JOINT BUDGET COMMITTEE

STAFF BUDGET BRIEFING
FY 2023-24

DEPARTMENT OF HUMAN SERVICES

(Behavioral Health Administration and Office of Behavioral Health)

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

PREPARED BY:
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ADDITIONAL RESOURCES

Brief summaries of all bills that passed during the 2020 and 2021 legislative sessions that had a fiscal impact on this department are available in Appendix A of the annual Appropriations Report: https://leg.colorado.gov/sites/default/files/fy21-22apprept_0.pdf

The online version of the briefing document, which includes the Numbers Pages, may be found by searching the budget documents on the General Assembly's website by visiting leg.colorado.gov/content/budget/budget-documents. Once on the budget documents page, select the name of this department's *Department/Topic*, "Briefing" under *Type*, and ensure that *Start date* and *End date* encompass the date a document was presented to the JBC.

DEPARTMENT OF HUMAN SERVICES

DEPARTMENT OVERVIEW

The Department of Human Services is responsible for the administration and supervision of most non-medical public assistance and welfare activities of the State, including financial and nutritional assistance programs, child protection services, behavioral health services, and programs for older Coloradans. The Department is also responsible for inspecting and licensing childcare facilities, and for the care and treatment of individuals with mental health disorders, individuals with intellectual or developmental disabilities, and youth and young adults who are involved in the juvenile justice system. These services are provided in collaboration with county governments, not-for-profit community-based providers, and other agencies. The Department provides direct services through the operation of mental health institutes, regional centers for persons with intellectual and developmental disabilities, and institutions for juvenile and young adult offenders. This staff budget briefing document concerns the Behavioral Health Administration and the Office of Behavioral Health.

BEHAVIORAL HEALTH ADMINISTRATION

The Behavioral Health Administration (BHA), which launched July 1, 2022, is responsible for policy development, service provision and coordination, program monitoring and evaluation, and administrative oversight of the state's public behavioral health system. Funding in this section supports the administration of the BHA in its leadership capacity as well as community-based prevention, treatment, and recovery support services for people with mental health and substance use disorders. This includes services for people with low incomes who are not eligible for Medicaid, as well as services for Medicaid-eligible clients that are not covered by the Medicaid program[1]. Prior to FY 2022-23, these functions were housed within the community-based programs in the Office of Behavioral Health (OBH). However, the establishment of the BHA in FY 2022-23 pursuant to H.B. 21-1097 (Establish Behavioral Health Administration) and H.B. 22-1278 (Behavioral Health Administration) moved those functions to the newly created BHA. Those bills also added new and expanded duties to the BHA beyond what had previously been housed within the community-based programs in OBH.

The agency continues to contract with 17 community mental health centers (Centers) across the state to provide mental health services that are not otherwise available.[2] Each Center is responsible for providing a set of core services, ranging from public education to inpatient services. The Office also contracts with four managed service organizations (MSOs) for the provision of substance use disorder treatment services that are not otherwise available. MSOs subcontract with local treatment providers across the state to deliver these services. In addition, the Department administers funding for programs that integrate mental health and substance use-related services. While the majority of community-based behavioral health funding is allocated to Centers and MSOs, the Department also contracts with other organizations to provide specific types of services or services targeting specific populations.

[1] Most mental health disorder and substance use disorder services for Medicaid-eligible clients are funded through the Department of Health Care Policy and Financing.

[2] The State added an 18th Center with the designation of Eagle Valley Behavioral Health as a Community Mental Health Center in October 2021 but a merger of two others as of July 1, 2022, reduced the number to 17.

By July 1, 2024, H.B. 22-1278 requires significant changes to the BHA's contracting process with the addition of Behavioral Health Administrative Service Organizations (BHASOs). That change will add a contractual layer between the BHA and providers such that the BHA will contract with the BHASOs who will then contract with providers to ensure service quality and availability in their respective regions. The BHASOs will also consolidate the existing roles of the managed service organizations (MSOs) for substance use services and the existing administrative service organizations (ASOs) for crisis services and the implementation of the Children and Youth Mental Health Treatment Act. The bill also authorizes the designation of additional providers as part of the state safety net.

OFFICE OF BEHAVIORAL HEALTH (OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH)

With the movement of community-based programs to the BHA in FY 2022-23, the Office of Behavioral Health (which the Department of Human Services has internally renamed as the Office of Civil and Forensic Mental Health or OCFMH) now focuses on two major areas of responsibility:

First, The OCFMH administers and operates two Mental Health Institutes (state hospitals) that provide inpatient hospitalization for individuals with serious mental health disorders. One is located in Pueblo and the other is located on the Fort Logan campus in Denver. These hospitals serve three populations: (1) forensic clients with pending criminal charges who require inpatient evaluations of competency to stand trial and inpatient services to restore competency; (2) individuals who have been found not guilty by reason of insanity and require hospitalization; and (3) adults and adolescents who are referred for admission by community mental health centers, the Department's Division of Youth Services, and other health providers.

