

An Act

SENATE BILL 17-019

BY SENATOR(S) Martinez Humenik, Aguilar, Court, Fields, Jones, Kefalas, Kerr, Merrifield, Tate, Todd, Williams A., Zenzinger;
also REPRESENTATIVE(S) Singer, Buckner, Esgar, Exum, Ginal, Hooton, Jackson, Kennedy, Lebsock, Lee, Michaelson Jenet, Rosenthal, Young, Duran.

CONCERNING INCREASING MEDICATION CONSISTENCY FOR PERSONS WITH MENTAL ILLNESS IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

(d) THE MEDICATION CONSISTENCY WORK GROUP OF THE BEHAVIORAL HEALTH TRANSFORMATION COUNCIL IDENTIFIED MENTAL HEALTH MEDICATIONS THAT ARE ESSENTIAL AND PREFERRED FOR A BASIC MEDICATION FORMULARY THAT COULD BE USED ACROSS ALL PUBLIC SYSTEMS TO INCREASE MEDICATION CONTINUITY FOR INDIVIDUALS WITH BEHAVIORAL OR MENTAL HEALTH DISORDERS IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS; AND

(e) INCREASING INFORMATION SHARING ACROSS SYSTEMS AND SERVICE PROVIDERS ABOUT THE IMPORTANCE OF MEDICATION CONSISTENCY AND THE USE OF A COMMON AND AGREED UPON MEDICATION FORMULARY AND COOPERATIVE PURCHASING WILL RESULT IN LONG-TERM BENEFITS FOR THE STATE AND FOR INDIVIDUALS WITH BEHAVIORAL OR MENTAL HEALTH DISORDERS WHO ARE INVOLVED IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS.

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

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

(2) "FACILITY" MEANS A FEDERALLY QUALIFIED HEALTH CARE CENTER, CLINIC, COMMUNITY MENTAL HEALTH CENTER OR CLINIC,

INSTITUTION, ACUTE TREATMENT UNIT, JAIL, FACILITY OPERATED BY THE DEPARTMENT OF CORRECTIONS, OR A FACILITY OPERATED BY THE DIVISION OF YOUTH CORRECTIONS.

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

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

(5) "PROVIDER" MEANS ANY PERSON, FACILITY, OR GOVERNMENT ENTITY RESPONSIBLE FOR PROVIDING MENTAL HEALTH SERVICES RELATED TO THE CARE AND TREATMENT OF AN INDIVIDUAL WITH BEHAVIORAL OR MENTAL HEALTH DISORDERS WHO IS OR WAS INVOLVED WITH THE CRIMINAL OR JUVENILE JUSTICE SYSTEM.

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

(b) FOR THE SOLE PURPOSE OF ENSURING MEDICATION CONSISTENCY FOR PERSONS WITH MENTAL HEALTH DISORDERS IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS, THE DEPARTMENT OF CORRECTIONS, COUNTIES, THE DIVISION OF YOUTH CORRECTIONS, COMMUNITY MENTAL HEALTH CENTERS, AND OTHER PROVIDERS SHALL SHARE PATIENT-SPECIFIC MENTAL

HEALTH AND TREATMENT INFORMATION. ALL SUCH INFORMATION SHARING MUST COMPLY WITH CONFIDENTIALITY REQUIREMENTS, INCLUDING ANY NECESSARY MEMORANDUMS OF UNDERSTANDING BETWEEN PROVIDERS, SET FORTH IN THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", 45 CFR PARTS 2, 160, 162, AND 164.

(2) BEGINNING JULY 1, 2018, THE OFFICE SHALL HAVE THE FOLLOWING DUTIES AND RESPONSIBILITIES, SUBJECT TO AVAILABLE APPROPRIATIONS:

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

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

(c) ON OR BEFORE SEPTEMBER 1, 2018, THE OFFICE, IN COLLABORATION WITH THE OFFICE OF INFORMATION TECHNOLOGY, THE OFFICE OF E-HEALTH INNOVATION, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, THE DEPARTMENT OF PUBLIC SAFETY, THE DEPARTMENT OF CORRECTIONS, AND OTHER AGENCIES AS APPROPRIATE, SHALL DEVELOP A PLAN BY WHICH THE PATIENT-SPECIFIC INFORMATION REQUIRED BY SUBSECTION (1)(b) OF THIS SECTION CAN BE SHARED ELECTRONICALLY, WHILE STILL IN COMPLIANCE WITH CONFIDENTIALITY REQUIREMENTS, INCLUDING ANY NECESSARY MEMORANDUMS OF UNDERSTANDING BETWEEN PROVIDERS, SET FORTH IN THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", 45 CFR PARTS 2, 160, 162, AND 164.

