2022/2023

Annual Report

Behavioral Health Ombudsman of Colorado

Email ombuds@BHOCO.org
Website www.BHOCO.org

Table of Contents

"The Behavioral Health Ombudsman operates independently from Colorado's governmental agencies, insurance carriers, and behavioral health providers. We serve the people of Colorado."

About BHOCO

Mission

The Behavioral Health Ombudsman of Colorado (BHOCO) works to improve mental health and substance use care coverage and access in Colorado by investigating concerns and complaints, gathering data, delivering recommendations for reform, and helping those who are seeking care or providing care navigate complicated systems.

Values

INDEPENDENT

BHOCO operates independently from Colorado's governmental agencies, insurance carriers, and behavioral health providers. We serve the people of Colorado.

NEUTRAL

BHOCO acts as an impartial receiver of concerns, complaints and data, and has a statutory mandate to maintain transparency and report on our work to the public.

CONFIDENTIAL

BHOCO does not disclose identifying information without permission unless it is necessary to address imminent risk of serious harm.

INCLUSIVE

BHOCO believes that this Office needs to be available to all residents of Colorado regardless of insurance coverage. We seek to be a safe and accessible space for persons of any ability or identity.

About BHOCO

History

Access to adequate and appropriate behavioral health coverage is critical to ensuring Coloradans receive the preventative and treatment services they need. In many situations, Coloradans who are seeking care do not have the resources and supports in place to spend hours trying to resolve covered health plan benefits and reimbursement methodologies. Additionally, many people are unaware of their rights to parity in coverage.

The Office of the Behavioral Health Ombudsman of Colorado (BHOCO) was established by Colorado House Bill 18-1357 and House Bill 19-1269 to work with community based organizations, state agencies, and providers to better serve the behavioral health community, and to educate consumers of their rights to insurance coverage and help them navigate the insurance system. The role of the Ombudsman Office, as defined by statute, is to:

- Interact with consumers and health care providers with concerns or complaints to help resolve behavioral health care access and coverage issues.
- Identify, track and report to the appropriate regulatory or oversight agency concerns, complaints and potential violations of state or federal rules, regulations or statutes concerning the availability of, and terms and conditions of, benefits for mental health conditions or substance use disorders, including potential violations related to quantitative and nonquantitative treatment limitations.
- Receive and assist consumers and providers in reporting concerns and filing complaints with appropriate regulatory or oversight agencies relating to inappropriate care, an emergency procedure under section 27-65-105, a certification for short-term treatment under section 27-65-107, or a certification for long-term care and treatment under section 27-65-109.
- Provide appropriate information to help consumers obtain behavioral health care.
- Develop appropriate points of contact for referrals to other state and federal agencies.
- Provide appropriate information to help consumers or health care providers file appeals or complaints with the appropriate entities, including insurers and other state and federal agencies.

2022-2023 Highlights

Overview & Priorities

With receipt of American Rescue Plan Act (ARPA) funding, the Ombudsman Office was able to implement a new case management system to move the Office forward in its efforts to follow individual case information, aggregate data, and systemic trends, and to meet pending new state data sharing requirements. Additionally, the Office increased staff to better match demand, which has reduced intake response times and allowed more time and resources to work on individual case management and other statutory requirements. The Office has met all established metrics for ARPA funding at this time and has valued this opportunity to strengthen the ability of the Office to support Colorado's children, youth, adults, and families.

At the same time, calls to the Office increased by more than fifty percent, available ARPA funding is due to end this year, and the behavioral health needs of many Coloradans are still going unmet due to systemic and complex gaps in the state's behavioral health system.

Many callers are unable to access appropriate care on behalf of themselves, family members, or people in their care. Sometimes there is no available funding for care or other resources. Other times, people are unsure where or how to find care or other resources. And often even when payor funding has been approved for the level of care needed, there is simply nowhere for them to go.