The OCFMH is also responsible for a variety of behavioral health services to forensic clients (those involved in the criminal justice system), including all issues related to competency evaluations and restoration, either in or outside of the state hospitals. This includes support and administration of services in the Mental Health Institutes, jail-based services, purchased in-patient psychiatric beds, community-based services, and outpatient competency restoration programs, in addition to work with the courts to place clients in the most appropriate services as clients move through the process.

DEPARTMENT BUDGET: RECENT APPROPRIATIONS

DEPARTMENT OF HUMAN SERVICES

FUNDING SOURCE	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24 *
General Fund	$1,034,930,086	$1,111,202,446	$1,057,156,646	$1,117,393,924
Cash Funds	421,832,773	549,781,848	724,693,243	421,632,376
Reappropriated Funds	209,414,386	228,925,941	215,794,327	216,817,997
Federal Funds	709,092,573	1,064,621,460	553,775,174	564,533,549
TOTAL FUNDS	**$2,375,269,818**	**$2,954,531,695**	**$2,551,419,390**	**$2,320,377,846**
Full Time Equiv. Staff	5,181.3	5,195.6	5,241.7	5,341.0

*Requested appropriation.

Funding for the Department of Human Services in FY 2022-23 consists of 41.4 percent General Fund, 28.4 percent cash funds, 8.5 percent reappropriated funds, and 21.7 percent federal funds.

BEHAVIORAL HEALTH DIVISIONS

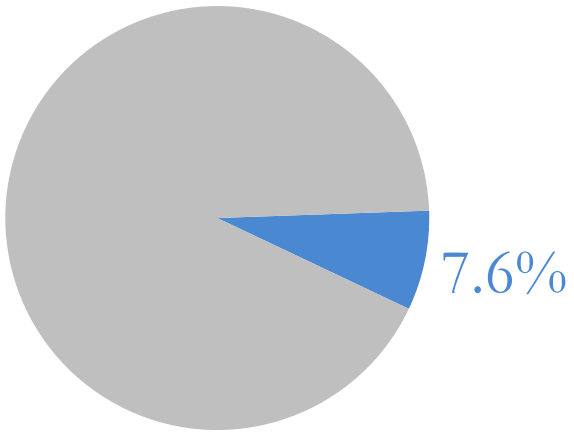
FUNDING SOURCE	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24 *
General Fund	$255,694,282	$284,668,739	$326,265,408	$347,330,713
Cash Funds	48,341,550	155,862,750	361,421,474	76,080,804
Reappropriated Funds	25,722,102	26,334,705	25,326,533	23,953,391
Federal Funds	42,361,118	42,433,562	42,660,658	43,154,609
TOTAL FUNDS	**$372,119,052**	**$509,299,756**	**$755,674,073**	**$490,519,517**
Full Time Equiv. Staff	1,470.8	1,486.2	1,629.4	1,708.6

*Requested appropriation.

Funding for the behavioral health divisions (Behavioral Health Administration and the Office of Behavioral Health/OCFMH in FY 2022-23 consists of 43.2 percent General Fund, 47.8 percent cash funds (with the large increase from the prior year made up of one-time stimulus funds), 3.4 percent reappropriated funds, and 5.6 percent federal funds. Appropriations for FY 2020-21 and FY 2021-22 were entirely to the Office of Behavioral Health, while the FY 2022-23 appropriation and the FY 2023-24 request have separated community-based programs and other costs into the Behavioral Health Administration.

