Behavioral Health Ombudsman of Colorado

ANNUAL REPORT FY 2019-2020

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Note: The appointed Behavioral Health Ombudsman is currently on leave and, as such, has not reviewed the content of this annual report. Upon their return, any requested changes will be indicated in a new/updated document. Please direct questions or media inquiries to Rebecca Swanson, Deputy/Acting Ombudsman, at rebecca@bhoco.org

INTRODUCTION: ABOUT BHOCO

Mission

The Behavioral Health Ombudsman of Colorado (BhoCO) works to improve mental health and substance use care coverage and access in Colorado by investigating concerns and complaints, gathering data, delivering recommendations for reform, and helping those who are seeking care or providing care navigate complicated systems.

Values

Independent - BhoCO operates independently from Colorado's governmental agencies, insurance carriers, and behavioral health providers. We serve the people of Colorado.

Neutral - BhoCO acts as an impartial receiver of concerns, complaints and data, and has a statutory mandate to maintain transparency and report on our work to the public.

Confidential - BhoCO does not disclose identifying information without permission unless it is necessary to address imminent risk of serious harm.

Inclusive - BhoCO believes that this office needs to be available to all residents of Colorado regardless of insurance coverage. We seek to be a safe and accessible space for persons of any ability or identity.

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History

Access to adequate and appropriate behavioral health coverage is critical to ensuring Coloradans receive the preventative and treatment services they need. In many situations, Coloradans who are seeking care do not have the resources and supports in place to spend hours trying to resolve covered health plan benefits and reimbursement methodologies. Additionally, many people are unaware of their rights to parity in coverage.

The Office of the Behavioral Health Ombudsman Office of Colorado (BhoCO) was established by Colorado House Bill 18-1357 and House Bill 19-1269 to work with community based organizations, state agencies, and providers to better serve the behavioral health community, and to educate consumers of their rights to insurance coverage and help them navigate the insurance system. The role of the Ombudsman office, as defined by statute, is to:

- Interact with consumers and health care providers with concerns or complaints to help resolve behavioral health care access and coverage and coverage issues.
- Identify, track and report to the appropriate regulatory or oversight agency concerns, complaints and potential violations of state or federal rules, regulations or statutes concerning the availability of, and terms and conditions of, benefits for mental health conditions or substance use disorders, including potential violations related to quantitative and nonquantitative treatment limitations.
- Receive and assist consumers and providers in reporting concerns and filing complaints with appropriate regulatory or oversight agencies relating to inappropriate care, an emergency procedure under section 27-65-105, a certification for short-term treatment under section 27-65-107, or a certification for long-term care and treatment under section 27-65-109.
- Provide appropriate information to help consumers obtain behavioral health care.
- Develop appropriate points of contact for referrals to other state and federal agencies.
- Provide appropriate information to help consumers or health care providers file appeals or complaints with the appropriate entities, including insurers and other state and federal agencies.

2019-2020 HIGHLIGHTS

Year One Priorities and Overview:

The Ombudsman was appointed in August of 2019. The first year of this office focused primarily on three major functions:

I. ***Establishing a new office.*** In many ways, the Office of the Behavioral Health Ombudsman seeks to follow the hard work of Colorado's Child Protection Ombudsman, which has spent the past decade building an effective and transparent ombudsman system. **In year one, BhoCO has been working to create formal case practices and procedures, an independent and transparent website, and dedicated liaisons with state and federal agencies.**

II. ***Opening to new case calls.*** The first goal of the Ombudsman office is to "Interact with consumers and health care providers with concerns or complaints to help resolve behavioral health care access and coverage and coverage issues." We are also committed to ensuring individualized attention to everyone who contacts the ombudsman. Ideally, this would include warm handoffs and direct connections with state and local offices for various issues. **In practice, year one calls have demonstrated that the majority of our cases are complicated and time-consuming, involving multiple stakeholders, and issues that extend beyond behavioral health care access and coverage—such as housing, justice systems, and child welfare.**

III. ***Identifying and reporting access, parity and coverage issues and systemic concerns.*** Our office is committed to identifying, reporting and prioritizing behavioral health parity and coverage issues. Per HB19-1269, when such complaints are made from our office, both the state's Insurance Commissioner and the Department of Health Care Policy and Financing (HCPF) "Shall examine the complaint, as requested by the office, and shall report to the office in a timely manner any actions taken related to the complaint." **In year one, we have worked to establish connections with liaisons in**

the State's Division of Insurance, The Department of Health Care Policy and Financing (HCPF), and the State's Office of Behavioral Health. Additionally, we have connected with the federal Department of Labor in order to report potential violations of federally regulated ERISA health care plans. We also submitted a formal complaint to HCPF regarding systemic parity concerns [see p9 of this report].

