



COLORADO

Department of Health Care
Policy & Financing

1570 Grant Street
Denver, CO 80203

2023 HCPF Legislative Session Wrap-Up

June 2023

During the 2023 Legislative Session, HCPF introduced and passed eight Agenda Bills to save Coloradans money on health care and improve health care equity, access and outcomes. Descriptions of the Agenda Bills, as well as other major bills impacting the Department, are below.

HB23-1040 Prader-Willi Syndrome

This bill makes a technical change to statute by removing outdated and inconsistent language related to Prader-Willi Syndrome. Prader-Willi Syndrome is a rare genetic disorder that results in a number of physical, mental and behavioral complications. Currently, more updated portions of statute, regulations and waivers, including the Developmental Disabilities (DD), Supported Living Services (SLS) and Children's Extensive Support (CES) waivers, have revised definitions of developmental disability that include Prader-Willi Syndrome. This change aligns all relevant language.

Additionally, this bill removes language from statute regarding the number of people diagnosed with Prader-Willi Syndrome. The use of these numbers in the original bill was intended to demonstrate the global and statewide number of people impacted by the disorder. However, this number will change over time and removing the language now prevents future legislation from amending statute repeatedly.

HB23-1201 Rx Drug Benefits Contract Term Requirements

Prescription drug "spread pricing" occurs when a pharmacy benefit manager (PBM) or its health insurance carrier affiliate charges its policyholder or employer client a higher price than it pays the pharmacy for dispensing the same drug to the same covered member. As a result of spread pricing, employers pay more for the health benefits provided to their employees, and the PBM/insurance carrier keeps the "spread" as profit.

This bill prohibits a PBM or insurance carrier affiliate from spread pricing in the insured market and creates a voluntary "opt in" for self-insured ERISA plans (including Taft-Hartley plans) to leverage the transparency and savings components of this bill. It also creates transparency for employers on critical prescription drug pricing factors in place with their PBM or insurance carrier, which reduces PBMs' or carriers' attempts to preserve profits through opaque pricing mechanisms. Brokers and consultants can leverage this transparency

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information when negotiating on behalf of their clients. This bill allows for exemptions if carriers meet certain criteria and provides an avenue for attestation to show compliance to the Commissioner of Insurance. In addition, this bill adds a spread pricing prohibition for Health First Colorado, ensuring the state and taxpayers pay a fair price for prescription drugs dispensed to Medicaid members.

HB23-1228 Nursing Facility Reimbursement Rate Setting

This bill authorizes the Department to update nursing facility Medicaid reimbursement, as well as to improve and innovate nursing facility reimbursement by moving the reimbursement methodology from statute to regulation over the next 3 years. This bill allows the Department to implement recommendations from the [2022 Nursing Facility Reimbursement Recommendations Report](#) (report) and ensures that the nursing facility industry continues to move forward with innovative practices aimed at improving their long-term financial sustainability. The report includes a number of recommendations that the Department will now implement, including:

- Targeting future short-term increases in funding to facilities that provide a large proportion of their services to Medicaid members,
- Increasing transparency in ownership and financial practices in the nursing facility industry,
- Increasing funding for behavioral health and complex needs payments,
- Increasing funding to rural nursing facilities, and
- Removing statutorily defined rate increases and removing regulatory and licensing barriers where possible.

HB23-1243 Hospital Community Benefit

This bill improves upon legislation from previous years to hold nonprofit, tax-exempt hospitals accountable to their communities. Importantly, this bill applies only to Colorado's larger nonprofit, tax-exempt hospitals, and does not apply to the 32 Critical Access Hospitals in rural and frontier areas of the state. This bill:

- Clarifies submission requirements for hospital community benefit investment reporting to capture more specific spending categories such as behavioral health services; support for housing, food, and job opportunities for community members; provider recruitment and training; and research. Improved data reporting will allow hospitals to be evaluated for their specific investments and how they align with the needs of their communities.
- Enhances public meeting compliance requirements for hospitals by improving meeting noticing and accessibility, as well as by requiring hospitals to incorporate community feedback in spending priorities.
- Establishes corrective action and penalties for non-compliance.

SB23-182 Temporary Suspension Of Medicaid Requirements

This bill ensures the necessary state authority to continue to access federal funding related to COVID-19 response and recovery activities for the 14-month period after the COVID-19



continuous coverage requirement ended in May 2023. The expiration of the continuous coverage requirement authorized by the Families First Coronavirus Response Act (FFCRA) is the single largest health coverage transition event since the first open enrollment period of the Affordable Care Act. Throughout the federally-designated Public Health Emergency (PHE) in response to COVID-19, states have been required to maintain enrollment of nearly all Medicaid enrollees as a condition of receiving a temporary 6.2% Federal Medical Assistance Percentage (FMAP) increase. Now that the PHE has expired, states have up to 14 months to return to normal eligibility and enrollment operations as provided by the Federal Centers for Medicare and Medicaid Services. This bill ensures Colorado has the legal authority to access the 6.2% FMAP during the 14 month time period.

