

CHAPTER 183

HUMAN SERVICES - BEHAVIORAL HEALTH

HOUSE BILL 22-1303

BY REPRESENTATIVE(S) Amabile and Sandridge, Gonzales-Gutierrez, Michaelson Jenet, Benavidez, Burnett, Bird, Boesenecker, Caraveo, Cutter, Duran, Exum, Gray, Hooton, Jodeh, Kennedy, Kipp, Lindsay, Lontine, McCluskie, McCormick, McLachlan, Mullica, Roberts, Sirota, Snyder, Tipper, Weissman, Woodrow, Young, Garnett, Esgar, Froelich, Bacon, Carver, Catlin, Daugherty, Herod, Pico, Ricks, Titone, Valdez D.;
also SENATOR(S) Winter and Smallwood, Buckner, Cooke, Donovan, Gardner, Hisey, Jaquez Lewis, Kirkmeyer, Kolker, Lee, Moreno, Pettersen, Simpson, Story, Fenberg.

AN ACT

CONCERNING AN INCREASE IN THE NUMBER OF RESIDENTIAL BEHAVIORAL HEALTH BEDS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) During the COVID-19 pandemic, adults with behavioral health needs have faced unprecedented challenges;

(b) During this time, adults and their families have needed increased availability of behavioral and mental health care, including residential beds;

(c) At least one hundred twenty-five additional residential beds for adults with severe mental illness or urgent behavioral health needs that require long-term services and supports or immediate intervention must be created statewide and made available as long as necessary for stabilization;

(d) The Colorado mental health institute at Fort Logan needs sixteen additional beds to serve adults in need of competency services and adults with serious mental illness or chronic behavioral health needs in need of civil commitment;

(e) The federal government enacted the "American Rescue Plan Act of 2021" to enable state, local, and tribal governments to provide critical government services

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

in response to the adverse impacts of the COVID-19 pandemic;

(f) People with serious mental illness are in need of longer-term treatment and stabilization services in their communities;

(g) The residential beds funded by this act are appropriate uses of the federal money transferred to Colorado under the "American Rescue Plan Act". This funding will expand access to residential beds; and

(h) The services described in this act are critical government services.

SECTION 2. In Colorado Revised Statutes, **add** 27-94-107 as follows:

27-94-107. Renovation for additional beds. (1) THE DEPARTMENT OF HUMAN SERVICES SHALL RENOVATE A BUILDING AT THE CENTER TO ADD AT LEAST SIXTEEN INPATIENT BEDS. THE DEPARTMENT SHALL SPEND OR OBLIGATE ALL MONEY APPROPRIATED FOR THE RENOVATION BY DECEMBER 30, 2024. ANY MONEY OBLIGATED BY DECEMBER 30, 2024, MUST BE EXPENDED BY DECEMBER 30, 2026.

(2) INITIALLY, THE BEDS MAY BE USED FOR PERSONS NEEDING COMPETENCY SERVICES. WHEN THE WAIT LIST FOR COMPETENCY SERVICES PROVIDED PURSUANT TO SECTION 16-8.5-111 IS ELIMINATED OR TRENDING SO THAT IT CAN BE REASONABLY EXPECTED TO BE ELIMINATED WITHIN ONE YEAR, THE DEPARTMENT OF HUMAN SERVICES SHALL IMPLEMENT A PLAN TO TRANSITION THE BEDS CREATED IN SUBSECTION (1) OF THIS SECTION TO SERVE CIVIL PATIENTS AND IMMEDIATELY NOTIFY THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY. WITHIN ONE YEAR AFTER THE NOTIFICATION TO THE JOINT BUDGET COMMITTEE, ALL BEDS CREATED PURSUANT TO SUBSECTION (1) OF THIS SECTION MUST SERVE CIVIL PATIENTS.

