Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

This Unofficial Version Includes Committee Amendments Not Yet Adopted on Second Reading

LLS NO. 22-0779.01 Shelby Ross x4510 **SENATE BILL 22-106**

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A BILL FOR AN ACT

CONCERNING ADDRESSING CONFLICTS OF INTEREST IN REGIONAL ORGANIZATIONS RESPONSIBLE FOR PUBLIC BEHAVIORAL HEALTH SERVICES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

On or before October 1, 2022, the bill requires each managed care entity, administrative service organization, and managed service organization that has 25% or more provider ownership to comply with certain conflict of interest policies in order to promote transparency and accountability.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 25.5-5-402, **amend** (9) as follows:

25.5-5-402. Statewide managed care system - definitions - rules. (9) **Bidding.** (a) The state department is authorized to institute a program for competitive bidding pursuant to section 24-103-202 or 24-103-203 for MCEs seeking to provide, arrange for, or otherwise be responsible for the provision of services to its enrollees. The state department is authorized to award contracts to more than one offer or. The state department shall use competitive bidding procedures to encourage competition and improve the quality of care available to medicaid recipients over the long term that meets the requirements of this section and section 25.5-5-406.1.

(b) (I) ON OR BEFORE JANUARY 1, 2023, IN ORDER TO PROMOTE TRANSPARENCY AND ACCOUNTABILITY, THE STATE DEPARTMENT SHALL REQUIRE EACH MCE THAT HAS TWENTY-FIVE PERCENT OR MORE OWNERSHIP BY PROVIDERS OF BEHAVIORAL HEALTH SERVICES TO COMPLY WITH THE FOLLOWING CONFLICT OF INTEREST POLICIES:

(A) PROVIDERS WHO HAVE OWNERSHIP OR BOARD MEMBERSHIP IN AN MCE SHALL NOT HAVE CONTROL, INFLUENCE, OR DECISION-MAKING AUTHORITY IN THE ESTABLISHMENT OF PROVIDER NETWORKS.

(B) EACH MCE SHALL REPORT QUARTERLY THE NUMBER OF PROVIDERS WHO APPLIED TO JOIN THE NETWORK AND WERE DENIED AND A COMPARISON OF RATE RANGES FOR PROVIDERS WHO HAVE OWNERSHIP OR BOARD MEMBERSHIP VERSUS PROVIDERS WHO DO NOT.

(C) AN EMPLOYEE OF A CONTRACTED PROVIDER OF AN MCE

SHALL NOT ALSO BE AN EMPLOYEE OF THE MCE UNLESS THE EMPLOYEE IS THE CHIEF CLINICAL OFFICER OR UTILIZATION MANAGEMENT DIRECTOR OF THE MCE. IF THE INDIVIDUAL IS ALSO AN EMPLOYEE OF A PROVIDER THAT HAS BOARD MEMBERSHIP OR OWNERSHIP IN THE MCE, THE MCE SHALL DEVELOP POLICIES, APPROVED BY THE EXECUTIVE DIRECTOR OF THE STATE DEPARTMENT, TO MITIGATE ANY CONFLICT OF INTEREST THE EMPLOYEE MAY HAVE.

(D) AN MCE'S BOARD SHALL NOT HAVE MORE THAN FIFTY PERCENT OF CONTRACTED PROVIDERS AS BOARD MEMBERS, AND THE MCE IS ENCOURAGED TO HAVE A COMMUNITY MEMBER ON THE MCE'S BOARD.

(II) NO LATER THAN JULY 1, 2025, THE STATE DEPARTMENT SHALL APPROPRIATELY ADDRESS PERCEIVED OR ACTUAL PROVIDER OWNERSHIP AND CONTROL OF MCES PARTICIPATING IN THE STATEWIDE MANAGED CARE SYSTEM IN THE INTEREST OF TRANSPARENCY AND ACCOUNTABILITY. IN DESIGNING A COMPETITIVE BIDDING PROCESS, THE STATE DEPARTMENT SHALL INCORPORATE COMMUNITY FEEDBACK AND HAVE A PUBLIC PROCESS RELATED TO GOVERNING REQUIREMENTS, INCLUDING HOW TO ADDRESS CONFLICTS OF INTEREST.

