

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

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

LLS NO. 22-0779.01 Shelby Ross x4510

SENATE BILL 22-106

SENATE SPONSORSHIP

Kolker and Sonnenberg, Pettersen, Priola

HOUSE SPONSORSHIP

Michaelson Jenet and Rich, Amabile, McCluskie, Roberts, Soper

Senate Committees
Health & Human Services

House Committees

A BILL FOR AN ACT

101 **CONCERNING ADDRESSING CONFLICTS OF INTEREST IN REGIONAL**
102 **ORGANIZATIONS RESPONSIBLE FOR PUBLIC BEHAVIORAL**
103 **HEALTH SERVICES.**

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>.)

On or before October 1, 2022, the bill requires each managed care entity, administrative service organization, and managed service organization that has 25% or more provider ownership to comply with certain conflict of interest policies in order to promote transparency and accountability.

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

SENATE
Amended 2nd Reading
February 28, 2022

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

2 **SECTION 1.** In Colorado Revised Statutes, 25.5-5-402, **amend**
3 (9) as follows:

4 **25.5-5-402. Statewide managed care system - definitions -**
5 **rules. (9) Bidding.** (a) The state department is authorized to institute a
6 program for competitive bidding pursuant to section 24-103-202 or
7 24-103-203 for MCEs seeking to provide, arrange for, or otherwise be
8 responsible for the provision of services to its enrollees. The state
9 department is authorized to award contracts to more than one offer or.
10 The state department shall use competitive bidding procedures to
11 encourage competition and improve the quality of care available to
12 medicaid recipients over the long term that meets the requirements of this
13 section and section 25.5-5-406.1.

14 (b) (I) ON OR BEFORE JANUARY 1, 2023, IN ORDER TO PROMOTE
15 TRANSPARENCY AND ACCOUNTABILITY, THE STATE DEPARTMENT SHALL
16 REQUIRE EACH MCE THAT HAS TWENTY-FIVE PERCENT OR MORE
17 OWNERSHIP BY PROVIDERS OF BEHAVIORAL HEALTH SERVICES TO COMPLY
18 WITH THE FOLLOWING CONFLICT OF INTEREST POLICIES:

19 (A) PROVIDERS WHO HAVE OWNERSHIP OR BOARD MEMBERSHIP IN
20 AN MCE SHALL NOT HAVE CONTROL, INFLUENCE, OR DECISION-MAKING
21 AUTHORITY IN THE ESTABLISHMENT OF PROVIDER NETWORKS.

22 (B) EACH MCE SHALL REPORT QUARTERLY THE NUMBER OF
23 PROVIDERS WHO APPLIED TO JOIN THE NETWORK AND WERE DENIED AND
24 A COMPARISON OF RATE RANGES FOR PROVIDERS WHO HAVE OWNERSHIP
25 OR BOARD MEMBERSHIP VERSUS PROVIDERS WHO DO NOT. ____

26 (C) AN EMPLOYEE OF A CONTRACTED PROVIDER OF AN MCE

1 SHALL NOT ALSO BE AN EMPLOYEE OF THE MCE UNLESS THE EMPLOYEE
2 IS THE CHIEF CLINICAL OFFICER OR UTILIZATION MANAGEMENT DIRECTOR
3 OF THE MCE. IF THE INDIVIDUAL IS ALSO AN EMPLOYEE OF A PROVIDER
4 THAT HAS BOARD MEMBERSHIP OR OWNERSHIP IN THE MCE, THE MCE
5 SHALL DEVELOP POLICIES, APPROVED BY THE EXECUTIVE DIRECTOR OF THE
6 STATE DEPARTMENT, TO MITIGATE ANY CONFLICT OF INTEREST THE
7 EMPLOYEE MAY HAVE.

8 (D) AN MCE'S BOARD SHALL NOT HAVE MORE THAN FIFTY
9 PERCENT OF CONTRACTED PROVIDERS AS BOARD MEMBERS, AND THE MCE
10 IS ENCOURAGED TO HAVE A COMMUNITY MEMBER ON THE MCE'S BOARD.

11 (II) NO LATER THAN JULY 1, 2025, THE STATE DEPARTMENT SHALL
12 APPROPRIATELY ADDRESS PERCEIVED OR ACTUAL PROVIDER OWNERSHIP
13 AND CONTROL OF MCEs PARTICIPATING IN THE STATEWIDE MANAGED
14 CARE SYSTEM IN THE INTEREST OF TRANSPARENCY AND ACCOUNTABILITY.
15 IN DESIGNING A COMPETITIVE BIDDING PROCESS, THE STATE DEPARTMENT
16 SHALL INCORPORATE COMMUNITY FEEDBACK AND HAVE A PUBLIC PROCESS
17 RELATED TO GOVERNING REQUIREMENTS, INCLUDING HOW TO ADDRESS
18 CONFLICTS OF INTEREST.

