

CBHC Policy Priority:

Anticipated Family Input Legislation

*****NOTE: This backgrounder will be updated with more specifics when the bill is introduced, which will likely not be until after our Day at the Capitol.**

BILL SPONSORS: Reps. Judy Amabile (D-Boulder) and Naquetta Ricks (D-Aurora)

Issue Background:

In the 2023 legislative session, Rep. Ricks introduced a bill that would have, among other things, created a standardized “family input form” enabling people to share information with providers about family members or close friends seeking behavioral health services. Providers would have been required to accept and review the form as part of the treatment plan. This proposal came from family members of adult children with SMI. CBHC members strenuously expressed concerns about being required to accept such a form. They noted that federal law stipulates providers can neither confirm nor deny that an individual is receiving services; family members do not always have the best interests of their children at heart; even individuals with SMI still have a right to privacy; and providers must retain the ability to exercise their professional judgment in deciding whether/how to act upon information received from third parties. They also expressed concerns about whether HIPAA and 42 CFR Part 2 would even allow them to accept written information of this type and noted that the definition of “accept” is sufficiently vague to create liability concerns.

CBHC successfully negotiated with Rep. Ricks to remove the family input provisions from the bill and allow us to use the interim to try to develop a mutually agreeable family input process with stakeholders. As part of that process, we convened a stakeholder group with federal experts on HIPAA and 42 CFR Part 2 who clarified that both laws are silent on whether providers can accept information in writing, but that patients’ right to privacy and providers’ ethical responsibility means that providers cannot be forced to act on information received from family members.

Because Rep. Amabile made clear that she intended to run a bill about ROIs and family input forms in 2024, CBHC suggested her legislation simply codify in Colorado law that nothing in federal law precludes providers from accepting information from family members or close friends but that they retain the ability to exercise their professional judgment, without liability, in determining whether/how to act on such information. We also suggested that forms be housed in the consent registry being developed by the state Office of E-Health Innovation. With input from member experts, we also helped refine her proposed requirements around a universal ROI that would be regularly updated.

Current Draft Legislation:

As of early January, the bill is still being drafted and stakeholdered. Rep. Amabile is working with both CBHC and Mental Health Colorado to draft it, and our views of the best policy direction do not necessarily match. For now, however, we have succeeded in securing permissive language about accepting the form. We have also connected MHCO and the bill drafter with SAMHSA's Center of Excellence on PHI to ensure that the bill comports with HIPAA and 42 CFR Part 2. In addition, we've shared the draft with liability experts.

Talking Points About the Issue:

- CBHC has worked closely with the sponsors of this bill and other stakeholders since the summer to understand their desires, share our concerns and craft a mutually acceptable solution. We look forward to continuing this constructive dialogue as the bill moves forward.
- We understand the desire of family members of adult children with SMI to ensure the providers who treat those individuals have as much information as possible about the patient's history and current status in order to make good decisions about treatment.
- Clinicians always welcome as much information as they can get about the patients they treat. Yet they must always carefully weigh any information from third parties, however close those individuals are to the patient, and exercise their best professional judgment about whether/how to act upon it or share with the patient.
- At the same time, just because an individual has serious mental illness, that does not mean they lose their right to privacy. Both HIPAA and 42 CFR Part 2 are designed to protect that right, and clinicians are taught to carefully observe it.
- Because federal law is silent about whether clinicians can accept written information but does stipulate that they can neither confirm nor deny that an individual is receiving services—and because 42 CFR Part 2 puts additional safeguards on sharing information related to SUD treatment— many providers err on the side of caution when accepting information, especially in writing.