OFFICE OF THE STATE AUDITOR

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EVALUATION OF A REQUEST FOR A PERFORMANCE AUDIT OF BEHAVIORAL HEALTH CARE

Members of the Legislative Audit Committee:

This memo is in response to a request (attached) that our office received from Representatives Michaelson Jenet and Larson, and Senators Rodriguez and Gonzales, on January 11, 2022, for a performance audit of the State's system for providing behavioral health care. Behavioral health care services are available to Colorado's low-income or uninsured individuals and families through programs overseen by the Department of Human Services (DHS) and the Department of Health Care Policy and Financing (HCPF). DHS contracts with 17 community mental health centers (CMHCs) to provide behavioral health care to those who are low-income or uninsured, and HCPF contracts with six regional accountable entities (RAEs) to coordinate health care benefits, including behavioral health care, for Medicaid recipients.

The audit request included looking at the roles of DHS and HCPF, and their effectiveness in overseeing the behavioral health care services provided by the CMHCs and RAEs. The request also asked the State Auditor to determine whether the issues could be fully audited under current authority and, if not, what additional issues could be addressed if statutes were changed to expand the State Auditor's authority. On January 25, 2022, the Legislative Audit Committee (LAC) considered the audit request and authorized our office to conduct research on the feasibility of an audit.

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We have completed our preliminary research. Below, we summarize the questions that we could address through an audit of the behavioral health system, and provide two options for the scope of an audit:

OPTION 1: Audit of DHS and HCPF, Under Existing Authority. The State Auditor's current authority allows the OSA to audit DHS' and HCPF's roles in the behavioral health care system. An audit under our existing authority could focus on DHS' and HCPF's processes for overseeing the CMHCs and RAEs, and address the following questions:

1. Do DHS and HCPF have adequate rules, policies, contract requirements, and other oversight mechanisms to ensure that the public funding they distribute for behavioral health services is used as intended?
   -Answering this question would help address concerns that the State may have paid for services that were not provided properly. One example cited in the news articles was a CMHC that received state funds for a mobile crisis program that did not serve all counties in its area.

2. Do DHS and HCPF have effective rate-setting processes that result in rates that are equitable and promote efficient spending? This would include evaluating what data are used to set rates and how these departments verify the underlying data.
   -Answering this question would help address concerns that the departments' rate setting may create a financial incentive for CHMCs to refuse clients or limit their services, and that the CHMCs may receive higher reimbursements than private providers.

3. Do DHS and HCPF have adequate processes for contracting with CHMCs and RAEs? This could include assessing whether processes are appropriately competitive and rigorous; whether contracts contain clear and adequate requirements, such as provisions that (1) establish the responsibilities of contractors and providers with respect to proper billing, (2) establish deadlines for timely provider reimbursement, and (3) require contractors to hire qualified staff to provide treatment; and assessing how well contract provisions are enforced.
   -Answering this question would help address concerns with potential weaknesses in contracting processes that were alluded to in new articles. Concerns included that the State automatically renewed contracts with the CMHCs for decades despite apparent problems with the availability, quality, and timeliness of some services that the CMHCs provide; and that the RAEs may not always reimburse providers timely.

By focusing on these questions, we would expect to provide members of the General Assembly and the public with information on the effectiveness of the DHS' and HCPF's oversight of behavioral health in Colorado.

OPTION 2: Audit of CMHCs and RAEs, Requiring Additional Authority. If the OSA was granted statutory authority to directly audit the CMHCs and RAEs, an audit could look at not only DHS' and HCPF's oversight, but also the processes and records of the CMHCs and RAEs. This more in-depth evaluation could address the following additional questions.

1. Do the CMHCs and RAEs spend money and manage finances in a fiscally responsible manner that complies with contractual requirements?
   -Answering this question would help address concerns with how the CMHCs are spending state funds and how they are treating providers. For example, news articles reported that some of the CMHCs have held large liquid reserves, ranging from $10 million to $40 million, while their clients' wait times for services grew, and questioned the reasonableness of some spending such as one CMHC spending about one-third of its funds on administrative costs, and another CMHC paying its CEO about 10 times more than an average clinician and almost 2.5 times more than the CEOs of other CMHCs. The audit request also referenced problems with the RAEs not always paying providers on time and possibly not having the proper systems in place to carry out RAE responsibilities.

2. Do the CMHCs and RAEs have adequate procedures to ensure the availability, timeliness, and quality of services? This could include direct examination of the CMHC's and RAE's records related to services provided.
   -Answering this question would help address concerns with how CMHCs and RAEs provide services to clients. For example, news articles reported instances of long waits and unavailable services; that some CMHCs use staff who are not trained or certified to provide some services; and that some have no bilingual clinicians in areas with high Spanish-speaking populations.

