

## 2019 LEGISLATIVE SESSION REVIEW

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### The Blue Wave Hits Colorado

The 2018 midterm elections proved to be both contentious and surprising not only at the federal level but also within the state of Colorado. Leading up to the elections, the focus was on whether or not there would be a “blue wave” elevating Democratic candidates above Republicans. As it turned out, the wave was so strong in Colorado that [CPR reporter Sam Brasch renamed it the “blue avalanche”](#). When the dust settled, the Democratic party gained full control of Colorado’s state government by winning all statewide elected offices, increasing their advantage in the House, and flipping the Senate majority. With complete control, little stood in the way of Democrats achieving their agenda and passing bills that had previously been defeated in the Republican controlled Senate.

### New Governor & New Administration

One result of the blue avalanche was the election of the country’s first openly gay Governor, Jared Polis, who had previously served in the United States Congress as the representative for Colorado’s 2<sup>nd</sup> congressional district. As a part of his historic inauguration, Governor Polis staffed a (mostly) new Cabinet, surrounded himself with a handful of his staff from D.C., and brought forth an ambitious agenda which included funding statewide full-day kindergarten and lowering the high cost of health care and health insurance.

In addition to these priorities and others, they have not shied away from making behavioral health a top priority. On April 8<sup>th</sup>, Governor Polis directed Michelle Barnes, Executive Director of the Colorado Department of Human Services (CDHS), to assemble a task force to evaluate the current systems and create a “[Behavioral Health Blueprint](#)” by June 2020, with anticipated implementation of recommendations starting in July 2020. To date, the following three subcommittees have been identified:

- 1. Children’s Behavioral Health:** This subcommittee will develop a plan to address how Colorado delivers and administers children’s behavioral health and how to improve outcomes. This emphasis on children’s behavioral health is closely aligned with the policy recommendations included in SB19-195.
- 2. Long-term Competency:** Consistent with a recent consent decree entered into between the Colorado Department of Human Services and the plaintiff, Disability Law Colorado, this subcommittee will develop a comprehensive plan for individuals in the criminal justice system who have been found incompetent to stand trial. It will also focus on future solutions to increase community interventions to reduce the demand for forensic mental health services.
- 3. State Safety Net:** This subcommittee will create a plan regarding the safety net system to ensure that every Coloradan, regardless of acuity level, ability to pay, or co-occurring disabilities, can obtain appropriate behavioral health services in their community. This subcommittee is closely aligned with the policy recommendations included in SB19-222.

## Democratic Controlled Legislature

Democrats in the House and Senate also had ambitious health and behavioral health agendas. Several bills that had previously been defeated in the Senate under Republican control, including bills to lower the age of consent for psychotherapy services and banning the practice of conversion therapy for minors by a licensed mental health professional, found new life under a Democratic-led legislature.

## A Cautious Economic Forecast

After a rosy economic report in 2018, this year's March forecast, which helps the Joint Budget Committee (JBC) set the final budget figures, included much uncertainty. As a result, anticipated revenue was lower. Combined with the Governor's full-day kindergarten priority, the fiscal outlook became much more challenging for funding the full slate of CBHC's budget priorities.

With all this in mind – not to mention the extensive behavioral health agendas brought by other stakeholders – the CBHC team had our work cut out for us. In the end, we relied heavily upon our board policy positions, member feedback and participation, and leveraged long-standing partnerships to secure the wins and achieve the compromises that we sought.

With tremendous gratitude to those who helped shape our policy platform and who guided and supported our legislative efforts, we present the most significant outcomes for behavioral health in the 2019 legislative session below.

## Budget Priorities

Only two legislators returned to the [Joint Budget Committee](#) this session, and the Democrats held a 4-2 majority, as opposed to the 3-3 makeup during a split-legislature. This major change in such an important committee significantly altered the usual process of creating the state budget. In addition to these changes, this JBC had to contend with the changes that incoming Governor Polis made to the budget request originally written by staff from the Hickenlooper administration.

