

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov****(Analysis must be uploaded as a PDF)****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 2/5/25 *Check all that apply:*
Bill Number: HB4 Amended Original Correction
 Amendment Substitute

Sponsor: Rep. Christine Chandler
 Criminal Competency &
 Treatment

Agency Name and Code HCA 630
Number: _____
Person Writing Analysis: Anita M. Mesa
Phone: 505.709.5665 **Email** Anitam.mesa@hca.nm

Short Title:

SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	None	None

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
None	None	None	None	None

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Forensic Evaluator Contract Costs	None	\$3,074.0	\$3,074.0*	\$6,148.0	Recurring	General Fund
FTE Costs	None	\$169.4	\$169.4	\$338.8	Recurring	General Fund
Total	None	\$3,243.4	\$3,243.4	\$6,486.8	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

**This figure does not reflect the potential increase in the number of evaluations that need to be performed as a result of bill implementation.*

Duplicates/Conflicts with/Companion to/Relates to: Not known
 Duplicates/Relates to Appropriation in the General Appropriation Act: Not known

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 4 (HB4) would extensively rewrite the sections of the Criminal Code relating to determining criminal competency, creating in the process a flow chart of the actions the court may take concerning determination, commitment, and treatment. House Bill 4 would also expand the crimes for which a defendant may be criminally committed.

HB4 would revise criminal competency laws by requiring evaluation reports to assess a defendant’s competency and potential for involuntary commitment or outpatient treatment; allow community-based restoration for non-dangerous defendants; expand crimes eligible for commitment; permit courts to advise on treatment upon dismissal of a criminal case; authorize the use of a competency report in involuntary commitment proceedings; and amend the Assisted Outpatient Treatment Act to allow the District Attorney or Attorney General to file a petition for assisted outpatient treatment within 30 days of a professional evaluation.

HB4 as amended further clarifies qualified professionals (Section 1.A) and what type of supervisor may report to the court about treatment progress (Section 5.C). Other amendments included provide language enabling DOH to perform required processes important to competency restoration and treatment (Section 6.E.1 and 7.A).

FISCAL IMPLICATIONS

The bill does not include specific funding to expand or oversee the inpatient and outpatient behavioral health services necessary to support the bill’s requirements.

The Health Care Authority’s Behavioral Health Services Division (HCA BHSD) provides structure, quality control, training, and funding for all court ordered competency evaluations wherein the defendant is found to be indigent. The Medicaid program administered by the HCA is the primary payor of most (more than 90%) of behavioral health services in New Mexico.

To accommodate the additional time needed for contracted evaluators to perform the functions in Section 3C, the HCA BHSD would need to increase its current budget by \$3,074,000.

Calculation based upon 1,537 evaluations performed in FY24. The industry **average cost** for comprehensive clinical evaluations: \$200.00/hr. As a result of the projected increase in evaluations needed, the estimated number of additional hours needed per evaluation equals ten hours. As such, \$200 x 10hrs, x 1,537 per evaluation = \$3,074,000. (This figure does not reflect the potential increase in the number of evaluations needed to be performed as a result of bill implementation).

HCA BHSD would need to expand forensic evaluator scopes of work to ensure the new court timelines outlined in the bill are met, such as the inclusion of competency restoration services for uninsured individuals. These new duties will likely result in increased costs. In FY25, HCA BHSD increased payment to contract evaluators to \$1,250 per evaluation. This amount would likely need to be increased to retain the current pool of evaluators and recruit new evaluators.

HCA BHSD would need additional staff to accommodate the administrative and programmatic support of forensic evaluators. This would require 1 FTE at a pay band 70, and 0.5 of a supervisor position for a total of \$169,400 for salary, fringe and operating costs.

In calendar year 2025 HCA projected the Per Member Per Month (PMPM) costs for those enrolled in Turquoise Care that have a Substance Use Disorder or Serious Mental Illness diagnosis to be \$1,618,550 and \$2,609,610 respectively. (The projected PMPM does not specifically reflect individuals that may also be in a criminal justice setting with behavioral health needs).

SIGNIFICANT ISSUES

New Mexico requires a significant investment in behavioral health capacity and the workforce to successfully serve all individuals who may become eligible for court-ordered treatment as proposed in the bill. (The FY26 HCA Executive Recommendation includes \$100M GF for behavioral health infrastructure and capacity). HB4 does not describe funding, or the state infrastructure needed to oversee and implement any new processes. The bill does not make clear how DOH or other state agencies would interface with the existing competency diversion programs being administered by these new processes, as possible resources for competency restoration services.

