Progress Report

Program Evaluation Unit
Legislative Finance Committee
September 2022

Challenges at Some DOH Facilities Deepen

Summary

Although the Department of Health has made progress since a 2021 LFC evaluation found quality and operational challenges at facilities, significant issues with quality of care and utilization persist. DOH is in the process of implementing most LFC recommendations including hiring dedicated leadership to oversee statewide facility operations and clinical outcomes, tracking daily census across facilities and implementing some quality improvement processes. However, despite increased need for behavioral health care and long-term care in New Mexico, facilities are chronically underutilized, driving up cost per bed by an estimated 25 percent from FY20 to FY22. Budget forecasts continue to overestimate expected revenue, leading to supplemental or special appropriation requests.

Underutilization is partially driven by staffing shortages, leadership challenges, unpublished admissions criteria and mixed quality, with some of these factors potentially also negatively impacting patient outcomes. Lower level direct-care positions, such as certified nursing assistants and technicians, are particularly hard to hire and the implementation of SPO's recent pay plan has created new pay disparities. Leadership challenges and turnover at the agency and within facilities pose risks to oversight.

Quality of patient care and oversight at the New Mexico State Veterans' Home (NMVH) is of particular concern. A June 2022 federal report from the Centers for Medicare and Medicaid Services (CMS) found significant clinical deficiencies at NMVH, resulting in substandard care and examples of patient harm. As a result of the CMS findings, the NMVH is at risk of losing its provider agreement with Medicaid and Medicare if unresolved by December 2022.

The Evaluation: *LFC's evaluation of the Department of Health facilities found a lack of dedicated leadership led to inadequate oversight, affecting its ability to ensure quality care and address facility construction issues, most notably at the Veterans' Home.*

Chronic underutilization led to growing costs and inefficiencies across many facilities. Decentralized operations complicate budgeting and management.

Progress Reports foster accountability by assessing the implementation status of previous program evaluation reports, recommendations and need for further changes.

NEW MEXICO LEGISLATIVE FINANCE COMMITTEE

Background

The Department of Health (DOH) operates seven facilities around the state, providing an array of behavioral health, rehabilitation, and long-term care services to some of New Mexico's most vulnerable populations, including aging adults and New Mexicans with acute or specialized behavioral health needs (Table 1).

Table 1. Overview of DOH Facilities

Facility	Services Provided	Location
Fort Bayard Medical Center (FBMC)	Long-term, intermediate, and skilled nursing care	Santa Clara
Los Lunas Community Program (LLCP)	Supportive living and employment services through the Developmental Disabilities Waiver (DDW) and intermediate care	Los Lunas
New Mexico Behavioral Health Institute (NMBHI/the Meadows)	Inpatient psychiatric care for adults, adolescents, and court-ordered individuals; long-term nursing care (the Meadows)	Las Vegas
New Mexico Rehabilitation Center (NMRC)	Inpatient medical rehabilitation, drug and alcohol detox, inpatient residential treatment and intensive outpatient program	Roswell
New Mexico State Veterans' Home (NMVH)	Long-term nursing care for honorably discharged military veterans, their spouses, and gold star families	Truth or Consequences
Sequoyah Adolescent Treatment Center (SATC)	Residential treatment for adolescent males age 13-17 who have a history of violence a mental health disorder, and are amenable to treatment	Albuquerque
Turquoise Lodge Hospital (TL)	Drug and alcohol detox, inpatient residential treatment, medication assisted treatment and intensive outpatient program	Albuquerque

Source: LFC and DOH

In July 2021, LFC staff reviewed DOH facilities to analyze financial management, assess capacity and utilization, and review patient outcomes. The resulting program evaluation identified a lack of dedicated leadership over facilities and inadequate oversight as contributing factors to facility deficiencies and harm to residents or patients. Chronic problems included underutilization, staffing shortages, a higher rate of serious patient care deficiencies, inefficient fiscal management, and poor facility conditions. Since then, DOH began to address these large, systemic problems. However, with the growing need for mental health care and the state's aging population, there is increased urgency to improve access and quality for New Mexicans who rely on these safety net facilities.

DOH Made Progress in Several Areas Since the 2021 LFC Evaluation

The 2021 evaluation identified the need for improved governance and oversight to ensure facilities are used to their full capacity and reach the populations for which they are intended to serve in a safe and efficient manner. A more unified system of care, with strong and effective planning, oversight, and use of data to drive performance could help increase the use of facilities and improve services. Capital needs and operational inefficiencies presented challenges. DOH has begun the work to address these issues.

DOH has fully implemented four of 12 LFC recommendations, with six in progress and two ongoing. (See "Appendix A"). Most notably, the agency hired a chief medical officer and deputy cabinet secretary dedicated to operational and clinical oversight, although the chief medical officer has since resigned after about six-months. DOH also implemented a statewide daily census tracking system for all facilities providing a statewide view of occupancy. New leadership also implemented a root cause analysis and peer review process to review clinical outcomes for patients and established quality councils to share knowledge. They have also begun enhancing admission criteria and developing a marketing and outreach strategy to highlight programs and services available to communities. Additionally, the agency has

improved its ability to collect third-party revenue, nearly meeting its FY22 target of 95 percent.

The need for behavioral healthcare and long-term care increased in New Mexico making the role of DOH facilities more important.

The need for behavioral health care, particularly for substance use disorders, has grown significantly since the Covid-19 pandemic, yet access to care needs improvement. A 2021 LFC report found drug overdose and alcohol-related deaths in New Mexico reached all-time highs in 2020. The aging population is also growing, although projections predict a decline in the aging veterans' population.

The pandemic exacerbated an already higher than national average rate of both acute and general mental health issues for youth and adults in New Mexico. According to a 2019 Mental Health America report, New Mexico ranked 50th out of 51 states and the District of Columbia for the percent of youth with at least one major depressive episode in the last year. The rate of youth with substance use disorders as well as the rate of severe major depressive episodes among youth also outpaced national averages. A December 2020 LFC report described the significant impact of suicides statewide. In 2021, the American Academy of Pediatrics declared a national emergency in child mental health tied to the stress caused by the pandemic. Data from the 2021 CDC Household Pulse survey suggests a high prevalence of behavioral health conditions among adults in New Mexico, with nearly one in three adults reporting symptoms of anxiety, depressive disorder, or both. Before the pandemic, from 2018 to 2019, the share of adults in New Mexico with any mental illness was lower (but still significant) at 21.4 percent. More acute behavioral health issues have also increased. Over the last two decades, alcohol-induced deaths nearly doubled with one in five deaths among working age adults (20 to 64) in New Mexico in 2022 attributable to alcohol.

Table 2. Youth in New Mexico Experience a Higher Rate of Mental Illness than Nationally, 2019

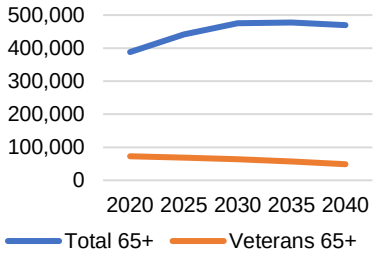
	NM
Youth with at Least One Major Depressive Episode in the Past Year	Rank: 50 Percent: 18.6 Number: 31,000
Youth with Substance Use Disorder in the Past Year	Rank: 45 Percent: 5.43 Number: 9,000
Youth with Severe Major Depressive Episode	Rank: 44 Percent: 13.8 Number: 22,000

Source: Mental Health America

Despite growing need for services, access to care is sometimes limited. The Behavioral Health Services Division of the Human Services Department reports over 60 percent of adults with moderate mental illness and over 30 percent of adults with serious mental illness did not receive treatment in 2021. In surveys conducted between 2019 to 2022 by the Anna, Age Eight Institute and New Mexico State University, up to 56 percent of those reporting needing behavioral healthcare, said they had difficulty accessing it. Respondents cited a lack of quality care as one of the top barriers.