SECTION 3. In Colorado Revised Statutes, **add** article 71 of title 27 as follows:

ARTICLE 71 **Mental Health Residential Facility**

27-71-101. Legislative declaration. THE GENERAL ASSEMBLY FINDS AND DECLARES THAT THERE IS AN URGENT NEED FOR COMMUNITY-BASED MENTAL HEALTH RESIDENTIAL BEDS THROUGHOUT THE STATE TO SERVE INDIVIDUALS WHO NEED THE SUPPORT OF A RESIDENTIAL SETTING.

27-71-102. Definitions. AS USED IN THIS ARTICLE 71, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ASSISTED LIVING RESIDENCE" HAS THE SAME MEANING AS DEFINED IN SECTION 25-27-102 (1.3).

(2) "BEHAVIORAL HEALTH ADMINISTRATION" OR "BHA" MEANS THE BEHAVIORAL HEALTH ADMINISTRATION ESTABLISHED PURSUANT TO SECTION 27-60-203.

(3) "BEHAVIORAL HEALTH DISORDER" HAS THE SAME MEANING AS DEFINED IN SECTION 25-27.6-102 (5).

(4) "BEHAVIORAL HEALTH ENTITY" HAS THE SAME MEANING AS DEFINED IN SECTION 25-27.6-102 (6).

(5) "DEPARTMENT" MEANS THE DEPARTMENT OF HUMAN SERVICES.

(6) "LEVEL OF CARE" MEANS THE INTENSITY OF EFFORT REQUIRED TO DIAGNOSE, PRESERVE, OR MAINTAIN AN INDIVIDUAL'S PHYSICAL OR EMOTIONAL STATUS, WITH CONSIDERATION TOWARDS CREATING A MINIMALLY RESTRICTIVE AND HOMELIKE ENVIRONMENT, WHEN FEASIBLE AND SAFE.

(7) "LONG TERM FACILITY" MEANS A RESIDENTIAL FACILITY OPERATED BY A BEHAVIORAL HEALTH ENTITY OR ASSISTED LIVING RESIDENCE WITH THE INTENT TO SUPPORT, STABILIZE, AND PROMOTE LONG-LASTING RECOVERY BY PROVIDING THE APPROPRIATE LEVEL OF CARE TO PATIENTS WITH MENTAL HEALTH DISORDERS.

(8) "MENTAL HEALTH RESIDENTIAL FACILITY" OR "MENTAL HEALTH FACILITY" MEANS A RESIDENTIAL MENTAL HEALTH FACILITY OPERATED BY A BEHAVIORAL HEALTH ENTITY OR AN ASSISTED LIVING RESIDENCE TO SERVE INDIVIDUALS WITH A MENTAL HEALTH DISORDER WHO NEED THE SUPPORT OF A LONG-TERM RESIDENTIAL SETTING INCLUDING PERSONS COMING FROM A:

(a) COLORADO MENTAL HEALTH INSTITUTE;

(b) HOSPITAL DESIGNATED AS A PLACEMENT FACILITY FOR SEVENTY-TWO HOUR EVALUATION AND TREATMENT, AND SHORT-TERM AND LONG-TERM SUPPORT;

(c) COMMUNITY BEHAVIORAL HEALTH SAFETY NET PROVIDER;

(d) WALK-IN CRISIS CENTER, CRISIS STABILIZATION UNIT, OR ACUTE TREATMENT UNIT OPERATING AS PART OF THE BEHAVIORAL HEALTH CRISIS RESPONSE SYSTEM; OR

(e) HOSPITAL EMERGENCY ROOM.

27-71-103. Mental health residential facilities - additional beds. (1) (a) ON OR BEFORE JULY 1, 2024, THE DEPARTMENT AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL JOINTLY CREATE, DEVELOP, OR CONTRACT, WHICH MAY INCLUDE THE COST OF RENOVATION AT PRIVATE FACILITIES, FOR AT LEAST AN ADDITIONAL ONE HUNDRED AND TWENTY-FIVE BEDS AT MENTAL HEALTH RESIDENTIAL FACILITIES THROUGHOUT THE STATE BASED ON THE GREATEST AREAS OF NEED. THE BEDS IN THE MENTAL HEALTH FACILITIES ARE AVAILABLE FOR ADULT INDIVIDUALS IN NEED OF ONGOING SUPPORTIVE SERVICES, BUT INDIVIDUALS WITH A SEVERE MENTAL ILLNESS OR A DUAL DIAGNOSIS OF MENTAL ILLNESS AND ALCOHOL OR SUBSTANCE USE DISORDER MUST BE PRIORITIZED. WHEN AVAILABLE, THE DEPARTMENT SHALL USE EXISTING DEPARTMENT PROPERTIES FOR THE MENTAL HEALTH FACILITIES.