IV. **Relationship building.** In addition to connecting with numerous stakeholders from behavioral health advocacy organizations, local communities and others. **In year one we were pleased to serve as an appointed member on the Governor's Behavioral Health Task Force (Safety Net Subcommittee), where we**:

1. Shared issues we saw day-to-day
2. Advocated for the inclusion of parity, coverage and access concerns in the final recommendations
3. Attended many public listening sessions, where we shared our contact information with members of the public who were there testifying

Year One: Individual Case Examples

As an ombudsman office, our goal is to be responsive first and foremost to those who are seeking assistance or guidance, from individuals with lived experience to family members to health care providers and others. This means ensuring we connect callers with resources where appropriate, help people navigate or obtain care, and report possible coverage violations. In our first year, we found we spent significant amounts of time on the navigational components, and identified several key commonalities:

First, there were often already many concerned and diligent care providers and state and local organizations involved in cases that ultimately reached our office. **However**—in many of the cases, there was a lack of clear points of responsibility and accountability, which resulted in patients dropping out of care or failing to find appropriate care. **Additionally,** even in cases where an entire care team reached agreement on treatment needs, a lack of resources (e.g. inpatient beds or funding sources) often resulted in insufficient care. **Finally,** a gap between short-term crisis stabilization services and ongoing/follow-up care has been notable in numerous instances and has left us with questions about discharge planning processes in Colorado.

CASE EXAMPLE 1.

A parent/legal guardian called seeking appropriate long-term care for her adult child, who has been in and out of treatment, hospitals and the criminal justice system for multiple years. Each time she was released or discharged from a facility, she was unable to obtain sufficient follow up and long-term care. Most recently, the woman was admitted on an emergency hospital hold where she received immediate short-term stabilization. Despite having a robust care navigation team who believed she needed long-term continued care, the facility scheduled a discharge into an unhoused living situation. Our office arranged numerous calls with the care team, including hospital staff, Medicaid's regional accountable entity, the state's Office of Behavioral Health, Rocky Mountain Human Services and others. As a result of this dedicated group, an appropriate and safe place for long-term care was ultimately identified and approved, and the woman is now receiving care.

CASE EXAMPLE 2.

We spoke with parents who were concerned that their minor child was being released early from an out-of-state inpatient care program, where they believed he was thriving. His behavioral health care providers recommended additional time in the program, but his Medicaid regional accountable entity denied further care, citing "medical necessity" for the denial. Our office filed a parity complaint with the Colorado Department of Health Care Policy and Financing (HCPF), and helped the parents file a continued series of appeals for their son's care. While awaiting the results of these appeals, we worked with the parents to identify safe and appropriate alternative care options for their child, and scheduled numerous calls with providers, payors, facilities, advocates, and others to try to find suitable options. What we found was a series of hurdles–financial obstacles, lack of facilities, lack of coordination and accountability, all of which were preventing this family from finding suitable care. At one point, the out-of-state facility communicated that they would have to release the minor before the parents were able to reach the facility, with no alternative placement available. Ultimately, we were able to work with local and state agencies, multiple care providers, and others to ensure an in-state placement that included access to behavioral health care, IDD support, and educational services.

CASE EXAMPLE 3

The majority of our calls center on a lack of available behavioral health services and facilities. In one recent case, however, a parent of a child with significant IDD (intellectual/developmental disability) needs contacted our office with concerns that she would not be able to find appropriate daytime care and support for her child now that her school district would be remote schooling during the COVID-19 pandemic. Our office connected with the state Department of Education (DoE) and the local school district in order to help the parent receive paid federal emergency leave funding so that she could care for her child during remote schooling.

Year One: Identifying and Reporting Systemic Issues

Between October 2019 and February 2020, the Ombudsman office was contacted by multiple providers, legislators and advocacy organizations concerning a notice from the Colorado Community Health Alliance (a Medicaid RAE/Regional Accountable Entity), which stated that certain behavioral health providers would have their reimbursement rates cut from 100% to 80%.

Callers expressed concerns that these provider reimbursement rate cuts did not comply with state and federal parity laws. Our office filed a complaint with the state entity that oversees Medicaid (HCPF).

Following an ensuing series of exchanges between our office and HCPF, and our own independent research, BhoCO became concerned that HCPF was not only failing to demonstrate compliance with federal and state parity laws in this particular RAE, ***but that they were failing to demonstrate to what extent they were monitoring parity at all, for any of the RAEs***. As such, we sent this letter to HCPF on February 11, 2020. We also contacted the department requesting a meeting and/or written response to address six specific questions on responsibility, reporting, parity compliance, monitoring, rate-setting, and non-quantitative treatment limitations. The following questions were asked [bold added for emphasis]:

1. Based on federal and state parity laws and regulations and Colorado's unique capitated behavioral health system, **who is ultimately responsible for determining parity compliance**–HCPF, or the RAEs (who also have parity listed as part of their contracts)?

