

Date: February 13, 2018	POLICY ANALYSIS PREPARED FOR THE BOARD OF DIRECTORS	 OF NORTHERN LARIMER COUNTY
Staff: Alyson Williams		

HB18-1136 SUBSTANCE USE DISORDER TREATMENT:

Concerning treatment for individuals with substance use disorders, and adding residential and inpatient treatment to the Colorado medical assistance program

Details

Bill Sponsors:	House – <i>Pettersen (D)</i> , Buck (R), Kennedy (D), Singer (D) Senate – <i>Priola (R) and Jahn (I)</i> , Aguilar (D), Lambert (R), Tate (R)
Committee:	House Committee on Public Health Care & Human Services
Bill History:	1/23/2018-Introduced in House-Assigned to Public Health Care & Human Services
Next Action:	2/27/2018-Hearing in House Committee on Public Health Care & Human Services

Bill Summary

This bill concerns treatment for substance use disorder through Colorado’s Medicaid program - Health First Colorado. The bill adds residential and inpatient substance use disorder treatment as an optional service. For this addition to occur, a Section 1115 waiver must be sought from the federal government to be able to receive federal matching funds. The bill mandates that the state seek approval for this additional optional service by October 1, 2018. If the waiver is approved, the bill dictates that the state reprioritize marijuana tax cash fund money to assist in substance use disorder treatment to people who are not otherwise covered by public or private insurance.

Background

Current Treatment in Colorado

Currently Colorado’s Medicaid benefits only cover early intervention, outpatient treatment, partial hospitalization services, and medically managed intensive inpatient services.¹ There is currently a significant gap in the American Society of Addiction Medicine (ASAM) recommended continuum of care because the medical assistance program does not cover the intermediate residential and inpatient steps on the treatment continuum. The Colorado Health Institute’s (CHI) report for the Colorado Department of Health Care Policy and Financing (HCPF) detailed many aspects about the landscape of residential and inpatient treatment for substance use disorders within the state.² Approximately 67,000 Coloradans needed treatment for a substance use disorder but did not receive it, with the rates being higher among Medicaid recipients than privately insured individuals.²

IMD Exclusion

Since the inception of Medicaid in 1965 there has been a statutory prohibition at the federal level of using federal Medicaid dollars for residential mental health or substance use disorder treatment in facilities known as institutions for mental diseases (IMD).² IMDs are defined as facilities that have more than 16 beds, is a licensed psychiatric facility, maintained for the care of people with mental disorders, and more than 50 percent of its patients are admitted with a mental disorder diagnosis.² Since substance use disorders are

¹ This is medical detox coverage with severe/acute medical needs that may arise from substance use disorders.

² Colorado Health Institute (2017). *Exploring Options for Residential and Inpatient Treatment of Substance Use Disorder in Health First Colorado*. Retrieved from <https://www.colorado.gov/pacific/sites/default/files/HCPF%202017%20Inpatient%20SUD%20Treatment%20Report.pdf> . Accessed on Dec 6, 2017

classified as a mental disorder in the Diagnostic and Statistical Manual of Mental Disorders, facilities that provide inpatient and residential treatment fall under the IMD exclusion.

Section 1115 Waivers

Section 1115 of the Social Security Act allows states to apply for demonstration project waivers that further the goals and intentions of Medicaid while providing more flexibility to states. These demonstration projects are aimed to either build upon existing or novel approaches that promote the objectives of Medicaid. The important aspect of these propositions is that they must be budget neutral.³ To be budget neutral in these demonstrations the expectation is that expenditures by the federal government will not exceed it would have spent without the demonstration.³

Other States & IMD Exclusion Waivers

Eight states have been approved to allow the waiving of the IMD payment exclusion for substance use disorder treatment (California, Kentucky, Massachusetts, Maryland, New Jersey, Utah, Virginia, and West Virginia).⁴ Nine states (Arizona, Illinois, Indiana, Kansas, Massachusetts, Michigan, North Carolina, New Mexico, and Wisconsin) have pending waiver applications.⁴ California was the first approval and started providing these services in summer 2016; therefore, data about the utilization, cost, and other factors about the coverage have yet to be evaluated and published. The actual costs of this benefit will vary depending on the exact terms of the benefit, such as: provider rates, prior authorization process, and allowable days in treatment.

