

“Behavioral health continued to be a focus of the General Assembly in 2023. Several bills addressing behavioral health services, mental health providers, step therapy requirements for mental health drugs, substance use, and disordered eating were considered during the legislative session.”

Behavioral Health Services

The Behavioral Health Administration (BHA) was established in July 2022 within the Department of Human Services (DHS). *House Bill 23-1236* delineates certain administrative responsibilities between the BHA and DHS. The bill makes clarifications and modifications to the state laws concerning the BHA and formally repeals the Office of Behavioral Health, which now functions as the Office of Civil and Forensic Mental Health in DHS. Additionally, certain deadlines related to the implementation of the BHA are extended under the bill.

House Bill 23-1153 requires DHS to contract with a third party to conduct a feasibility study on the intersection of Colorado's behavioral health service availability and judicial system. The study will determine the feasibility of establishing a system for individuals with serious mental illness to access behavioral health care and housing support services. The

study's findings must be reported to the General Assembly by March 1, 2024.

The Department of Health Care Policy and Financing (HCPF) provides behavioral health services for Medicaid members by contracting with regional managed care entities (MCE). The MCE receives a set monthly rate for each Medicaid member who resides in its region. The MCE is responsible for building an adequate network of providers and reimbursing in-network providers as they serve Medicaid members. *House Bill 23-1200* requires MCEs to enter into single-case agreements with out-of-network providers when the MCE cannot provide a specific member with behavioral health services required under the MCE's contract with HCPF.

Mental Health Providers

House Bill 23-1071 allows licensed psychologists to prescribe and administer psychotropic medications by obtaining a prescription certificate issued by the State Board of Psychologist Examiners in the Department of Regulatory Agencies. The bill outlines the criteria and process for obtaining a prescription certificate. Once granted, the psychologist may only administer and prescribe psychotropic medication if they:

- maintain a collaborative relationship with the patient's health provider;
- meet certain continuing education requirements; and
- carry malpractice insurance.



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Youth Behavioral Health

House Bill 23-1269 enacts several measures to better understand and provide for the behavioral health needs of children and youth, including:

- requiring HCPF to analyze the use of directed payment authority and fee schedules to ensure adequate services are available for children and youth with behavioral health needs;
- requiring DHS to convene a working group to develop an incentive funding pool pilot program to encourage residential providers to treat children and youth with behavioral health needs;
- requiring the BHA to develop a framework that measures the effectiveness of the behavioral health system for children and youth;
- requiring hospitals and county departments to report certain data on children and youth quarterly to the BHA;
- requiring DHS to develop a plan for when residential treatment facilities for children and youth close or change their operations; and
- creating the High-Acuity Treatment and Services Cash Fund to provide additional resources to licensed providers serving children and youth with behavioral and mental health needs.

Senate Bill 23-174 requires select mental health services, including family, group, and individual therapy, to be covered for Medicaid members under 21 years of age without requiring a diagnosis. The services must be provided through the managed care system and the School Health Services Program. The Senate Health and Human Services Committee indefinitely postponed a similar bill,

Senate Bill 23-091, that would have limited coverage of select mental health services without requiring a diagnosis for Medicaid members under 21 years of age to those members who had certain mental health risk factors, including genetic factors, traumatic events, and environmental factors.

House Bill 23-1003 creates the Sixth through Twelfth Grade Mental Health Screening Program in the BHA. The bill allows participating public schools to conduct brief, structured screenings for early identification of mental health concerns. Schools that choose to participate are required to provide written notices to parents about the screenings and allow parents to opt their child out of the screening program. Based on the outcome of the screening, the screening provider may be required to send a notification to the student's school and parent, provide information about behavioral health services to the student and their parent, or report known or suspected child abuse or neglect to the proper authorities.

Senate Bill 23-004 allows school districts to employ school-based therapists who are not licensed by the Colorado Department of Education (CDE). The school-based therapist may be supervised by either a special services provider with a school counseling endorsement or by a school district administrator. The school-based therapist must complete a fingerprint-based criminal history record check.