A lack of access to appropriate care continues to be the primary reason for outreach to the Behavioral Health Ombudsman Office. Calls come from those who need care, from family members or caretakers of those who need care, and from providers trying to ensure care for people who need it. Increasingly, the Office is being approached by case managers, Medicaid care coordinators, and nonprofit, provider, local or state agency officials who are also struggling to find solutions to these gaps in care and are hoping for additional assistance from our staff.

Cases continue to increase by both number and complexity, as the Office strives to maintain a balance of handling these cases while also seeking to establish more formal processes and long-term, sustainable funding. The Ombudsman focused primarily on three major areas in 2022/23:

1. Case management
2. Strategic planning and systems implementation
3. Continued collaboration with local and state governmental entities and others while ensuring ongoing independence and integrity

2022-2023 Highlights

Case Management

As in prior years, the cases the Office receives are often complex and require intensive support. As an Ombudsman Office, our goal is to be responsive first and foremost to those who are seeking assistance or guidance for themselves or someone else: from individuals with lived experience to family members to health care providers or others. This means ensuring we connect callers with resources where appropriate, help people navigate or obtain care, and help report possible coverage concerns or violations.

Over the past year, the Office has had a notable increase of cases that were either referred to us or directly requested by providers, payors, or state and local government agencies—including more than thirty percent of new cases over the last two months.

In the course of our work over the past year, the Office has identified several shared, systemic issues across many of our cases:

1. **Ambiguous single and sustainable points of entry.** In prior years our Office has noted ambiguity of responsibility and accountability for many of our cases. **It is worth noting that over the past year the Office has observed increased clarity and accountability by Medicaid RAEs for care coordination in shared cases**.

Client cases overall, however, regardless of insurance type, lack streamlined processes and clear and easily navigable single points of entry for clients with complex behavioral health and associated needs. When a point of entry is located by a client, at times their care is stalled by silos between systems.

2. **Limited resources**, including funding, case management, and providers/facilities:

- Funding: we continue to see cases with discrepancies between care needs identified by providers, family members and others versus funding approved by payors. In some instances, we see denials based on “primary” versus secondary diagnoses, or denials based on “medical necessity” that differ from qualified provider treatment recommendations and/or fail to include viable alternative treatment options.

2022-2023 Highlights

Case Management (cont.)

- Case management/care navigation: Many of our most complex cases may benefit from more intensive case management. Some agencies, for example, provide both gap funding and collaborative case management for complex cases, however, they are sometimes limited both by eligibility requirements and by increasingly long waitlists for assistance. The Behavioral Health Administration may soon offer care navigation services as well, but at this time does not have such services in place.
- Providers/facilities: On many of our calls, despite the best efforts of care teams, and group agreement regarding necessary treatment options for clients, there is simply nowhere for them to go to obtain these services, which leads to an additional and significant concern as identified in 3, below.

3. **A gap between short-term crisis stabilization services and ongoing behavioral health care** continues to be notable and points to further exploration of obstacles in discharge planning processes and network adequacy in Colorado. This includes adults, who are sometimes faced with unsafe or unhoused discharge situations directly from facilities. This also includes children, whose cases are brought to us by parents, guardians, care coordinators, providers or others.

Of particular note: We are regularly involved in cases involving children under 21 (some as young as 7) who have been therapeutically and payor approved for residential treatment, but in practice there are frequently no appropriate residential facilities available, and/or there is a waiting list lasting weeks, months, or longer for placement. At the same time, there is often limited availability for equally robust, therapeutically recommended (and sometimes preferred by clients) alternative treatment options, such as intensive in-home and/or outpatient services.

A complicating and concerning factor is that these children are sometimes discharged from short-term or temporary care facilities (e.g. emergency room, inpatient, acute care, outpatient) while approved for residential level of care, and deemed unsafe by providers and/or parents/guardians/caregivers to be discharged to their homes based on threats of harm to themselves or others in their home (often siblings or parents).

2022-2023 Highlights

Case Management (cont.)