(b) AT A MINIMUM, THE DEPARTMENT SHALL ENSURE THAT THE MENTAL HEALTH RESIDENTIAL FACILITIES OFFER THE FOLLOWING SERVICES:

(I) ASSISTANCE WITH MEDICATION;

(II) DIRECT SUPPORT PERSONNEL INCLUDING ASSISTANCE WITH ACTIVITIES OF DAILY LIVING;

(III) INTENSIVE CASE MANAGEMENT SERVICES;

(IV) LIFE SKILLS TRAINING; AND

(V) NON-MEDICAL TRANSPORTATION.

(c) THE DEPARTMENT AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL WORK COLLABORATIVELY TO ENSURE THE BEDS IN THE MENTAL HEALTH FACILITIES ARE ELIGIBLE FOR FEDERAL FUNDING THROUGH THE MEDICAL ASSISTANCE PROGRAM.

(2)(a) THE BEDS AT THE MENTAL HEALTH FACILITIES CREATED PURSUANT TO THIS SECTION ARE INTENDED PRIMARILY FOR ADULT INDIVIDUALS WITH SERIOUS MENTAL ILLNESS OR A CO-OCCURRING MENTAL HEALTH AND SUBSTANCE USE DISORDER IN NEED OF SERVICES. A MENTAL HEALTH FACILITY MAY ALSO PROVIDE SERVICES TO AN INDIVIDUAL IN NEED OF COMPETENCY RESTORATION PURSUANT TO ARTICLE 8.5 OF TITLE 16 WHO DOES NOT REQUIRE IMPRISONMENT IN A JAIL.

(b) THE DEPARTMENT, IN COLLABORATION WITH THE BEHAVIORAL HEALTH ADMINISTRATION AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, SHALL PRIORITIZE PLACEMENT FOR INDIVIDUALS IN THE CIVIL SYSTEM WHO ARE LEAVING THE MENTAL HEALTH INSTITUTES AT PUEBLO AND FORT LOGAN, CIVIL INDIVIDUALS BEING DISCHARGED FROM INPATIENT SETTINGS, INDIVIDUALS RECEIVING INVOLUNTARY MENTAL HEALTH TREATMENT PURSUANT TO ARTICLE 65 OF THIS TITLE 27, AND CIVIL INDIVIDUALS IN NEED OF RESIDENTIAL SERVICES WHO ARE IN A MENTAL HEALTH CRISIS FACILITY, ACUTE CARE HOSPITAL, OR IN THE COMMUNITY.

(c) THE STATE DEPARTMENT, IN COLLABORATION WITH THE BEHAVIORAL HEALTH ADMINISTRATION AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, SHALL ESTABLISH CRITERIA FOR ADMISSIONS AND DISCHARGE PLANNING, QUALITY ASSURANCE MONITORING, APPROPRIATE LENGTH OF STAY, AND COMPLIANCE WITH APPLICABLE FEDERAL LAW. FOR THE MENTAL HEALTH RESIDENTIAL FACILITIES CREATED PURSUANT TO THIS SECTION, ADMISSION CRITERIA FOR FACILITIES MUST INCLUDE:

(I) PRIORITIZATION OF PEOPLE WITH SERIOUS MENTAL ILLNESS WHO HAVE COMPLEX OR CO-OCCURRING CONDITIONS AS DEFINED BY THE STATE DEPARTMENT; AND

(II) FOR TREATMENT BEDS THAT DO NOT SERVE INDIVIDUALS COVERED UNDER A HOME- AND COMMUNITY-BASED WAIVER, OFFERING PRIORITY PLACEMENT TO INDIVIDUALS UNDER A CERTIFICATION FOR SHORT-TERM OR EXTENDED SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-107 OR 27-65-108 AND LONG-TERM CARE AND TREATMENT PURSUANT TO SECTION 27-65-109 ON AN OUTPATIENT BASIS.