The overall aging population, and associated Medicaid expenditures, are growing in New Mexico. According to a 2021 LFC report, over the last decade, a 38 percent increase in the over-65 population (or 105 thousand individuals) almost completely drove New Mexico's population growth.

Chart 1. Projected Aging Population in New Mexico, Total and Veterans 2020 - 2040



Source: US Dept. of Veterans Affairs and UNM Geospaital and Population Studies Dept

Healthcare costs also increased for this population. A 2021 LFC report found from FY14 to FY20 Medicaid expenditures for long-term services and supports increased 32 percent. By 2035, the state's over-65 demographic will continue to see the greatest growth of any age group, increasing by over 89 thousand, according to population projections from the University of New Mexico's Geospatial and Population Studies. The U.S. Department of Veterans Affairs, however, predicts the population of aging veterans in New Mexico will decline over the same period, from over 72 thousand in 2020 to an estimated 57 thousand in 2035. Fort Bayard Medical Center and the Meadows at the Behavioral Health Institute offer long-term care for aging individuals and Fort Bayard and the State Veterans' Home provide long-term care to veterans as well.

DOH facility utilization is declining, increasing costs per bed by an estimated 25 percent from FY20 to FY22.

Licensed Beds: The maximum number of beds each facility is approved to operate under its operating licenses and certifications

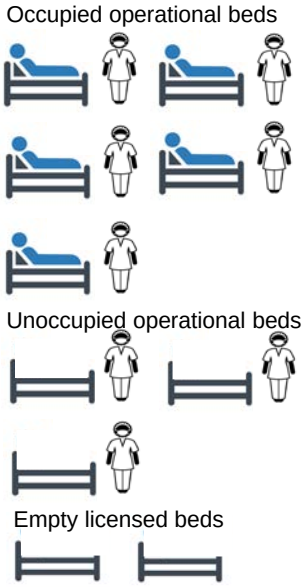
Operational Beds: The number of beds each facility is capable of operating under current staffing and facility conditions

Since 2009, underutilization of DOH facilities has been reported by LFC as a chronic challenge. The 2021 LFC evaluation found the Covid-19 pandemic accelerated the decline in DOH's average patient census, in part due to facilities restricting the number of operational beds in response to social distancing requirements of the pandemic and due to staffing shortages. Despite the growing needs for behavioral healthcare and long-term services, fewer patients occupy beds now than in 2020. In 2022, the number of operational beds declined at some facilities, increasing the rate of operational occupancy. Underutilization comes at a cost, driving up the costs of both occupied and unoccupied beds. Additionally, DOH continues to have challenges with budget projections and requests special appropriations that affect state budget-making decisions.

Utilization of beds at DOH facilities continues to drop, increasing costs of occupied beds.

For every 10 beds that exist at DOH facilities, approximately eight are operational, and approximately five of every 10 are occupied. From March 2022 to July 2022, 926 beds across DOH facilities were licensed, 746 of these were operational and the average daily patient census was 454, less than half of overall licensed capacity. Certain services, particularly intensive outpatient care, suffer from underutilization more than other services. During LFC site visits, staff at facilities noted Covid-19 restrictions, a lack of staffing and a lack of awareness of available services contribute to underutilization.

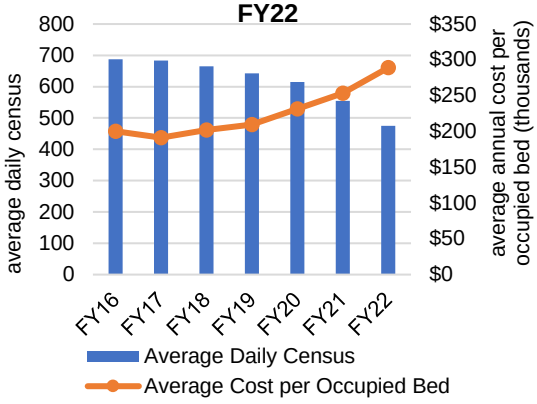
Figure 1. Occupancy at DOH Facilities



Source: LFC analysis of DOH data

As utilization declined an estimated 23 percent from FY20 to FY22, estimated costs per occupied beds rose 25 percent. The estimated average annual cost per occupied bed rose from $231 thousand to $289 thousand from FY20 to FY22. At Fort Bayard Medical Center (FBMC), the estimated cost per bed in FY22 was $233 thousand annually, while the rate at New Mexico Rehabilitation Center (NMRC) was an estimated $725 thousand. An occupancy of only 25 percent at NMRC significantly increased estimated per-bed costs from FY20 to FY22. Across all facilities, estimated average daily census dropped 23 percent over this period.

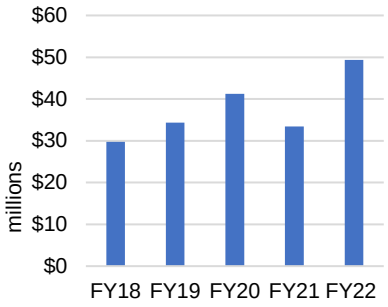
Chart 2. Estimated Average Daily Census and Estimated Cost per Occupied Bed, All Facilities FY16-FY22



Note: Due to lack of census data for March 2021 through March 2022, FY21 and FY22 are estimates.

Source: LFC analysis of DOH and SHARE data

Chart 3. Estimated Total Cost of Unoccupied Beds



Note: Due to lack of census data for March 2021 through March 2022, FY21 and FY22 are estimates.

Source: LFC analysis of SPO and DOH data

Costs of unoccupied beds at DOH facilities increased from $41 million in FY20 to $49 million in FY22. As occupancy rates have remained low, the annual cost per occupied bed increased over the last two years**.** The 2021 LFC evaluation noted maintaining unoccupied beds is expensive, driving up the cost per occupied bed in facilities. LFC analysis suggests maintaining unoccupied operational beds at DOH facilities in FY22 cost the state an estimated $49 million, a 30 percent increase over FY20.

Since the third quarter of 2021, licensed occupancy dropped 11 percent and operational occupancy fell 12 percent. In March 2022, DOH implemented a daily census tracking system and has a performance measure and goal to reach 75 percent licenced occupancy across all facilities, but only 49 percent of licensed beds were filled in the fourth quarter of FY22. Several facilities trended at or below 50 percent licensed occupancy in 2022, including NMRC, the Veterans' home, Sequoyah Adolescent Treatment Center, and Turquoise Lodge. Between the first and third quarter of 2021, licensed occupancy was at 60 percent. Prior to evacuation due to wildfires in May 2022, the Behavioral Health Institute was trending slightly above 50 percent occupancy. Fort Bayard had the highest operational occupancy at 94 percent. (See "Appendix B" for detailed occupancy table).

