

LFC Requester:

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

[AgencyAnalysis.nmlegis.gov](https://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: 3/10/25

Check all that apply:

Bill Number: ~~HB70~~ HB70AFSub

Original ☐ Correction ☐

Amendment ☐ Substitute ☒

Sponsor: Rep. Tara Lujan

Short Behavioral Health Medicaid

Title: Waiver Act

Agency Name

and Code

HCA 630

Number:

Person Writing Kresta Opperman

Phone: (505)231- Email Kresta.opperman@hca

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
\$0.0	\$1,100.0 \$0.0	Nonrecurring NA	State General Fund NA

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	\$1,100.0 \$0.0	\$0.0	Nonrecurring NA	State General Fund NA

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecur ring	Fund Affected
Range	NFI	NFI	Range \$316,621.0 to \$3,166,135.0	Range \$16,620.0 to \$3,166,135.0	Recurring	State General Fund
Range	NFI	NFI	Range \$800,601.9 to \$8,005,831.1	Range \$800,601.9 to \$8,005,831.1	Recurring	Federal Medicaid Funds
Range	NFI	NFI	Range \$1,117,222.7 to \$11,171,966.4	Range \$1,117,222.7 to \$11,171,966.4	Recurring	Total

(Parenthesis () Indicate Expenditure Decreases)

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:

HB70 Appropriation and Finance Committee Substitute removes \$1.1 million appropriation that was included in the bill as introduced.

House Bill 70 (HB70) would require the Health Care Authority (HCA) to submit a Medicaid waiver to the federal government to provide long-term home- and community-based services to individuals defined as having a “behavioral health ~~disability~~ **condition**”. A behavioral health ~~disability~~ **condition** is described in the bill as an individual with a serious mental illness (SMI), serious emotional disturbance (SED), substance use disorder (SUD), or brain injury, when that condition:

- Substantially impairs a person’s ability to manage their own affairs; or
- Makes a person eligible to receive disability benefits from the state or federal government.

The bill contains specific definitions for SMI, SED, SUD and brain injury.

HB70 directs the HCA to:

- Acquire, provide, or coordinate support for persons with behavioral health ~~disabilities~~ **conditions**;
- Enter into contracts and provider agreements with agencies and persons to provide support and services for persons with behavioral health ~~disabilities~~ **conditions**; and
- Establish advisory councils and task forces to guide operations and review the operations of these functions.

The bill would require that all services would be provided by the HCA by an interdisciplinary team that would develop and individual support and service plan for each person served under the new program.

HB70 requires the HCA to immediately begin convening meetings in July 2025 with persons with behavioral health disabilities conditions, their family members, and other stakeholders to determine the scope of services to be available under the waiver and eligibility requirements to participate in the waiver program. The HCA may hire a consultant to support this purpose. the best way to apply for federal approval to operate the proposed waiver program. The HCA is also directed to hire a consultant for this purpose.

FISCAL IMPLICATIONS:

HB 70 would appropriate \$1.1 million from the state general fund to develop and submit a new Medicaid waiver that would be similar to the Developmental Disabilities Supports Waiver administered by the HCA today. HB70 provides no appropriation. The bill is not specific regarding what services would be covered today in the new program, but the eligibility criteria set forth in the bill is very broad. The range of projected cost to implement the waiver (assuming an FY27 impact) is provided below, depending on the percentage of total individuals with behavioral health disabilities conditions that would be served. The table below table assumes varying utilization across the populations from a low take-up rate of 10% (\$316.6 million annual General Fund impact) to what the costs would be if 100% of individuals with disabilities conditions were served under the program (\$3.1 billion annual General Fund impact).

