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## FISCAL IMPACT REPORT

LAST UPDATED \_\_\_\_\_

SPONSOR Lujan/Dixon/Szczepanski/Hochman-Vigil ORIGINAL DATE 2/4/2025

**BILL**

SHORT TITLE Behavioral Health Medicaid Waiver Act NUMBER House Bill 70/ec

ANALYST Esquibel

### APPROPRIATION\* (dollars in thousands)

FY25	FY26	Recurring or Nonrecurring	Fund Affected
	\$1,100.0	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### REVENUE\* (dollars in thousands)

Type	FY25	FY26	FY27	FY28	FY29	Recurring or Nonrecurring	Fund Affected
		\$1,100.0				Recurring	Federal Medicaid Funds

Parentheses ( ) indicate revenue decreases.

\*Amounts reflect most recent analysis of this legislation.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
New Medicaid BH Waiver State			\$316,620.9- \$3,166,135.3	\$316,620.9- \$3,166,135.3	Recurring	General Fund
New Medicaid BH Waiver Fed			\$800,601.8- \$8,005,831.1	\$800,601.8- \$8,005,831.1	Recurring	Federal Medicaid Funds
Medicaid Admin			Up to \$35,000.0	Up to \$35,000.0	Recurring	GF/FF
<b>Total</b>			\$1,117,222.7- \$11,206,966.4	\$1,117,222.7- \$11,206,966.4	Recurring	GF/FF

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to appropriation in the General Appropriation Act

### Sources of Information

LFC Files

Agency Analysis Received From  
Aging and Long-Term Services Department (ALTSD)

Department of Health (DOH)  
Health Care Authority (HCA)

Agency Analysis was Solicited but Not Received From  
New Mexico Counties  
New Mexico Mortgage Finance Authority (NMFA)  
Office of Superintendent of Insurance (OSI)  
University of New Mexico Health Sciences Center (UNMHSC)

## **SUMMARY**

### **Synopsis of House Bill 70**

House Bill 70 (HB70) would require the Health Care Authority (HCA) to submit a Medicaid waiver to the federal Centers for Medicare and Medicaid Services (CMS) to provide long-term home- and community-based services to individuals with a “behavioral health disability,” including a serious mental illness (SMI), serious emotional disturbance (SED), substance use disorder (SUD), or brain injury (BI), when the condition substantially impairs a person’s ability to manage their affairs or makes a person eligible to receive disability benefits from the state or federal government.

HB70 directs HCA to acquire, provide, or coordinate support for people with behavioral health disabilities, enter into contracts and provider agreements with agencies and individuals to provide support and services for people with behavioral health disabilities, and establish advisory councils and task forces to guide operations and review the operations of these functions.

The bill would require HCA to form an interdisciplinary team to develop individual support and services plans for each person served under the new Medicaid behavioral health waiver. The bill would require HCA to immediately convene meetings with people with behavioral health disabilities, their family members, and other stakeholders to determine rules, policies, procedures, services, standards, and funding to operate the proposed waiver program. HCA is also directed to engage a consultant to assist in developing the waiver application, which the bill would require be submitted to CMS no later than December 31, 2025.

The bill includes a general fund appropriation of \$1.1 million to contract with a consultant and hire 4 FTE in FY26 and FY27.

House Bill 70 includes an emergency clause.

## **FISCAL IMPLICATIONS**

### **HB70 Appropriation and LFC Recommended Funding**

HB70 includes an appropriation of \$1.1 million from the general fund to the HCA for expenditure in FY26 and FY27 to contract with a consultant and to hire 4 FTE. Any unexpended or unencumbered balance remaining at the end of fiscal year 2027 shall revert to the general fund. The appropriation would be eligible for a federal 50/50 Medicaid administrative match.

The LFC recommendation for the General Appropriation Act includes \$1 million in funding for a special appropriation to study the merits, feasibility, costs, and enrollment in the proposed Medicaid behavioral health waiver.

### HCA Projected Cost of Proposed Medicaid Behavioral Health Waiver

In the table below, HCA projects the cost to implement the proposed Medicaid behavioral health waiver, assuming an FY27 impact, would depend on the percent of total individuals with behavioral health disabilities that would take-up services. The table below assumes varying utilization across the populations from a low take-up rate of 10 percent (\$316.6 million annual general fund impact) to a high take-up rate of 100 percent (\$3.1 billion annual general fund impact).