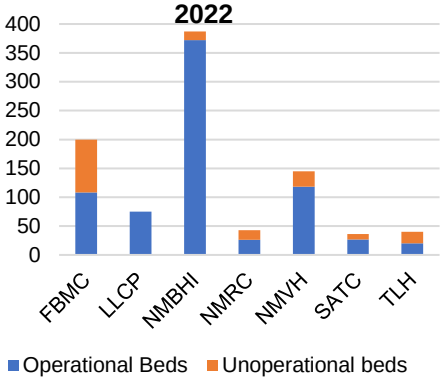
Table 3. Licensed and Operational Occupancy 2021 and 2022

	Occupancy of Licensed Beds		Occupancy of Operational Beds	
Facility	**2021 Q1-Q3**	**2022 Q4**	**2021 Q1-Q3**	**2022 Q4**
FBMC	58%	51%	65%	94%
LLCP	85%	88%	85%	88%
NMBHI	57%	45%	76%	46%
NMRC	50%	25%	77%	41%
NMVH	72%	50%	73%	61%
SATC	35%	39%	70%	52%
TL	35%	42%	71%	83%
All	**60%**	**49%**	**73%**	**61%**

Notes: Inpatient beds only, excludes intensive outpatient and other programs. LLCP has 4 licensed beds in its intermediate care facility; home-based services for individuals with developmental disabilities are not licensed health facilities.

Source: LFC analysis of DOH data

Chart 4. Licensed Beds - Operational vs Unoperational March - July 2022



Source: LFC analysis of DOH data

Since March 2022, DOH facilities utilized 5 percent of intensive outpatient capacity. Intensive Outpatient (IOP) treatment offers care for a range of behavioral health needs such as addiction and depression that do not require round-the-clock supervision. Unlike residential treatment, patients are able to live at home, and therefore IOP offers a more cost-effective approach to treatment when deemed appropriate. IOP is one of several evidence-based therapies past LFC reports on adult and children's behavioral health have recommended for state investment. Turquoise Lodge has licensed and operational IOP capacity for 30 patients and NMRC has licensed and operational IOP capacity for 45 patients. However, since March 2022 there have been few patients using these beds, with a maximum census of four patients at Turquoise Lodge in July. NMRC had no patients using IOP from March to July 2022, but the unit will reopen by the end of October, 2022.

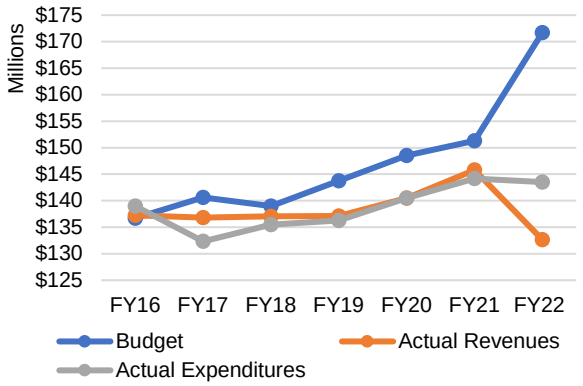
It is a strategic challenge for a public healthcare facility to adjust staffing levels based on census. When fewer patients are admitted to private facilities, hospital administrators can quickly adjust staffing. DOH, with its state employees, may not as quickly reduce staff or limit staff scheduling to respond to declines in patient census. This means that facilities carry operating costs for unoccupied beds for which they cannot collect billing revenue. However, state-operated facilities will need to evaluate how to manage costs and occupancy. Hospitals commonly rely on contract staff to solve this problem but it also more expensive.

DOH facilities continue to overestimate and under collect revenue, and request supplemental or special appropriations.

DOH continues to over project the amount of revenue they plan to collect. For example, in FY20 the agency overestimated revenues by $8 million and in FY21 revenues were overestimated by $5.5 million. In FY22, the agency projected revenue would grow by $20 million from the prior year. At the same time in FY22, spending by DOH facilities remained relatively flat.

From FY21 to FY22, the budget increased by 13 percent from $151 million to $171 million. However, as of September 9, 2022, actual revenue declined by 8 percent (from $145 million to $132 million) and expenditures increased by 2 percent (from $144 million to $143 million) from FY21. The agency is required to have their FY22 financial books fully complete by November 15 and therefore are still recognizing revenue not yet collected. However, the growing gap between budget and actuals suggests an ongoing issue with DOH's ability to forecast revenues and costs, a problem identified in previous LFC evaluations. When revenue is not collected to the level expected, DOH facilities request from the Legislature a supplemental or special appropriation. Consequently, the Legislature cannot use these funds to invest in other priorities.

Chart 5. DOH Facilities Revenues and Expenditures, FY16-FY22
(Includes NM Veterans' Home Operated by the Department of Veterans' Services in FY18 and FY19)



Note: Includes NM Veterans' Home opoerated by the Department of Veterans' Services in FY18 and FY19. FY22 actual revenue is reported as of 9/6/22.

Source: SHARE as of 9/2022

Despite declines in patient occupancy, appropriations for DOH facilities grew 24 percent between FY18 and FY23. The 2021 evaluation also identified a trend of DOH facilities requests for special and supplemental appropriations, and DOH again received a special appropriation of $4 million for operational and facilities needs in facilities for FY23. Additionally, during the 2022 legislative session, DOH received $29 million for capital projects and $40 million from the general fund operating reserve for construction of a new building at the New Mexico State Veteran's Home, contingent on a federal match. (See "Appendix C" for more details on regular, special and supplemental appropriations).

Staff shortages, leadership challenges and issues with quality persist, affecting occupancy and patient outcomes

The causes and consequences of chronic underutilization at DOH facilities are significant. The 2021 LFC report noted staffing shortages, building deficiencies, and pandemic restrictions contributed to low patient levels, reduced oversight, poor patient outcomes and increases in costs. In some facilities, improvements have been made; for others, these challenges persist or have worsened. Staffing vacancies, particularly for lower level direct care positions, continue to grow. Because these jobs represent the clinical backbone of hospitals, these shortages limit occupancy. Leadership challenges continue at both DOH and within facilities contributing to gaps in oversight and limiting occupancy. There are also potential barriers to admissions, including unpublished admissions criteria and a potentially burdensome admissions process at Turquoise Lodge. A recent CMS report specifically cites issues with staffing and training new staff as impacting care at the New Mexico State Veterans' Home (NMVH). The forensic unit at BHI, which provides treatment to individuals with serious mental health disorders who are also involved in the legal system, is severely outdated according to the Joint Commission, a healthcare accreditation organization.

A janitor at DOH would have to take a 25 percent pay cut to work as a psychiatric technician at a DOH facility, a critical direct-care position.

Differential salary increases created new pay disparities, potentially exacerbating recruitment and retention challenges.

Despite recent wage increases, staff shortages, particularly for lower level direct care positions, limit occupancy at DOH facilities. With unemployment in New Mexico at a low of 4.5 percent (July 2022), along with the possibility the state has reached full-employment, recruiting for direct care positions is difficult. Less demanding entry-level jobs outside of state government provide higher wages.

A 2022 LFC evaluation reported the State Personnel Office's plan to distribute salary increases as "highly uneven", leaving some of the hardest-to-fill positions with smaller raises. For FY23, the executive developed a two-pronged methodology for distributing the FY23 (6.9 percent) pay increases. First, the executive assumed exempt employees and employees in occupational pay bands had salaries correctly adjusted to the job market and targeted a smaller increase (4 percent) for those employees. For all other employees in the general salary schedule, raises were to be determined based on multipliers assigned first on compa-ratios and then on pay bands.