By including these questions in a performance audit, we would expect to provide information about how publicly funded behavioral health services are provided at the local level, including whether public funds are used efficiently and responsibly; quality services are accessible and available in a timely manner; and providers are supported, such as through proper and timely payment, to help ensure an adequate number of providers are available to clients.

Potential Statutory Language Granting Additional Audit Authority

In 2015, similar concerns arose about the Community Centered Boards (CCBs), which administer state and federal programs that provide services to persons with intellectual and developmental disabilities. The CCBs are 501(c)(3) non-profits that contract with the State. In response to those concerns, Senate Bill 16-038 was passed, authorizing the State Auditor to conduct performance audits to evaluate whether the CCBs are effectively and efficiently fulfilling their obligations.

Should the LAC decide to pursue legislation to grant the State Auditor authority to audit the CMHCs and RAEs directly, the members could follow a similar approach to that used in Senate Bill 16-038 by amending Title 27. For example, Section 27-60-205, C.R.S., could be added with language such as:

IN THE EXERCISE OF HIS OR HER DISCRETION, THE STATE AUDITOR MAY CONDUCT A PERFORMANCE AUDIT OF THE COMMUNITY MENTAL HEALTH CENTERS AS DEFINED IN SECTION 27-66-101(2), C.R.S., AND OF THE REGIONAL ACCOUNTABLE ENTITIES THAT PROVIDE OR COORDINATE BEHAVIORAL HEALTH CARE SERVICES. THE STATE AUDITOR SHALL SUBMIT A WRITTEN REPORT AND RECOMMENDATIONS ON ANY AUDIT CONDUCTED UNDER THIS SUBSECTION AND SHALL PRESENT THE REPORT AND RECOMMENDATIONS TO THE LEGISLATIVE AUDIT COMMITTEE CREATED IN SECTION 2-3-101(1), C.R.S. THE STATE AUDITOR SHALL PAY THE COSTS OF ANY PERFORMANCE AUDIT CONDUCTED PURSUANT THIS SUBSECTION.

Background information

The Existing System. DHS and HCPF play key roles in overseeing Colorado's behavioral health care system, as briefly summarized below.

- **DHS.** The Office of Behavioral Health (OBH) within DHS contracts with 17 Community Mental Health Centers (CMHCs) that provide prevention, crisis response, treatment, and recovery support services for mental health and substance use disorders for individuals and families that are low-income or uninsured. Each CMHC serves a specific geographic region of the state. CMHCs are statutorily mandated to provide: (1) inpatient; (2) outpatient; (3) partial hospitalization; (4) emergency; and (5) consultative and educational services. The CMHCs are 501(c)(3) non-profit organizations. OBH also regulates the publicly funded behavioral health

care system and offers support services, such as training and technical assistance, to providers. According to state officials, the CMHCs collectively served about 159,000 clients in Fiscal Year 2021.

- **HCPF.** Most mental health and substance use disorder services are provided to Medicaid recipients through a statewide managed care or "capitated" program. HCPF contracts with six regional organizations—known as regional accountable entities, or RAEs—to provide or arrange for medically necessary behavioral health services to Medicaid recipients. The RAEs replace the Regional Care Collaborative Organizations and the Behavioral Health Organizations, which used to coordinate behavioral health care in the past. The RAEs offer a range of behavioral health services, including individual and group therapy, inpatient and outpatient psychiatric care, prevention/early intervention activities, and substance use disorder and recovery services. Each RAE is responsible for a certain geographic area of the state, and receives a pre-determined monthly payment, set by HCPF, for each Medicaid recipient enrolled with the RAE. According to HCPF, the average monthly caseload of Medicaid recipients receiving behavioral health services was about 1.3 million in Fiscal Year 2021.

Impact of System Reforms on an Audit. As of January 2022, a new Behavioral Health Administration (BHA) is in the process of being established within DHS. House Bill 21-1097 created the BHA, which will be fully operational in Fiscal Year 2024. The BHA is intended to significantly improve how behavioral health care is delivered in Colorado by aligning, coordinating, and integrating state mental health and substance use programs and funding under one government entity to streamline access to services. Work is currently in process to fully define the role of the BHA and how it will oversee and coordinate statewide behavioral health services. A performance audit of DHS, HCPF, and/or the CMHCs and RAEs, would include consideration of these system reforms, including their status at the time the audit is planned and begun, as well as where the system is expected to be by the time the audit is completed. The OSA would also need to determine how auditing processes, and the contracts referenced in the audit request, would add value as the reforms continue to roll out.