(III) AS USED IN THIS SUBSECTION (9)(b):

(A) "CHIEF CLINICAL OFFICER" MEANS A PHYSICIAN WHO PROVIDES THE CLINICAL VISION FOR THE MCE AND MAY PROVIDE CLINICAL DIRECTION TO NETWORK MANAGEMENT, QUALITY IMPROVEMENT, UTILIZATION MANAGEMENT, OR CREDENTIALING DIVISIONS.

(B) "MCE" MEANS A MANAGED CARE ENTITY RESPONSIBLE FOR THE STATEWIDE SYSTEM OF COMMUNITY BEHAVIORAL HEALTH CARE, AS DESCRIBED IN SECTION 25.5-5-402 (3) AND IS NOT OWNED, OPERATED BY, OR AFFILIATED WITH AN INSTRUMENTALITY, MUNICIPALITY, OR POLITICAL

SUBDIVISION OF THE STATE.

(C) "OWNERSHIP" MEANS AN INDIVIDUAL WHO IS A LEGAL PROPRIETOR OF AN ORGANIZATION, INCLUDING A PROVIDER OR INDIVIDUAL WHO OWNS ASSETS OF AN ORGANIZATION, OR HAS A FINANCIAL STAKE, INTEREST, OR GOVERNANCE ROLE IN THE MCE.

(D) "UTILIZATION MANAGEMENT DIRECTOR" MEANS A LICENSED HEALTH CARE PROFESSIONAL WITH BEHAVIORAL HEALTH CLINICAL EXPERIENCE THAT LEADS AND DEVELOPS THE UTILIZATION MANAGEMENT PROGRAM AND MANAGES THE MEDICAL REVIEW AND AUTHORIZATION PROCESS.

SECTION 2. In Colorado Revised Statutes, 27-60-103, **add** (8) as follows:

27-60-103. Behavioral health crisis response system - services - request for proposals - criteria - reporting - rules. (8) (a) ON OR BEFORE JANUARY 1, 2023, IN ORDER TO PROMOTE TRANSPARENCY AND ACCOUNTABILITY, THE OFFICE SHALL REQUIRE EACH ADMINISTRATIVE SERVICE ORGANIZATION THAT HAS TWENTY-FIVE PERCENT OR MORE OWNERSHIP BY PROVIDERS OF BEHAVIORAL HEALTH SERVICES TO COMPLY WITH THE FOLLOWING CONFLICT OF INTEREST POLICIES:

(I) PROVIDERS WHO HAVE OWNERSHIP OR BOARD MEMBERSHIP IN AN ADMINISTRATIVE SERVICE ORGANIZATION SHALL NOT HAVE CONTROL, INFLUENCE, OR DECISION-MAKING AUTHORITY IN HOW FUNDING IS DISTRIBUTED TO ANY PROVIDER OR THE ESTABLISHMENT OF PROVIDER NETWORKS.

(II) THE OFFICE SHALL QUARTERLY REVIEW AN ADMINISTRATIVE SERVICE ORGANIZATION'S FUNDING ALLOCATION TO ENSURE THAT ALL PROVIDERS ARE BEING EQUALLY CONSIDERED FOR FUNDING. THE OFFICE

IS AUTHORIZED TO REVIEW ANY OTHER PERTINENT INFORMATION TO ENSURE THE ADMINISTRATIVE SERVICE ORGANIZATION IS MEETING STATE AND FEDERAL RULES AND REGULATIONS AND IS NOT INAPPROPRIATELY GIVING PREFERENCE TO PROVIDERS WITH OWNERSHIP OR BOARD MEMBERSHIP.

