

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

BILL 2

LLS NO. 17-0148.01 Jane Ritter x4342

COMMITTEE BILL

**Legislative Oversight Committee Concerning the Treatment of Persons
with Mental Illness in the Criminal and Juvenile Justice Systems**

A BILL FOR AN ACT

101 **CONCERNING INCREASING MEDICATION CONSISTENCY FOR PERSONS**
102 **WITH MENTAL ILLNESS IN THE CRIMINAL AND JUVENILE JUSTICE**
103 **SYSTEMS.**

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://www.leg.state.co.us/billsummaries>.)

Legislative Oversight Committee Concerning the Treatment of Persons with Mental Illness in the Criminal and Juvenile Justice Systems. The bill implements recommendations from the task force concerning the treatment of persons with mental illness in the criminal and juvenile justice systems and the medication consistency work group

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

of the behavioral health transformation council to promote increased medication consistency for persons with mental illness in the criminal and juvenile justice systems. The recommendations include:

- Requiring the unit and office within the department of human services that administers behavioral health programs (OBH), including those related to mental health and substance use, and the department of corrections to promulgate rules that require providers under each department's authority to use an agreed upon medication formulary (formulary) by mental health providers and justice system providers (providers);
- Requiring OBH to conduct annual and biannual reviews of the formulary to address any urgent concerns related to the formulary, update the formulary, and ensure compliance with the medicaid formulary;
- Requiring the department of corrections, county jails, community mental health centers, the division of youth corrections, and other providers to share patient-specific mental health care and treatment information, provided federal and state confidentiality requirements are met;
- Requiring OBH and relevant providers to develop a process for electronically sharing patient-specific mental health care and treatment information across systems;
- Requiring OBH to encourage providers to utilize cooperative purchasing for the formulary to maximize statewide cost savings;
- Encouraging the pharmaceutical cooperative purchasing entity to include an ongoing drug utilization review process;
- Requiring OBH to develop and study the potential for a pilot program for various providers, based on a health home model, to determine if such partnerships can increase the continuity of care and maximize federal drug discount benefits for individuals with mental illness; and
- Requiring the executive director of the department of personnel or his or her designee (executive director) to collect data related to the formulary and cooperative purchasing for the formulary. The executive director shall use the data collected to prepare annual reports to the general assembly on which entities are or could be using the formulary, which entities are or could be using cooperative purchasing, a list of medications purchased through the formulary and cooperative purchasing, and a breakdown of usage of the formulary and cooperative purchasing by provider type.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 70 to title
3 27 as follows:

4 **ARTICLE 70**

5 **Medication Consistency for Persons with Mental Illness**
6 **in the Criminal and Juvenile Justice Systems**

7 **27-70-101. Legislative declaration.** (1) THE GENERAL ASSEMBLY
8 FINDS AND DECLARES THAT:

9 (a) THE LACK OF MEDICATION CONSISTENCY FOR INDIVIDUALS
10 WITH MENTAL ILLNESS WHO ARE INVOLVED IN THE CRIMINAL AND
11 JUVENILE JUSTICE SYSTEMS CREATES ADDITIONAL, OFTEN SERIOUS,
12 PROBLEMS FOR THESE INDIVIDUALS;

13 (b) IT IS CRITICAL THAT THE STATE INCREASE THE LIKELIHOOD
14 THAT A BROAD SPECTRUM OF EFFECTIVE MEDICATIONS, INCLUDING
15 PSYCHOTROPIC MEDICATIONS, ARE AVAILABLE TO THESE INDIVIDUALS,
16 REGARDLESS OF SETTING OR SERVICE PROVIDER;

17 (c) BY WORKING COOPERATIVELY WITH THE CRIMINAL AND
18 JUVENILE JUSTICE SYSTEMS AND MENTAL HEALTH SERVICE PROVIDERS,
19 THE STATE CAN HELP ENSURE MEDICATION CONSISTENCY AND ALSO
20 DECREASE OVERALL STATE COSTS THROUGH THE USE OF A COMMON AND
21 AGREED UPON MEDICATION FORMULARY AND A GROUP PURCHASING
22 ORGANIZATION;