House Bill 23-1007 requires higher education institutions to print both the phone number and text talk number for Colorado Crisis Services, the statewide behavioral health crisis response system, and 988, the national suicide



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and crisis lifeline number, on any student identification (ID) cards issued after August 1, 2023. Institutions must distribute information for Colorado Crisis Services and 988 at the beginning of each semester or trimester to any students with ID cards issued prior to August 1, 2023, or to all students if the institution does not use student ID cards.

Veterans Mental Health

House Bill 23-1088 creates the Veterans Mental Health Services Program in the Department of Military and Veterans Affairs (DMVA). Under the program, veterans residing in veterans community living centers who have exhausted their federal Veterans Health Administration mental health benefits may receive 26 reimbursed mental health sessions per year. The DMVA must reimburse mental health care providers who participate in the program for mental health sessions.

Prescription Drugs

Step therapy, or a fail first requirement, is when an insurance company requires certain steps before paying for a medication. Typically, this means a patient must take a preferred medication before the insurer will pay for a non-preferred medication. The General Assembly considered two bills addressing step therapy requirements for prescription drugs for mental health conditions.

House Bill 23-1130 makes changes to step therapy requirements for prescription drugs treating serious mental illness, as defined by the bill. Specifically, it prohibits state-regulated insurance plans from requiring more than one alternative drug trial as part of a step therapy protocol before covering a drug prescribed by a provider to treat serious mental illness. Additionally, it requires

insurance plans to cover a drug if the provider attests a prescribed drug is necessary, without undergoing step therapy. Lastly, HCPF must review a newly FDA-approved drug for a serious mental illness within 90 days for coverage of the drug under Medicaid.

Senate Bill 23-033 would have prohibited HCPF from requiring prior authorization, fail first, or step therapy requirements for any prescription drug indicated to treat a serious mental health disorder. The bill was deemed lost.

Substance Use

House Bill 23-1009 creates the Secondary School Student Substance Use Committee in CDE to develop, identify, or modify practices that identify students in secondary school who need substance use treatment, offer brief interventions, and refer students to substance use treatment resources.

Overdose prevention centers are facilities that provide space for individuals to use previously obtained controlled substances under the supervision of healthcare professionals or other trained staff for the purpose of providing life-saving treatment in the event of a potential overdose, as well as access to other harm reduction services. *House Bill 23-1202* would have allowed municipalities to authorize the operation of an overdose prevention center within its boundaries after holding a public hearing. The bill was postponed indefinitely by the Senate Health and Human Services Committee.

House Bill 23-1204 requires a certifying body, approved by the BHA, to approve recovery residences' client discharge and transfer policies. A recovery residence is allowed to discharge or transfer a client with 24-hours'



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notice in certain circumstances and to immediately discharge or transfer a client if the client is found in possession of alcohol or nonprescription or illegal drugs. Prior to discharging a client, a recovery residence must provide the client with referrals to treatment or support services, alternative housing options, and recommendations for follow-up care. The certifying body must establish a fair and accessible grievance and appeals process for clients to appeal a discharge or transfer decision made by recovery residences. Residences and clients may file an appeal of any decision made by the certifying body with the Department of Personnel and Administration and seek judicial review.

Disordered Eating

Senate Bill 23-014 creates the Disordered Eating Prevention Program in the Department of Public Health and Environment (CDPHE).

The program must:

- create and maintain an external-facing resource that is updated annually and includes key information about disordered eating, including risk factors and prevention factors;
- collaborate with other offices within CDPHE to align work focused on disordered eating, facilitate public outreach, and increase awareness about disordered eating prevention;
- partner with the CDE to inform teachers, administrators, school staff, students, and parents about disordered eating prevention; and
- coordinate the Disordered Eating Prevention Research Grant Program, which is created by the bill, to provide financial assistance to research the root causes of

disordered eating and examine risk factors for disordered eating.

Senate Bill 23-176 creates prohibitions and requirements related to health care services for individuals with disordered eating. Specifically, Medicaid and health insurance plans are prohibited from using body mass index, ideal body weight, or any achieved weight standard to determine medical need or the level of care for individuals with disordered eating. Additionally, the bill prohibits retail establishments from selling over-the-counter diet pills to individuals under the age of 18.