The Office has received concerns in which a discharging facility has warned parents or caregivers that they will call child protection services, and in several cases has called, if the child isn't picked up by caregivers. However, the caregivers express that they face possible threats of harm to themselves or their child(ren) and fear that their child will not receive sufficient services if they bring their child home, or if they do not comply, trauma from separation from their child, or losing their jobs if a dependency and neglect (D and N) case is opened. This issue is further complicated by differing payment mechanisms for residential services (Medicaid, other payor, or county human services), which ultimately results in some parents who state that they do not wish to relinquish any parental rights, but eventually consider doing so in hopes of their child receiving treatment.

RAEs, state agencies, providers, and counties appear to recognize these concerning patterns, based on observation during our Office's participation in care coordination calls and direct outreach to the Office from these entities, and these entities frequently work collaboratively and intensively to try to find solutions. ***While there are many facets to this issue, one of the primary concerns is the lack of available residential treatment facilities or equally robust community-based treatment options for children who need, and have been approved for, these services.***

We are specifically concerned as to whether limited residential treatment availability for youth/children, or equally robust and available alternative treatment options (which may include community-based treatment options), is a possible violation of network adequacy requirements ensured by state and federal mental health parity laws. This issue does not appear to be unique to any one region, but rather has potential to be inadequate for the state Medicaid system as a whole, as well for those under commercial insurance plans. Our Office has recently reported these concerns to the Colorado Department of Health Care Policy and Financing and the Colorado Division of Insurance and looks forward to working collaboratively with them to explore this issue, share any relevant data, and look for possible solutions.

2022-2023 Highlights

Case Examples

FAMILIES SUPPORTING THEIR CHILDREN'S LONG TERM BEHAVIORAL HEALTH NEEDS

Multiple families and providers have reached out to the Office with similar issues regarding resources for children and youth in need of ongoing intensive behavioral health services and supports. The following example is a composite of several families' situations with the name changed to preserve anonymity.

Mal is a 10 year-old youth with recent aggressive, assaultive, and sexualized behavior towards their parents and siblings. They have had a recent psychiatric in-patient hospitalization after causing physical harm to family members. Critical stabilization has occurred, and hospitalization has been determined to be no longer medically necessary and the facility is discharging Mal to their parents. However, Mal continues to threaten to cause harm to themselves or family members, and their community-based clinical team indicates that Mal is not safe at home without intensive home-based and outpatient services. The insurance payor has determined that Mal meets eligibility criteria for therapeutic residential care, although over 50 referrals made to residential care placements in and out of Colorado have resulted in rejections due to behavior acuity, age, or other factors. The hospitalizing facility has indicated that they will refer the situation to child protective services if the family does not pick Mal up. The family and community-based clinical team agree that safety at home is a significant issue, however the care team and payor have been unable to identify providers and services to meet the continuum of care needed to support Mal and their family. Mal had been in the hospital for 8 weeks beyond meeting medical necessity criteria, with the payor declining payment, but transitional supports or residential care hadn't been secured. The Behavioral Health Ombudsman Office was contacted, and initiated communication to ensure an urgent care coordination meeting occurred, and was invited to join semi-weekly team meetings. With the support of the Ombudsman's Office, a care team meeting was scheduled within a day, appropriate payors were brought in to the call, resources were suggested that hadn't been previously explored, additional referrals were made for appropriate care, and help was provided to the family in the appeals and grievance processes. Intensive in-home supports, respite, a partial hospitalization program, and family support were all secured while additional residential options were explored, and Mal was able to leave the hospital.

2022-2023 Highlights

Case Examples

ADULT LONG-TERM BEHAVIORAL HEALTHCARE NEEDS

In the following case, a community-based advocate for an adult with significant behavioral health needs contacted our Office requesting urgent support in ensuring the person with whom they were working was safe. Initials have been changed to protect confidentiality.

