

**HB19-1160: MENTAL HEALTH FACILITY PILOT PROGRAM**  
Concerning a mental health facility pilot program

**Details**

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<b>Bill Sponsors:</b>	House – <i>Landgraf (R) and Singer (D)</i> , Pelton (R), Bockenfield (R), Larson (R), Wilson (R), McKean (R), Catlin (R), Gonzales-Gutierrez (D), Mullica (D) Senate – <i>Gardner (R)</i>
<b>Committee:</b>	House Public Health Care & Human Services House Appropriations
<b>Bill History:</b>	1/30/2019- Introduced in House
<b>Next Action:</b>	2/27/2019- Hearing in House Public Health Care & Human Services
<b>Fiscal Note:</b>	<u>2/20/2019 Version</u>

**Bill Summary**

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This bill creates a three-year pilot program to provide residential care, treatment, and services to individuals that have both physical and mental health conditions.

**Issue Summary**

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**Physical and Mental Health**

Many studies have demonstrated that individuals with severe mental illness<sup>1</sup> have a higher mortality rate than the general population.<sup>2</sup> Physical conditions such as HIV, obesity, type 2 diabetes, hepatitis B/C, poor dental status, stroke, high blood pressure, high cholesterol, heart attacks, impaired lung function, and other cardiac/vascular diseases have increased frequency of occurrence in individuals with severe mental illness.

**State & Federal Regulations**

There are numerous state and federal rules and regulations that govern the physical health and mental health industries and the integration of the two. This analysis is limited in scope so the following state and federal policies reflect issues that may arise for entities participating in the proposed pilot program.

At the state level, if a nursing care facility, licensed by the Colorado Department of Public Health and Environment (CDPHE), has a written agreement with a designated facility<sup>3</sup> to provide care and treatment to an individual undergoing mental health evaluation or treatment by the designated facility, the nursing care facility must follow both the state regulations concerning the operation of a nursing care facility<sup>4</sup> and the care and treatment of persons with a mental health disorder<sup>5</sup>. If any of these two sets of regulations conflict with one another, the nursing care facility is to comply with whichever is stricter.

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<sup>1</sup> Severe mental illness may include conditions like schizophrenia, bipolar disorder, schizoaffective disorder, and major depressive disorder.

<sup>2</sup> DE Hert, M., et al. (2011). Physical illness in patients with severe mental disorders. I. Prevalence, impact of medications and disparities in health care. *World psychiatry: official journal of the World Psychiatric Association (WPA)*, 10(1), 52-77. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3048500/>

<sup>3</sup> A designated facility is an agency that has been applied for and been approved by the CO Department of Human Services to provide mental health services.

<sup>4</sup> 6 CCR 1011-1 Chap 05

<sup>5</sup> 2 CCR 502-1, section 21.280

Since the inception of Medicaid in 1965 there has been a statutory prohibition at the federal level of using federal Medicaid dollars for residential mental health or substance use disorder treatment in facilities known as institutions for mental diseases (IMD).<sup>2</sup> An IMD is defined as a “hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services.”<sup>2</sup>

The Nursing Home Reform Act, which was also the Omnibus Budget Reconciliation Act of 1987, requires states to conduct Pre-admission Screening and Resident Review (PASRR) of individuals with disabilities (mental illness, intellectual disability, developmental disabilities) prior to admission to a nursing facility to determine if they actually need nursing facility level of care, even if the individual is not Medicaid eligible.<sup>6,7</sup>

The Centers for Medicare Services (CMS) created the Five-Star Quality Rating System to help consumers, families, and facilities evaluate the performance of nursing homes.<sup>8</sup> Included in the ratings are Quality Measures which are derived from resident assessment data. One of the rating criteria is the number of residents at the facility who are receiving antipsychotic medications: the larger the number, the lower the score the facility receives. Although the system has good intentions, there are anecdotal records of nursing homes turning away patients or not properly medicating for conditions that require psychiatric medications for their mental health condition.<sup>9</sup>

### This Legislation

The bill declares that individuals with physical health or significant mental health needs are often cared for in expensive acute care hospitals or psychiatric hospitals and Colorado taxpayers often bear the costs for care in these expensive settings. Regulations exist that limit the percentage of individuals with a mental health diagnosis or intellectual and development disability (IDD) that can reside in a nursing home. Individuals with physical and mental health needs would benefit from being in a facility that serves those needs and may assist in transitioning to living on their own; however, current federal and state regulations do not allow for such a treatment model. The General Assembly intends for a pilot program to be established to create a new licensed facility model for those with dual diagnoses to receive a variety of services.

The bill establishes the pilot program within the CDPHE and authorizes no more than two entities to participate in the three-year pilot program to allow individuals with both a physical health diagnosis and significant mental health diagnosis to live in the facility that treats both issues and provides additional services to help with transitioning to independent living.