23 (d) THE MEDICATION CONSISTENCY WORK GROUP OF THE
24 BEHAVIORAL HEALTH TRANSFORMATION COUNCIL IDENTIFIED MENTAL
25 HEALTH MEDICATIONS THAT ARE ESSENTIAL AND PREFERRED FOR A BASIC
26 MEDICATION FORMULARY THAT COULD BE USED ACROSS ALL PUBLIC

1 SYSTEMS TO INCREASE MEDICATION CONTINUITY FOR PERSONS WITH
2 MENTAL ILLNESS IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS; AND

3 (e) INCREASING INFORMATION SHARING ACROSS SYSTEMS AND
4 SERVICE PROVIDERS ABOUT THE IMPORTANCE OF MEDICATION
5 CONSISTENCY AND THE USE OF A COMMON AND AGREED UPON MEDICATION
6 FORMULARY AND A GROUP PURCHASING ORGANIZATION WILL RESULT IN
7 LONG-TERM BENEFITS FOR THE STATE AND FOR PERSONS WITH MENTAL
8 ILLNESS WHO ARE INVOLVED IN THE CRIMINAL AND JUVENILE JUSTICE
9 SYSTEMS.

10 **27-70-102. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
11 CONTEXT OTHERWISE REQUIRES:

12 (1) "DEPARTMENT" MEANS THE DEPARTMENT OF HUMAN SERVICES
13 CREATED IN SECTION 26-1-105.

14 (2) "FACILITY" MEANS A PUBLIC HOSPITAL OR A LICENSED PRIVATE
15 HOSPITAL, FEDERALLY QUALIFIED HEALTH CARE CENTER, CLINIC,
16 COMMUNITY MENTAL HEALTH CENTER OR CLINIC, INSTITUTION, ACUTE
17 TREATMENT UNIT, JAIL, FACILITY OPERATED BY THE DEPARTMENT OF
18 CORRECTIONS, OR A FACILITY OPERATED BY THE DIVISION OF YOUTH
19 CORRECTIONS.

20 (3) "MEDICATION FORMULARY" MEANS THE MEDICATION
21 FORMULARY ESTABLISHED PURSUANT TO SECTION 27-70-103 FOR USE BY
22 PROVIDERS.

23 (4) "PROVIDER" MEANS ANY PERSON, FACILITY, OR GOVERNMENT
24 ENTITY RESPONSIBLE FOR PROVIDING MENTAL HEALTH SERVICES RELATED
25 TO THE CARE AND TREATMENT OF A PERSON WITH MENTAL ILLNESS WHO
26 IS OR WAS INVOLVED WITH THE CRIMINAL OR JUVENILE JUSTICE SYSTEM.

27 (5) "UNIT", ALSO KNOWN AS THE "OFFICE OF BEHAVIORAL

1 HEALTH", MEANS THE UNIT IN THE DEPARTMENT THAT ADMINISTERS
2 BEHAVIORAL HEALTH PROGRAMS AND SERVICES, INCLUDING THOSE
3 RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE.

4 **27-70-103. Medication consistency for persons with mental**
5 **illness in the criminal and juvenile justice systems - medication**
6 **formulary - group purchasing organization.** (1) (a) BEGINNING JULY

7 1, 2017, THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF
8 CORRECTIONS SHALL PROMULGATE RULES THAT REQUIRE PROVIDERS
9 UNDER EACH DEPARTMENT'S AUTHORITY TO USE A MEDICATION
10 FORMULARY THAT HAS BEEN DEVELOPED COLLABORATIVELY BY
11 DEPARTMENTS, AGENCIES, AND PROVIDERS. THE DEPARTMENTS SHALL
12 ALSO DEVELOP PROCESSES FOR EDUCATION AND MARKETING RELATED TO
13 INFORMATION REGARDING THE MEDICATION FORMULARY AND
14 PURCHASING OPPORTUNITIES FOR FACILITIES AND PROVIDERS.

15 (b) ON OR BEFORE JULY 1, 2018, AND EVERY JULY 1 OF EVERY
16 EVEN-NUMBERED YEAR THEREAFTER, THE UNIT SHALL CONDUCT A REVIEW
17 OF THE MEDICATION FORMULARY TO ADDRESS ANY URGENT CONCERNS
18 RELATED TO THE FORMULARY AND TO PROPOSE UPDATES TO THE
19 FORMULARY. DURING THIS REVIEW, THE UNIT SHALL ALSO CREATE THE
20 APPROPRIATE NOTIFICATION PROCESS FOR UPDATES TO THE FORMULARY.

