GT GreenbergTraurig

Behavioral Health Law Ledger | December 2021

Welcome to the Ledger

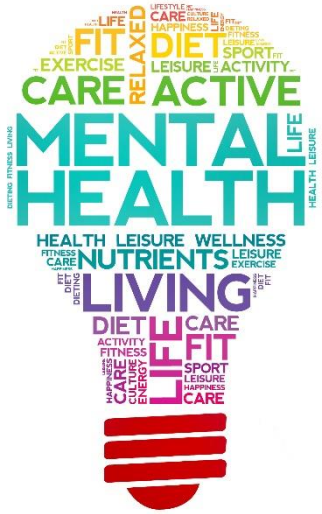
Welcome to the second issue of Greenberg Traurig's Behavioral Health Law Ledger! The Ledger is for behavioral health and integrated health providers interested in staying abreast of behavioral health law legal and regulatory developments. The Ledger highlights new legal developments in audit risks, litigation, enforcement actions, and changes to behavioral-health-related laws or regulations such as health privacy, confidentiality, and/or security issues, consent issues, data sharing allowances, and other cutting-edge arrangements and issues facing behavioral and integrated health care providers.

Q&A With Colorado Behavioral Health Council (CBHC) CEO Doyle Forrestal

Doyle Forrestal is the chief executive officer of CBHC. Before rejoining the organization in 2015, she served as the executive officer for the U.S. Department of Health and Human Services (HHS) in Region VIII, Office of Intergovernmental and External Affairs, where she helped implement provisions of the Affordable Care Act with state and tribal governments across Colorado, Utah, Montana, Wyoming, North Dakota, and South Dakota. Prior to working with HHS, Doyle was director of public policy for CBHC and worked with the Colorado Legislature for nearly a decade. She has over 18 years of experience guiding, developing, and implementing legislative strategy and policy at the federal, state, and local levels. She received a bachelor of arts in political science from the University of Colorado and a law degree from the University of Denver.

Doyle graciously agreed to provide some insight into CBHC's issues of focus, be them pain points or victories, pandemic-related or otherwise. In doing so, Doyle spoke with us solely in her individual capacity, and not on behalf of the CBHC membership or Greenberg Traurig.

1. How have your members' services to patients changed over the course of the pandemic?



There have been many changes to mental health and substance use disorder treatment services since the early days of the lockdown and pandemic. For example, when the governor announced back in March 2020 that only essential health systems could remain open, CBHC members had to quickly identify what was "essential" and what could pivot quickly to telehealth services.

Overnight the community mental health centers identified ways to keep clients engaged through phone and virtual visits. In some cases, this meant purchasing tablets and delivering them to homes so people could stay connected to services. The community also had to create protocols to keep bed-based programs open safely, as essential services such crisis walk-in clinics or withdrawal management programs needed to stay functional throughout the various stages of the pandemic. Additional community efforts included delivering groceries to elderly and high-risk clients, and other unique ways to keep clients healthy and engaged during such a quick transition to remain at home.

As the restrictions started rolling back and more services were feasible in-person, many clients chose to go back to in-person care, while others liked the convenience of remaining on a telehealth platform. Likewise, some of the staff appreciated the ability to work remotely, while others were eager to return to the office. Now, as we are approaching two years in this "new normal" world, I believe we will utilize telehealth more but equally recognize the importance of in-person care and offering flexibility to staff and clients.

2. Have you seen the pandemic disproportionately impact certain communities' mental health statuses more than others (e.g., by age, race, region, ethnicity, etc.)? If yes, how so, and what in your opinion ought to be done to address this disparate impact?

Most people were dramatically impacted by the response to the pandemic. For example, I was contacted several times by high-school-aged children looking for resources for themselves and their friends in need. They talked about the stress of the uncertainty, the opportunities missed such as graduation, prom, and other high-school senior year activities. They also mentioned how hard it was to watch their parents struggle with loss of income or economic uncertainty and the difficulties of participating in school from home. Adult alcohol use increased, as did drug overdose. According to a report by the Substance Abuse and Mental Health Service Administration (SAMHSA), about 10% of people (or 10.9 million people) aged 12 or older who used drugs other than alcohol in the past year said they believed they used those substances more during the pandemic. And we recently learned from a CDC report that overdose deaths were up 35% in Colorado between April 2020 to April 2021. The impact of the deaths and despair are very real for all segments of society who felt the impact of COVID-19 policies on school, work, and social life.

3. What are the biggest challenges your members are currently facing in delivering behavioral health care to patients?

There is absolutely no workforce. Community behavioral health providers have struggled with a workforce shortage for many years, but now it is truly a crisis. People are burnt out. They worked really hard to keep services in place throughout the pandemic and that intensity has not decreased. Community behavioral health providers serve some of the most acute clients, and the pandemic has added to that complexity of need and increased the acuity of people seeking care. With fewer providers, there are access challenges, and we simply can't meet the new increased demand for services with such a significant loss of workforce.