Fiscal Impact of New Behavioral Health Disability for FY 2027	10% of Individuals with at least one diagnosis of SED, SMI, SUD, or BI	20% of Individuals with at least one diagnosis of SED, SMI, SUD, or BI	30% of Individuals with at least one diagnosis of SED, SMI, SUD, or BI	100% of Individuals with at least one diagnosis of SED, SMI, SUD, or BI
General Fund (\$000s)	\$ 316,620.9	\$ 633,223.4	\$ 949,844.3	\$ 3,166,135.3
Federal Funds (\$000s)	\$ 800,601.8	\$ 1,601,156.9	\$ 2,401,758.7	\$ 8,005,831.1
Total Computable (\$000s)	\$ 1,117,222.7	\$ 2,234,380.3	\$ 3,351,603.0	\$ 11,171,966.4

HCA’s projected costs for the proposed new Medicaid behavioral health waiver effective on July 1, 2026, (FY27) are based on the cost incurred by clients enrolled in a similar waiver package of services under the Developmentally Disabled (DD) waiver’s traditional service model in FY24. The cost used for this analysis includes payments for case management services, community integrated employment services, family living, supported living services, and intensive Medicaid living services. However, the projected costs do not include estimates for housing costs. A 4.5 percent annual growth is applied to the FY24 DD waiver cost to derive the FY27 behavioral health waiver projected cost. The cost for FY27 ranges from a total of \$1.1 billion, \$316 million in general fund support, with 10 percent of the population enrolled, to \$11.2 billion, \$ 3.1 billion in general fund support, with 100 percent of the population enrolled, or 171,186 individuals with at least one diagnosis category of serious mental illness (SMI), serious emotional disturbance (SED), substance use disorder (SUD), or brain injury (BI). The federal match share is calculated with a 71.66 percent match.

### HCA Administrative Costs

HCA notes the proposed new Medicaid behavioral health waiver would have significant administrative costs as set forth in the “Administrative Implications” section below. The bill does not include funding to support the required monitoring, support, and evaluation of the waiver. The bill does not include recurring funding to cover state match of services implemented through the waiver and does not address how program administration would be funded.

## SIGNIFICANT ISSUES

HCA reports the estimated total number of individuals who could be served under the new Medicaid behavioral health waiver program is 171,156, including:

- Individuals with SMI/SED: 123,564
- Individuals with SUD: 38,324
- Individuals with BI: 9,268

HCA notes the bill does not specify specific service needs, or gaps in the existing service continuum, that would be addressed by the proposed waiver program. The table below is a comparison of service categories in the state’s current existing Medicaid waiver programs compared with the current existing covered Medicaid behavioral health benefit package.

Service Category	DDW	Mi Via	MFW	Supports Waiver	Behavioral Health & Other Available State Plan Services
Case Management	Yes	Yes	Yes	Yes	No, however Assertive Community Treatment (ACT) an evidence-based practice which includes case management is a covered service.
Employment Services	Yes	Yes	No	Yes	No
Community Supports	Yes	Yes	Yes	Yes	Yes
Residential Living Support	Yes	No	No	No	Adult and Youth Residential Treatment Centers based on medical necessity
Respite	Yes	Yes	Yes	Yes	Yes - under age 21
Personal Care & Home Health	Yes	Yes	Yes	Yes	Yes - EPSDT under age 21
Nutritional Counseling	Yes	Yes	Yes	No	Yes
OT	Yes	Yes	Yes	No	Yes
PT	Yes	Yes	Yes	No	Yes
SLP	Yes	Yes	Yes	No	Yes
Nursing	Yes	Yes	Yes	No	Yes
Assistive Tech, Goods, DME	Yes	Yes	Yes	No	Yes (DME)
Behavioral Support Consultation	Yes	Yes	Yes	Yes	Yes
Environmental Modifications	Yes	Yes	Yes	Yes	No
Non-Medical Transportation	Yes	Yes	Yes	Yes	No*

\*Note, Non-Emergency Medical Transportation services are available for all Medicaid eligible individuals.

Additionally, HCA notes the bill does not include a funding allocation for services or Medicaid program costs for the new waiver; however, assurance of state general fund match would be required to accompany the waiver submission to the federal CMS. HCA would not be able to submit the waiver application for federal review by December 31, 2025, because there is no assurance the necessary general fund revenue is included in the agency’s budget or in the bill.

