

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 17-0148.01 Jane Ritter x4342

SENATE BILL 17-019

SENATE SPONSORSHIP

Martinez Humenik,

HOUSE SPONSORSHIP

Singer,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASING MEDICATION CONSISTENCY FOR PERSONS**
102 **WITH MENTAL ILLNESS IN THE CRIMINAL AND JUVENILE JUSTICE**
103 **SYSTEMS, AND, IN CONNECTION THEREWITH, MAKING AN**
104 **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/>.)

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

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.

SENATE
Amended 2nd Reading
May 5, 2017

concerning the treatment of persons with mental illness in the criminal and juvenile justice systems and the medication consistency work group 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 plan 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 investigate and develop options for collaboration with local county jails to coordinate medication purchasing. Based on that information, the behavioral health transformation council shall develop a medication purchasing plan on or before July 1, 2017; and
- ! Requiring the department of human services and the department of corrections to report progress on the implementation and use of the medication formulary and cooperative purchasing as part of each department's "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" hearing, beginning in January 2018 and annually thereafter.

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

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

ARTICLE 70

Medication Consistency for Individuals with Behavioral or Mental Health Disorders in the Criminal and Juvenile Justice Systems

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

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

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

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

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
27 SYSTEMS TO INCREASE MEDICATION CONTINUITY FOR INDIVIDUALS WITH

1 BEHAVIORAL OR MENTAL HEALTH DISORDERS IN THE CRIMINAL AND
2 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 COOPERATIVE PURCHASING WILL RESULT IN LONG-TERM
7 BENEFITS FOR THE STATE AND FOR INDIVIDUALS WITH BEHAVIORAL OR
8 MENTAL HEALTH DISORDERS WHO ARE INVOLVED IN THE CRIMINAL AND
9 JUVENILE JUSTICE SYSTEMS.

10 **27-70-102. Definitions.** AS USED IN THIS ARTICLE 70, 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 FEDERALLY QUALIFIED HEALTH CARE
15 CENTER, CLINIC, COMMUNITY MENTAL HEALTH CENTER OR CLINIC,
16 INSTITUTION, ACUTE TREATMENT UNIT, JAIL, FACILITY OPERATED BY THE
17 DEPARTMENT OF CORRECTIONS, OR A FACILITY OPERATED BY THE DIVISION
18 OF YOUTH CORRECTIONS.

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

22 (4) "OFFICE" MEANS THE OFFICE OF BEHAVIORAL HEALTH IN THE
23 DEPARTMENT OF HUMAN SERVICES.

24 (5) "PROVIDER" MEANS ANY PERSON, FACILITY, OR GOVERNMENT
25 ENTITY RESPONSIBLE FOR PROVIDING MENTAL HEALTH SERVICES RELATED
26 TO THE CARE AND TREATMENT OF AN INDIVIDUAL WITH BEHAVIORAL OR
27 MENTAL HEALTH DISORDERS WHO IS OR WAS INVOLVED WITH THE

1 CRIMINAL OR JUVENILE JUSTICE SYSTEM.

2

3 **27-70-103. Medication consistency for individuals with**
4 **behavioral or mental health disorders in the criminal and juvenile**
5 **justice systems - medication formulary - cooperative purchasing -**
6 **reporting - rules.** (1) (a) BEGINNING SEPTEMBER 1, 2017, THE
7 DEPARTMENT OF HUMAN SERVICES IN CONSULTATION WITH THE
8 DEPARTMENT OF CORRECTIONS SHALL PROMULGATE RULES THAT REQUIRE
9 PROVIDERS UNDER EACH DEPARTMENT'S AUTHORITY TO USE A
10 MEDICATION FORMULARY THAT HAS BEEN DEVELOPED COLLABORATIVELY
11 BY DEPARTMENTS, AGENCIES, AND PROVIDERS. PUBLIC HOSPITALS AND
12 LICENSED PRIVATE HOSPITALS MAY ALSO, AT THEIR DISCRETION,
13 PARTICIPATE IN THE MEDICATION FORMULARY. USING CONSULTING
14 SERVICES AS NECESSARY, THE DEPARTMENTS SHALL ALSO DEVELOP
15 PROCESSES FOR EDUCATION AND MARKETING RELATED TO INFORMATION
16 REGARDING THE MEDICATION FORMULARY AND COOPERATIVE
17 PURCHASING OPPORTUNITIES FOR FACILITIES AND PROVIDERS. THE
18 PROCESSES FOR EDUCATION AND MARKETING REQUIRED PURSUANT TO
19 THIS SUBSECTION (1) SHALL BE COMPLETED ON OR BEFORE SEPTEMBER 1,
20 2017.