2. Based on federal and state parity laws and regulations, **are CCHA and Colorado's other RAEs in compliance** regarding provider reimbursement rate setting processes?

3. If no one is comparing provider reimbursement rate processes for the capitated BH organizations with the med/surg processes, **is the state violating any federal or state mandates** that direct them to assess parity compliance?
    a. If not, is the state misleading the public by stating in their 2019 analysis that they satisfy federal requirements?

4. Given the state's capitated payment system for behavioral health, **is it possible under the current funding structure and current RAE contracts to appropriately monitor federal and state parity compliance for provider reimbursement rates**?

5. Given the state's capitated system**, is it possible under the current funding structure and current RAE contracts to monitor federal and state parity compliance for any NQTLs [non-quantitative treatment limitations]?**

a. NOTE: we have complaint history re: billing codes, medical necessity denials, prior authorization requirements, audit triggers, and other potential NQTL compliance issues.

6. Finally, **if it is deemed possible under current structures to appropriately monitor parity compliance, is it happening?**

a. Does HCPFs 2019 parity analysis actually demonstrate compliance, in light of the statements that RAEs do not monitor some or all of the med/surg payment processes, and that HCPF does not monitor some or all of the RAE capitated payment processes?

b. Is the state currently monitoring parity compliance for NQTLs, including provider reimbursement rate setting processes, as per current requirements and pending June 2020 reporting requirements?

On June 1, 2020, our office received a written response from HCPF (see bhoco.org). This response does not directly answer any of the above questions. The response *does* indicate that an independent parity review of the department and the RAEs was being conducted as per requirements of HB19-1269. The review team conducted an interview with our office in April 2020. The HCPF parity analysis was released on July 31, 2020. BhoCO is reviewing this report and will reach out to HCPF with any additional questions or concerns.

LOOKING AHEAD TO FY2020-21

Budget and Resources

Like all state agencies, we have been impacted by budget shortfalls and the ongoing pandemic. Since the appointment of the Ombudsman, the office has had a total of one employee for five out twelve months, and two employees for the remainder of the time. After November of this year, the budget will again allow for only one employee for the remaining seven months of the fiscal year. Having only one staff person for much of the startup year of the office has made it challenging to balance the needs of establishing a new office with managing cases, but we have made every effort to prioritize the people of Colorado.

We were pleased to be awarded a SIPA microgrant to set up our G suite as an independent platform outside of DHS. We will continue to seek grant funding and other potential sources for staffing and other resources, in the hopes of assembling a team for individual case management and other office priorities and requirements as outlined in this report.

Establishing independence

It was important for the stakeholders who supported establishment of this office that BhoCO remain a neutral, independent office and remains distinct and separate from the agencies with whom it may file complaints and concerns. The language in HB18-1357 indicated this independence. However, since passage of HB18-1357, an executive order was signed that requires the ombudsman office to seek approval directly from CDHS and the Governor's office on myriad issues, and that has led our office to seek clarity regarding our independence. One of our goals of 2020-21 is to ensure that this office functions as a neutral, independent office, and we will explore whether this might require specific Memorandums of Understanding with state agencies, or additional future legislation.

Community Outreach

Many of our year one cases arrived at our office through a combination of word-of-mouth and outreach we made at the Governor's Behavioral Health Task Force public testimony sessions. We anticipate awareness of our office will increase as the state's insurance carriers (Medicaid and private) begin to list our contact information as per HB19-1269 requirements.

Our ultimate goal, however, is that no person in the state finds themselves unable to find care, or unable to find someone to help them navigate access and coverage issues. Over the course of the past year, we have received numerous requests to speak to community organizations and others involved in behavioral health care advocacy. We hope to increase this outreach and ensure that all Coloradans who need care for themselves or someone else know about our office, and know how to contact our office for assistance.

We have also connected with agencies such as the state's Division of Insurance (DOI) who are very responsive to the goal of assisting people with possible parity and coverage issues. It is our hope that we can work collaboratively to track and identify Coloradans who are being denied care, and work closely with DOI and others to ensure no Coloradans slip through the cracks of the state's behavioral health care system.

CONCLUSION

The Office of the Behavioral Health Care Ombudsman of Colorado (BhoCO) serves a role for Colorado residents that is unmet through other resources. As the office has seen over the past year, access to services and assurance of mental health parity and coverage are needed to fulfill state and federal legal obligations and statutorily required treatments—and, more importantly, to ensure the people of Colorado are adequately served with quality, affordable behavioral health care.