

27-65 Legislative and Budget Proposal

Article 65 of Title 27 of the Colorado Revised Statutes addresses involuntary and voluntary care and treatment for individuals with mental health disorders. These laws have been in effect for almost 50 years and are in place to:

“secure for each person with a mental health disorder such care and treatment suited to his or her needs and to ensure that the care and treatment are skillfully and humanely administered with full respect for the person’s dignity and personal integrity [27-65-101 (1)(a)].”

In the past half century, there have been very few significant updates to the statute. The article contains legal processes and patient rights for people placed on transportation holds, emergency mental health holds (commonly referred to as M1s), short-term certifications (3-months), and long-term certifications (6-months) for both outpatient and inpatient care.

According to data from the Department of Human Services, in 2018 there were 31,754 emergency mental health holds, 913 transportation holds, 2,852 short-term certifications, and 317 long-term certifications placed on individuals in Colorado.

Individuals and their families often experience significant trauma, abuse, and social/financial harm as a result of these involuntary processes. People with lived experience and families alike are asking for greater enforcement of patient rights and promotion of continuity of care. First responders, law enforcement officers, and other providers of care are frustrated by these involuntary processes and their outcomes. We must and can do better.

Additionally, although 27-65 is a central statute to the mental health system and is utilized by providers for our state’s most acute and at-risk populations, this Article does not have a dedicated line item in the Colorado State budget. Individuals who are on an M1 or who are certified have their civil liberties taken from them due to the severity of their illness but the state does not provide any specific funding to support their needs. We recommend the state create a dedicated line item in the budget for 27-65 and the needs of individuals who have been certified or those who need care coordination during a M1 hold.

Article 65 of Title 27 is in great need of a legislative and budgetary overhaul. Facilities supporting individuals in a mental health crisis need better funding models to support staffing and to promote quality.

Starting in February of 2021, Mental Health Colorado and the Office of Behavioral Health started a stakeholder process to review specific issues related to 27-65. Stakeholders include people with lived experience, parents of people with lived experience, hospitals, community mental health centers, clinicians, law enforcement, county attorneys, consumer advocacy organizations, the Department of Health Care Policy and Financing, and the Department of Public Health and Environment. These recommendations have been suggested in the stakeholder meetings as potential solutions to improve care for clients and support for providers. In particular, we hope these recommendations will result in better treatment of consumers, improved continuity of care, increased clarity in legal processes, better enforcement of 27-65, and more support for people with lived experience and their family and/or friends.

Legislative Changes

27-65-102 Definitions

- Change “department” to "BEHAVIORAL HEALTH ADMINISTRATION" OR "BHA" MEANS THE BEHAVIORAL HEALTH ADMINISTRATION ESTABLISHED IN SECTION 27-60-203.
- Requires emergency medical services facilities to hold a base designation by the Commissioner.
- Changes “Executive Director” to “Commissioner of the Behavioral Health Administration.”
- Move the definition of “intervening professional” out of 27-65-105 to 27-65-102 and update to include an APRN and PA, as well as stating that the BHA will determine necessary training required.

Create new 27-65-103.5 voluntary applications for mental health services – treatment of minors.

- Will include what was 27-65-103 (2-8) everything else will stay in 27-65-103

27-65-105 Emergency Procedure

- Requires emergency medical services facilities to hold a base designation by the Commissioner.
- Remove sections pertaining to transportation hold and place in new 27-65-105.5
- Add requirements for discharge planning
- Add specific patient rights that are better aligned with a 72-hour hold.
- Allow an ED/WIC/CSU/ATU to initiate a certification for up to 5-days if the facility holds the appropriate designation from the Commissioner.
- Clarify language for court-ordered emergency hold: 27-65-105(1)(b)

- Remove designation requirements from this section and create a new subsection
- Clarify that any person may petition
- Can be heard by a judge or magistrate
- Evaluations report must be sent to court
- Require OBH to create rule that must, at minimum, address:
 - Expectations/requirements for evaluations
 - Require expectations/requirements to be written into medical record whether voluntary or certified
- Add language that a M1 hold supersedes a warrant.
- Removes ability to hold someone on over the weekend and holiday in addition to the three days.
- Changes the individuals who can drop a hold and/or initiate a certification. Under the changes, a professional person (MD/DO, psychologist), APRN, and a LCSW and LPC with appropriate training could drop a hold and certify a person.
- Require the Behavioral Health Administration to:
 - Support hospitals and other designated facilities in discharge planning or in finding appropriate placement once a certification has been initiated.
 - Create a care-coordination system whereby hospitals and CSUs/ATUs/WICs are supported in finding supportive services (SDOH) for an individual.

