecution to 13. There were additional funds added to boost CMPs and to expand their reach to counties that currently do not have them. CBHC supported this legislation in alignment with existing Board policy.

Status: Passed both chambers; awaiting leadership signatures before going to the governor's desk.

HB 1268, private treatment for out-of-state defendant (changes to interstate compact) – Lukens/Evans, Roberts/Pelton B.

Overview: Lesley Brooks, MD, chief medical officer at SummitStone, was instrumental in shaping this bill. A longtime champion for easing the requirement that clinicians check whether individuals seeking SUD treatment are involved with the criminal justice system in another state, Dr. Brooks has always observed that this impedes access to care, perpetuates institutional racism, and institutes a requirement for behavioral healthcare that does not exist for physical healthcare. The bill clarifies that its requirements apply only to individuals convicted of crimes in another state, not those who have been charged but not convicted or sentenced, and only to those for whom treatment is a part of their sentence. It requires clinicians in SUD programs to notify these individuals of their own need to register with the compact (rather than requiring the clinician to do so themselves), while retaining certain requirements around notification of law enforcement.

Status: Passed both chambers; awaiting leadership signatures before going to the governor's desk.

HB 1295, Medicaid provider audits – Bird/Bockenfeld, Zenzinger/Kirkmeyer

Overview: As written, the bill would have made extensive changes to HCPF's existing RAC audit process, including narrowing the timeframe within which they can be conducted and requiring repayment to providers of underpayments. The fiscal note on the introduced bill was $52M, with 26 FTE, which makes it an unusual bill to come from the Joint Budget Committee. Ultimately, the bill was amended into an audit of the RAC audit process, with one of the sponsors noting that they'd learned it's unclear how much flexibility the state even has on RAC audits.

Status: Passed both chambers; awaiting leadership signatures before going to the governor's desk.

SB 002, Medicaid reimbursement for community health workers – Mullica/Simpson, McCluskie/Bradfield

Overview: Crafted largely by Children's Hospital and the FQHCs, the bill directs HCPF seek federal authorization by 2024 to make the services of community health workers such as promotoras, health navigators and peer support specialists reimbursable by Medicaid. It establishes a stakeholder process prior to that time to specify exactly which services will be reimbursable, clarify scope of practice, and explore whether non-health care organizations that employ CHWs may be included in the program, among other questions. The bill requires that, in order to be reimbursable, CHWs must work under the supervision of a clinician or a licensed/Medicaid-enrolled provider agency.

Status: Sent to the governor May 2.

SB 033, Medicaid preauthorization exemption – Rodriguez/Fields, Amabile

Overview: This bill came from the Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. It prohibited HCPF from imposing prior authorization, step therapy, and fail first requirements for Medicaid coverage of a prescription drug to treat serious mental health disorders. It carried a significant fiscal note, which effectively killed its chances.

Status: Died on Appropriations calendar.

SB 174, access to certain behavioral health benefits (originally SB 091)

Overview: As originally introduced, the bill would have qualified children for Medicaid behavioral health benefits if they were subject to one of several social determinants of health (food insecurity, housing insecurity, death of a parent or close family members, etc.). While CBHC supported the concept, we were concerned that the necessary screening process would pose a barrier to kids and a burden to providers. Cyndi Dodds, chief clinical officer at SummitStone, suggested that the bill be revised to simply make BH benefits available without a diagnosis to any child in Medicaid. HCPF supported that change, and no appropriations were required. Because the revised approach would not fit under the title of SB 091, the sponsor killed it and introduced the new version. CBHC testified in strong support of SB 174.

Status: Passed both chambers with nearly unanimous support, awaiting governor's signature.

SB 182, temporary suspension of Medicaid requirements – Zenzinger/Kirkmeyer, Bird/Pugliese

Overview: This bill, carried by JBC members, ensures an efficient unwind from the continuous health insurance coverage provisions enacted as part of the COVID Public Health Emergency by extending eligibility provisions until July 1, 2024.

Status: Signed by Governor April 27.

MONITOR POSITION

HB 1012, juvenile competency to proceed – Amabile, Rodriguez

Overview: This legislation came through the Behavioral Health Disorders in the Criminal Justice System (BHDCJS) Legislative Oversight Committee. It updates and adds criteria for the process of assessing juvenile competency to proceed.

Status: Sent to the governor May 5.

HB 1031, mental health professionals reporting exemption – Story/Willford, Winter

Overview: Eliminates the requirement for mental health professionals (licensed and candidates) to report information about patients with sexually transmitted infections to the State Board of Health.

