

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 22-0779.01 Shelby Ross x4510

SENATE BILL 22-106

SENATE SPONSORSHIP

Kolker and Sonnenberg, Pettersen, Priola, Fields, Ginal, Jaquez Lewis, Moreno,
Rodriguez, Simpson

HOUSE SPONSORSHIP

Michaelson Jenet and Rich, Amabile, McCluskie, Roberts, Soper

Senate Committees

Health & Human Services

House Committees

Public & Behavioral Health & Human Services
Appropriations

A BILL FOR AN ACT

101 CONCERNING ADDRESSING CONFLICTS OF INTEREST IN REGIONAL
102 ORGANIZATIONS RESPONSIBLE FOR PUBLIC BEHAVIORAL
103 HEALTH SERVICES, AND, IN CONNECTION THEREWITH, MAKING
104 AN APPROPRIATION.

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
May 2, 2022

SENATE
3rd Reading Unamended
March 1, 2022

SENATE
Amended 2nd Reading
February 28, 2022

certain conflict of interest policies in order to promote transparency and accountability.

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

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

4 **25.5-5-402. Statewide managed care system - definitions -**
5 **rules. (9) Bidding.** (a) The state department is authorized to institute a
6 program for competitive bidding pursuant to section 24-103-202 or
7 24-103-203 for MCEs seeking to provide, arrange for, or otherwise be
8 responsible for the provision of services to its enrollees. The state
9 department is authorized to award contracts to more than one offer or.
10 The state department shall use competitive bidding procedures to
11 encourage competition and improve the quality of care available to
12 medicaid recipients over the long term that meets the requirements of this
13 section and section 25.5-5-406.1.

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

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

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

1 (C) AN EMPLOYEE OF A CONTRACTED PROVIDER OF AN MCE
2 SHALL NOT ALSO BE AN EMPLOYEE OF THE MCE UNLESS THE EMPLOYEE
3 IS A CLINICAL OFFICER OR UTILIZATION MANAGEMENT DIRECTOR OF THE
4 MCE. IF THE INDIVIDUAL IS ALSO AN EMPLOYEE OF A PROVIDER THAT HAS
5 BOARD MEMBERSHIP OR OWNERSHIP IN THE MCE, THE MCE SHALL
6 DEVELOP POLICIES, APPROVED BY THE EXECUTIVE DIRECTOR OF THE STATE
7 DEPARTMENT, TO MITIGATE ANY CONFLICT OF INTEREST THE EMPLOYEE
8 MAY HAVE.

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

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

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

21 (A) "CLINICAL OFFICER" MEANS A PHYSICIAN WHO PROVIDES THE
22 CLINICAL VISION FOR THE MCE OR PROVIDES CLINICAL DIRECTION TO
23 NETWORK MANAGEMENT, QUALITY IMPROVEMENT, UTILIZATION
24 MANAGEMENT, OR CREDENTIALING DIVISIONS.

25 (B) "MCE" MEANS A MANAGED CARE ENTITY RESPONSIBLE FOR
26 THE STATEWIDE SYSTEM OF COMMUNITY BEHAVIORAL HEALTH CARE, AS
27 DESCRIBED IN SECTION 25.5-5-402 (3) AND IS NOT OWNED, OPERATED BY,

1 OR AFFILIATED WITH AN INSTRUMENTALITY, MUNICIPALITY, OR POLITICAL
2 SUBDIVISION OF THE STATE.

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

7 (D) "UTILIZATION MANAGEMENT DIRECTOR" MEANS A LICENSED
8 HEALTH CARE PROFESSIONAL WITH BEHAVIORAL HEALTH CLINICAL
9 EXPERIENCE WHO LEADS AND DEVELOPS THE UTILIZATION MANAGEMENT
10 PROGRAM OR MANAGES THE MEDICAL REVIEW AND AUTHORIZATION
11 PROCESS.