This Legislation

This bill adds residential and inpatient substance use disorder treatment to the optional services covered by Colorado's Medicaid program. The treatment is mandated to be nationally recognized and evidence-based and serve those with substance use disorders and those individuals with co-occurring mental health disorders. The bill mandates that HCPF submit a Section 1115 waiver by October 1, 2018.⁵ Finally, the bill mandates that if the waiver application is successful, managed service organizations are to reprioritize funds received from the marijuana tax cash fund to assist in providing treatment to those with substance use disorders that are not covered by public or private insurance.

Reasons to Support

The 2017 report to the Colorado General Assembly by CHI on options for residential and inpatient treatment concluded that the state could benefit by providing coverage in the Medicaid program.² Furthermore, the report cites the support of stakeholders (providers, consumer advocates, and agency staff) throughout the state to assist in developing the application for the Section 1115 waiver. There is both a need and the support to develop a waiver to allow for Medicaid to provide residential and inpatient treatment as an optional service in the program.

Supporters

- Colorado Association of Local Public Health Officials
- Colorado Behavioral Healthcare Council
- Colorado Consumer Health Initiative
- Colorado Fraternal Order of Police
- Colorado Hospital Association

³ U.S. Centers for Medicare and Medicaid Services (n.d.). *About Section 1115 Demonstrations*. Retrieved from <https://www.medicare.gov/medicaid/section-1115-demo/about-1115/index.html>.

⁴ Kaiser Family Foundation (Feb. 1, 2018). *Section 1115 Medicaid Demonstration Waivers: The Current Landscape of Approved and Pending Waivers*. Retrieved from <https://www.kff.org/medicaid/issue-brief/section-1115-medicare-demonstration-waivers-the-current-landscape-of-approved-and-pending-waivers/>.

⁵ In the bill's fiscal note (dated 1/24/2018), Legislative Council Staff notes that the timeline dictated by the bill would not be workable. For the purposes of the fiscal note the assumption was made that HCPF would apply for the waiver by February 1, 2019.

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Reasons to Oppose

The current text may not allow enough time for HCPF to appropriately apply for a Section 1115 waiver; both the CHI report and the fiscal note by Legislative Council staff cite longer timelines.

This waiver process would require additional expenditures by HCPF in FY2018-19 and FY2019-20 for the federal authorization process and planning the benefit. For those two years, the outlays are estimated at more than \$975,000.⁶ Although the federal government has signaled that it will approve waivers such as this and has approved eight waivers in a relatively short period of time, there is no guarantee that Colorado's waiver request would be approved. Therefore, some may assert that expending these resources for something that is not guaranteed would be foolish in a time where other priorities could be funded with the money.

Opponents

- Any opposition has not been made publicly available at this time.

About this Analysis

This analysis was prepared by Health District of Northern Larimer County staff to assist the Health District Board of Directors in determining whether to take an official stand on various health-related issues. The Health District is a special district of the northern two-thirds of Larimer County, Colorado, supported by local property tax dollars and governed by a publicly elected five-member board. The Health District provides medical, mental health, dental, preventive and health planning services to the communities it serves. For more information about this summary or the Health District, please contact Alyson Williams, Policy Coordinator, at (970) 224-5209, or e-mail at awilliams@healthdistrict.org.

⁶ Legislative Council Staff (Jan 24, 2018). *Fiscal Note for HB18-1136*. Retrieved from http://leg.colorado.gov/sites/default/files/documents/2018A/bills/fn/2018a_hb1136_00.pdf.