Status: Signed by the governor April 10.

HB 1070, practice hours required for licensure – Ricks, Buckner

Overview: This bill would have halved the supervised clinical practice and postdoctoral practice required before becoming licensed as a marriage and family therapist.

Status: Postponed indefinitely by the House Health & Insurance Committee Feb. 28.

HB 1071, psychologist prescribing authority – Amabile/Bradfield, Simpson/Fenberg

Overview: Enables licensed psychologists to administer and prescribe psychotropic medications by means of a "prescription certificate." In order to qualify for that certificate, the psychologist must have completed a Master of Science degree in psychopharmacology that meets certain minimum requirements (specified in the law); have passed the psychopharmacology examination of the Assn. of State and Provincial Psychology Boards; been certified as having completed a supervised and relevant clinical experience approved by both the Colorado Medical Board and Colorado Board of Psychology. That supervised clinical experience must include 750 hours treating at least 150 clients under the supervision of one or more prescribing physicians, with at least an 80-hour practicum in observational clinical assessment and pathophysiology; additional requirements apply for psychologists working with youth or the elderly. The psychologist must undergo peer review as approved by the Colorado Medical Board and hold professional liability insurance.

Many CBHC members were concerned that, despite these requirements, psychologists will simply never have exposure to the depth and breadth of clinical training psychiatrists undergo, thereby endangering patients. In addition, some noted that prescribing psychologists will practice in urban areas, and this proposal will not help address the provider shortage in rural parts of the state. Other CBHC members, however, viewed it as a useful tool for helping to address the wait time for prescribers. Accordingly, CBHC was neutral on the bill.

Status: Signed by the governor March 3.

HB 1138, procedures related to adult competency – Amabile/Soper, Rodriguez

Overview: The bill allows a district attorney, a medical professional, a representative of the Behavioral Health Administration, or a representative from the Office of Civil and Forensic Mental Health (OCFMH) to initiate a proceeding for a certification for short-term treatment. This bill was brought by OCFMH to address the adult competency backlog.

Status: Passed both chambers, awaiting leadership signatures before going to governor's desk.

HB 1269, extended stay and boarding patients – Michaelson-Jenet/Gonzales-Gutierrez, Bridges/Gardner

Overview: Designed to address the issue of children languishing in hospitals for weeks/months at a time when there are no residential beds available for inpatient behavioral healthcare.

- Requires Medicaid to analyze whether directed payment authority can be used to expand services for children and youth. The authority would require RAEs to pay no less than department-established fee schedule rates for certain services, including residential treatment, multisystemic therapy (MST), functional family therapy (FFT), and psychotherapy.
- Requires CDHS to form a working group to develop a pilot to incentivize residential treatment providers to accept and treat children and youth with high-acuity behavioral health needs.
- Requires the BHA to develop a framework to measure and assess how the children and youth behavioral health system is functioning and requires that framework to include measures of accountability for boarding and extended stay patients.
- Requires hospitals and counties to report the number of children and youth who are boarding or extended stay in hospitals, hotels, and county departments of human services.
- Requires CDHS to develop a plan for whenever a residential treatment facility closes to support treatment capacity elsewhere.

Status: Passed both chambers; awaiting leadership signatures before going to the governor's desk.

SB 004, employment of school mental health professionals – Marchman/Jaquez-Lewis, Michaelson-Jenet/Young

Overview: Removes requirement that mental health professionals working in schools be licensed by the State Dept. of Education. They must still have a professional license in good standing and undergo a background check.

Status: Signed by governor May 4.

SB 170, extreme risk protection orders – Sullivan/Fenberg, Bacon/Weissman

Overview: The bill extended the list of individuals who may request extreme risk protection orders ("red flag orders") to a number of new categories, including mental health professionals. Mental health professionals are defined as psychologists, licensed professional social workers, marriage and family therapists, licensed professional counselors, addiction counselors. Both licensees and candidates in all these categories are included in the definition. The definition also covers school counselors, school psychologists, school social workers and unlicensed psychotherapists. The bill does not require mental health professionals to file red flag orders, and includes liability protections that apply both to those who request the orders and those who do not. In early stakeholder discussions, CBHC expressed concerns to the sponsors about the potential for this to have a chilling effect on individuals' willingness to seek or remain in therapy. In particular, we highlighted the potential impact on individuals in rural and ag industries, where the suicide risk is high and people are already reluctant to seek care. We also shared information from Maryland, where mental health professionals are already allowed to seek ERPOs yet vanishingly few do for precisely the reasons cited above. The sponsors were not receptive to those concerns; the bill was a linchpin of their gun control package that they felt strongly

about. Because it simply “allows” and does not “require” therapists to file the orders we focused on ensuring the liability protections are robust.