On or before October 1, 2019, CDPHE is to develop an application for interested entities to apply for the pilot program. At a minimum, the application must require the entity to demonstrate that it:

- Serves individuals with both physical and mental health diagnoses
- Offers staff secure environments rather than physically secure spaces
- Has the capability to provide integrated services with community medical and behavioral health providers
- Has sufficient staffing levels of licensed nurses, nursing assistants, and occupational and recreational professionals

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<sup>6</sup> The Arc. (n.d.) *Key Federal Laws*. Retrieved from <https://www.thearc.org/what-we-do/public-policy/know-your-rights/federal-laws>

<sup>7</sup> 42 CFR Part 483.112-116

<sup>8</sup> CMS (July 2018). *Design for Nursing Home Compare Five-Star Quality Rating System: Technical Users Guide*. Retrieved from <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/downloads/usersguide.pdf>

<sup>9</sup> Thompson R. (July 11, 2016). Navigating the Five-Star Conflict for the mentally ill. *McKnight's Long Term Care News*. Retrieved from <https://www.mcknights.com/blogs/guest-columns/navigating-the-five-star-conflict-for-the-mentally-ill/>; Sewell, D.D. (Nov. 29, 2016). *Nursing Homes are Turning Away Patients with Mental Health Issues*. Retrieved from <http://careforyourmind.org/nursing-homes-are-turning-away-patients-with-mental-health-issues/>

- Has a partnership with either an acute care hospital or psychiatric hospital and a skilled nursing facility, so it can transfer an individual in need of a higher level of care
- Demonstrates a collaborative relationship with the hospital, including consultation and treatment plan support, one-on-one staffing support, and ongoing staff training at the mental health facility
- Is in a community that has resources to support community engagement to move an individual to less restrictive environments
- Demonstrates cost savings or cost neutrality for the Colorado Medicaid program
- Is willing and able to contribute one-third of the increased costs that the entity will incur under the pilot program and has identified sources for the remaining two-thirds.
- Is willing to prepare reports on the pilot program

On or before December 1, 2019, CDPHE is to select up to two entities for the pilot program. If more than one entity is chosen, one applicant must be in a community with a population over 100,000 and the other with a population of less than 100,000 (unless there is no qualified applicant from such a community. Both entities cannot be located in the same city and cannot be assisted living facilities.

CDPHE is authorized to adopt rules to implement the pilot program.

The bill is effective August 2, 2019 is the last day of session is May 3, 2019, unless a referendum petition is filed against the bill.

### Reasons to Support

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People who get treatment for co-occurring mental and physical conditions may experience an improvement in their overall medical condition, better compliance with care, and a better quality of life. This pilot program could demonstrate the benefits of further integrating physical and mental health care. There is a critical gap in care for those who have both physical and mental health conditions at a severe level that makes it difficult or even impossible to live independently.

### Supporters

- Alliance Colorado<sup>10</sup>

### Reasons to Oppose

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There is limited funding in the mental health sphere. As drafted, this pilot program provides no state funding to support entities in their program duties. This may be constraining on who applies for the program; as the bill states, there are state and federal regulations that places limits on this work. Therefore, the selected entities would need the ability to dedicate resources to determine how to comply with the pilot program requirements and follow mandated regulations.

### Opponents

- Any opposition has not been made public at this time.

### Other Considerations/Unanswered Questions

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It is unknown what entities would be eligible for such a pilot program or if setting up the program according to the statutory parameters. The bill currently prohibits assisted living facilities from being eligible for the pilot program; however besides that qualification there is little discussion regarding what types of entities

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<sup>10</sup> Statewide association of Community Centered Boards (CCBs) and Program Approved Service Agencies (PASAs)- with mission of strengthening services and supports to individuals with IDD

would be eligible. Would only skilled nursing facilities (SNFs) be eligible for the program? If not just SNFs, how would the program provide the medical care services to the participating individuals?

As the bill currently requires the chosen entity and outside organizations to fund the pilot program it is unknown how entities would be able to produce this new funding or prioritize existing funds to the program. How will the state incentivize applications to and participation in the pilot program without the involvement of state funding? Will there be sufficient funding from the entities and outside sources to adequately fund the pilot program?

The timeline for CDPHE to develop an application for the pilot program seems to be short. As the bill appears to lack clarity on its intentions and the guidelines for the program, it may take CDPHE time to develop an appropriate application. Furthermore, one of the requirements for the application to include is for the entity to demonstrate that it has sufficient staffing levels of licensed nurses, nursing assistants, and occupational/recreational professionals. There is no requirement for the entity to demonstrate that there is sufficient staffing of appropriate behavioral health professionals for the program to be successful.

The requirement of entities to demonstrate cost savings or cost neutrality to Medicaid in their application may be a large deterrent for entities to apply for the pilot program. Such an analysis may require the entity to contract with an outside group to conduct the analysis, which will require further financial participation by the entity.

There is a need for this type of integrated care, without the regulatory barriers and limits. The state may need to dedicate resources to helping develop an appropriate and successful approach and create an incentive for organizations to create this pilot.

### **About this Analysis**

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This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. This analysis is accurate to staff knowledge as of date printed. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at [awilliams@healthdistrict.org](mailto:awilliams@healthdistrict.org).