Also, a new waiver submission generally takes between nine to 12 months to compile due to required federal timelines for drafting, public comment, and tribal consultation. In the bill, funds are not budgeted until FY26 starting in July 2025; therefore, the agency would have to begin the waiver process without any additional funding or FTE. Concurrently, the bill requires stakeholder meetings to begin immediately; whereas, funding is not available until July 2025.

Currently, Medicaid members who meet a nursing facility level of care qualify for the Turquoise Care Community Benefit. Depending on the criteria for eligibility for the new behavioral health waiver, some current community benefit members may want to shift to the new behavioral health waiver.

## PERFORMANCE IMPLICATIONS

According to the Legislative Finance Committee brief, *Medicaid: Physical Health and Behavioral Health Workforce* dated June 12, 2024, there is a shortage of behavioral healthcare providers in New Mexico. The mental health provider shortage impacts people in communities throughout the state but disparately impacts rural New Mexicans. New Mexico has 19 designated geographic mental health shortage areas, covering 28 counties. Approximately 845 thousand New Mexican residents are underserved, or about 40 percent of the state's population. This shortage could directly impact the behavioral health Medicaid waiver proposed in the bill.

The Department of Health (DOH) reports the likelihood of the proposed behavioral health Medicaid waiver application resulting in an increase in federal funding is highly variable, depending on both state and federal administration alignment, prioritization, and opportunities for submittal. Additionally, the provisions of the bill could have a potential impact on DOH behavioral health facilities, including public health offices, if they were contracted to provide services to individuals under the proposed Medicaid behavioral health waiver.

## ADMINISTRATIVE IMPLICATIONS

HCA reports the bill would have substantial long-term administrative implications for HCA. The Developmental Disabilities (DD) Medicaid waiver and other waiver programs currently administered by HCA are managed by a dedicated division, the Developmental Disabilities Supports Division, with a personnel and operating budget of over \$35 million and 195 FTE in locations statewide. HCA would need a new, dedicated division to administer the proposed behavioral health waiver, which would need to be created in New Mexico enabling statute.

The current DD waiver staff implement and maintain the waiver programs, monitor and evaluate services, ensure compliance with state and federal rules, perform reporting, monitor providers, engage in service planning, coordinate with stakeholders, and perform wellness visits to reduce the risk of abuse, neglect, and exploitation. These same functions would need to be administered under the proposed new Medicaid behavioral health waiver program.

HCA reports the proposed new behavioral health Medicaid waiver would require IT system changes to accommodate a new category of eligibility, benefit package, provider network, and billing criteria.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The LFC recommendation for the General Appropriation Act includes \$1 million in funding for a special appropriation to study the merits, feasibility, costs, and likely enrollment in a proposed new Medicaid waiver for people with serious mental illness or substance dependent leading to regular confinement in county jails or intensive overuse of hospital emergency rooms or other emergency or crisis services versus continuing with the current service array for people with serious mental illness.

## TECHNICAL ISSUES

HCA notes the bill is not specific regarding what services would be covered under the new behavioral health Medicaid waiver, and the eligibility criteria set forth in the bill is very broad.

HCA notes the bill includes brain injury within the behavioral health definition. Brain injury is not a behavioral health condition and may require different or additional supports distinct from behavioral health.

HCA notes the bill includes outdated language such as “abuse” of drugs or alcohol. HCA recommends replacing abuse with “use” or “misuse.” The bill references behavioral health “disabilities.” HCA recommends replacing disability with “condition.”

To be comparable to the 1915c waivers as referenced in this bill, the CMS technical guide should be referenced when writing the waiver for the designated population in this bill. HCA suggests using terminology of “behavioral health condition” versus “behavioral health disability.”

On page 4, line 24, HCA recommends replacing “in” with “within” to ensure clarity that an SUD diagnosis occurred within 12 months and not that it had a duration of 12 months.

The Aging and Long-Term Services Department (ALTSD) indicates the bill does not specify a process for integrating the proposed Medicaid behavioral health waiver with existing ALTSD behavioral health programs serving senior New Mexicans.

## OTHER SUBSTANTIVE ISSUES

ALTSD reports the University of New Mexico’s Center for Applied Research and Analysis’ *2024 New Mexico Older Adult Needs Assessment* notes in-home mental health therapy and behavioral health in general are unmet needs of New Mexico’s senior population.

RAE/hg/sgs