Status: Signed by governor April 28.

OPPOSE POSITION

HB 1164, opioid harm reduction – Lynch

Overview: One part of this bill was commendable: establishing a fund to provide naloxone to schools. However, the remainder of the bill was concerning strengthening penalties for possession of fentanyl by eliminating the requirement that the possession must be known. Because of CBHC’s long-standing harm reduction policy, we opposed the bill on those grounds.

Status: Postponed indefinitely by House Judiciary Committee April 11.

HB 1200, improved outcomes for persons with behavioral health disorders – Ricks/Bockenfeld, Mullica

Overview: As introduced, the bill had two sections. Section 1 established a pilot voucher program for individuals who can’t receive timely care from their safety net provider or who have “irreconcilable differences” with them; patients could use the voucher to receive services from private, non-Medicaid providers. Section 2 expanded information-sharing parameters for family members of individuals with SPMI.
We opposed the voucher proposal, as did HCPF and BHA, because it would undercut the safety net reforms of the last two years before they’ve even taken effect. And, while we applauded the intent of the family input form, there are legal and ethical questions about how to handle and protect that family-provided information.
We had numerous discussions with the bill sponsors and proponents but struggled to find common ground. Ultimately, though, our suggestion in testimony that proponents seek to expand the existing Medicaid single case agreements gained traction as an alternative to Section 1. Our offer to work with stakeholders on a family input process over the interim was embraced, but the cost of a state-sponsored process meant that the idea was ultimately stripped from the bill. The final version of the bill contains only provisions regarding the single case agreements. CBHC has pledged to the sponsors and Mental Health Colorado to work with them on the family input process over the interim.

Status: Passed both chambers, awaiting leadership signatures before going to governor’s desk.

SB 109, criminal penalties for controlled substance supplier – Pelton B./Mullica, Lynch/Snyder

Overview: Would create a drug-induced homicide law, making it a level 1 drug felony if a person sells or provides any amount of a controlled substance to an individual who dies as a result of consuming that substance. It was a reaction to some of the heart-wrenching testimony from the fentanyl bill last year. CBHC opposed it because it ran counter to CBHC’s board policy positions that support harm reduction principles and decriminalizing behavioral health conditions.

Status: Postponed indefinitely by House Judiciary Committee May 5.

Legislation we expected to see but which did not materialize:

Sen. Priola (D-Adams County) has been working with Healthier Colorado, Mental Health Colorado, and others for two years on a proposal to increase fees on alcohol, wine and beer and use the proceeds to fund alcohol use disorder prevention and treatment. He shared the bill draft with CBHC and other stakeholders early in the session, in the expectation it would be introduced shortly after that. The measure would have to be referred to the ballot for a vote of the people, and it appeared that there was not sufficient support in the sponsor’s caucus to make that viable (referred measures require a 2/3 vote in both chambers to qualify for the ballot). The bill was never introduced.

BUDGET

Despite the best efforts of CBHC members to persuade JBC to increase BH provider rates by 5% (on par with state employee salary increases) rather than the 3% recommended by JBC staff as part of the common policy, JBC members voted unanimously to stick with the 3% increase. While some JBC members expressed interest in ensuring parity between providers and state employees, JBC Chair Sen. Zenzinger sternly noted to the committee that a 3% increase was "historic": rates under the common policy have never increased by more than 2.5%.

CBHC succeeded in adding $75,000 in Teen Mental Health First Aid funding to the CDPHE budget, to cover additional trainings and materials.

THANK YOU!

We are incredibly grateful to all of you who supported the work of CBHC this year – especially those who took the time to testify and advocate for CBHC priorities. Your attention to our action alerts and your engagement throughout this process is a critical part of our success!

CBHC Staff

Doyle Forrestal
Chief Executive Officer
dforrestal@cbhc.org

Frank Cornelia
Deputy Executive Director
fcornelia@cbhc.org

Edie Sonn
Senior Director of External Affairs
esonn@cbhc.org

Natalie Strom
Chief Administrative Officer
nstrom@cbhc.org

Betsy Molgano
Program Director MHFACO
bmolgano@cbhc.org

Adam Snell
Intern
MHFACO
asnell@cbhc.org