21 (b) FOR THE SOLE PURPOSE OF ENSURING MEDICATION
22 CONSISTENCY FOR PERSONS WITH MENTAL HEALTH DISORDERS IN THE
23 CRIMINAL AND JUVENILE JUSTICE SYSTEMS, THE DEPARTMENT OF
24 CORRECTIONS, COUNTIES, THE DIVISION OF YOUTH CORRECTIONS,
25 COMMUNITY MENTAL HEALTH CENTERS, AND OTHER PROVIDERS SHALL
26 SHARE PATIENT-SPECIFIC MENTAL HEALTH AND TREATMENT INFORMATION.
27 ALL SUCH INFORMATION SHARING MUST COMPLY WITH CONFIDENTIALITY

1 REQUIREMENTS, INCLUDING ANY NECESSARY MEMORANDUMS OF
2 UNDERSTANDING BETWEEN PROVIDERS, SET FORTH IN THE FEDERAL
3 "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996",
4 45 CFR PARTS 2, 160, 162, AND 164.

5 (2) BEGINNING JULY 1, 2018, THE OFFICE SHALL HAVE THE
6 FOLLOWING DUTIES AND RESPONSIBILITIES AND SHALL INCLUDE A REQUEST
7 FOR THE FINANCING OF SUCH DUTIES AND RESPONSIBILITIES IN THE
8 DEPARTMENT OF HUMAN SERVICES'S NOVEMBER 2017 BUDGET REQUEST
9 TO THE JOINT BUDGET COMMITTEE:

10 (a) ON OR BEFORE SEPTEMBER 1, 2018, AND EVERY SEPTEMBER 1
11 OF EVERY EVEN-NUMBERED YEAR THEREAFTER, THE OFFICE SHALL
12 CONDUCT A REVIEW OF THE MEDICATION FORMULARY TO ADDRESS ANY
13 URGENT CONCERNS RELATED TO THE FORMULARY AND TO PROPOSE
14 UPDATES TO THE FORMULARY. DURING THIS REVIEW, THE OFFICE SHALL
15 ALSO CREATE THE APPROPRIATE NOTIFICATION PROCESS FOR UPDATES TO
16 THE FORMULARY.

17 (b) ON OR BEFORE JULY 1, 2019, AND EVERY TWO YEARS
18 THEREAFTER AS NECESSARY, THE OFFICE SHALL CONDUCT A REVIEW OF
19 THE MEDICATION FORMULARY TO UPDATE THE MEDICATION FORMULARY
20 AND ENSURE COMPLIANCE WITH THE MEDICAID FORMULARY USED BY THE
21 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING.

22 =====

23 (c) ON OR BEFORE SEPTEMBER 1, 2018, THE OFFICE, IN
24 COLLABORATION WITH THE OFFICE OF INFORMATION TECHNOLOGY, THE
25 OFFICE OF E-HEALTH INNOVATION, THE DEPARTMENT OF HEALTH CARE
26 POLICY AND FINANCING, THE DEPARTMENT OF PUBLIC SAFETY, THE
27 DEPARTMENT OF CORRECTIONS, AND OTHER AGENCIES AS APPROPRIATE,

1 SHALL DEVELOP A PLAN BY WHICH THE PATIENT-SPECIFIC INFORMATION
2 REQUIRED BY SUBSECTION (1)(b) OF THIS SECTION CAN BE SHARED
3 ELECTRONICALLY, WHILE STILL IN COMPLIANCE WITH CONFIDENTIALITY
4 REQUIREMENTS, INCLUDING ANY NECESSARY MEMORANDUMS OF
5 UNDERSTANDING BETWEEN PROVIDERS, SET FORTH IN THE FEDERAL
6 "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996",
7 45 CFR PARTS 2, 160, 162, AND 164.