Table 4. Case Study: SPO Pay Plan Results in New Pay Disparities

Position	June 2022 Hourly Wage	July 2022 Hourly Wage	% Change
CNA	$17.75	$18.46	4%
Psych Tech	$16.31	$16.96	4%
Janitor-DOH	$16.02	$21.79	36%

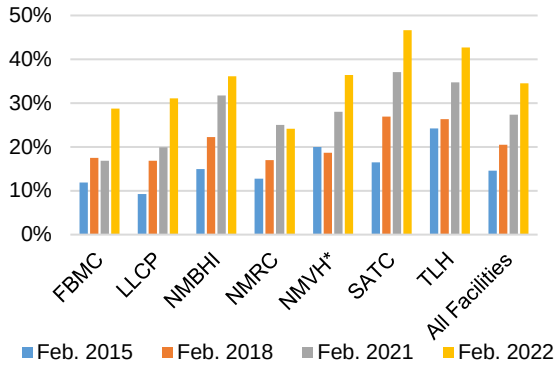
Source: LFC analysis of SPO data, Walmart Job Postings

One consequence of the personnel office's approach, as noted in the recent LFC report, is that employees at the lower end of the general salary schedule can earn more than employees with more required qualifications at the lower end of the healthcare schedule earn. For example, a janitor, on the general salary schedule, at the NMVH received a 36 percent increase, bringing a $16/hour wage in May to $21.79/hour in July. However, a certified nurse assistant (CNA), on the healthcare salary schedule, received a 4 percent increase, rising from $17.75/hour to $18.46/hour. When unfilled, these healthcare jobs represent a critical bottleneck to expanding capacity. As noted

by NMVH staff and confirmed by LFC staff, a "stocker" at Walmart in Truth or Consequences near the NMVH could earn $21/hour, a wage $4 higher than a CNA at the NMVH. This observation exemplifies potential recruitment and retention challenges created by pay levels of direct-care positions and potentially indicates the need for targeted pay increases.

Staff vacancies rose in 2022, particularly for lower level positions, potentially limiting the number of patients a facility can serve. Since the 2021 LFC program evaluation, vacancy rates across DOH facilities for direct-care positions increased from 25 percent to an average of 35 percent, ranging from 24 percent (at New Mexico Rehabilitation Center) to 47 percent (at Sequoyah Adolescent Treatment Center). The daily census at the rehabilitation center was particularly impacted by vacancies, dropping to an average of 11 patients from March 2022 to July 2022 but the facility is licensed to serve 43 patients. Intensive outpatient care at both Turquoise Lodge and the rehabilitation center were also significantly reduced due to staffing gaps. DOH staff at both Sequoyah and BHI cite the need for more CNAs and psychiatric technicians (psych techs) to expand occupancy.

Chart 6. Vacancy Rate (All Positions) of DOH Facilities



* Note: The New Mexico State Veterans' Home was administered by the Department of Veterans' Services in FY18 and FY19.
Source:LFC analysis of SPO data

Table 5. Nursing Positions Vacancy Rates and Hourly Wages, 2021 and 2022

	Vacancy Rate	
	21-Jun	**22-Jun**
CNAs	24%	40%
LPNs	35%	46%
RNs	26%	30%
CNPs	0%	14%
All	**25%**	**35%**

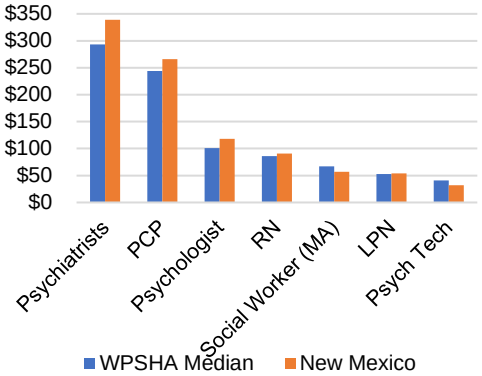
Note: Excludes management and administrative positions. Includes NMVH under DVS during FY18-FY19.

Source: LFC analysis of SPO data

Between FY18 and FY23, the Legislature increased appropriations to the DOH Facilities Management program by 18 percent, from $58.1 million to $68.7 million, partially to support wage increases. Nevertheless, DOH reports these vacancies are one of the key factors contributing to low occupancy across several of the department's facilities.

Psych techs at BHI earn 25 percent less than peers at other state psychiatric hospitals earn. Psych techs represent another profession potentially in need of targeted pay increases. The Western Psychiatric State Hospital Association (WPSHA) tracks information from public psychiatric hospitals in 15 western states. According to their FY21 average annual base salary data, psychiatrists, primary care physicians, psychologists and registered nurses at BHI earn higher salaries than peers at psychiatric hospitals in other states earn. However, master's level social workers, licensed practical nurses and psych techs all earn incomes below their peers. The biggest disparity

Chart 7. Average Annual Salary for Positions at Western State Psychiatric Hospitals, FY21 (in thousands)



Note: The follwing states provided data: AK, AZ, CA, CO, HI, ID, MT, NV, NM, ND, OR, SD, UT, WA, WY

Source: WPSHA

in income was for psych techs who earned 25 percent less at BHI than peers at psychiatric hospitals in other states earn.

In 2021, Oregon allocated $60 million, including American Rescue Plan Act funds, to increase recruitment and retention of the state's mental health workforce by paying for tuition, salary and other workforce needs.

The funding seeks to increase the numbers of Black, Indigenous, people of color, tribal and rural behavioral health providers. Financial incentives can be used for sign-on and retention bonuses, tuition assistance and scholarships, loan forgiveness, housing assistance, child-care and tax subsidies, grants for graduates to complete supervision and obtain licensure and stipends for supervising clinicians.

Loan repayment, sign-on bonuses and moving expenses can help recruit more highly trained healthcare providers to DOH facilities but other strategies might be more effective to fill lower level positions. The Pew Charitable Trusts' Results First Clearinghouse Database points to evidence indicating higher education financial incentives, such as loan repayment and loan for service programs, are effective in recruiting and retaining healthcare professionals. The 2021 New Mexico Healthcare Workforce Committee report recommended the state increase its funding for healthcare loan repayment or loan-for-service programs. A 2020 LFC report noted applications for these programs have outpaced awards, indicating more demand than resources. Other healthcare providers, including the Indian Health Services, University of New Mexico Hospital and Federally Qualified Health Centers like Presbyterian Medical Services, use sign-on bonuses to recruit providers. Hospitals also establish staffing pools to help address shortages. These staffing pools are filled by floaters and can work in various settings.

Leadership remains a challenge, limiting oversight and occupancy

Dedicated and consistent leadership remains a challenge at DOH and within the facilities, making it difficult to maintain oversight, remedy deficiencies and improve utilization. In addition to a lack of consistent and dedicated leadership, discretionary decision-making by facility administrators could be contributing to underutilization.

Previous LFC reports have identified the challenges that come with turnover in leadership and temporary leadership (e.g., "acting positions"). The 2021 evaluation also cited the need for centralized leadership. These challenges persist at multiple levels at DOH. For example, since 2020, DOH has had three secretaries with the current secretary in an acting role while also overseeing the Human Services Department. However, the secretary brings strong leadership skills to the role.

The acting secretary of DOH is now overseeing the NMVH. The previous LFC evaluation recommended dedicated leadership positions to oversee DOH facilities. At the beginning of 2022, DOH hired a deputy secretary of DOH facilities to oversee all facility operations and a chief medical officer responsible for clinical outcomes. Until recently, the Governor-appointed director of special projects was responsible for the Veterans' Home. However, now the DOH acting secretary will be overseeing this facility to ensure full compliance with a recent federal report.

DOH facilities continues to experience turnover. In February 2022, DOH hired a deputy secretary of facilities to oversee operations and a chief medical officer overseeing clinical outcomes for all DOH Facilities. The chief medical officer left the position in August, after approximately six months in the position.