	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
Fiscal Impact of New Behavioral Health Disability for FY 2027				
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

The additional programmatic cost of new benefits under a new waiver that is effective on July 1, 2026 (FY 2027) is based on the cost incurred by clients enrolled in a similar waiver package of services (the Developmentally Disabled (DD) waiver (traditional service model)) during FY 2024. The cost used for this analysis included payments for case management services, community integrated employment services, family living, supported living services, and intensive Medicaid living services. This does not include estimates for general housing costs. A 4.5% annual growth is applied to the FY 2024 cost to derive the FY 2027 projected cost. The cost for FY 2027 ranges from \$1,117,222.7 thousands with 10% of the population enrolled, of which the General Fund is \$ 316,620.9 thousands to \$11,171,966.4 thousands with \$ 3,166,135.3 thousands of general fund to cover all of the Medicaid populations (171,186) with at least one diagnosis category of SED, SUD, SMI or BI who qualified for services through this new waiver. The federal share is calculated with a 71.66% federal medical assistance percentage.

HB70 would also have significant administrative impacts to the HCA, which are set forth in the Administrative Implications section below.

SIGNIFICANT ISSUES

The estimated total number of individuals who could be served under the new waiver program is 171,156, including:

- Individuals with SMI/SED: 123,564

- Individuals with SUD: 38,324
- Individuals with Traumatic Brain Injury: 9,268

The bill does not specify specific service needs, or gaps in the existing service continuum, that would be addressed by the proposed waiver program. Below is a comparison of typical service categories in the existing Medicaid waiver programs to the currently 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.

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.

~~Allocated funds are for a qualified consultant and four FTE to implement the proposed waiver.~~ The bill does not include funding to support the required monitoring, support and evaluation of the waiver. No reoccurring funds are allocated to cover state match of services implemented through this waiver; and the bill does not clarify how the program and associated administration would be funded after implementation.

HB70 does not include an 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. As written, the HCA would not be able to submit the waiver application for federal review by ~~December 31, 2025~~ **July 1, 2026**, since there is no assurance of the necessary general fund included in the agency's budget or in the bill. **There is not a need to prescribe to the agency the federal authority to be sought (e.g. waiver versus state plan) and that should be examined in the feasibility study. The waiver requires several other demands that are not applicable for state plan service changes.**

Additionally, a new waiver submission generally takes between 9-12 months due to required federal timelines for drafting, public comment, and tribal consultation. ~~Funds are not budgeted until FY26 starting in July 2025;~~ Therefore, the agency would have to begin this major effort without any additional funding or FTE. The bill requires the coordination and stakeholder meetings to begin immediately.

Currently, Medicaid members who meet a nursing facility level of care (NFLOC) qualify for the Turquoise Care Community Benefit. Depending on the criteria for eligibility for the new BH waiver, some current CB members may want to shift to the new BH waiver.

PERFORMANCE IMPLICATIONS

See Significant Issues and Administrative Implications

ADMINISTRATIVE IMPLICATIONS

HB70 would have substantial long-term administrative implications for the HCA. The Developmental Disabilities **Waiver** and other waiver programs that are currently administered by the agency are run by a dedicated division, the Developmental Disabilities Supports Division, which includes **between 175-180** ~~hundreds of~~ FTE located in offices across New Mexico. These 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. All of these functions would be needed to administer the new waiver program.

The HCA would most likely need a new, dedicated division to administer the waiver program. This would need to be created in New Mexico statute.

The expectation is that the new covered services and Medicaid Eligibility Groups will require IT system changes to accommodate a new category of eligibility, benefit package, provider network, and billing criteria for individuals with a behavioral health disability. **The new rules prescribe member and beneficiary committees, and this may be duplicative in nature; appropriate staff are needed to staff/support additional advisory committees.**

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Not known.

TECHNICAL ISSUES

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

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

OTHER SUBSTANTIVE ISSUES

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.

~~Suggest using terminology of “behavioral health condition” versus “behavioral health disability.”~~

ALTERNATIVES

~~None suggested.~~ Have the feasibility study dictate, along with the funding appropriated in subsequent years, which federal approvals are sought to expand covered behavioral health services.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None known