8 (c) (I) THE OFFICE SHALL ENCOURAGE PROVIDERS THAT HAVE
9 BEEN GRANTED PURCHASING AUTHORITY BY THE DEPARTMENT OF
10 PERSONNEL PURSUANT TO SECTION 24-102-204 TO UTILIZE COOPERATIVE
11 PURCHASING FOR THE MEDICATION FORMULARY, AS AUTHORIZED
12 PURSUANT TO SECTION 24-110-201, UNLESS THE PROVIDER CAN OBTAIN
13 THE MEDICATION ELSEWHERE AT A LOWER COST. THE USE OF
14 COOPERATIVE PURCHASING MAY, AND IS ENCOURAGED TO, INCLUDE
15 EXTERNAL PROCUREMENT ACTIVITY, AS DEFINED IN SECTION 24-110-101
16 (2), IF THE EXTERNAL PROCUREMENT ACTIVITY AGGREGATES PURCHASING
17 VOLUME TO NEGOTIATE DISCOUNTS WITH MANUFACTURERS,
18 DISTRIBUTORS, AND OTHER VENDORS.

19 (II) ANY EXTERNAL PROCUREMENT ACTIVITY, AS DEFINED IN
20 SECTION 24-110-101 (2), USED BY PROVIDERS FOR PURPOSES OF THIS
21 ARTICLE 70 IS ENCOURAGED TO INCLUDE AN ONGOING DRUG UTILIZATION
22 REVIEW PROCESS. THE PURPOSE OF THE REVIEW PROCESS IS TO HELP
23 ENSURE A STRUCTURED, ONGOING REVIEW OF HEALTH CARE PROVIDER
24 PRESCRIBING, PHARMACIST DISPENSING, AND PATIENT USE OF MEDICATION.
25 THE REVIEW MUST INCLUDE A COMPREHENSIVE ANALYSIS OF PATIENTS'
26 PRESCRIPTION AND MEDICATION DATA TO HELP ENSURE APPROPRIATE
27 MEDICATION DECISION-MAKING AND POSITIVE PATIENT OUTCOMES BY

1 PROVIDING EDUCATIONAL FEEDBACK TO PROVIDERS ON APPROPRIATE
2 MEDICATION UTILIZATION.

3 (d) THE OFFICE SHALL INVESTIGATE AND DEVELOP OPTIONS FOR
4 COLLABORATION WITH LOCAL COUNTY JAILS TO COORDINATE MEDICATION
5 PURCHASING. BASED ON THE INFORMATION FROM THE OFFICE, THE
6 BEHAVIORAL HEALTH TRANSFORMATION COUNCIL, ESTABLISHED IN
7 SECTION 27-61-102, SHALL DEVELOP A MEDICATION PURCHASING PLAN ON
8 OR BEFORE SEPTEMBER 1, 2018.

9 (3) (a) BEGINNING IN JANUARY 2019, AND EVERY JANUARY
10 THEREAFTER, THE DEPARTMENT OF HUMAN SERVICES AND THE
11 DEPARTMENT OF CORRECTIONS SHALL REPORT PROGRESS ON THE
12 IMPLEMENTATION AND USE OF THE MEDICATION FORMULARY AND
13 COOPERATIVE PURCHASING AS PART OF EACH DEPARTMENT'S "STATE
14 MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT
15 (SMART) GOVERNMENT ACT" HEARING REQUIRED BY SECTION 2-7-203.
16 EACH DEPARTMENT SHALL MAKE SUCH REPORTS TO THE JOINT HEALTH
17 AND HUMAN SERVICES COMMITTEE AND THE JOINT JUDICIARY COMMITTEE,
18 OR ANY SUCCESSOR COMMITTEES.

19 (b) THIS SECTION IS EXEMPT FROM THE PROVISIONS OF SECTION
20 24-1-136 (11), AND THE PERIODIC REPORTING REQUIREMENT OF THAT
21 SECTION SHALL REMAIN IN EFFECT UNTIL CHANGED BY THE GENERAL
22 ASSEMBLY ACTING BY BILL.

23 **SECTION 2. Appropriation.** (1) For the 2017-18 state fiscal
24 year, \$26,000 is appropriated to the department of human services. This
25 appropriation is from the general fund. To implement this act, the
26 department may use this appropriation as follows:

27 (a) \$24,000 for use by the office of behavioral health for personal

1 services; and

2 (b) \$2,000 for use by the office of behavioral health for operating
3 expenses.

4 **SECTION 3. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly (August
7 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
8 referendum petition is filed pursuant to section 1 (3) of article V of the
9 state constitution against this act or an item, section, or part of this act
10 within such period, then the act, item, section, or part will not take effect
11 unless approved by the people at the general election to be held in
12 November 2018 and, in such case, will take effect on the date of the
13 official declaration of the vote thereon by the governor.