The 2021 LFC report also found the New Mexico Rehabilitation Center and the Veterans' Home have seen the most turnover of facility administrators since 2015. Turnover at these facilities continued in 2022. Since the beginning of 2022 at NMRC, the administrator, chemical dependency unit director and human resource director all resigned and the medical director was suspended. A new administrator was hired in August 2022 and the facility is preparing to offer a new chemical dependency curriculum beginning in October. With a cost of $725 thousand per occupied bed and 25 percent of licensed beds occupied from March to July 2022, NMRC continues to experience challenges maintaining consistent patient levels and controlling costs.

NMVH has seen five administrators in seven years. At the NMVH, DOH placed the administrator on leave following a major Covid-19 outbreak, a replacement was hired and then departed in July 2022. An interim administrator currently leads NMVH, the fifth in seven years. The medical director recently resigned as well. The lack of consistent leadership makes it difficult to address physical plant deficiencies, such as water and sewage problems, as well as ensure the facility is safe and follows best practices in infection control and quality care.

Barriers to admissions may contribute to underutilization.

Another leadership challenge faced by facilities, and recognized by DOH, is the need to ensure all admission and exclusionary criteria are clear and made available. Clear criteria ensure all eligible patients or residents are equitably admitted. A balance between clear guidelines and opportunities for waivers is also important. Nationally, inpatient behavioral health facilities often have flexibility to set their own acceptance criteria, and the process is generally unregulated. However, inflexible checklists developed by individual facilities sometimes contradict guidelines issued by national, professional organizations, which promote the need for customized, flexible assessments of patients with severe mental illnesses awaiting placement and care. When criteria are too strict, admissions can be restricted, limiting utilization of a facility. Additionally, admissions processes for patients seeking treatment for substance use disorders should be swift and seamless, according to the Substance Abuse and Mental Health Services Administration (SAMHSA).

The New Mexico State Veterans' Home is the only DOH facility with published criteria for who is and is not eligible for admission. No other DOH facility makes available on the DOH website their exclusionary criteria and only two (Turquoise Lodge and Sequoyah Adolescent Treatment Center) publish admission criteria.

With chronic underutilization of DOH facilities and the growing need for behavioral healthcare, ensuring that facilities admit all eligible patients is both critical and has a significant financial impact on costs per bed. At a July 2022 Legislative Health and Human Services committee meeting, staff from DOH Facilities reported they are reviewing admission and exclusionary criteria at all facilities.

Oregon codifies admission and exclusionary criteria for state-operated inpatient behavioral health services in state regulation, including a process for waiving criteria when appropriate.

The Oregon Health Authority publishes admission and exclusionary criteria for state-operated inpatient behavioral health programs that outline the intended services state behavioral health hospitals provide and the specific medical conditions and demographics (such as children or incarcerated people) who cannot be served by the state's adult behavioral health facilities. Oregon's administrative code also specifies the process for waiving exclusionary criteria, including approval by the state Health Authority Superintendent. By including these criteria in administrative code, Oregon transparently shares with referring providers and patients the criteria for admission.

Source: NCSL

Table 6. Published Admission and Exclusion Criteria at DOH Facilities

DOH Facility	Admission Criteria?	Exclusion Criteria?
NMRC	x	X
FBMC	x	X
NMBHI	x (Some broad categories included)	X
LLCP	x	X
TL	✓	X
SATC	✓	X
NMVH	✓	✓

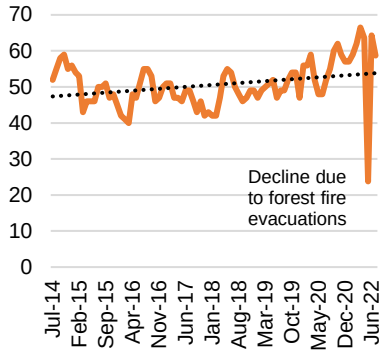
Source: DOH website

Turquoise Lodge requires patients to make a phone appointment for intake, rather than allow walk-in admissions, potentially impacting utilization. Turquoise Lodge provides inpatient detox and substance abuse treatment services. The hospital requires patients to follow a multi-step admission process over the phone before actually being admitted to the hospital. According to the federal SAMSHA, ensuring admission for substance abuse treatment happens quickly and is rigorous but not burdensome could help increase the likelihood that patients will seek treatment. Moving some or all of the admission process from over the phone to in-person could improve admissions and utilization of services at Turquoise Lodge. DOH plans to review TL's admissions process.

The quality of care and infrastructure at New Mexico's DOH facilities need improvement

Fort Bayard Medical Center, the New Mexico State Veterans' Home and the Meadows long-term care facility at the New Mexico Behavioral Health Institute all provide long-term nursing care for aging adults. With 162 licensed beds for long-term care, the Meadows at the Behavioral Health Institute (BHI) is the largest provider, offering over 30 percent of the 507 licensed long-term care beds in DOH facilities.

Chart 8. Average Monthly Patient Census at NMBHI Forensic Unit

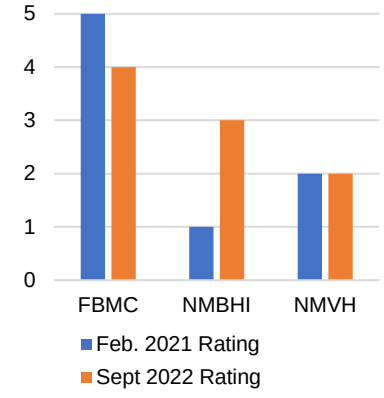


Note: Data is note available from

Source: LFC analysis of DOH data

Despite the Meadows at BHI being the one long-term care facility that improved quality over the last year, its outdated design for its forensic unit potentially signals the need for additional improvement. The existing forensic building is outdated and does not comply with current standards for a healthcare facility to ensure appropriate treatment in a safe and therapeutic setting. The facility does not meet ADA and anti-ligature requirements of the Joint Commission, a healthcare accreditation and certification organization. The Legislature appropriated $5 million for capital planning for a new forensic unit on the campus of BHI. Initial plans include replacing the current, 39 thousand square foot building with 90 beds with a new 75 thousand square foot building with 100 beds. Unlike many other DOH facilities, the average monthly patient census has been slightly increasing, growing 25 percent from July 2014 to June 2022. DOH plans for a new building to be built to current anti-ligature standards, provide a more appropriate therapeutic setting and address current and future population needs. The request for proposals for architect and engineer services was issues in August and proposals are due in early September. DOH plans to finalize contractual agreements for the planning phase by November 2022.

Chart 9. CMS Star Quality Ratings



Source: LFC analysis of CMS data

Current CMS ratings suggest DOH could improve the overall quality at its long-term care facilities. The Centers for Medicare and Medicaid Services (CMS) releases quality ratings for long-term care facilities using a five star scale that assesses overall quality, health inspections, and staffing. CMS evaluates all long-term facilities that accept Medicare or Medicaid, including private facilities and intends the ratings to be used by consumers. CMS bases the ratings on the *relative* performance of facilities within a state. The top 10 percent in each state receive a health inspection rating of five stars; the middle 70 percent receive a rating of two, three, or four stars, with an equal number in each rating category; and the bottom 20 percent receive a one-star rating.

From February 2021 to September 2022, BHI's rating improved, while ratings at Fort Bayard declined and NMVH remained the same, relative to other facilities in the state. As of September 2022, Fort Bayard holds a four star rating, the Meadows at BHI holds a three-star rating and NMVH holds a two-star rating from CMS. In 2022, Fort Bayard received a relatively positive review from CMS. Because CMS releases ratings frequently and scores facilities relative to one another, these rankings can shift regularly.