(d) (I) THE OFFICE SHALL ENCOURAGE PROVIDERS THAT HAVE BEEN GRANTED PURCHASING AUTHORITY BY THE DEPARTMENT OF PERSONNEL PURSUANT TO SECTION 24-102-204 TO UTILIZE COOPERATIVE PURCHASING FOR THE MEDICATION FORMULARY, AS AUTHORIZED PURSUANT TO SECTION

24-110-201, UNLESS THE PROVIDER CAN OBTAIN THE MEDICATION ELSEWHERE AT A LOWER COST. THE USE OF COOPERATIVE PURCHASING MAY, AND IS ENCOURAGED TO, INCLUDE EXTERNAL PROCUREMENT ACTIVITY, AS DEFINED IN SECTION 24-110-101 (2), IF THE EXTERNAL PROCUREMENT ACTIVITY AGGREGATES PURCHASING VOLUME TO NEGOTIATE DISCOUNTS WITH MANUFACTURERS, DISTRIBUTORS, AND OTHER VENDORS.

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

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

(3) (a) BEGINNING IN JANUARY 2019, AND EVERY JANUARY THEREAFTER, THE DEPARTMENT OF HUMAN SERVICES AND THE DEPARTMENT OF CORRECTIONS SHALL 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 REQUIRED BY SECTION 2-7-203. EACH DEPARTMENT SHALL MAKE SUCH REPORTS TO THE JOINT HEALTH AND HUMAN SERVICES COMMITTEE AND THE JOINT JUDICIARY COMMITTEE, OR ANY SUCCESSOR COMMITTEES.

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

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

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

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

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Kevin J. Grantham
PRESIDENT OF
THE SENATE



Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Effie Ameen
SECRETARY OF
THE SENATE



Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471
Fax (303) 866-2003

June 6, 2017



John W. Hickenlooper
Governor

The Honorable Colorado Senate
General Assembly
State Capitol
200 E. Colfax Ave.
Denver, CO 80203

Dear Members of the Colorado Senate:

Today, we filed with the Secretary of State Senate Bill 17-019, "Concerning Medication Consistency for Persons with Mental Illness in the Criminal and Juvenile Justice Systems" (SB 17-019). As I am neither signing nor vetoing SB 17-019, the bill will become law at 12:01 A.M. on June 10, 2017. This letter sets forth my reasons for allowing SB 17-019 to become law absent my signature.

Senate Bill 17-019 implements recommendations of the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems. We are pleased with the bill's statutory changes and its support for Coloradans with mental illnesses. On the bill's policy merits, we take no issue. However, we have concerns regarding the bill's cost and the late amendments that were added to this legislation.

Like all bills, SB 17-019 received an independent fiscal impact analysis. The original fiscal note estimated a cost of \$540,575 and 0.9 full time employees (FTE) in FY 2017-18 and continued costs in future fiscal years. During the legislative process, amendments reduced the stated fiscal impact to \$26,000 and zero FTE.

Accounting for this significantly lowered fiscal estimate, in the final week of the 2017 legislative session, amendments were added delaying several of the bill's implementation dates beyond Fiscal Year 2017-2018. Furthermore, language was inserted making most of the bill's requirements voluntary, subject to out-year budgeting, and legislating future budget requests by the Administration to prioritize funds to accomplish the bill's tasks. These changes were stated to have been done to secure passage and sidestep the fiscal constraints of the House and Senate Appropriations Committees.

We are very grateful for the House sponsor's efforts to alleviate some of these concerns when these issues were raised. However, legislation should not contain "work-around" language to the annual appropriations process - whether by delays of implementation dates several years out, use of optional or permissive bill language, or other tactics that may veil a bill's true cost to the taxpayers.

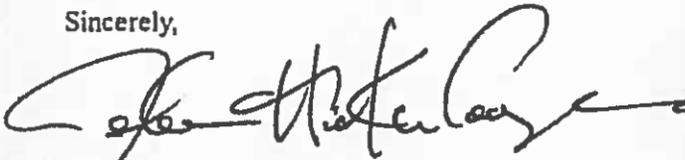
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Although we remain persuaded that SB 17-019 enacts positive changes for the State, we expect legislation to be more transparent on its impact on taxpayer funds. Given that we are frequently accused of not correctly prioritizing our resources or not making tough choices, the strategy in this bill merits highlighting. For these reasons, I allowed Senate Bill 17-019 to become law without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Hickenlooper", written in a cursive style.

John W. Hickenlooper
Governor