In New Mexico, the projected number of individuals who may need Medication Assisted Treatment (MAT) who are *not* receiving services for a substance use disorder (SUD) is 9,130; the projected number of individuals who may need community-based treatment who are *not* receiving services for a severe mental illness (SMI) is 12,182. In calendar year 2025 HCA projected the Per Member Per Month (PMPM) costs for those enrolled in Turquoise Care that have an SUD or SMI diagnosis to be \$1,618,550 and \$2,609,610 respectively. (The projected unmet service needs do not specifically reflect individuals that may also be in a criminal justice setting with behavioral health needs).

HCA BHSD provides structure, quality control, training and funding for all court ordered competency evaluations wherein the defendant is found to be indigent. Activities include: contracting with forensic evaluators statewide to ensure competency evaluations are assigned and completed, providing training for the competency evaluators on current practice, complete reviews on evaluations to ensure quality standards are met.

~~HB4 proposes changing definition of evaluators from psychologists and psychiatrists to “qualified mental health professionals” as recognized by the district court.~~ **Reinstates original**

language to psychiatrist, psychologist while leaving in language that allows for other qualified professional recognized by the district court as an expert. The concern still remains as it relates to “qualified professional” because district court personnel may not have the clinical subject matter expertise to make the determination of a “qualified professional”. Currently, nationally recognized training programs in forensics are only in existence for psychologists and psychiatrists.

HB4 states that competency to stand trial reports can be used to determine whether someone meets criteria for involuntary hospitalization. By NM Statute, competency to stand trial evaluations and reports do not address these elements.

HB4 conflates civil commitments and criminal commitments. Civil and criminal commitments are two separate processes. An individual should only be moved to the civil side once restoration attempts have been made and it is deemed that they are unlikely to be restored. Once the case is dismissed because someone is not competent and not restorable, the civil process commences - if they are deemed dangerous, the system would seek involuntary commitment, but they are no longer in a criminal process and solely been transferred over to the civil side. As written, defendants are being evaluated for involuntary commitment multiple times in the process which would take considerable time and resources and can be traumatic to an individual to undergo repeated evaluations.

HB4 proposes competency restoration to occur in the community and inpatient. There would need to be funding for outpatient competency restoration initiatives, especially in counties where defendants reside in other regions of the state. Many states allow community-based competency restoration. In the 16 states that have formal community-based competency restoration programs services are paid for by mental health agencies (NAMI.org, 2025).

Pg 1, lines 14-17 proposes that qualified professionals performing Competency to Stand Trial (CST) evaluation include opinions as to, “...whether the defendant satisfies the criteria for involuntary commitment or assisted outpatient treatment;”. State funded contracted evaluators are not tasked to perform this level of comprehensive treatment recommendations. They also are not provided with the collateral information necessary to build a treatment plan. Administrative burden would increase in a manner that may impact the number of evaluators contracted with HCA BHSD, limit recruitment opportunities, and impact the state’s ability to perform and submit timely reporting for individuals who are deemed indigent.

Pg 1, lines 20-25 lends to the possibility that Assisted Outpatient Treatment (AOT) could be mandated. A key principle to AOT services is that the individual enters treatment voluntarily for optimal outcomes, rather than by mandate.

Section 2a, Pg 3, lines 15-17 expands the authority of the NM Courts to determine who would qualify as an expert; and places risk on HCA BHSD’s ability to properly vet and determine the caliber and quantity of its state contracted evaluators within its forensic program.

Section 2c in its entirety would require state contracted evaluators to provide information outside of the original intent for forensic evaluations which is to speak to the three basic prongs required for competency to stand trial. Additionally, collateral information and other key records are not available to state contracted evaluators, making it difficult for them to provide the scope of evaluation proposed in HB4. Evaluation time would be expanded and costs to perform comprehensive testing would increase. The industry standard hourly rates for these types of

evaluations average \$150.00-\$200.00/hour and would likely require a minimum of 10 additional hours to accommodate assessment, testing, report writing, and treatment recommendations.

Section 6 language suggests that if an individual is found not competent and not restored and then if the person is deemed dangerous, they can be held in a locked facility for no longer than the time they could have been convicted. It is unclear what the determination will be for the individual at the end of the time period held should they still be deemed incompetent and dangerous but have met the period of time equal to the maximum sentence to which the defendant would have been subject had the defendant been convicted in a criminal proceeding.

Current amendments address DOH cited concerns relating to CST evaluations and treatment evaluations that are performed primarily at NMBHI. HCA concerns related to how HB4 would affect state contracted forensic evaluators and their evaluations have not been addressed through the amendments. For example, the bill may result in an increased workload and lack of reimbursement. The HCA pays \$1,200 per report but any additional court appearances or reports are out of pocket for the provider. In FY24, 1537 evaluations were conducted for individuals who were deemed indigent and for whom questions of competency have been raised.