## Strengthening the Behavioral Health Workforce

Despite the new dynamics of the JBC, and without support in the Governor's budget proposal, CBHC embarked on an ambitious plan to increase provider rates to improve employee salaries and boost the community-based provider workforce. Our team worked with members and experts to conduct an analysis that demonstrated that a 10% rate increase for safety net behavioral health providers would bring salaries back into a competitive range compared to inflation. This ask was designed to work within a wider strategy to address Colorado's significant behavioral health workforce concerns.

In the end, between competing priorities such as full-day kindergarten and a cautious economic forecast, **the JBC approved a 2% behavioral health provider rate increase to the budget to be directed toward salaries. This is in addition to the 1% Cost of Living Adjustment (COLA) that was included in the Governor's budget request.**

One of the significant outcomes of this effort, in addition to the final action taken by the JBC, was [the drafting of an extensive JBC staff memo](#) that detailed the issue to the Committee. CBHC is optimistic that the memo and the 2% increase is a significant step in the right direction towards a multi-year workforce enhancement strategy that will ensure all Coloradans have access to community-based services.

## Policy Priorities

Throughout the session, legislators and several key stakeholders brought forth ambitious behavioral health agendas. More than ever, the CBHC team's time and resources were divided between achieving our platform priorities and collaborating or negotiating on the priorities of others when their policy proposals had the potential to impact our member organizations. For the bills below, CBHC's positions are indicated in parentheses.

### **[HB19-1237: Behavioral Health Facility Licensure](#) (Active Support)**

For several months leading up to the 2019 legislative session, CBHC had been working closely with various state departments and other stakeholders to examine Colorado's structure for licensing and regulating behavioral health facilities. In 2018, Governor Hickenlooper formally convened a taskforce to complete a comprehensive review of the current licensing and certification of behavioral health facilities and to develop recommendations for reform. The product of this work was the [Behavioral Health Facility Licensing Task Force Findings & Recommendations](#) report. This report outlined current issues in our structure and included a plan to create a new licensing model that promotes more flexibility in licensing. Among the recommendations was the development of legislation which resulted in HB19-1237. The bill will implement several policy recommendations from the task force report, including:

- 1. Establish a new, single "Behavioral Health Entity" (BHE) license within CDPHE to completely reform licensing across several state departments.** This was designed to consolidate functions, ensure consistency, promote parity, streamline processes, minimize waste, and increase efficiency. Further, it will allow for "service-based" licensure that promotes innovation and flexibility.
- 2. Create an implementation and advisory committee to advise on the roll-out of the new licensure structure.** The group will create specific recommendations for regulatory reform and collaboration between the departments as well as advise on the new structure as it is implemented.
- 3. Prepare needed regulatory and statutory reform for the new licensure framework with rule-making authority, timeline establishment, and statute modernization and conformation.**

CBHC is grateful for the coalition and state agency partners that helped this high impact bill succeed. It is expected to be signed soon, and the implementation of regulatory functions will begin this summer.

*If you have any questions or feedback about our work during the 2019 legislative session, please contact Frank Cornelia, Director of Government & Community Relations, at [fcornelia@cbhc.org](mailto:fcornelia@cbhc.org) or at 720-573-9371.*

## Competency & Restoration Services

As a direct result of 2018's initiatives regarding competency restoration and the eventual demise of SB18-252, stakeholders began meeting over the summer to plan for the 2019 session and identify joint priorities. During this time, three priority areas were identified. They included the two bills listed below along with a commitment to strategic planning which will be a part of the Governor's behavioral health taskforce.

- [SB19-222: Individuals at Risk of Institutionalization](#)** (Support)  
The intention for this bill was to create opportunities for the highest acuity individuals who require safety net services to avoid institutionalization and/or criminal justice involvement. Through its lifespan, the design of this bill proved challenging for CBHC and our members due to competing priorities for a safety net system and the requirements which stakeholders wanted to place upon it. Ultimately, the bill outlines ideals for Colorado's safety net system and how it operates, such as limiting the refusal of services without coordination to other appropriate levels of care, directing the state to seek an IMD-exclusion waiver, and undoing historic bed allocations at the state institutes. Through CBHC's work on this bill, we engaged in close and frequent communications with the sponsors and key stakeholders to find a balanced, common ground that focuses on enhancing our existing system while also requiring study of the critical issues highlighted during the discussion. This strategic study of the safety net system will be implemented through the Governor's Task Force Safety Net Subcommittee.
- [SB19-223: Actions Related to Competency to Proceed](#)** (Support)  
A companion to SB19-222, this complex bill focuses on widespread reform of Colorado's policies related to competency evaluation and restoration. Stakeholders and legislators worked diligently to ensure the bill closely reflects the settlement agreement of the case between CDHS and Disability Law Colorado on the wait times for individuals who need restoration. The bill also introduces a further emphasis on increasing the number of individuals served in the community and creating opportunities to do so.