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

14 **27-60-103. Behavioral health crisis response system - services**
15 **- request for proposals - criteria - reporting - rules.** (8) (a) ON OR
16 BEFORE JANUARY 1, 2023, IN ORDER TO PROMOTE TRANSPARENCY AND
17 ACCOUNTABILITY, THE OFFICE SHALL REQUIRE EACH ADMINISTRATIVE
18 SERVICE ORGANIZATION THAT HAS TWENTY-FIVE PERCENT OR MORE
19 OWNERSHIP BY PROVIDERS OF BEHAVIORAL HEALTH SERVICES TO COMPLY
20 WITH THE FOLLOWING CONFLICT OF INTEREST POLICIES:

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

26 (II) THE OFFICE SHALL QUARTERLY REVIEW AN ADMINISTRATIVE
27 SERVICE ORGANIZATION'S FUNDING ALLOCATION TO ENSURE THAT ALL

1 PROVIDERS ARE BEING EQUALLY CONSIDERED FOR FUNDING. THE OFFICE
2 IS AUTHORIZED TO REVIEW ANY OTHER PERTINENT INFORMATION TO
3 ENSURE THE ADMINISTRATIVE SERVICE ORGANIZATION IS MEETING STATE
4 AND FEDERAL RULES AND REGULATIONS AND IS NOT INAPPROPRIATELY
5 GIVING PREFERENCE TO PROVIDERS WITH OWNERSHIP OR BOARD
6 MEMBERSHIP.

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

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

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

1 ORGANIZATION. IF THE OFFICE IS UNABLE TO DESIGNATE A NEW
2 ADMINISTRATIVE SERVICE ORGANIZATION, THE TEMPORARY
3 ADMINISTRATIVE SERVICE ORGANIZATION MAY CONTINUE TO PROVIDE THE
4 REGIONAL BEHAVIORAL HEALTH CRISIS RESPONSE SYSTEM SERVICES ON A
5 YEAR BY YEAR BASIS.

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

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

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

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

20 **27-80-107. Designation of managed service organizations -**
21 **purchase of services - revocation of designation.** (2.5) (a) ON OR
22 BEFORE JANUARY 1, 2023, IN ORDER TO PROMOTE TRANSPARENCY AND
23 ACCOUNTABILITY, THE OFFICE OF BEHAVIORAL HEALTH SHALL REQUIRE
24 EACH MANAGED SERVICE ORGANIZATION THAT HAS TWENTY-FIVE
25 PERCENT OR MORE OWNERSHIP BY PROVIDERS OF BEHAVIORAL HEALTH
26 SERVICES TO COMPLY WITH THE FOLLOWING CONFLICT OF INTEREST
27 POLICIES:

1 (I) PROVIDERS WHO HAVE OWNERSHIP OR BOARD MEMBERSHIP IN
2 A MANAGED SERVICE ORGANIZATION SHALL NOT HAVE CONTROL,
3 INFLUENCE, OR DECISION-MAKING AUTHORITY IN HOW FUNDING IS
4 DISTRIBUTED TO ANY PROVIDER OR THE ESTABLISHMENT OF PROVIDER
5 NETWORKS.

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

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

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

1 ORGANIZATION'S BOARD.

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

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

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

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

23 **SECTION 4. Appropriation.** (1) For the 2022-23 state fiscal
24 year, \$42,658 is appropriated to the department of health care policy and
25 financing for use by the executive director's office. This appropriation is
26 from the general fund. To implement this act, the office may use this
27 appropriation as follows:

1 (a) \$38,883 for personal services, which amount is based on an
2 assumption that the office will require an additional 0.9 FTE; and

3 (b) \$3,775 for operating expenses.

4 (2) For the 2022-23 state fiscal year, the general assembly
5 anticipates that the department of health care policy and financing will
6 receive \$42,657 in federal funds to implement this act, which amount is
7 subject to the "(I)" notation as defined in the annual general appropriation
8 act for the same fiscal year. The appropriation in subsection (1) of this
9 section is based on the assumption that the department will receive this
10 amount of federal funds to be used as follows:

11 (a) \$38,882 for personal services; and

12 (b) \$3,775 for operating expenses.

13 **SECTION 5. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, or safety.