(III) AN EMPLOYEE OF A CONTRACTED PROVIDER OF AN ADMINISTRATIVE SERVICE ORGANIZATION SHALL NOT ALSO BE AN EMPLOYEE OF THE ADMINISTRATIVE SERVICE ORGANIZATION UNLESS THE EMPLOYEE IS A MEDICAL DIRECTOR FOR THE ADMINISTRATIVE SERVICE ORGANIZATION. IF THE MEDICAL DIRECTOR IS ALSO AN EMPLOYEE OF A PROVIDER THAT HAS BOARD MEMBERSHIP OR OWNERSHIP IN THE ADMINISTRATIVE SERVICE ORGANIZATION, THE ADMINISTRATIVE SERVICE ORGANIZATION SHALL DEVELOP POLICIES, APPROVED BY THE COMMISSIONER OF THE BEHAVIORAL HEALTH ADMINISTRATION, TO MITIGATE ANY CONFLICT OF INTEREST THE MEDICAL DIRECTOR MAY HAVE.

(IV) AN ADMINISTRATIVE SERVICE ORGANIZATION'S BOARD SHALL NOT HAVE MORE THAN FIFTY PERCENT OF CONTRACTED PROVIDERS AS BOARD MEMBERS, AND THE ADMINISTRATIVE SERVICE ORGANIZATION IS ENCOURAGED TO HAVE A COMMUNITY MEMBER ON THE ADMINISTRATIVE SERVICE ORGANIZATION'S BOARD.

(b) IF THE OFFICE IS UNABLE TO CONTRACT WITH AN ADMINISTRATIVE SERVICE ORGANIZATION THAT MEETS THE REQUIREMENTS OF THIS SUBSECTION (8), THE OFFICE MAY DESIGNATE ANOTHER EXISTING ADMINISTRATIVE SERVICE ORGANIZATION TO TEMPORARILY PROVIDE THE SERVICES FOR THAT REGION, FOR UP TO ONE YEAR, PENDING DESIGNATION OF A NEW ADMINISTRATIVE SERVICE ORGANIZATION. IF THE OFFICE IS UNABLE TO DESIGNATE A NEW

ADMINISTRATIVE SERVICE ORGANIZATION, THE TEMPORARY ADMINISTRATIVE SERVICE ORGANIZATION MAY CONTINUE TO PROVIDE THE REGIONAL BEHAVIORAL HEALTH CRISIS RESPONSE SYSTEM SERVICES ON A YEAR BY YEAR BASIS.

(c) AS USED IN THIS SUBSECTION (8), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "MEDICAL DIRECTOR" MEANS A PHYSICIAN WHO OVERSEES THE MEDICAL CARE AND OTHER DESIGNATED CARE AND SERVICES IN AN ADMINISTRATIVE SERVICES ORGANIZATION. THE MEDICAL DIRECTOR MAY BE RESPONSIBLE FOR HELPING TO DEVELOP CLINICAL QUALITY MANAGEMENT AND UTILIZATION MANAGEMENT.

(II) "OWNERSHIP" MEANS AN INDIVIDUAL WHO IS A LEGAL PROPRIETOR OF AN ORGANIZATION, INCLUDING A PROVIDER OR INDIVIDUAL WHO OWNS ASSETS OF AN ORGANIZATION, OR HAS A FINANCIAL STAKE, INTEREST, OR GOVERNANCE ROLE IN THE ADMINISTRATIVE SERVICES ORGANIZATION.

SECTION 3. In Colorado Revised Statutes, 27-80-107, **add** (2.5) as follows:

27-80-107. Designation of managed service organizations - purchase of services - revocation of designation. (2.5) (a) ON OR BEFORE JANUARY 1, 2023, IN ORDER TO PROMOTE TRANSPARENCY AND ACCOUNTABILITY, THE OFFICE OF BEHAVIORAL HEALTH SHALL REQUIRE EACH MANAGED SERVICE ORGANIZATION THAT HAS TWENTY-FIVE PERCENT OR MORE OWNERSHIP BY PROVIDERS OF BEHAVIORAL HEALTH SERVICES TO COMPLY WITH THE FOLLOWING CONFLICT OF INTEREST POLICIES:

(I) PROVIDERS WHO HAVE OWNERSHIP OR BOARD MEMBERSHIP IN

A MANAGED SERVICE ORGANIZATION SHALL NOT HAVE CONTROL, INFLUENCE, OR DECISION-MAKING AUTHORITY IN HOW FUNDING IS DISTRIBUTED TO ANY PROVIDER OR THE ESTABLISHMENT OF PROVIDER NETWORKS.