B.L., who has a diagnosis of schizophrenia, was being discharged from a hospital stay with no post-discharge living arrangement identified. They were demonstrating disorientation, and were on a medication certification at the time of potential discharge, but no longer met medical necessity criteria for remaining in hospitalization level-of-care. It had been determined that B.L. meets the criteria for a skilled nursing facility placement. B.L. has a guardian, who agreed that for safety and to best meet B.L.'s therapeutic needs, this level of care was appropriate. Many referrals were made to skilled nursing facilities and memory care placements, with multiple denials. The RAE initially denied payment for continued hospitalization, as B.L. no longer met medical necessity criteria, however after several weeks of referrals and intensive Ombudsman involvement in the situation, one facility accepted B.L. and the RAE extended hospitalization payment on a limited basis. Additionally the Ombudsman's Office worked closely with B.L.'s care team and the RAE to navigate RAE funding for a hotel stay with medical and medication compliance support multiple times per day while waiting for the skilled nursing facility placement.

2022-2023 Highlights

Case Management: Next Steps for 2023/2024

The Ombudsman Office will continue to strive to ensure that no one in Colorado is left without safe and appropriate care and support, and will continue to work with local and state agencies and others to identify both gaps and solutions. We are hopeful that the Behavioral Health Administration will soon provide a centralized location to help many of our callers who need multiple and extensive supports, and to help fill both funding and care navigation gaps. However, we recognize that even once the BHA establishes care navigation systems, they may be limited by scope and jurisdiction, and by a potential focus on systemic statewide issues over individual cases. We will work as closely with them as possible to identify what services they will be able to provide, while continuing to maintain independence as an neutral Ombudsman office.

2022-2023 Highlights

Strategic Planning

Strategic planning over the past year has focused primarily on: establishing new client management systems; hiring new staff and establishing improved and more timely intake processes; and additional long-term sustainability planning.

1. Procurement and implementation of Salesforce Client Management System

The Office implemented a customer relationship management (CRM) solution that will serve as the Office's central database and allow for the tracking of client care, behavioral health care access information, referrals, and inquiries (e.g., complaints, requests, concerns). Implementing a case management system has begun to allow the Office to perform reporting and capture electronic signatures for the release of sensitive case health care and demographic information. The result of having a CRM solution is that the Office is becoming more efficient with daily tasks around data management while having an automated means of reporting with a reputable CRM platform that will be easy to maintain for future expansion.

Example: With the completion in May 2023 of the first phase of the BHOCO case management system through Salesforce, the Office has been able to track subsequent cases based on reason for contacting our Office. New contacts to the Office have been entered with initial concerns expressed as: 28% who can't find outpatient behavioral health care; 24% seeking assistance with grievances or complaints; 16% seeking residential or long-term safe placement for behavioral health needs but can't find it; 10% as a hospital/facility discharge without a safe environment to be discharged to; 5% seeking help with a provider payment or reimbursement; and 16% reaching out for other issues.*

*Unduplicated percentage of contacts to BHOCO entered in Salesforce in July and August 2023.

2022-2023 Highlights

Strategic Planning

2. Hiring of new staff

With dedicated ARPA funding, the Office built on earlier strategic planning to create formal tracking and intake systems and hire additional staff to work on these systems and manage caseloads and operations. In 2023, the Office hired one term-limited dedicated intake specialist and two term-limited part time co-ombudsman to assist in case management and ongoing operations and planning.

The spending plan for ARPA funds (a portion of which were rolled forward to FY 2023-24) allowed the Office to temporarily fund staff levels needed to conduct statutorily required operations in a timely manner, address increasing caseloads, and begin to prepare statutorily required data tracking systems and anticipated mandatory data-sharing requirements. The Office has met all current metrics for ARPA accountability mechanisms.

Of note: funding will expire at the end of fiscal year '24 and be depleted prior to that, at the same time as caseloads have increased more than 50% from 2021 levels. We anticipate case numbers to continue to climb, based on increasing referrals from providers, facilities and other agencies.

Additionally, we continue to have significant operational needs as an independent Office, including: essential operations, development of annual and other reports, data and trend identification and tracking, marketing and communications, website and database management, budget development, policy oversight, and development and oversight of systems, practices and procedures. This need is anticipated to increase with the pending state data sharing rulemaking process and requirements.