People are retiring early, leaving for higher paying jobs with less complex clients, or leaving the field altogether. One center reported that staff were leaving with no other job in place and they believed it was due, in part, to burnout and the acuity of patients. The governor really needs to prioritize solutions to the community behavioral health workforce shortage if there is any hope of meeting the increased need of Coloradans due to the pandemic. The community behavioral health safety net is comprised of nonprofit organizations that simply can't compete with large hospital systems or other industries that can pay a higher salary. Just two months ago, the 17 community mental health centers and two specialty clinics reported having over 1,000 vacancies across the state, and 14 of the 17 centers said that an increased workload is driving this exodus from the field. Even with additional federal support to build new programs to better meet this increase in demand for services, providers have had to turn away funds because there was no workforce to support the program. Long-term solutions could include loan repayment programs and tuition funding to help attract staff to these positions in the future.

4. What is your greatest accomplishment with CBHC and why?

My favorite accomplishment so far was the passage of SB17-207, which eliminated the use of jails as a location to take people in a mental health crisis who had not been charged with a crime. I did not know this was allowed in Colorado prior to this issue coming to my attention. In 2016, the Colorado Sheriffs Assoc. and a Sheriff from Delta Colorado presented to the Joint Budget Committee that they needed more resources if they were going to have to continue to house people experiencing a mental health crisis that had not committed a crime simply because there was no better option. Turns out the practice was more prevalent in our rural and frontier communities than in the front range or more populated areas of the state due to lack of other resources. So, in 2017 CBHC worked with a broad group of stakeholders to eliminate that practice, change the statute, and build more resources in rural and frontier areas of the state to meet people in need with health care resources versus a criminal justice approach.

5. What are the top three priorities of your members for the next year?

For next year, we have a lot of opportunity to continue to innovate. Our top three priorities are (1) to stabilize the behavioral health workforce through salary and wage increases, (2) to create a Certified Community Behavioral Health Clinic (CCBHC) model in Colorado, and (3) to create opportunities to better share data and reduce provider administrative burden. Colorado currently has five CCBHC grantees, and we hope to have more soon, as this model will be incredibly important in the way behavioral health is delivered in Colorado in the future. According to the National Council for Mental Well Being, looking at the information from those states currently participating in the demonstration, 50% of CCBHCs nationwide provide same-day care. This is one option to help us expand access. Also, with overdose deaths on the rise, 89% of CCBHCs are able to provide Medication-Assisted Treatment that leads to lower drug use and fewer overdose incidents. These are just a few of the reasons we are passionate that we must bring this innovative model here to Colorado permanently.

Special thanks to Doyle for sharing her perspective.

SAMHSA Report:
Is Telehealth Delivery of Behavioral Health Services Here to Stay?

In October 2021, the Substance Abuse and Mental Health Services Administration (SAMHSA) released its report discussing the results from the 2020 National Survey on Drug Use and Health. The data collected by the survey provides estimates of substance use and mental illness at the national, state, and local levels, identifies the extent of substance use and mental illness among different subgroups, estimates trends over time, and determines the need for treatment services. The survey covers all 50 states and the District of Columbia and is representative of persons aged 12 and over in the civilian noninstitutionalized population of the United States. The survey excludes individuals experiencing homelessness who do not use shelters, active military personnel, and residents of institutional group quarters such as jails, nursing homes, mental institutions, and long-term care hospitals.

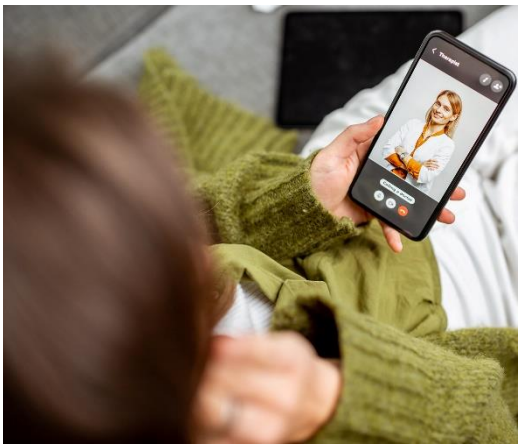
The report highlights key statistics on general substance use, tobacco use or nicotine vaping, alcohol use, illicit drug use, mental illness, and suicide, among other categories and sub-categories. In addition, the report discusses substance use and mental health treatment in the past year. Prior to the COVID-19 pandemic, substance use treatment was generally delivered in person. However, the pandemic led to an increase in the use of telehealth and virtual treatments, as well as an expansion of reimbursement for virtual services, including reimbursement for services delivered only using audio over the phone. Among people aged 12 or older in the last quarter of 2020 who received substance use treatment in the past year, 58% (or 2.2 million people) received telehealth services. In 2020, 11% of adults aged 18 or older (or 26.3 million people) received telehealth services for a mental health issue.

In the last quarter of 2020, nearly one in three individuals (31.3% or 84.6 million people) had medical appointments moved from in-person to telehealth, and more than one in four (29.4% or 79.4 million people) experienced delays or cancellations in medical appointments or preventive services. Approximately one in 11 people (8.9% or 23.9 million people) experienced delays in getting prescriptions, and one in 20 (5.6% or 15.1 million people) were unable to access needed medical care resulting in a perceived moderate or severe impact on health.

These numbers indicate that telehealth services are increasingly used by individuals with substance use and mental health disorders, and will likely continue to be an important method of the delivery of health services for these populations going forward.

Let's Stay in Touch

We want to stay in touch with you. Through this newsletter, we will share tips and updates we have learned in the course of our services to clients, and we will do our best to facilitate an interactive dialogue with behavioral and integrated health providers and the issues they are facing in their businesses. If you know someone who would appreciate receiving the Ledger, please forward this email to them, or they can subscribe here.



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