

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

SPONSOR Trujillo, C. ORIGINAL DATE 2/11/2020  
LAST UPDATED \_\_\_\_\_ HB 273  
SHORT TITLE Competency Evaluator Pay Increase SB \_\_\_\_\_  
ANALYST Esquibel

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		
	\$250.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorneys (AODA)  
Department of Health (DOH)  
Department of Public Safety (DPS)  
Human Services Department (HSD)  
University of New Mexico Health Sciences Center (UNMHSC)

### SUMMARY

#### Synopsis of Bill

House Bill 273 (HB273) appropriates \$250 thousand from the general fund in FY21 to the Human Services Department (HSD) to increase the compensation rate for psychologists and psychiatrists that perform competency evaluations in criminal proceedings.

### FISCAL IMPLICATIONS

The appropriation of \$250 thousand contained in bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of FY21 shall revert to the general fund.

The Human Services Department's Behavioral Health Services Division (BHSD) reports it pays

competency evaluators a flat rate of \$725 to perform competency evaluations that involve felony charges despite case complexity, and pay a flat rate of \$300 for 25 percent of cases involving misdemeanor charges. Data from FY19 and FY20 indicates approximately 1,800 competency evaluations will be requested by the court in FY21. If HB273 is enacted, BHSD will analyze competency data, review national standards, and elicit feedback from competency evaluators to help determine the most effective distribution of rate increases for FY21.

DOH notes forensic evaluators are underpaid and many will not accept cases in rural counties due to the current contract not covering travel or other costs. An increase in pay may make it easier for rural counties to access the forensic evaluators. Also, increasing the pay for evaluators may improve the process of competency evaluations processed through DOH's New Mexico Behavioral Health Institute.

The Human Services Department's Behavioral Health Services Division (BHSD) received an increase over FY20 of \$11.7 million, or 30.3 percent, from the general fund for FY21 in the General Appropriation Act of 2020 that passed out of the House.

## **SIGNIFICANT ISSUES**

The Human Services Department's Behavioral Health Services Division (BHSD) reports Section 43-1-1 NMSA 1978 requires that "whenever a district courts finds it necessary to obtain an evaluation of the mental condition of a defendant in a criminal case, the court shall order an evaluation from a qualified professional." BHSD expends state general fund revenue to support competency evaluations for indigent clients. Once the court has demonstrated indigency, BHSD pays evaluators a flat rate for competency evaluations. BHSD also provides training and technical support for evaluators, which includes leading a monthly learning community.

Current rates for competency evaluations do not adequately compensate evaluators. The compensation rate for an evaluation that involves a felony charge is \$725, which covers less than 3 hours of the evaluator's time; however, evaluators spend more than 3 hours on some evaluations. Felony-related evaluations typically take three to 10 hours, with 10 to 15 hours for more complex cases.

Competency evaluators report that the tests and measures used to perform a professional evaluation continue to increase in cost and they are not reimbursed for travel or testimony costs. The compensation rate for competency evaluation has not increased in over 10 years. An increase in the compensation rate should help BHSD retain and attract psychologists and psychiatrists to perform court-ordered competency evaluation for indigent clients.

## **ADMINISTRATIVE IMPLICATIONS**

HSD reports a change in rates would require a revision of the fee schedule and rate adjustments by BHSD's administrative services organization in its payment processing system.

AOC reports multiple district courts report issues regarding the ability to obtain timely competency evaluations, due at least in part to a lack of professionals willing to perform the work. The current \$800 fee has not been raised in years and may be considered too low to adequately compensate for the complexity of the work that is required to perform a thorough competency evaluation.

District courts do not generally expend court funds for competency evaluations of criminal; however, increasing the compensation for competency evaluators will promote timely evaluations, thereby facilitating efficient criminal proceedings.

### **OTHER SUBSTANTIVE ISSUES**

UNMHSC notes approximately 60,000 defendants are evaluated for trial competency annually, making this the most common forensic issue evaluated (Morris & DeYoung, 2012; Pirelli, Gottdiener, & Zapf, 2011). Current research indicates that this number has been steadily increasing over time (Zapf, Roesch, & Pirelli, 2014).

Forensic evaluators are tasked with describing the degree of congruence or incongruence between the relevant jurisdictional competency standard and the defendant's current abilities. To complete this task, forensic evaluators must maintain a combination of advanced clinical skills coupled with knowledge about the legal system, competency standards, and their interpretation, as a finding of incompetent to stand trial cannot be rendered without sufficient consideration of specific facts regarding the defendant's current legal case (Murrie & Zelle, 2015; Zapf, Roesch, & Pirelli, 2014). Mental health issues, such as the presence or absence of psychosis, play a prominent role in competency determinations (Kalbeitzer & Benedetti, 2009; Ryba and Zapf, 2011).

RAE/sb