2022-2023 Highlights

Strategic Planning: Next Steps for 2023/2024

While ARPA funding does not address long-term sustainability, the Office is grateful to the legislature and the Governor's Office for the use of short-term dollars to establish new systems and to hire additional staff to manage increasing case and operational needs. Over the next year, we will continue to seek long-term funding sources to prepare for the depletion of ARPA funds.

Additionally, most case calls to the Behavioral Health Ombudsman Office have come through word-of-mouth or referrals. While cases are already increasing, part of our long-term strategic planning seeks to further market the Office so that all Coloradans are easily able to identify and access the Office, ensuring both geographic and social equity.

2022-2023 Highlights

Collaboration

Over the past year, we have worked hard to establish and grow collaborative relationships whenever possible with state and local behavioral health agencies, providers, Medicaid care coordinators, and other intersecting systems such as school districts, justice departments, I/DD service entities and others. More than thirty percent of new cases over the last two months have been referred or requested directly by such agencies or providers, and numerous cases have come to us from entities we have worked with on previous cases.

We are also collaborating with the Behavioral Health Administration to discuss data sharing agreements as required by HB22-1278 and to explore how to best work together to ensure a continuum of care for Coloradans. We look forward to continuing this collaboration and seeking opportunities to come together to identify systemic issues in the state's behavioral health system.

While engaging in all collaboration, the Office will continue to prioritize maintaining objectivity and independence. The Office of the Behavioral Health Ombudsman is unique —by design—in that it operates as an independent Office in order to provide a neutral voice in care access, and identify (and objectively convey to all relevant parties) gaps in services and missing points of accountability in all cases that we work on. Importantly, a mechanism was also established by statute that requires certain regulatory agencies to respond to our concerns regarding potential parity and coverage violations.

Our Office has the distinct role of being able to help families navigate a complex web of care as a neutral entity. We do not provide behavioral health services, and we neither regulate nor fund them. This allows an objective assessment of where gaps exist, and the ability to objectively communicate these gaps to all parties, including families and service providers. Our ability—as set by statute—to exist outside of existing entities has been key to providing families, providers and others with vital information and potential steps available to them. We have been recognized for this neutral and independent role by consumers, providers and others in the behavioral health community, and will work to ensure this continues.

2022-2023 Highlights

Collaboration: Next Steps for 2023/2024

We will continue working collaboratively to identify gaps in service, patterns of access issues and potential violations, and policy concerns that need to be addressed. It is our hope that such collaboration will lead to better outcomes for those who need care.

At the same time, it is important that we maintain independence and neutrality in our role as an Ombudsman office. In the coming year, we will continue to look to ombudsman standards and other ombudsman practices to inform our formal practices in ways that will maintain the highest of standards as a neutral office.

While there are many local and state entities that provide services, fund services, conduct care coordination and case management, or aim to offer single entry points for care, these entities sometimes overlap or create silos preventing streamlined services, which can creates additional hurdles for clients seeking care. Additionally, behavioral health systems also intersect frequently with other systems (including education, child welfare, justice and legal systems, other health care systems, and social services) which further potential complexities in care. Our office seeks to help bridge gaps between all systems.

The Behavioral Health Ombudsman will continue to be available to help all Coloradans, regardless of insurance coverage, to access care. We will communicate regularly with others as to how to best ensure that people who need care receive it, and that people who are facing obstacles to care are never turned away.

Conclusion

With receipt of federal ARPA funding, which allowed us to implement management systems and increase staff, the office is realizing its potential to not only meet all of our statutory obligations, and our increasing caseloads, but to do so in a more timely and robust manner. We are also working to establish and improve operations, outreach, and collaborative efforts to identify systemic gaps and mental health parity and coverage issues in a stronger capacity than we've been able to do in prior years due to limited resources.

We appreciate the ongoing support from the legislature, the Governor's office, and others while we seek to firmly establish our office, and we appreciate all of the local and state partners and others who have worked so collaboratively with us on one of our most important responsibilities: helping Coloradans resolve issues that stand in the way of receiving needed behavioral health care.