(II) THE OFFICE OF BEHAVIORAL HEALTH SHALL QUARTERLY REVIEW A MANAGED SERVICE ORGANIZATION'S FUNDING ALLOCATION TO ENSURE THAT ALL PROVIDERS ARE BEING EQUALLY CONSIDERED FOR FUNDING. THE OFFICE OF BEHAVIORAL HEALTH IS AUTHORIZED TO REVIEW ANY OTHER PERTINENT INFORMATION TO ENSURE THE MANAGED SERVICE ORGANIZATION IS MEETING STATE AND FEDERAL RULES AND REGULATIONS AND IS NOT INAPPROPRIATELY GIVING PREFERENCE TO PROVIDERS WITH OWNERSHIP OR BOARD MEMBERSHIP.

(III) AN EMPLOYEE OF A CONTRACTED PROVIDER OF A MANAGED SERVICE ORGANIZATION SHALL NOT ALSO BE AN EMPLOYEE OF THE MANAGED SERVICE ORGANIZATION UNLESS THE EMPLOYEE IS A MEDICAL DIRECTOR FOR THE MANAGED SERVICE ORGANIZATION. IF THE MEDICAL DIRECTOR IS ALSO AN EMPLOYEE OF A PROVIDER THAT HAS BOARD MEMBERSHIP OR OWNERSHIP IN THE MANAGED SERVICE ORGANIZATION, THE MANAGED SERVICE ORGANIZATION SHALL DEVELOP POLICIES, APPROVED BY THE COMMISSIONER OF THE BEHAVIORAL HEALTH ADMINISTRATION, TO MITIGATE ANY CONFLICT OF INTEREST THE MEDICAL DIRECTOR MAY HAVE.

(IV) A MANAGED SERVICE ORGANIZATION'S BOARD SHALL NOT HAVE MORE THAN FIFTY PERCENT OF CONTRACTED PROVIDERS AS BOARD MEMBERS, AND THE MANAGED SERVICE ORGANIZATION IS ENCOURAGED TO HAVE A COMMUNITY MEMBER ON THE MANAGED SERVICE ORGANIZATION'S BOARD.

(b) IF THE OFFICE IS UNABLE TO CONTRACT WITH A MANAGED SERVICE ORGANIZATION THAT MEETS THE REQUIREMENTS OF THIS SUBSECTION (2.5), THE OFFICE MAY DESIGNATE ANOTHER EXISTING MANAGED SERVICE ORGANIZATION TO TEMPORARILY PROVIDE THE SERVICES FOR THAT REGION, FOR UP TO ONE YEAR, PENDING DESIGNATION OF A NEW MANAGED SERVICE ORGANIZATION. IF THE OFFICE IS UNABLE TO DESIGNATE A NEW MANAGED SERVICE ORGANIZATION, THE TEMPORARY MANAGED SERVICE ORGANIZATION MAY CONTINUE TO PROVIDE THE REGIONAL SUBSTANCE USE DISORDER SERVICES ON A YEAR BY YEAR BASIS.

(c) AS USED IN THIS SUBSECTION (2.5), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(I) "MEDICAL DIRECTOR" MEANS A PHYSICIAN WHO OVERSEES THE MEDICAL CARE AND OTHER DESIGNATED CARE AND SERVICES IN A MANAGED SERVICE ORGANIZATION. THE MEDICAL DIRECTOR MAY BE RESPONSIBLE FOR HELPING TO DEVELOP CLINICAL QUALITY MANAGEMENT AND UTILIZATION MANAGEMENT.

(II) "OWNERSHIP" MEANS AN INDIVIDUAL WHO IS A LEGAL PROPRIETOR OF AN ORGANIZATION, INCLUDING A PROVIDER OR INDIVIDUAL WHO OWNS ASSETS OF AN ORGANIZATION, OR HAS A FINANCIAL STAKE, INTEREST, OR GOVERNANCE ROLE IN THE MANAGED SERVICE ORGANIZATION.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.