F I S C A L I M P A C T R E P O R T

SPONSOR Papen, Cadena **ORIGINAL DATE** 2/13/2020 **LAST UPDATED** **HB**

SHORT TITLE Behavioral Health Community Integration Act **SB** 54/ec

ANALYST Esquibel

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	**FY21**		
$7,000.0		Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	**FY21**	**FY22**		
	$25.0	$25.0	Recurring	Behavioral Health Community Integration (BHCI) Fund

(Parenthesis ( ) Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Comprehensive community-based mental health system	Up to $7,000.0	Up to $7,000.0	Up to $7,000.0	Up to $21,000.0	Recurring	Behavioral Health Community Integration (BHCI) Fund
Medicaid MCO capitation rates	$25.0	$25.0	$25.0	$75.0	Recurring	General Fund
HSD/BHSD ASO costs	$50.0	$15.0	$15.0	$80.0	Recurring	Behavioral Health Community Integration (BHCI) Fund
CYFD	Substantial	Substantial	Substantial	Substantial	Recurring	General Fund
Total	$7,075.0	$7,040.0	$7,040.0	$21,155.0	Recurring	General Fund, BHCI Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Senate Bill 54 relates to Senate Bill 128, Assisted Outpatient Treatment Act Changes, and Senate Bill 182, Behavioral Health Community Integration Act.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Indian Affairs Department (IAD)
Children, Youth and Families Department (CYFD)
Corrections Department (CD)
Human Services Department (HSD)
University of New Mexico Health Sciences Center (UNMHSC)

SUMMARY

Synopsis of Bill

Senate Bill 54 (SB54) would create the Behavioral Health Community Integration (BHCI Act). The target population of the BHCI Act is adults with serious mental illness (SMI) and youth between ages 16 and 22 with serious emotional disturbance (SED), and includes adults or youth who live in rural areas or who are homeless.

SB54 would require the Behavioral Health Services Division (BHSD) of the Human Services Department (HSD) to design and implement a comprehensive community-based mental health system in communities throughout the state that provides support services to achieve one or more of the following:

1) To prevent or reduce the likelihood of relapse following discharge from inpatient care or recidivism following release from detention or incarceration;
2) To correct, reduce or ameliorate the physical, mental, cognitive or developmental effects of serious mental illness (SMI) or serious emotional disturbance (SED);
3) To reduce or ameliorate the pain or suffering caused by SMI or SED;
4) To assist the person to achieve or maintain maximum functional capacity in performing the activities of daily living; or
5) To assist the person with life skills needed to live independently in the community.

HSD/BHSD would be required to provide periodic reports to the Legislative Health and Human Services Committee.

SB54 would create the Behavioral Health Community Integration Fund as a non-reverting fund in the state treasury. HSD/BHSD would administer the fund to contract for services, with the following conditions:

1) Money in the fund shall be expended only for the purposes specified in the BHCI Act;
2) Money in the fund shall be used to provide, arrange for or assist with targeted case management, transitional and long-term housing for the target population, and psychosocial rehabilitation and support services for the target population; and
3) Money in the fund shall not be used to pay for goods or services covered by Medicaid or to match federal funding for Medicaid.

SB54 outlines contract requirements as follows:

1) Contracts awarded from the BHCI Fund would be awarded for a period of at least four years to contractors who demonstrate the ability to achieve outcomes specified by BHSD,

with preference to proposals for communities with few or no behavioral health providers or services. Awards shall allow innovative, flexible and creative uses of local resources other than traditional providers of behavioral health services;
2) BHSD may require contractors to demonstrate in-kind or other support; and
3) HSD shall enter into a contract for procurement after evaluating competitive proposals and shall not design requests for proposals to provide for only sole source contracts. HSD's procurement process must be in accordance with the Procurement Code, provided that Section 13-1-998.1 NMSA 1978 (Hospital and Health Care Exemption) shall not apply to procurements pursuant to the BHCI Act.

SB54 would require that HSD promulgate standards and performance measures for contracts awarded pursuant to the BHCI Act. Minimum standards are described in Section 6 of SB54 and include:

1) identification and tracking of each person served;
2) acceptance of referrals from all sources for persons in the target population;
3) an assessment performed, and service plan developed within certain parameters;
4) assignment of a community support worker responsible for assisting in the assessment of the person and development of the service plan;
5) initiation of services within one calendar day of the assessment for persons with urgent needs and within five calendar days for persons with non-urgent needs;
6) immediate access to crisis stabilization services, with 24-hour telephone response and next calendar day appointment; and
7) continuing support for persons served.