19 (III) AS USED IN THIS SUBSECTION (9)(b):

20 (A) "CHIEF CLINICAL OFFICER" MEANS A PHYSICIAN WHO PROVIDES
21 THE CLINICAL VISION FOR THE MCE AND MAY PROVIDE CLINICAL
22 DIRECTION TO NETWORK MANAGEMENT, QUALITY IMPROVEMENT,
23 UTILIZATION MANAGEMENT, OR CREDENTIALING DIVISIONS.

24 (B) "MCE" MEANS A MANAGED CARE ENTITY RESPONSIBLE FOR
25 THE STATEWIDE SYSTEM OF COMMUNITY BEHAVIORAL HEALTH CARE, AS
26 DESCRIBED IN SECTION 25.5-5-402 (3) AND IS NOT OWNED, OPERATED BY,
27 OR AFFILIATED WITH AN INSTRUMENTALITY, MUNICIPALITY, OR POLITICAL

1 SUBDIVISION OF THE STATE.

2 (C) "OWNERSHIP" MEANS AN INDIVIDUAL WHO IS A LEGAL
3 PROPRIETOR OF AN ORGANIZATION, INCLUDING A PROVIDER OR INDIVIDUAL
4 WHO OWNS ASSETS OF AN ORGANIZATION, OR HAS A FINANCIAL STAKE,
5 INTEREST, OR GOVERNANCE ROLE IN THE MCE.

6 (D) "UTILIZATION MANAGEMENT DIRECTOR" MEANS A LICENSED
7 HEALTH CARE PROFESSIONAL WITH BEHAVIORAL HEALTH CLINICAL
8 EXPERIENCE THAT LEADS AND DEVELOPS THE UTILIZATION MANAGEMENT
9 PROGRAM AND MANAGES THE MEDICAL REVIEW AND AUTHORIZATION
10 PROCESS.

11 **SECTION 2.** In Colorado Revised Statutes, 27-60-103, **add** (8)
12 as follows:

13 **27-60-103. Behavioral health crisis response system - services**
14 **- request for proposals - criteria - reporting - rules.** (8) (a) ON OR
15 BEFORE JANUARY 1, 2023, IN ORDER TO PROMOTE TRANSPARENCY AND
16 ACCOUNTABILITY, THE OFFICE SHALL REQUIRE EACH ADMINISTRATIVE
17 SERVICE ORGANIZATION THAT HAS TWENTY-FIVE PERCENT OR MORE
18 OWNERSHIP BY PROVIDERS OF BEHAVIORAL HEALTH SERVICES TO COMPLY
19 WITH THE FOLLOWING CONFLICT OF INTEREST POLICIES:

20 (I) PROVIDERS WHO HAVE OWNERSHIP OR BOARD MEMBERSHIP IN
21 AN ADMINISTRATIVE SERVICE ORGANIZATION SHALL NOT HAVE CONTROL,
22 INFLUENCE, OR DECISION-MAKING AUTHORITY IN HOW FUNDING IS
23 DISTRIBUTED TO ANY PROVIDER OR THE ESTABLISHMENT OF PROVIDER
24 NETWORKS.

25 (II) THE OFFICE SHALL QUARTERLY REVIEW AN ADMINISTRATIVE
26 SERVICE ORGANIZATION'S FUNDING ALLOCATION TO ENSURE THAT ALL
27 PROVIDERS ARE BEING EQUALLY CONSIDERED FOR FUNDING. THE OFFICE

1 IS AUTHORIZED TO REVIEW ANY OTHER PERTINENT INFORMATION TO
2 ENSURE THE ADMINISTRATIVE SERVICE ORGANIZATION IS MEETING STATE
3 AND FEDERAL RULES AND REGULATIONS AND IS NOT INAPPROPRIATELY
4 GIVING PREFERENCE TO PROVIDERS WITH OWNERSHIP OR BOARD
5 MEMBERSHIP.