Since the 2021 evaluation, severe deficiencies cited by CMS declined in two of three DOH long-term care facilities but opportunities remain to reduce overall deficiencies. On behalf of CMS, the Division of Health Improvement at DOH evaluates all DOH facilities for licensing purposes, noting when a facility is not up to standards for resident care, medications, maintenance, infection control, or fire safety. DOH completes inspection surveys only for long-term care facilities. Deficiencies concerning patient health and well-being are coded based on scope (from isolated to widespread) and severity (from minimal harm to immediate jeopardy) and may result in a financial penalty.

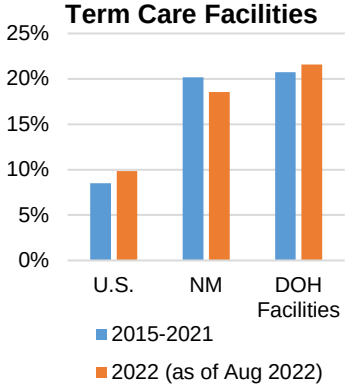
Table 7. Total Deficiencies Cited 2022

NMBHI	9
FBMC	11
NMVH	31

Source: LFC analysis of CMS data

Deficiencies of substandard care are more serious, resulting in immediate jeopardy to health or safety, a pattern of widespread harm, or a widespread potential for minimal harm. Between 2015 and 2021, substandard deficiencies represented 9 percent of deficiencies in U.S. facilities, but 21 percent of deficiencies in DOH facilities. In data published by CMS in August 2022, DOH facilities were cited for a total of 51 deficiencies in 2022, 22 percent of which were for substandard care. During the same period, substandard care deficiencies reflected 10 percent of all deficiencies in the United States but 19 percent of all deficiencies in New Mexico facilities, including private providers.

Chart 10. Percent of Substandard Care Deficiencies in Long-Term Care Facilities



Source: LFC analysis of CMS

Deficiencies at NMVH led to patient harm and a risk of losing all federal operational funding

Table 8. Long-term Care Occupancy at NMVH

	Census 7/29/22	Licensed Bed Occupancy	Operational Bed Occupancy
Domicilary	1	10%	13%
Long-term Care	64	47%	58%
Total	65	45%	55%

Source: DOH

The 2021 LFC evaluation found significant issues relating to facility condition and patient care including a pattern of deficiencies at the New Mexico Veterans Home (NMVH) resulting in substantial risks to the health and safety of residents and staff. These problems persist. Additionally, NMVH must address infrastructure problems in the annex building, ensure successful construction of new buildings to replace the outdated old main building and operationalize a new model of care. Like many DOH facilities, the Veterans' Home is under-occupied, with 65 residents in a facility (on July 29, 2022) that could serve 145.

Deficient care at NMVH led to patient harm and substandard care, including falls, medication errors, and failure to follow advance directives, among other problems.

DOH's Division of Health Improvement (DHI) conducts health and safety surveys of long-term care facilities for licensing and regulatory purposes on behalf of CMS. Complaints can also trigger additional review. In June 2022, DHI released a regular survey and a response to a complaint at NMVH.

The report identified three instances of immediate jeopardy that required immediate action as well as six deficiencies pointing to other forms of substandard care or resident harm. There were a total of 31 overall deficiencies identified in the report. The cases of immediate jeopardy included:

- A patient was intubated despite a do not resuscitate order;
- A patient was given insulin without a glucometer to measure glucose levels;
- The facility failed to follow infection prevention and control rules.

The 2021 LFC program evaluation cited repeated noncompliance with staff usage of PPE, a finding repeated in the most recent CMS report where inspectors noted, "it was observed staff coming in and out of the resident's room without wearing their PPE." While Covid-19 cases significantly declined since a major outbreak in 2020, these recent deficiencies in infection prevention and control create additional cause for concern. Other deficiencies outlined in the report include:

- Failure to ensure the environment was free of accident hazards that resulted in patient falls;
- Patients not receiving showers in two weeks;
- Improper medication storage and usage; and
- Use of a patient's bed as a means of restraint thereby limiting freedom of movement and treatment with dignity and respect.

Examples of Deficiencies in Care at NMVH
June 15th 2022 NMVH CMS Report

Surveyors of long-term care facilities identify deficiencies concerning patient health and well-being and code them based on scope (from isolated to widespread) and severity (from minimal harm to immediate jeopardy). The following examples relate to deficiencies of the most severe and broadest scope (See Appendix D for CMS scope and severity grid).

> A resident was given insulin when he left the facility but was not provided a glucometer to check his blood sugar levels. "This deficient practice likely resulted in [resident] being admitted to the hospital for…..diabetic ketoacidosis: a serious complication of diabetes that can be life-threatening." (p.51) This deficient practice placed a resident in immediate jeopardy.
>
> During an emergency, a "resident was intubated against his DNR code status" as a result of the deficient practice of not including full code status information on the crash cart." This deficient practice placed a resident in immediate jeopardy. (p. 34).
>
> Infection control guidelines were not followed, including failure to ensure that staff wear face masks properly in patient care areas, properly cover equipment, ensure staff are trained in infection control practices; follow proper hand hygiene as well as "repeated antibiotic use…without verification of effectiveness…" These deficient practices placed residents in immediate jeopardy. (p.105)
>
> A resident was found unresponsive and on the floor. He was transferred to the hospital and subsequently died. This resident had a history of multiple falls and "had 8 fall incidents after the last care plan for falls had been revised with no new interventions implemented." (p.72)

Source: June 2022 CMS Report

As a result of the report, NMVH faces a range of consequences, including a potential loss of federal funds. Following the report, DOH terminated the administrator and the medical director recently resigned. NMVH established a plan of correction to address the identified deficiencies and will also need to complete an additional plan of correction for particular deficiencies as directed by the federal government.

The federal government will also impose consequences. The facility will not be able to bill CMS for new residents, although NMVH is currently not admitting people. CMS will impose a yet to be determined fine. CMS will extend an existing sanction that prohibits NMVH from training its own nurse aids for years. Given the need for nurse aides at NMVH, this presents an acute challenge. Lastly, and most seriously, NMVH has six months to achieve substantial compliance or "the State Medicaid Agency may and the regional [Medicaid] office must terminate [the] facility, or the regional office must stop all Federal funding to [the] facility" (CMS State Operations Manual).

In FY22, NMVH's medical director's privileges were removed as a result of deficiencies in patient care. Following the June 2022 survey of NMVH, the medical director's privileges were removed due to irregular drug regimen review and failures to ensure a functional antibiotic stewardship program. Attending physicians were appointed to cover these responsibilities. The medical director has since resigned.

A NMVH medical director received almost double pay in FY22 from overtime. In addition to a base salary of over $200 thousand annually, the medical director received $166 thousand in overtime pay in FY21 and $196 thousand in FY22, leading to a total annual salary of over $350 thousand in FY21 and nearly $400 thousand in FY22. At NMVH, total overtime for all employees equaled $1.5 million in FY21 and $1.6 million in FY22, representing 8 percent and 10 percent of total expenditures in those years. All DOH facilities used overtime during this period as a strategy to address staff shortages, ranging from 5 percent to 19 percent of expenditures.

Infrastructure problems at annex persist and groundbreaking of new building begins.

Construction and repair continues at the NMVH, both to address unresolved infrastructure problems within the annex building and for new buildings that will replace the old main building.