SB23-222 Medicaid Pharmacy And Outpatient Services Copayment

This is a companion bill to the Department's *R-7 Provider Rate Adjustments* budget request. It grants the Department authority to eliminate copays for most Medicaid benefits. Studies show that copays in Medicaid can lead to delayed care, pill-splitting and unfilled prescriptions, which can result in poor health outcomes and more expensive health issues. The Department anticipates that removing member copays will lessen the financial burden that members and families might experience as a result of cost-sharing, such as having to borrow money to pay for care or struggling to afford basic needs like rent and food. Copays are also part of the cost-sharing mechanism for reimbursing health providers. Eliminating copays will allow the Department to leverage more federal matching funds through higher overall reimbursement to providers.

SB23-223 Medicaid Provider Rate Review Process (MPRRAC)

This bill makes technical changes to accelerate the implementation of the three-year Medicaid Provider Rate Review cycle established in SB22-236, which passed in 2022. That bill made changes to MPRRAC by increasing its effectiveness and efficiency while ensuring providers, consumers and stakeholders have an opportunity to provide input during the rate review process.

Most importantly, the 2022 bill reduced the rate-review cycle from once every five years to once every three years, beginning in 2025. However, the Department is ready to implement this change in 2023, so this bill changes the implementation date from 2025 to 2023. This bill also eliminates the May 2023 analysis report, consistent with the JBC's intent to streamline the process.

SB23-289 Community First Choice (CFC) Medicaid Benefit

This bill will establish CFC in the Colorado Revised Statutes alongside other home and community-based services offered through Health First Colorado. Community First Choice (CFC) is an optional program under the State Plan that allows states to offer a package of services to Health First Colorado members who meet an institutional level of care. In addition to establishing CFC in statute, the implementation of CFC requires several technical changes to existing home and community-based services including removal of duplicative



services in statute for existing 1915(c) waivers and updated eligibility for consumer directed programs to include CFC and repealing outdated statute.

These services will assist in accomplishing activities of daily living (ADLs), instrumental activities of daily living (IADLs) and health-related tasks, including personal emergency response for individuals who require assistance. Under CFC, which draws a higher federal match than home and community-based services, Colorado will pay 44% of program costs, gaining a 6% increased FMAP instead of the 50% it currently pays on most services.

Other Major Bills Impacting the Department:

[HB23-1003](#) School Mental Health Assessment creates a mental health screening program under the Behavioral Health Administration (BHA) to identify potential risks related to unmet mental or emotional health needs of students in grades six through twelve and provides students with resources and referrals to address mental or emotional health concerns. This bill enables the BHA to work with HCPF to identify a process for reimbursement for screenings or related services provided to any student covered by Medicaid, to the greatest extent allowable pursuant to state and federal requirements.

[HB23-1117](#) Affidavit Support Eligibility Public Benefits eliminates the requirement for a person who is lawfully residing in the state, a legal immigrant who is a resident of the state or a documented individual to refrain from executing an affidavit of support for the purpose of sponsoring a documented individual while the person is receiving public services or medical assistance. The county departments responsible for administering Medicaid under HCPF will identify and review relevant materials that reference a prohibition on sponsorship as a condition of eligibility. HCPF will remove all references from materials provided to applicants or beneficiaries.

[HB23-1130](#) Drug Coverage For Serious Mental Illness prohibits health insurance protocols from requiring a person to try, in some cases, any drug, and in other cases, more than one drug, prescribed for serious mental illness prior to receiving coverage for the drug recommended by the person's health care provider, if certain conditions are met. This bill requires HCPF to implement this act and to review coverage of a new drug approved by the FDA for a serious mental illness within 90 days of approval.

[HB23-1136](#) Prosthetic Devices For Recreational Activity requires a health insurance carrier to provide coverage for an additional prosthetic device or devices for a covered person if the covered person's treating physician determines that the additional prosthetic device or devices are necessary to enable the covered person to engage in physical and recreational activity. HCPF will oversee coverage of these devices for Health First Colorado members in accordance with this bill.



[HB23-1183](#) Prior Authorization For Step-therapy Exception requires HCPF to review and determine whether an exception to step therapy is granted, if the prescribing provider submits a prior authorization request with justification and supporting clinical documentation for treatment of a serious or complex medical condition and if certain requirements are met. HCPF must make its determination within 24 hours of the request.

[HB23-1197](#) Stakeholder Process For Oversight Of Host Home Providers requires HCPF to engage in a stakeholder process to address concerns and identify viable solutions related to individuals who receive long-term services and supports. HCPF must report on the stakeholder process as part of HCPF's annual SMART Act hearing.

[HB23-1200](#) Improved Outcomes Persons Behavioral Health allows HCPF's Managed Care Entities (MCEs) to enter into single case agreements with willing providers of behavioral health services enrolled in HCPF's Medical Assistance Program under two conditions: when both network development and access standards established by HCPF are not met and when a member needs access to a medically necessary behavioral health service covered under the scope of the MCE's contract with HCPF.

[HB23-1215](#) Limits On Hospital Facility Fees places limits on hospitals, health systems and health care facilities for charging, billing or collecting a facility fee directly from a patient that is not covered by a patient's insurance for preventive health care services that are provided in an outpatient setting. This bill also creates transparency requirements and requires HCPF to research and report the impact of outpatient facility fees.