6 (III) AN EMPLOYEE OF A CONTRACTED PROVIDER OF AN
7 ADMINISTRATIVE SERVICE ORGANIZATION SHALL NOT ALSO BE AN
8 EMPLOYEE OF THE ADMINISTRATIVE SERVICE ORGANIZATION UNLESS THE
9 EMPLOYEE IS A MEDICAL DIRECTOR FOR THE ADMINISTRATIVE SERVICE
10 ORGANIZATION. IF THE MEDICAL DIRECTOR IS ALSO AN EMPLOYEE OF A
11 PROVIDER THAT HAS BOARD MEMBERSHIP OR OWNERSHIP IN THE
12 ADMINISTRATIVE SERVICE ORGANIZATION, THE ADMINISTRATIVE SERVICE
13 ORGANIZATION SHALL DEVELOP POLICIES, APPROVED BY THE
14 COMMISSIONER OF THE BEHAVIORAL HEALTH ADMINISTRATION, TO
15 MITIGATE ANY CONFLICT OF INTEREST THE MEDICAL DIRECTOR MAY HAVE.

16 (IV) AN ADMINISTRATIVE SERVICE ORGANIZATION'S BOARD SHALL
17 NOT HAVE MORE THAN FIFTY PERCENT OF CONTRACTED PROVIDERS AS
18 BOARD MEMBERS, AND THE ADMINISTRATIVE SERVICE ORGANIZATION IS
19 ENCOURAGED TO HAVE A COMMUNITY MEMBER ON THE ADMINISTRATIVE
20 SERVICE ORGANIZATION'S BOARD.

21 (b) IF THE OFFICE IS UNABLE TO CONTRACT WITH AN
22 ADMINISTRATIVE SERVICE ORGANIZATION THAT MEETS THE
23 REQUIREMENTS OF THIS SUBSECTION (8), THE OFFICE MAY DESIGNATE
24 ANOTHER EXISTING ADMINISTRATIVE SERVICE ORGANIZATION TO
25 TEMPORARILY PROVIDE THE SERVICES FOR THAT REGION, FOR UP TO ONE
26 YEAR, PENDING DESIGNATION OF A NEW ADMINISTRATIVE SERVICE
27 ORGANIZATION. IF THE OFFICE IS UNABLE TO DESIGNATE A NEW

1 ADMINISTRATIVE SERVICE ORGANIZATION, THE TEMPORARY
2 ADMINISTRATIVE SERVICE ORGANIZATION MAY CONTINUE TO PROVIDE THE
3 REGIONAL BEHAVIORAL HEALTH CRISIS RESPONSE SYSTEM SERVICES ON A
4 YEAR BY YEAR BASIS.

5 (c) AS USED IN THIS SUBSECTION (8), UNLESS THE CONTEXT
6 OTHERWISE REQUIRES:

7 (I) "MEDICAL DIRECTOR" MEANS A PHYSICIAN WHO OVERSEES THE
8 MEDICAL CARE AND OTHER DESIGNATED CARE AND SERVICES IN AN
9 ADMINISTRATIVE SERVICES ORGANIZATION. THE MEDICAL DIRECTOR MAY
10 BE RESPONSIBLE FOR HELPING TO DEVELOP CLINICAL QUALITY
11 MANAGEMENT AND UTILIZATION MANAGEMENT.

12 (II) "OWNERSHIP" MEANS AN INDIVIDUAL WHO IS A LEGAL
13 PROPRIETOR OF AN ORGANIZATION, INCLUDING A PROVIDER OR INDIVIDUAL
14 WHO OWNS ASSETS OF AN ORGANIZATION, OR HAS A FINANCIAL STAKE,
15 INTEREST, OR GOVERNANCE ROLE IN THE ADMINISTRATIVE SERVICES
16 ORGANIZATION.

17 **SECTION 3.** In Colorado Revised Statutes, 27-80-107, **add** (2.5)
18 as follows:

19 **27-80-107. Designation of managed service organizations -**
20 **purchase of services - revocation of designation.** (2.5) (a) ON OR
21 BEFORE JANUARY 1, 2023, IN ORDER TO PROMOTE TRANSPARENCY AND
22 ACCOUNTABILITY, THE OFFICE OF BEHAVIORAL HEALTH SHALL REQUIRE
23 EACH MANAGED SERVICE ORGANIZATION THAT HAS TWENTY-FIVE
24 PERCENT OR MORE OWNERSHIP BY PROVIDERS OF BEHAVIORAL HEALTH
25 SERVICES TO COMPLY WITH THE FOLLOWING CONFLICT OF INTEREST
26 POLICIES:

27 (I) PROVIDERS WHO HAVE OWNERSHIP OR BOARD MEMBERSHIP IN

1 A MANAGED SERVICE ORGANIZATION SHALL NOT HAVE CONTROL,
2 INFLUENCE, OR DECISION-MAKING AUTHORITY IN HOW FUNDING IS
3 DISTRIBUTED TO ANY PROVIDER OR THE ESTABLISHMENT OF PROVIDER
4 NETWORKS.