27-65-105.5 Transportation Hold

- Add patient rights specific to transportation holds
- Allow EMTs and peace officers to place transportation holds but not intervening professionals
- Require screen within two hours after the facility accepts the person

27-65-106 Court-ordered evaluation for persons with mental health disorders

- Remove requirement for Professional Person to screen
- Require Court to find probable cause from sworn affidavit attached to pleading
- Require M3 to supersede outstanding warrants that do not include VRA crimes

27-65-107 Certification for short-term treatment

- Add patient right specific to inpatient short-term certification
- Add requirements for discharge planning

27-65-108 Extension of short-term treatment

- Move existing language to 27-65-107

- Change title and section of 108 and instead insert section on “Outpatient Care and Treatment – short- and long-term”
- Add language outlining the process of an outpatient certification
- Add patient rights specific to outpatient certifications
- Add provider liability

27-65-109 Long-term care and treatment of persons with mental health disorders

- Add patient right specific to inpatient long-term certification
- Add requirements for discharge planning
- Separate ILD provisions into own subsection, give examples (driving, cannabis use/possession, firearms)

27-65-109.5 New Section

- This was already included in 27-65-109, we moved this to a new section for readability

27-65-111 Hearing Procedures

- Clarify the time for determination of motions
- Include that lay caregivers and persons designated pursuant to 27-65-107(3) may file an affidavit concerning their views on appropriate disposition

27-65-117. Rights of persons receiving evaluation, care, or treatment

- Update patient rights

27-65-129 Payment for counsel

- The Judicial Department is required, not authorized, to pay for counsel

Required Funding

These changes will require significant funding to be put towards the behavioral health system and the providers who serve individuals in need of mental health care. We recommend the following:

1. **\$XX** for the Department of Health Care Policy and Financing to explore funding solutions to implement a tiered designation/value based payment model. We estimate the state set aside \$250,000 in ARPA funding for HCPF to do research and seek a CMS waiver. *(time-limited)*
2. **\$XX** for facilities that hold individuals placed on a transportation hold, emergency mental health hold, short-term certification or long-term certification to update or purchase EHR or other needed investments. *(time-limited)*

3. \$XX to support training of ED and CSU/ATU staff to serve individuals in a behavioral health crisis in an appropriate and trauma-informed manner. (*time limited*)
4. \$XX to ensure the BHA Care Coordination system is equipped to support and partner with hospital EDs in locating a bed and/or appropriate support services (i.e. SDOH). (*ongoing*)
5. \$XX in new FTE for the BHA to implement and sustain a tiered designation system and FTE to provide technical support to hospitals and other 27-65 designated facilities. (*ongoing/time limited*)
6. \$XX for the BHA to support ongoing training and outreach related to 27-65 to intervening professionals.
7. \$XX dedicated funding to support people certified on an outpatient basis (ongoing GF).

Tiered Designation

Base Designation - Level V

The majority of emergency mental health holds that occur in our state take place in emergency departments (EDs) that are not regulated by the Behavioral Health Administration (BHA) (currently, OBH). CDPHE will only investigate hospital EDs based on received complaints. CDPHE regulations do not require discharge planning if the person is not inpatient i.e., admitted to the facility.

Given how vulnerable and distressed individuals are when they are held involuntarily, and given that individuals in crisis present themselves or are presented in every community in the state, a minimum standard for quality of care requires that all hospital emergency departments hold a designation by the Behavioral Health Administration. The “base” designation emergency departments must be required to hold be should be as least burdensome to hospitals as possible, while also ensuring optimal health outcomes and the protection of patient rights, dignity, and privacy...