PERFORMANCE IMPLICATIONS

Additional requirements may strain the court system's ability to meet statutory timelines and ensure individuals' right to a prompt judicial process.

There are three counties that have competency diversion programs active in the communities of Doña Ana, San Miguel and Otero Counties. They are currently funded by NM Courts. These community-based programs are structured to support individuals whose competence has been questioned. The bill does not identify if these competency diversion programs could serve as competency restoration programs, and if not, what would qualify as an acceptable competency restoration program.

To date, there are three counties that have Assisted Outpatient Treatment programs, two of which are active in limited capacity (Bernalillo and Doña Ana), and one is in development stage (Santa Fe). The bill does not identify which agency would be responsible for implementing and overseeing other Assisted Outpatient Treatment programs to help ensure statewide access as proposed in the legislation.

Section 3 proposes new language that would greatly impact on the type of services to be made available in communities and the bill does not describe how the resources to deliver these services would be obtained or funded. This section speaks to supervisors that would be responsible for determining an individual's competency based on treatment outcomes. There is no indication as to the type of supervision or level of expertise required to function in the proposed capacity.

Statutory timelines may be exceeded and unmet based on the scope of recommendations expected by the proposed legislation thus impacting an individual's right to a timely judicial proceeding.

DOH, New Mexico Behavioral Health Institute (NMBHI) currently has oversight of competency restoration programs. Competency restoration is an educational process whereby someone with a behavioral health condition can receive treatment and education about the legal processes so that they can work with their attorneys for a plea deal which is likely to involve engagement in

treatment. NMBHI, located in San Miguel County, is the only facility in the State where individuals who are found incompetent to stand trial may receive treatment. NMBHI does not have the adequate capacity to serve all existing individuals needing treatment. Extensive planning and collaboration among HCA, DOH and AOC is necessary to expand competency restoration programs in other counties. HCA will also need assist DOH in identifying providers in each county to collaborate on service delivery for the expanded competency restoration programs. Planning and collaboration ensures that behavioral health needs are met for those identified as needing treatment.

ADMINISTRATIVE IMPLICATIONS

HCA BHSD would need to collaborate with the Department of Health (DOH), the Administrative Office of the Courts (AOC) and the NM Districts Courts (NM Courts) to support the development and implementation of community-based competency restoration programs as they seek to expand service delivery.

HCA BHSD would need to collaborate with DOH/NMBHI who oversees the competency restoration program to help locate behavioral health treatment providers in local communities to expand the competency restoration programs.

HCA BHSD may need to collaborate with local community and county programs to ensure a defendant is released with a treatment plan and case management services are in place.

No IT impact.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Unknown

TECHNICAL ISSUES

HB4 is missing a definition section, making it difficult to establish the appropriate parameters to execute the functions and timelines identified throughout the entirety of the bill.

There is no language regarding interpretation service during competency evaluation or competency restoration: National Standards for Culturally and Linguistically Appropriate Services ([CLAS](#)) in Health and Health Care Communication and Language Assistance:

- Offer language assistance to individuals who have limited English proficiency and/or other communication needs, at no cost to them, to facilitate timely access to all health care and services.
- Inform all individuals of the availability of language assistance services clearly and in their preferred language, verbally and in writing.
- Ensure the competence of individuals providing language assistance, recognizing that the use of untrained individuals and/or minors as interpreters should be avoided.
- Provide easy-to-understand print and multimedia materials and signage in the languages commonly used by the populations in the service area.

OTHER SUBSTANTIVE ISSUES

According to a [2023](#) analysis, people with mental illness are more likely to be a victim of violent crime than the perpetrator. Additionally, not all individuals needing access to behavioral health services perpetrate violence. The most important and independent risk factor for criminality and violence among individuals with mental illness is a long-term substance use disorder. In patients with major psychiatric illness, comorbid substance use disorder, there is a four-fold increase in

the risk of committing a crime or violence. Studies have shown that the rise in violent crime committed by individuals with mental illness, may entirely be accounted for with a history of alcohol and/or drug use.

The HCA is the largest payor of behavioral health care in NM. HCA Medical Assistance Division (Medicaid) is the payor of behavioral health services for the Medicaid eligible population, and HCA BHSD is the payor of behavioral health services for uninsured individuals and those ineligible for Medicaid. Together, these two HCA Divisions finance more than 90% of behavioral health care expenses in NM in FY25. This better integrated financing structure was made possible by the passage of the 2014 Federal Patient Protection and Affordable Care Act.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None