[HB23-1226](#) Hospital Transparency And Reporting Requirements builds on HB19-1001 to bolster hospitals' annual transparency reporting requirements to HCPF. This bill requires HCPF to coordinate the analysis, review and release of the hospital transparency report, including the opportunity to review and consult on the reports made by the CHASE Board, and to report on annual hospital transparency reporting during HCPF's SMART Act presentation.

[HB23-1236](#) Implementation Updates To Behavioral Health Administration transfers responsibilities to and from BHA and provides new requirements for the BHA. HCPF will work in partnership with the BHA to ensure the state's new system for behavioral health service delivery is stood up and meets the needs of patients across Colorado.

[HB23-1269](#) Extended Stay And Boarding Patients requires HCPF to analyze how directed payment authority can be used as part of a comprehensive plan to facilitate an adequate network of services for children and youth with behavioral health needs who are under twenty-one years of age and receive Medicaid benefits. HCPF must require each MCE to pay no less than HCPF-established fee schedule rates to increase access to care for services needed to promote clinical stabilization. This bill also creates the high-acuity treatment and services cash fund. HCPF will analyze how directed payment authority may be applied to clinical stabilization services, including, but not limited to, residential treatment services,



multisystemic therapy, functional family therapy and psychotherapy services for children and youth.

[HB23-1295](#) Audits Of Department Of Health Care Policy And Financing Payments To Providers requires HCPF to publish on its website an audit activity report detailing current and recently completed audits and reviews and summaries of the findings of such audits and reviews. HCPF is also required to conduct trainings for providers and hold stakeholder meetings regarding audits and reviews, and to create a provider advisory group for recovery audits. In addition, the Office of the State Auditor will conduct an independent review of HCPF's recovery audit contractor program for compliance with federal and state requirements.

[HB23-1300](#) Continuous Eligibility Medical Coverage requires HCPF to study the feasibility of extending continuous medical coverage for additional children and adults and how to better meet the health-related social needs of Medicaid members. This bill also requires HCPF to seek federal authorization to extend continuous eligibility coverage for children less than 3 years of age, including children who would be eligible for medical assistance coverage but are not because of their immigration status, and to extend eligibility coverage for 12 months for adults who have been released from a Colorado Department of Corrections facility, regardless of a change in income.

[SB23-002](#) Medicaid Reimbursement For Community Health Services authorizes HCPF to seek federal authorization from the Centers for Medicare and Medicaid Services to provide Medicaid reimbursement for community health worker services.

[SB23-162](#) Increase Access To Pharmacy Services amends the scope of practice as a pharmacy technician to include performing point-of-care testing and patient care technical tasks as specifically trained for and delegated by a supervising pharmacist. It also changes the pharmacists' supervision ratio over pharmacy technicians in certain settings. This bill also authorizes HCPF to reimburse eligible pharmacies and pharmacists under the Medical Assistance Program for dispensing or administering vaccines to children under 19 years of age.

[SB23-174](#) Access To Certain Behavioral Health Services requires HCPF to provide certain behavioral health services for Medicaid recipients who are under 21 years of age, without requiring a diagnosis. HCPF must also engage stakeholders and notify impacted entities of this change.

[SB23-189](#) Increasing Access To Reproductive Health Care expands access and protections for reproductive health care services. This bill requires HCPF to administer a reproductive health care program and to analyze and report the cost-effectiveness of the program. This bill also prohibits HCPF from restricting, by prior authorization or step therapy



requirements, any prescription drug approved by the FDA for HIV prevention or treatment if it is deemed medically necessary.

[SB23-219](#) Supports To Students And Facility Schools stabilizes and enhances the number of approved facility school placements and improves student services. This bill requires HCPF, in consultation with other agencies, to provide guidance to approved facility schools on how to request and receive Medicaid reimbursement funding for therapeutic services to the maximum extent possible.

[SB23-252](#) Medical Price Transparency requires hospitals to make public and post each hospital's Medicare reimbursement rates. HCPF must also conduct a performance assessment for each hospital to determine the hospital's adherence to federal transparency rules.

[SB23-261](#) Direct Care Workforce Stabilization Board creates a Direct Care Workforce Stabilization Board. The board will develop recommendations for minimum direct care employment standards to protect and ensure the health and welfare of direct care workers without impeding the dignity and independence of direct care consumers. A member of HCPF will serve on the Board.

[SB23-288](#) Coverage For Doula Services authorizes HCPF to pursue federal authority to reimburse doulas and codifies an equitable stakeholder process that includes the voices of birthworkers of color, pregnant people and other impacted communities. Additionally, it directs the Division of Insurance to contract with an independent entity to study the potential health care costs and benefits of providing coverage for doula services in health benefit plans.

[SB23-298](#) Allow Public Hospital Collaboration Agreements allows some county public hospitals to enter into a cooperative agreement with each other to engage in joint ventures and joint purchasing, including: medical and general supplies, medical and general equipment, pharmaceuticals or temporary staffing, consulting, joint delivery of health care services, purchasing joint insurance and data services.

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