(d) THE STATE DEPARTMENT SHALL COLLABORATE WITH RELEVANT STAKEHOLDERS WHEN ESTABLISHING THE CRITERIA DESCRIBED IN SUBSECTION (2)(c)

OF THIS SECTION.

(3) THE DEPARTMENT SHALL DISTRIBUTE THE MONEY FOR THE CREATION OF ADDITIONAL BEDS PURSUANT TO THIS SECTION NO LATER THAN DECEMBER 30, 2024. ANY PERSON RECEIVING MONEY PURSUANT TO THIS SECTION SHALL SPEND OR OBLIGATE ALL MONEY RECEIVED BY DECEMBER 30, 2024. ANY MONEY OBLIGATED BY DECEMBER 30, 2024, MUST BE EXPENDED BY DECEMBER 30, 2026.

27-71-104. Mental health residential facilities - initial license requirements - repeal. (1) ON OR AFTER JULY 1, 2022, ANY PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORATION OPERATING A MENTAL HEALTH RESIDENTIAL FACILITY SHALL OBTAIN A LICENSE FROM THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR THE DEPARTMENT OF HUMAN SERVICES AS EITHER:

(a) AN ASSISTED LIVING RESIDENCE LICENSED PURSUANT TO ARTICLE 27 OF TITLE 25; OR

(b) A BEHAVIORAL HEALTH ENTITY LICENSED PURSUANT TO ARTICLE 27.6 OF TITLE 25.

(2) NOTWITHSTANDING THE REQUIREMENT OF SUBSECTION (1) OF THIS SECTION, A MENTAL HEALTH FACILITY NEED NOT BE LICENSED AS A MENTAL HEALTH FACILITY IF THE FACILITY IS:

(a) LICENSED PURSUANT TO ARTICLE 27 OF TITLE 25; AND

(b) PROVIDING SERVICES TO INDIVIDUALS UNDER A HOME- AND COMMUNITY-BASED SERVICES FOR PERSONS WITH MAJOR MENTAL HEALTH DISORDERS WAIVER PURSUANT TO PART 6 OF ARTICLE 6 OF TITLE 25.5.

(3) ON AND AFTER JULY 1, 2023, THE BEHAVIORAL HEALTH ADMINISTRATION IS RESPONSIBLE FOR LICENSING MENTAL HEALTH HOME- AND COMMUNITY-BASED WAIVER RESIDENTIAL FACILITIES.

(4) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.

27-71-105. Mental health residential facilities - licensing requirements - rules. (1) ON AND AFTER JULY 1, 2023, UNLESS LICENSED AS AN ASSISTED LIVING FACILITY, ANY PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORATION OPERATING A MENTAL HEALTH RESIDENTIAL FACILITY SHALL OBTAIN A LICENSE FROM THE BEHAVIORAL HEALTH ADMINISTRATION. BY JULY 1, 2023, THE BHA SHALL PROMULGATE RULES ESTABLISHING MINIMUM STANDARDS FOR THE OPERATION AND LICENSING OF MENTAL HEALTH FACILITIES. THE RULES MUST ADDRESS, AT A MINIMUM, HEALTH, SAFETY, WELFARE, AND PROGRAMMATIC AND TREATMENT CONSIDERATION.