Figure 3. Unfinished Bowling Alley at NMVH Annex

Source: LFC

Facility problems in the 2017 annex remain unresolved. The annex at NMVH contains 59 private rooms for veterans with Alzheimer's disease, dementia, and other memory care needs. Since its construction in 2017, the building has experienced both exterior and interior facilities problems resulting in damage to a retaining wall, an inoperable heating, ventilation and air conditioning (HVAC) system and unused patient rooms, therapy pool, and bowling alley. Since the 2021 LFC evaluation, four emergency procurement contracts totaling $179 thousand were issued to address HVAC issues, including $30 thousand for 43 window AC units for residents as well as contracts to address leaking water and sewage resulting in a bad odor throughout the annex. While the plumbing problems related to the therapy pool appear closer to resolution, the odor persists and the unfinished bowling alley and other communal spaces remain unused. DOH has also engaged a contractor to repair nonoperational kitchens in each of the resident wings, overflowing bathroom showers and sharp corners on fireplace hearths that pose a hazard to residents.

Groundbreaking for a new $57 million complex of buildings commenced and application for federal funding remains under review. An estimated $50 million will cover construction costs with an additional $3.3 million for contingency costs and $3.5 million in soft costs (such as design and professional services fees). The new buildings will have capacity to house 72 people in six units of approximately 10 thousand square feet each. Each unit will have 12 individual sleeping rooms, private baths and common spaces, a model of long-term care preferred over larger institutional style facilities. In 2022, the Legislature appropriated $20 million for this project through severance tax bond proceeds and $40 million from the general fund contingent on application for a federal match and agreement to reimburse the operating reserve on receipt of federal funds. As of August 2022, the federal government was reviewing the application from DOH. At the same time, if the NMVH does not fully address all problems identified in the recent CMS report, their operations are at risk.

An understaffed facility without a permanent administrator and medical director poses challenges to operationalizing the new model of care planned for at NMVH. In June 2022, there was a 44 percent vacancy rate for all positions and 48 percent vacancy rate (with 33 unfilled jobs) for lower level direct-care positions. These unfilled positions represent a barrier to expanding access and improving care. The new building will require staff to take on new responsibilities because the design calls for six buildings that are more like shared houses than an institutional hospital. The model of care is promising but operationalizing it might be a challenge because the facility is already understaffed and without an administrator and medical director.

Figure 4. Plans for New NMVH Buildings

Source: LFC staff photo July 26, 2022

Recommendations

The Department of Health should:

- Accelerate marketing and outreach strategy to recruit more patients and staff;
- Fill vacant leadership roles at facilities;
- Similar to current practice used by Human Services Department for Medicaid projections, report at least quarterly to LFC and DFA on projected revenues and expenditures for each facility, including rationales for projected census, staffing, and allowances for uncollected revenue and unanticipated expenses;
- Complete a systems-wide facilities master plan with needs assessment including projections for future need for services provided at DOH facilities;
- Report to the LFC on number of patients by facility admitted and number of patients who were turned away;
- Use budget projections to determine if the department is able to provide targeted, out-of-cycle compensation increases to direct care staff in FY23;
- If a FY23 budget forecast shows DOH is unable to provide targeted raises, work with the Legislature to provide a supplemental or special appropriation to accelerate targeted increases for direct-care staff;
- Report to the LFC annually on the number and type of staff needed including targeted pay increase needs to reach target of 75 percent licensed occupancy to inform FY24 budget;
- Consider codifying in regulation the newly implemented quality improvement processes, including the root cause analysis, peer review and quality councils;
- Build up facility capacity to provide certified nursing assistant and psychiatric technician training programs where feasible;
- Update regulation to require facilities to make public their admission criteria; and
- Ensure all deficiencies outlined in the CMS report concerning NMVH are resolved by December 15, 2022 and the facility is in full compliance.

Appendix A. DOH Facilities Implementation Matrix

Recommendation	Status			Comments
	No Action	Progressing	Complete	
1. Legislature should consider: Establishing a chief executive officer of facilities at the deputy secretary level accountable to the secretary of Health and the DOH facilities governing board				Lea Harrison appointed, January 31, 2022
2. Legislature should consider: Formally establishing the DOH facilities governing board in statute, with voting membership independent of facility administration and with clear authority to review quality metrics, clinical outcomes, finances, and management performance				
3. Legislature should consider: Funding the state share of construction of a replacement for the original building at the New Mexico State Veterans' Home				Addressed through the $20m appropriation to GSD (on behalf of DOH) which supports the federal grant when/if approved.
4. Facilities governing board should: Update its bylaws to establish standing committees on quality and safety, finance, and strategic planning				Bylaws have been updated. Committees will be formed when all members are appointed. First meeting was held on July 20, 2022
5. DOH should: Take immediate action following recommendations of infection control specialists to ensure staff follow best practices regarding use of PPE, including staff education, refresher training, rounding, real-time coaching, and random auditing.				Ongoing. Infection control management will be ongoing in the facilities to address current needs. Infection Preventionists positions are being established across the facilities.
6. DOH should: Develop a system-wide facilities master plan that includes a needs assessment for all facility services currently offered, including options for replacing the Veterans' Home with federal support from the VA and consolidating substance abuse treatment centers				
7. DOH should: At the departmental rather than facility level, develop a comprehensive strategy to recruit for and retain the highest-need positions, including: (1 of 2) Establishing partnerships with New Mexico nursing schools for nurse internships and with community colleges, technical and vocational training programs, and high schools for nursing aides, psychiatric technicians, and other needed clinical support personnel				Ongoing. Relationships have been developed with: UNM, Highlands University, Eastern New Mexico University, Western New Mexico University, Luna Community College; Additionally, FBMC is expanding their CNA training program in order to provide CNA certification for facilities in that region.

8. DOH should: At the departmental rather than facility level, develop a comprehensive strategy to recruit for and retain the highest-need positions, including: (2 of 2) Developing a central pool of cross-trained traveling clinical staff, including nurses, technicians, and other needed providers, to be deployed strategically and as needed to fill staffing vacancies				Participating in exploratory meetings with facilities, HRB & SPO to address potential boundaries.
9. DOH should: Similar to current practice used by the Human Services Department for Medicaid projections, report at least quarterly to LFC and DFA on projected revenues and expenditures for each facility, including rationales for projected census, staffing and allowances for uncollected revenue and unanticipated expenses				See #11
10. DOH should: Reorganize responsibilities and workflow of the department's Administrative Services Division and facilities program to centralize certain financial and billing operations, oversight, and planning				
11. DOH should: Assess critical data needs for management of facilities as a unified enterprise and develop a plan for integrating key operational metrics (including daily census, staffing, revenues and expenditures) with clinical data (electronic health records and clinical outcomes), including integration with the HHS 2020/Medicaid management information system replacement project. Subsequently DOH should request funding for such a system from the New Mexico Legislature				A new RFP for an electronic health record is in process. The original RFP was from 2018 and facility/PHD needs have changed. A daily census report was implemented in March 2022 but will be fully automated with the addition of an EHR. A centralized billing portal (TrueBridge) is currently being implemented at the facility level. An inventory management system for maintenance and inventory is currently being implemented at facility level (AssetWorks).
12. DOH should: Facilitate work groups across all DOH facilities to share institutional knowledge and implement best practices				Monthly meetings across the facilities have been implemented for Quality Improvement, Nursing Leadership, and Infection Control. Pharmacy & social services meetings are in process.