Suggested requirements of base designation:

- 1st site visit is required to be on-site
- Subsequent site visits are done bi-annually and are not required to be onsite unless the BHA believes an on-site visit is needed due to complaints, critical incidents etc...
- The BHA will provide ERs technical support in meeting the requirements of 27-65 before a corrective action plan is created.
- All enforcement will be done in collaboration with CDPHE.

Value-based payment - Levels III and IV

We also recommend that the BHA, in collaboration with HCPF, the Colorado Hospital Association, Regional Accountable Entities, crisis providers, CMHCs, people with lived experience, and consumer advocates work to implement two additional tiers in the 27-65 designation that would be optional for facilities that accept 72-hour holds, including hospital EDs, Walk-in Centers, Crisis Stabilization Units, and Acute Treatment Units. These tiers would be linked to quality and would incentivize hospital EDs to invest in mental health staff, train all staff in de-escalation and trauma-informed care, and support the integration of mental health and substance use care. Each level would be linked to higher reimbursement. Hospitals and crisis providers with level III and IV tiers would become similar to centers of excellence in behavioral health and would be allowed to initiate short-term certifications. Crisis Stabilization Units (CSUs) and Acute Treatment Units (ATUs) would also be eligible for higher reimbursement through these designation levels. Short-term funding should be allocated to support hospitals and crisis providers in transitioning from one level to the next.

Level II - Outpatient Certification

We recommend the 27-65 designation for community providers such as comprehensive safety net providers or community mental health centers (CMHCs) be revised to more appropriately address outpatient certifications. This designation would address minimum treatment services, discharge planning and transition services, and involuntary medications.

Level I - Short and Long-term Certifications

We recommend the BHA update existing 27-65 designation rules to make sure they address legislative changes in 27-65 related to short and long-term inpatient certifications (patient rights etc...).

Table 1

Tier V Designation	<ul style="list-style-type: none"> ● Required for all hospital EDs ● Required redesignation every 2 years (no onsite requirement after 1st review) ● Designation allows facility to provide seventy-two (72) hour treatment and evaluation
Tier IV Designation	<ul style="list-style-type: none"> ● Optional for all hospital EDs ● Required for all BHEs with 24/7 mental health endorsement (i.e. CSUs/ATUs) ● Required redesignation every 2 years ● Designation allows facility to provide seventy-two (72) hour treatment and evaluation ● May initiate short-term certification

	<p>Requirements:</p> <ul style="list-style-type: none"> • 24-hour psych coverage (psychiatrist, psychologist, or psych-ARPN) • Mental health clinicians on staff during normal daytime hours • Employs peers • Incorporates comprehensive quality assessment program • Maintains relationship with comprehensive safety-net provider • All staff trained in de-escalation (including security staff) • 27-65 patient advocate on staff during normal business hours <p>Payment:</p> <ul style="list-style-type: none"> • Enhanced payment for quality via the RAEs for maintaining Tier IV Designation
Tier III Designation	<ul style="list-style-type: none"> • Optional for all hospital EDs • Optional for all BHEs with 24/7 mental health endorsement (CSUs/ATUs) • Required redesignation every 2 years • Designation allows facility to provide seventy-two (72) hour treatment and evaluation • May initiate short-term certification <p>Requirements:</p> <ul style="list-style-type: none"> • 24-hour psych coverage (psychiatrist, psychologist, or psych-ARPN) • Mental health clinicians on staff during normal daytime hours • Employs peers • Incorporates comprehensive quality assessment program • Maintains relationship with comprehensive safety-net provider • All staff trained in de-escalation and trauma-informed care (including security staff) • Continuing education provided for staff • May use seclusion and restraint • 27-65 patient advocate on staff during normal business hours • Maintains appropriate staffing ratios for high acuity individuals (can include CNAs/BH techs etc... as long as they have gone through appropriate training) <p>Payment</p> <ul style="list-style-type: none"> • Center of Excellence for emergency BH care • Pass through payments from the RAEs to maintain designation • Eligible for higher payment if the facility maintains relationships with recovery services providers and invests in treatment on demand programs for individuals with substance use disorders
Tier II Designation	Outpatient Certification Designation
Tier I Designation	Short/Long-term Certification Designation

Note: The recommendations in Table 1 will be addressed through regulation, not statute.