(2) NOTWITHSTANDING THE REQUIREMENT OF SUBSECTION (1) OF THIS SECTION, A MENTAL HEALTH FACILITY NEED NOT BE LICENSED AS A MENTAL HEALTH FACILITY IF THE FACILITY IS:

(a) LICENSED PURSUANT TO ARTICLE 27 OF TITLE 25; AND

(b) PROVIDING SERVICES TO INDIVIDUALS UNDER A HOME- AND COMMUNITY-BASED SERVICES FOR PERSONS WITH MAJOR MENTAL HEALTH DISORDERS WAIVER PURSUANT TO PART 6 OF ARTICLE 6 OF TITLE 25.5.

SECTION 4. Appropriation. (1) For the 2022-23 state fiscal year, \$728,296 is appropriated to the department of human services for use by administration and finance. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the department from July 1, 2023, through December 30, 2024, for the same purpose. To implement this act, the department may use this appropriation as follows:

(a) \$372,264 for personal services related to administration, which amount is based on an assumption that the department will require 3.3 FTE in the 2022-23 state fiscal year and 3.3 FTE in the 2023-24 state fiscal year;

(b) \$346,040 for operating expenses related to administration; and

(c) \$9,992 for vehicle lease payments.

(2) For the 2022-23 state fiscal year, \$9,992 is appropriated to the department of personnel for use by the division of capital assets. This appropriation is from reappropriated funds received from the department of human services under subsection (1)(c) of this section. To implement this act, the department of personnel may use this appropriation to provide vehicles to the department of human services. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the department from July 1, 2023, through December 30, 2024, for the same purpose.

SECTION 5. Appropriation. (1) For the 2022-23 state fiscal year, \$39,854,179 is appropriated to the department of human services for use by the office of behavioral health. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the office from July 1, 2023, through December 30, 2024, for the same purpose. To implement this act, the department may use this appropriation as follows:

(a) \$2,559,676 for oversight costs related to mental health residential facilities, which amount is based on an assumption that the office will require 7.0 FTE in the 2022-23 state fiscal year and 7.0 FTE in the 2023-24 state fiscal year;

(b) \$3,809,582 for costs associated with mental health residential facilities located in department-owned properties, which amount is based on an assumption that the office will require 14.8 FTE in the 2023-24 state fiscal year; and

(c) \$33,484,921 for contract beds in and the renovation of mental health residential facilities.

SECTION 6. Appropriation. For the 2022-23 state fiscal year, \$6,578,266 is

appropriated to the department of human services for use by the office of behavioral health. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. The office may use this appropriation for costs associated with the operation of additional beds at the Colorado mental health institute at Fort Logan established pursuant to section 27-94-107, C.R.S. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the office from July 1, 2023, through December 30, 2024, for the same purpose. These appropriations are based on the assumption that the office will require an additional 59.2 FTE in the 2023-24 state fiscal year to implement this act.

SECTION 7. Capital construction appropriation. For the 2022-23 state fiscal year, \$6,991,567 is appropriated to the department of human services. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S. To implement this act, the department may use this appropriation for capital construction related to the renovation for additional inpatient beds at the Colorado mental health institute at Fort Logan. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the department from July 1, 2023, through December 30, 2024, for the same purpose.

SECTION 8. Capital construction appropriation. For the 2022-23 state fiscal year, \$3,692,111 is appropriated to the department of human services. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S. To implement this act, the department may use this appropriation for capital construction related to the renovation of three existing department properties to create mental health residential facilities pursuant to section 27-71-103 (1)(a), C.R.S. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the department from July 1, 2023, through December 30, 2024, for the same purpose.

SECTION 9. Appropriation. (1) For the 2022-23 state fiscal year, \$91,938 is appropriated to the department of health care policy and financing for use by the executive director's office. This appropriation is from the general fund. To implement this act, the office may use this appropriation as follows:

(a) \$84,388 for personal services, which amount is based on an assumption that the office will require an additional 1.8 FTE; and

(b) \$7,550 for operating expenses.

(2) For the 2022-23 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$91,937 in federal funds to implement this act, which amount is subject to the "(I)" notation as defined in the annual general appropriation act for the same fiscal year. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds to be used as follows:

(a) \$84,387 for personal services; and

(b) \$7,550 for operating expenses.

SECTION 10. 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.

Approved: May 18, 2022