**The Governor signed both bills into law on May 20<sup>th</sup>, 2019.**

## Opioid & Other Substance Use Disorders Interim Study Committee

Originating in the 2017 legislative session and then re-requested for the 2018/19 cycle, the [Opioid and Other Substance Use Disorders \(SUDs\) Interim Study Committee](#) represented a bipartisan effort to address the impact of the opioid epidemic and strengthen our state's response to all SUDs. As in the previous year, the committee worked with stakeholders to sort through hundreds of policy recommendations which resulted in the following bills:

- [HB19-1009: Substance Use Disorders Recovery](#)** (Support)  
This interim committee bill expands recovery programming such as housing opportunities for low income individuals living with SUDs, requires a regulatory structure to be created for recovery residences, and establishes an opioid crisis recovery fund and advisory task force.

CBHC collaborated with the Colorado Providers Association (COPA) to secure an amendment to gain seats on this task force for our respective associations.

2. **[HB19-1287](#): Treatment for Opioids & Substance Use Disorders** (Support)  
HB19-1287 includes policy recommendations to create a treatment capacity tracker, a care navigation program within the statewide crisis hotline, and a new fund for expanding treatment capacity in rural areas. **This bill was signed into law on May 14<sup>th</sup>, 2019.**
3. **[SB19-008](#): Substance Use Disorder Treatment in Criminal Justice System** (Support)  
Another of the three interim committee bills, this bill establishes a variety of policies and funded programming to assist in diverting individuals with opioid and other substance use disorders away from the criminal justice system.
4. **[SB19-227](#): Harm Reduction Substance Use Disorders** (Support)  
This bill promotes several harm reduction programs and policies and increases access to opioid overdose reversal medication and medication assisted treatment (MAT).
5. **[SB19-228](#): Substance Use Disorder Prevention Measures** (Support)  
This bill includes several policy recommendations related to the misuse of opioids, prevention of opioid use disorders, and the education of prescribers, healthcare professionals, and the public.

**Governor Polis is expected to sign all five bills.**

## Other Priority Bills<sup>1</sup>

**[HB19-1017](#): Kindergarten Through Fifth Grade Social & Emotional Health Act** (Support)  
An effort by Representative Michaelson-Jenet and Senator Fields, this bill creates a pilot program to place school social workers in each grade from k-5 within one school district. The intention behind the bill is to show the impact that well-staffed school-based behavioral health resources can have towards a child's positive development. **Governor Polis signed this bill into law on May 10<sup>th</sup>, 2019.**

**[HB19-1044](#): Advance Behavioral Health Orders Treatment** (Support)  
The product of several months of collaboration by a coalition of mental health advocates, providers, and consumer advocates, this bill creates an advanced behavioral health treatment order option and process to provide individuals in crisis with an opportunity to receive self-directed healthcare. **This bill was signed into law on March 28<sup>th</sup>, 2019.**

**[HB19-1120](#): Youth Mental Health Education & Suicide Prevention** (Support)  
A revival of previous efforts by Representative Michaelson-Jenet, this bill allows a minor - 12 years of age or older - to obtain outpatient psychotherapy services with or without the consent of their parent

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<sup>1</sup> The full list of all 59 bills that CBHC tracked this year can be found here:  
<https://statebillinfo.com/SBI/index.cfm?fuseaction=Dossiers2.View&id=25972>

or guardian. It further encourages professionals working with a minor to obtain consent from the minor to speak with the minor's parent or guardian and requires the state to develop and maintain a mental health education literacy resource bank. **This bill was signed into law on May 17<sup>th</sup>, 2019.**