The bill specifies standards developed by HSD must not be so stringent that only traditional providers of behavioral health services can meet them. Contractors shall be required to report outcomes as determined by the department.

SB54 would require HSD to require a Medicaid managed care organization (MCO) or Medicaid fee-for-service (FFS) contractor to pay 3 percent of the annual amount spent by the organization or contractor for value-added behavioral health services be deposited into the behavioral health community integration fund in quarterly installments.

SB54 contains an emergency clause and would become effective immediately upon signature by the Governor.

FISCAL IMPLICATIONS

Senate Bill 54 includes an appropriation of $7 million in general fund revenue in FY20 to the behavioral health community integration fund. Revenue in the fund would not revert.

The bill would create the Behavioral Health Community Integration Fund consisting of appropriations, value-added services payments, gifts, grants, donations and any other money deposited in the fund. Money in the fund would only be expended for the purposes of the Behavioral Health Community Integration Act, as limited by the appropriation, and used for targeted case management, transitional and long-term housing, and psychosocial rehabilitation and support services. Money in the fund would not be used for Medicaid-eligible services.

SB54 creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created

funds, as earmarking reduces the ability of the legislature to establish spending priorities.

The Human Services Department's (HSD) Behavioral Health Services Division (BHSD) reports that no additional operating staffing would be necessary for FY21 and FY22.

If enacted, HSD estimates the operating cost of expanding BHSD's administrative service organization (ASO) reporting capability would be $50 thousand initially for FY21 and FY22, followed by $15,000 annually for maintenance, to be covered by BHCI Funds.

HSD/BHSD indicates sustainability of the systemic services outlined in the bill would be dependent on the 3 percent fee assessed on MCOs' value-added services. A 3 percent spending fee on the behavioral health value-added services for MCOs would generate an estimated $25,000 to the Behavioral Health Community Integration Fund based on year-to-date reporting by the MCOs on expenditures for behavioral health value added services to the traditional Medicaid population and the expansion adult population for three quarters. These expenditure projections are a full year impact. This estimate is kept flat for future years.

Additionally, the federal Medicaid managed care rules[1] promulgated by the Centers for Medicare and Medicaid Services (CMS) require that all reasonable costs to Medicaid MCOs be included in the capitation rate development process. Because of this federal rule, a 3 percent spending fee on behavioral health "value-added" services would need to be included in the Medicaid MCO capitation rates which are funded with general fund. However, because the spending fee would not be a broad-based provider or insurer tax it would be ineligible for federal matching funds. Thus, under the provisions of the bill there would be a $25 thousand impact to the general fund. To fund this additional fee required of the MCOs, the budget for HSD Medicaid would need to be increased by $25 thousand. For details, please see the table below.

MCOs reported Expenditures YTD	**FY20**	**3% fee**
BH Value Added Services/Non-State Plan Approved Services/Outliers	$848,000	$25,000

As worded, SB54 would prohibit HSD from using money from the fund as state match to generate additional federal matching funds for Medicaid beneficiaries. To the extent that any support services provided for in the bill would be covered Medicaid benefits, or that money from the fund could be used for the administration of Medicaid-related activities, these funds all could be used to leverage additional federal dollars. But as currently written, the bill explicitly prohibits using the funds to leverage federal Medicaid funding.

The Children Youth and Families Department indicates the expansion of services and supports for the transition-age population of youth ages 16 to 22 years would have a fiscal implication for CYFD, although it did not provide an amount. CYFD's Behavioral Health Services Division, through the CYFD Fee Schedule and Open Fund pool, provides funding for parity services to non-Medicaid eligible children, non-Medicaid eligible specialized services required by state statute, and children's behavioral health services and supports delivered by non-Medicaid providers. These funds are managed through the Behavioral Health Collaborative's administrative services organization, currently the Falling Colors Corporation, which manages the state's non-Medicaid behavioral health funds and services including state general fund revenue, federal funds, and non-profit grant dollars.

