

Behavioral Health Law Ledger | June 2022



Welcome to the Ledger

Welcome to the fourth issue of Greenberg Traurig’s quarterly Behavioral Health Law Ledger, keeping behavioral health and integrated health providers current on behavioral health legal and regulatory developments. Each quarter we highlight recent legal developments, including but not limited to audit risks, significant 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.

Lawmakers Urge Switch to OTC Status for Naloxone Text

In an effort to increase access to naloxone and potentially save lives, a bipartisan group of 30 lawmakers wrote to seven major naloxone manufacturers in April 2022, urging them to seek over the counter (OTC) status for naloxone, a medication that rapidly reverses an opioid overdose. *See a [copy of the letter](#).*

The United States has seen a dramatic increase in opioid-related overdose deaths since the COVID-19 pandemic began. More than 107,000 deaths were **reported** in the United States between December 2020 and December 2021. Certain industry stakeholders raised questions for consideration in tandem with the OTC discussion, namely, how to address the cost of OTC naloxone to make it widely available when, as an OTC medication, it would no longer be covered by insurance.

Lawmakers noted the FDA strongly supports the status change for naloxone and has taken steps to facilitate a switch to OTC status, including creating a model drug facts label that could be used for OTC naloxone products. It was the first time the FDA developed a model drug facts label for an OTC switch. Lawmakers remarked that the responsibility now lies with manufacturers to submit the paperwork needed to make the switch. The lawmakers’ letters were sent to the CEOs of a number of pharmaceutical

companies. The American Medical Association, the American Society for Addiction Medicine, and the Remedy Alliance support the letters.

Colorado Passes Bill to Address Conflicts of Interest in Behavioral-Health-Provider-Owned Regional Organizations

Colorado passed a bill on May 23, 2022, that will require certain regional organizations owned by behavioral health service providers that provide behavioral health services to the public (i.e., via the Medicaid program) to comply with specified conflict of interest policies in order to promote greater transparency and accountability. Impacted organizations must comply with the [new law](#) by Jan. 1, 2023.

Conflict of Interest in Public Behavioral Health, Colorado Senate Bill 22-106, requires managed care entities (MCE), administrative service organizations (ASO), and managed services organizations (MSO) owned 25% or more by behavioral health service providers to comply with the following conflict of interest policies:

- (a) **Owners and Board Members Shall Not Control Provider Network Decisions:** Providers who have ownership or board membership in an MCE, ASO, or MSO shall not have control, influence, or decision-making authority in the establishment of provider networks. For ASOs and MSOs, providers with an ownership or board membership interest shall also not have control, influence, or decision-making authority in how funding is distributed to any provider.
- (b) **Reports and Reviews Required on Funding Equity, Network Denials and Rate Comparisons:** Each MCE shall report on a quarterly basis the number of providers who applied to join the network and were denied and provide a comparison of rate ranges for providers who have ownership or board membership versus providers who do not have ownership or board membership with the MCE. For ASOs and MSOs, the Office of Behavioral Health (OBH) shall on a quarterly basis review an ASO or MSO's funding allocations to ensure all providers are equally considered for funding and compliance with applicable state and federal rules and regulations to ensure no inappropriate preference is given to providers with ASO or MSO ownership or board membership.
- (c) **No Joint Employment of a Contracted Provider with an MCE, MSO or ASO Without State Approval:** An employee of a contracted provider of an MCE shall not be an MCE employee unless the employee is the MCE's chief clinical officer or utilization management director. The same restriction applies to ASOs and MSOs, unless the employee is the medical director for the ASO or MSO. If the dually employed individual is also an employee of a provider with board membership or ownership in the MCE, the MCE shall develop policies, approved by certain state regulatory agencies or officials depending on the type of regional organization, to mitigate any conflicts of interest the employee may have.
- (d) **Limits on Provider Board Membership:** An MCE, ASO and/or MSO's board shall not have more than 50% of contracted providers as board members, and the MCE, ASO, or MSO is encouraged to have a community member on the MCE, ASO, MSO board.

Colorado MCEs, ASOs, and MSOs owned by behavioral health service providers may wish to review their conflict-of-interest policies, provider networks, and board membership composition, as well as their governing documents, and prepare to comply with these new requirements.

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 GT's Behavioral Health Law Ledger, please forward this email to them, or they can [subscribe here](#).

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