21 (c) ON OR BEFORE JULY 1, 2019, AND EVERY TWO YEARS
22 THEREAFTER AS NECESSARY, THE UNIT SHALL CONDUCT A REVIEW OF THE
23 MEDICATION FORMULARY TO UPDATE THE MEDICATION FORMULARY AND
24 ENSURE COMPLIANCE WITH THE MEDICAID FORMULARY USED BY THE
25 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING.

26 (2) (a) FOR THE SOLE PURPOSE OF ENSURING MEDICATION
27 CONSISTENCY FOR PERSONS WITH MENTAL ILLNESS IN THE CRIMINAL AND

1 JUVENILE JUSTICE SYSTEMS, THE DEPARTMENT OF CORRECTIONS,
2 COUNTIES, THE DIVISION OF YOUTH CORRECTIONS, COMMUNITY MENTAL
3 HEALTH CENTERS, AND OTHER PROVIDERS SHALL SHARE PATIENT-SPECIFIC
4 MENTAL HEALTH AND TREATMENT INFORMATION. ALL SUCH INFORMATION
5 SHARING MUST COMPLY WITH CONFIDENTIALITY REQUIREMENTS,
6 INCLUDING ANY NECESSARY MEMORANDUMS OF UNDERSTANDING
7 BETWEEN PROVIDERS, SET FORTH IN THE FEDERAL "HEALTH INSURANCE
8 PORTABILITY AND ACCOUNTABILITY ACT OF 1996", 45 CFR PARTS 2, 160,
9 162, AND 164.

10 (b) THE UNIT, IN COLLABORATION WITH MULTIPLE PROVIDERS,
11 SHALL DEVELOP A PROCESS BY WHICH THE PATIENT-SPECIFIC
12 INFORMATION REQUIRED BY SUBSECTION (2)(a) OF THIS SECTION CAN BE
13 SHARED ELECTRONICALLY, WHILE STILL IN COMPLIANCE WITH
14 CONFIDENTIALITY REQUIREMENTS, INCLUDING ANY NECESSARY
15 MEMORANDUMS OF UNDERSTANDING BETWEEN PROVIDERS, SET FORTH IN
16 THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY
17 ACT OF 1996", 45 CFR PARTS 2, 160, 162, AND 164.

18 (3) (a) THE UNIT SHALL ENCOURAGE PROVIDERS THAT HAVE BEEN
19 GRANTED PURCHASING AUTHORITY BY THE DEPARTMENT OF PERSONNEL
20 PURSUANT TO SECTION 24-102-204 TO UTILIZE COOPERATIVE PURCHASING
21 FOR THE MEDICATION FORMULARY, AS AUTHORIZED PURSUANT TO
22 SECTION 24-110-201, UNLESS THE PROVIDER CAN OBTAIN THE MEDICATION
23 ELSEWHERE AT A LOWER COST. THE USE OF COOPERATIVE PURCHASING
24 MAY, AND IS ENCOURAGED TO, INCLUDE EXTERNAL PROCUREMENT
25 ACTIVITY, AS DEFINED IN SECTION 24-110-101 (2), IF THE EXTERNAL
26 PROCUREMENT ACTIVITY AGGREGATES PURCHASING VOLUME TO
27 NEGOTIATE DISCOUNTS WITH MANUFACTURERS, DISTRIBUTORS, AND

1 OTHER VENDORS.

2 (b) ANY EXTERNAL PROCUREMENT ACTIVITY, AS DEFINED IN
3 SECTION 24-110-101 (2), USED BY PROVIDERS FOR PURPOSES OF THIS
4 ARTICLE IS ENCOURAGED TO INCLUDE AN ONGOING DRUG UTILIZATION
5 REVIEW PROCESS. THE PURPOSE OF THE REVIEW PROCESS IS TO HELP
6 ENSURE A STRUCTURED, ONGOING REVIEW OF HEALTH CARE PROVIDER
7 PRESCRIBING, PHARMACIST DISPENSING, AND PATIENT USE OF MEDICATION.
8 THE REVIEW MUST INCLUDE A COMPREHENSIVE ANALYSIS OF PATIENTS'
9 PRESCRIPTION AND MEDICATION DATA TO HELP ENSURE APPROPRIATE
10 MEDICATION DECISION-MAKING AND POSITIVE PATIENT OUTCOMES BY
11 PROVIDING EDUCATIONAL FEEDBACK TO PROVIDERS ON APPROPRIATE
12 MEDICATION UTILIZATION.