[1] 42 CFR Parts 431, 433, 438, 440, 457 and 495

SIGNIFICANT ISSUES

CYFD notes the provisions contained in SB54 align with CYFD efforts to deinstitutionalization children and youth through the use of trauma-responsive social and emotional therapies and supports.

PERFORMANCE IMPLICATIONS

UNMHSC indicates **i**n many areas throughout New Mexico there are little to no behavioral health resources and the development of a more comprehensive system of care for behavioral health could facilitate discharges from higher levels of care for patients to return back to areas of the state where there are currently limited resources.

ADMINISTRATIVE IMPLICATIONS

HSD reports that BHSD expects one FTE would be needed to administer every $1.2 million in additional program funding. No additional staffing would be necessary for FY21 and FY22 under this formula.

BHSD and CYFD could coordinate to ensure complementary, comprehensive services for the age 16-22 target population.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 54 relates to Senate Bill 182, Behavioral Health Community Integration Act. SB54 differs from SB182 in that SB54 contains an appropriation of $7 million from the general fund to the behavioral health community integration fund, SB54 does not require contractors be certified by Medicaid, and SB54 does not require the Behavioral Health Services Division of the Human Services Department to provide periodic reports to the Legislative Health and Human Services Committee.

TECHNICAL ISSUES

The Indian Affairs Department (IAD) indicates SB54 defines the "comprehensive community-based mental health system" as a "system of care that includes [an array of] support services with federal, state, and local public and private resources to enable persons to function outside of inpatient or residential institutions to the maximum extent of their capabilities." IAD recommends inserting "tribal" to the identified resources to include tribal participation in the bill's proposed comprehensive-based mental health system.

HSD notes the definition of comprehensive community-based mental health system does not include tribal resources.

HSD notes it would not be able to comply with the emergency clause immediate enactment of the bill because HSD will have to promulgate regulations and amend the MCO contracts which would take a few months.

The Children, Youth and Families Department (CYFD) suggests an amendment ensuring coverage up through 25 years of age. This amendment would address the current gap with existing services for youth aged 16 to 21.

CYFD indicates the standards for referral times for youth aging out of foster care should be developed with input from the CYFD Protective Services Division, particularly given CYFD's program development and expansion related to extended foster care.

CYFD notes many of the services identified in SB54 (i.e., targeted case management, transitional and long-term housing, psychosocial rehabilitation and support services) align with or duplicate services already overseen by CYFD. To ensure appropriate identification of service populations and avoid duplication of services or expenditures, CYFD should be added in the bill's provisions to include the establishment of program and services definitions, selection of provider vendors, oversight, and other such activities to ensure alignment with CYFD's commitment to the provision of quality behavioral health services and supports that are trauma informed, evidence-based, culturally competent, and youth and family driven.

The Corrections Department (NMCD) notes that Section 6A, subsection 3(b) requires an assessment shall be performed and support services plan developed within no more than 48 hours prior to an individual's discharge from inpatient care or release from detention or incarceration. NMCD indicates release plans are generated six months prior to release including any probation and parole plans, along with the planning process of proper referrals to NMCD's community service providers. Administratively, NMCD would need a minimum of 90 days post-assessment to rearrange or change referrals based on that assessment. As the release plans are generated, so are community service referrals, and if something were to change based on the assessment, 48 hours is not sufficient time for NMCD to change the release plan for that individual before they are released to the community.

OTHER SUBSTANTIVE ISSUES

The Indian Affairs Department (IAD) reports the participation of the state's 23 Tribes, Nations, and Pueblos in this Act is essential in improving the state's behavioral health outcomes.

New Mexico's Tribes, Nations, and Pueblos continue to suffer from alcohol and substance abuse, mental health disorders, suicide, violence, and behavior-related chronic diseases at significantly higher rates than the general public. There were 51 suicides in New Mexico children in 2011-2013, and the suicide rate was highest among American Indian children and among males (*New Mexico Child Fatality Review, 2014)*. In 2017, Whites and American Indians had the highest rates of suicide 29.7 and 21.1 deaths per 100,000 persons, respectively. For American Indians, the rate was highest among those 15-24 years of age (*NM Department of Health Fact Sheet, October 2018*). The state's Tribes, Nations, and Pueblos continue to work diligently to combat these behavioral health issues.

RAE/rl/sb