**HB19-1129: Prohibit Conversion Therapy for a Minor** (Active Support)

Following five years of attempts to pass this or similar legislation, advocates came to the capitol en masse to support this bill. HB19-1129 prohibits mental health professionals from engaging in "conversion therapy" with a minor and further defines advertising or practicing "conversion therapy" as a deceptive trade practice. **This bill has been sent to the Governor.**

**HB19-1169: Mental Health Involuntary Transportation Holds** (Monitor)

A direct response to new policies implemented in SB17-207, this bill attempts to make policy revisions to the involuntary transportation hold statutes. Following stakeholder discussions, bill sponsors agreed to revisit the issues in this bill during the summer and pursue a comprehensive solution. **This bill was postponed indefinitely.**

**HB19-1177: Extreme Risk Protection Orders** (Monitor)

The controversial "red flag" bill allows for firearms to be removed from high-risk individuals. CBHC took a monitor position on this bill primarily due to the rhetoric it sparked around behavioral health and individuals living with mental health disorders. CBHC's primary concerns were the potential to increase stigma as well as create additional barriers for individuals who are contemplating outreach to services. When placed, the "ERPO" prohibits an individual from possessing, controlling, purchasing, or receiving a firearm for 364 days. Upon issuance of the ERPO, the respondent shall surrender all their firearms and their concealed carry permit if they have one. **This bill was signed into law on April 12<sup>th</sup>, 2019.**

**HB19-1193: Behavioral Health Supports for High-Risk Families** (Support)

This bill makes amendments to the special connections program that provides access to substance use disorder treatment to pregnant and parenting women. It further creates child care pilot programs for parenting women engaged in substance use disorder treatment. It prohibits information relating to substance use during pregnancy, with certain exceptions, that is obtained as part of providing postpartum care for up to one year or disclosed while women are seeking or participating in behavioral health treatment from being used in court. **This bill has been sent to the Governor.**

**HB19-1269: Mental Health Parity Insurance Medicaid** (Support)

This bill includes parity reforms for both private carriers and Colorado's Medicaid program. Details about all the reforms included can be found here. **This bill was signed into law on May 17<sup>th</sup>, 2019.**

**HB19-1333: Cigarette Tobacco & Nicotine Products Tax** (Support)

Led by Children's Hospital, Healthier Colorado, and the Governor's Office, this bill sought to refer a ballot measure to the voters to increase tobacco taxes and to close a tax loopholes for alternative tobacco products such as nicotine vaping products. The bill was an ambitious effort introduced with only a couple of weeks left in the session and a full slate of bills remaining. CBHC was a supportive

member of the coalition and provided testimony and targeted member outreach to legislators. **After passing the House despite bipartisan opposition, this bill was defeated in the Senate on 2<sup>nd</sup> Reading.**

**SB19-001: Expand Medication-Assisted Treatment Pilot Program** (Support)

The bill expands a MAT access pilot program created in 2017 to additional counties, shifts administration from the college of nursing to the center for research into substance use disorder prevention, treatment, and recovery support strategies, increases the annual appropriation for the pilot program to \$5 million for the 2019-20 and 2020-21 fiscal years, and extends the program by an additional 2 years. **This bill was signed into law on May 14<sup>th</sup>, 2019.**

**SB19-010: Professional Behavioral Health Services for Schools** (Support)

A product of coalition work around behavioral health services for youth, this bill expands the behavioral health professional grant program for schools to also allow mental health services. It also allows schools to contract with community providers for the program. **Governor Polis signed this bill into law on May 10th, 2019.**

**SB19-195: Child & Youth Behavioral Health System Enhancements** (Monitor)

This bill creates the Office of Children and Youth Behavioral Health Policy Coordination, the Children and Youth Behavioral Health Policy Coordination Commission, and the Children and Youth Behavioral Health Advisory Council. It defines the duties and responsibilities for all the created bodies, focusing on recommendations for government actions around children's behavioral health. **This bill was signed into law on May 16<sup>th</sup>, 2019.**

***Thank You!***

We are incredibly grateful to our members for supporting the work of CBHC's legislative and policy team – especially those who took the time to travel to the Capitol to testify or directly advocate for CBHC priorities! Your attention to our action alerts and your engagement throughout this process is a critical part of our success.

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