13 (4) THE UNIT SHALL DEVELOP AND STUDY THE POTENTIAL FOR A
14 PILOT PROGRAM, BASED ON A HEALTH HOME MODEL, THAT INCLUDES THE
15 COOPERATION OF A FEDERALLY QUALIFIED HEALTH CARE CENTER, A
16 COUNTY JAIL, AND A COUNTY MENTAL HEALTH CARE PROVIDER. THE
17 PURPOSE OF ANY SUCH PILOT PROGRAM IS TO DETERMINE IF SUCH A
18 PARTNERSHIP CAN INCREASE CONTINUITY OF CARE AND MAXIMIZE THE
19 BENEFITS OF THE FEDERAL "340B DRUG DISCOUNT PROGRAM",
20 ESTABLISHED IN THE FEDERAL "PUBLIC HEALTH SERVICE ACT", PUB. L.
21 78-410, AS WELL AS ACHIEVE OTHER COST REDUCTIONS FOR THE
22 INVOLVED PARTIES AND IMPROVED HEALTH FOR THE CLIENTS.

23 **SECTION 2.** In Colorado Revised Statutes, add 24-110-209 as
24 follows:

25 **24-110-209. Mental health care in justice systems - medication**
26 **formulary - review and reports.** (1) BEGINNING JULY 1, 2017, THE
27 EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL COLLECT

1 INFORMATION CONCERNING THE TYPE, COST, AND QUANTITY OF
2 MEDICATIONS AND PURCHASING AUTHORITIES TAKING PART IN THE
3 MEDICATION FORMULARY AND COOPERATIVE PURCHASING ESTABLISHED
4 AND AUTHORIZED PURSUANT TO SECTION 27-70-103 TO PROVIDE
5 MEDICATION CONSISTENCY TO PERSONS WITH MENTAL ILLNESS WHO ARE
6 IN THE CRIMINAL OR JUVENILE JUSTICE SYSTEMS.

7 (2) ON OR BEFORE SEPTEMBER 1, 2018, AND EVERY SEPTEMBER 1
8 THEREAFTER, THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE,
9 TOGETHER WITH THE DEPARTMENT OF HUMAN SERVICES, SHALL PROVIDE
10 AN ANNUAL REPORT TO THE HEALTH AND HUMAN SERVICES COMMITTEE OF
11 THE SENATE AND THE PUBLIC HEALTH CARE AND HUMAN SERVICES
12 COMMITTEE OF THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR
13 COMMITTEES, BASED ON THE INFORMATION COLLECTED PURSUANT TO
14 SUBSECTION (1) OF THIS SECTION. THE REPORT MUST INCLUDE, AT A
15 MINIMUM:

16 (a) A LIST OF THE RELEVANT ENTITIES THAT ARE, OR COULD BE,
17 USING THE MEDICATION FORMULARY;

18 (b) A LIST OF THE RELEVANT ENTITIES THAT ARE, OR COULD BE,
19 UTILIZING COOPERATIVE PURCHASING;

20 (c) A LIST OF MEDICATIONS PURCHASED BY THE RELEVANT
21 ENTITIES UTILIZING COOPERATIVE PURCHASING, NOT INCLUDING
22 DISPENSING AND OTHER COSTS RELATED TO PACKAGING; AND

23 (d) A DESCRIPTION OF THE UTILIZATION OF THE MEDICATION
24 FORMULARY AND COOPERATIVE PURCHASING BY PROVIDER TYPE,
25 INCLUDING COMMUNITY MENTAL HEALTH CENTERS, COUNTY JAILS, STATE
26 HOSPITALS, AND DEPARTMENT OF CORRECTIONS AND DIVISION OF YOUTH
27 CORRECTIONS FACILITIES.

1 **SECTION 3. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety. <{*Safety clause OK?*
4 *If not, need to change some of the dates in the bill.*>