Appendix B. DOH Facility Capacity and Occupancy, FY22 March - July

Facility	Licensed or Total Beds*	Operational Beds	Avg. Daily Census	Occupancy of Licensed Beds	Occupancy of Operational Beds
FBMC	200	108	102	51%	94%
LLCP	75	75	66	88%	88%
NMBHI	387	372	173	45%	46%
NMRC	43	26	11	25%	41%
NMVH	145	118	72	50%	61%
SATC	36	27	14	39%	52%
TL	40	20	17	42%	83%
All Facilities	**926**	**746**	**454**	**49%**	**61%**

Notes: Inpatient beds only. Excludes intensive outpatient and other programs. In May 2022, NMBHI patients were evacuated and placed at other DOH facilities.

Source: LFC analysis of DOH data

Appendix C. DOH Facilities Appropriations

Appropriations for DOH Facilities Management Program, FY16-FY23

(In thousands. Includes NM Veterans' Home in FY18-FY19 Under Veterans' Services Department)

Budget	FY18	FY19	FY20	FY21	FY22	FY23	FY18-FY23 Change
General Fund	$58,144.80	$58,494.80	$61,914.90	$62,327.70	$63,081.20	$68,673.00	18.1%
Other State Funds	$72,159.60	$71,178.10	$70,186.60	$75,441.70	$80,010.20	$83,637.70	15.9%
Interagency Transfers	$1,118.20	$1,182.00	$4,431.80	$4,005.80	$7,276.60	$6,348.00	467.7%
Federal Funds	$7,345.50	$9,271.00	$8,106.70	$10,022.60	$12,331.80	$12,910.90	75.8%
Total Sources	**$138,768.10**	**$140,125.90**	**$144,640.00**	**$151,797.80**	**$162,699.80**	**$171,569.60**	**23.6%**
Expenditures							
Personal Services and Employee Benefits	$101,970.90	$103,480.70	$102,402.00	$111,825.50	$120,006.10	$122,686.20	20.3%
Contractual Services	$12,958.60	$13,384.40	$14,712.00	$12,809.80	$14,422.10	$16,146.60	24.6%
Other	$23,838.60	$23,260.80	$27,526.00	$27,162.50	$28,271.60	$32,736.80	37.3%
Total Uses	**$138,768.10**	**$140,125.90**	**$144,640.00**	**$151,797.80**	**$162,699.80**	**$171,569.60**	**23.6%**

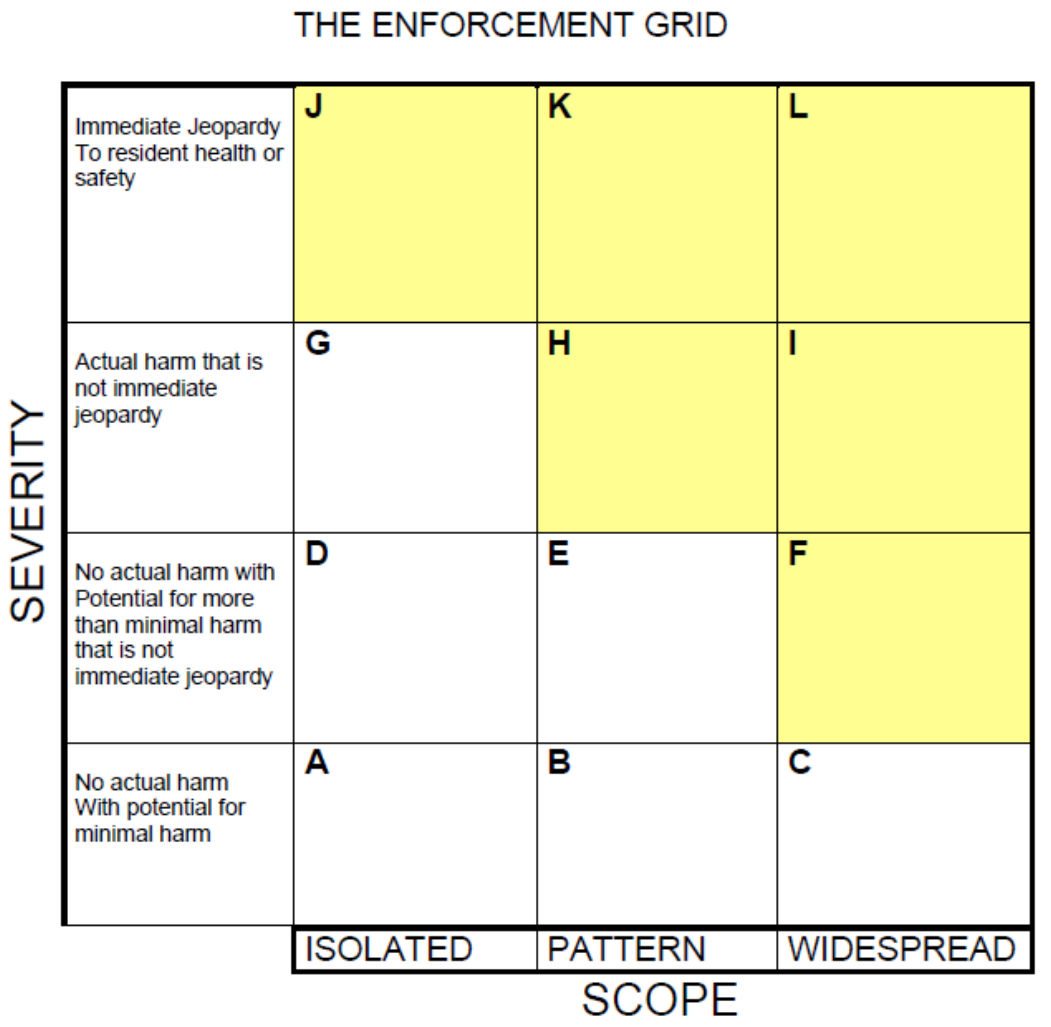
Source: LFC files, General Appropriations Act, SHARE

Special, Supplemental, and Deficiency Appropriations for DOH Facilities Since FY17

Fiscal Year(s)	Type of Appropriation	Source	Appropriation Amount (in thousands)	Purpose (GAA language)
FY17	Supplemental/Deficiency	General Fund	$375.00	For a shortfall in the Facilities Management Program
FY18	Supplemental/Deficiency	General Fund	$375.00	For a projected shortfall in the Facilities Management Program.
FY18	Supplemental/Deficiency	General Fund	$300.00	For start-up costs in the memory care unit of the Veteran's Home hospital opening in 2018
FY19	Supplemental/Deficiency	General Fund	$2,753.00	For a shortfall at the New Mexico Veteran's Home
FY19-20	Special	General Fund	$500.00	To provide economic feasibility and master planning assessments for five Department of Health hospitals and the Veteran's Home at Trust or Consequences
FY20	Supplemental/Deficiency	General Fund	$2,000.00	For personal services and employee benefits costs in the Facilities Management Program.
FY20-21	Special	General Fund	$5,451.20	For past and projected shortfalls in the personal services and employee benefit costs category in the facilities management program for the New Mexico Veterans Home.
FY23	Special	General Fund	$4,000.00	To fund the operational and maintenance needs within facilities
	Total		**$15,754.20**	

Source: LFC Files, General Appropriations Acts

Appendix D. CMS Scope and Severity Grid for Deficiencies at Long-Term Care Facilities



Substandard quality of care is any deficiency in 42 CFR 483.13, Resident Behavior and Facility Practices, 42 CFR 483.15, Quality of Life, or 41 CFR 483.25, Quality of Care, that constitutes immediate jeopardy to resident health or safety; or , a pattern of, or widespread actual harm that is not immediate jeopardy; or, a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.