5 (II) THE OFFICE OF BEHAVIORAL HEALTH SHALL QUARTERLY
6 REVIEW A MANAGED SERVICE ORGANIZATION'S FUNDING ALLOCATION TO
7 ENSURE THAT ALL PROVIDERS ARE BEING EQUALLY CONSIDERED FOR
8 FUNDING. THE OFFICE OF BEHAVIORAL HEALTH IS AUTHORIZED TO REVIEW
9 ANY OTHER PERTINENT INFORMATION TO ENSURE THE MANAGED SERVICE
10 ORGANIZATION IS MEETING STATE AND FEDERAL RULES AND REGULATIONS
11 AND IS NOT INAPPROPRIATELY GIVING PREFERENCE TO PROVIDERS WITH
12 OWNERSHIP OR BOARD MEMBERSHIP.

13 (III) AN EMPLOYEE OF A CONTRACTED PROVIDER OF A MANAGED
14 SERVICE ORGANIZATION SHALL NOT ALSO BE AN EMPLOYEE OF THE
15 MANAGED SERVICE ORGANIZATION UNLESS THE EMPLOYEE IS A MEDICAL
16 DIRECTOR FOR THE MANAGED SERVICE ORGANIZATION. IF THE MEDICAL
17 DIRECTOR IS ALSO AN EMPLOYEE OF A PROVIDER THAT HAS BOARD
18 MEMBERSHIP OR OWNERSHIP IN THE MANAGED SERVICE ORGANIZATION,
19 THE MANAGED SERVICE ORGANIZATION SHALL DEVELOP POLICIES,
20 APPROVED BY THE COMMISSIONER OF THE BEHAVIORAL HEALTH
21 ADMINISTRATION, TO MITIGATE ANY CONFLICT OF INTEREST THE MEDICAL
22 DIRECTOR MAY HAVE.

23 (IV) A MANAGED SERVICE ORGANIZATION'S BOARD SHALL NOT
24 HAVE MORE THAN FIFTY PERCENT OF CONTRACTED PROVIDERS AS BOARD
25 MEMBERS, AND THE MANAGED SERVICE ORGANIZATION IS ENCOURAGED
26 TO HAVE A COMMUNITY MEMBER ON THE MANAGED SERVICE
27 ORGANIZATION'S BOARD.

1 (b) IF THE OFFICE IS UNABLE TO CONTRACT WITH A MANAGED
2 SERVICE ORGANIZATION THAT MEETS THE REQUIREMENTS OF THIS
3 SUBSECTION (2.5), THE OFFICE MAY DESIGNATE ANOTHER EXISTING
4 MANAGED SERVICE ORGANIZATION TO TEMPORARILY PROVIDE THE
5 SERVICES FOR THAT REGION, FOR UP TO ONE YEAR, PENDING DESIGNATION
6 OF A NEW MANAGED SERVICE ORGANIZATION. IF THE OFFICE IS UNABLE TO
7 DESIGNATE A NEW MANAGED SERVICE ORGANIZATION, THE TEMPORARY
8 MANAGED SERVICE ORGANIZATION MAY CONTINUE TO PROVIDE THE
9 REGIONAL SUBSTANCE USE DISORDER SERVICES ON A YEAR BY YEAR BASIS.

10 (c) AS USED IN THIS SUBSECTION (2.5), UNLESS THE CONTEXT
11 OTHERWISE REQUIRES:

12 (I) "MEDICAL DIRECTOR" MEANS A PHYSICIAN WHO OVERSEES THE
13 MEDICAL CARE AND OTHER DESIGNATED CARE AND SERVICES IN A
14 MANAGED SERVICE ORGANIZATION. THE MEDICAL DIRECTOR MAY BE
15 RESPONSIBLE FOR HELPING TO DEVELOP CLINICAL QUALITY MANAGEMENT
16 AND UTILIZATION MANAGEMENT.

17 (II) "OWNERSHIP" MEANS AN INDIVIDUAL WHO IS A LEGAL
18 PROPRIETOR OF AN ORGANIZATION, INCLUDING A PROVIDER OR INDIVIDUAL
19 WHO OWNS ASSETS OF AN ORGANIZATION, OR HAS A FINANCIAL STAKE,
20 INTEREST, OR GOVERNANCE ROLE IN THE MANAGED SERVICE
21 ORGANIZATION.

22 **SECTION 4. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, or safety.