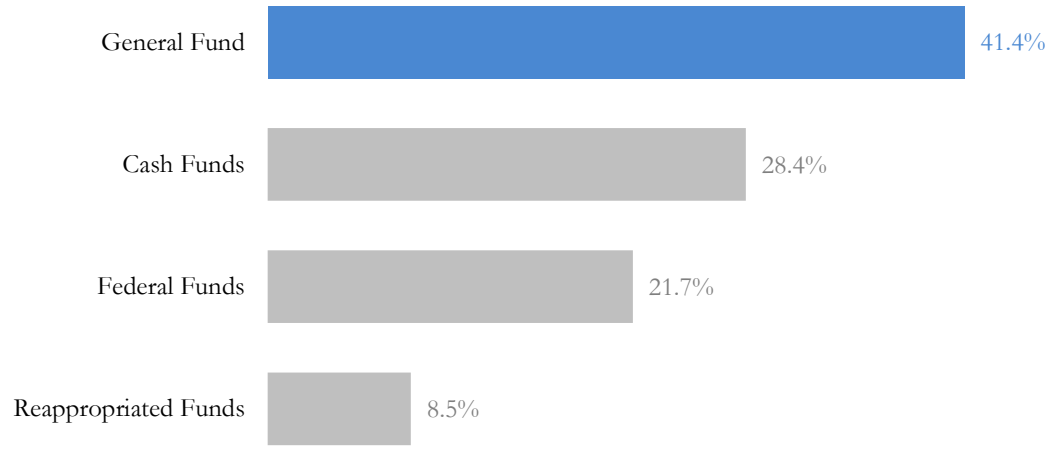
DEPARTMENT BUDGET: GRAPHIC OVERVIEW

Department's Share of Statewide General Fund



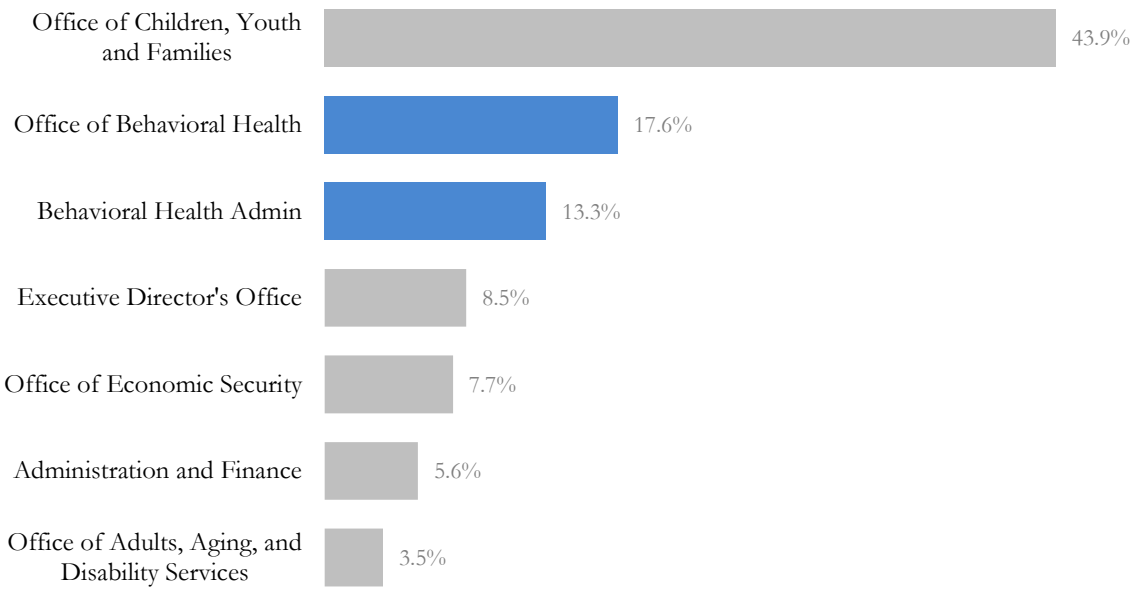
Based on the FY 2022-23 appropriation.

Department Funding Sources



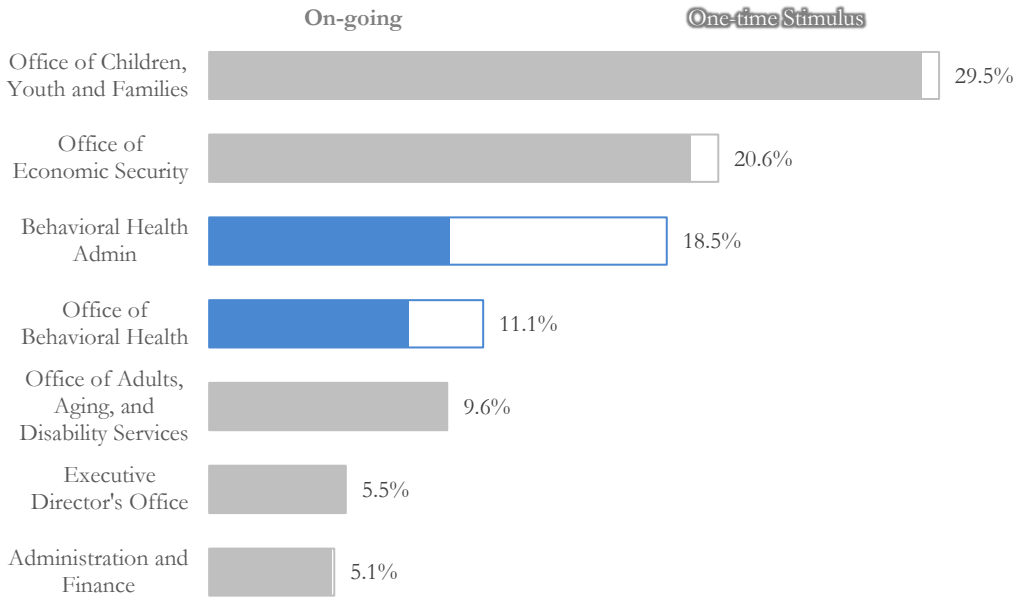
Based on the FY 2022-23 appropriation.

Distribution of General Fund by Division



Based on the FY 2022-23 appropriation.

Distribution of Total Funds by Division



Based on the FY 2022-23 appropriation.

GENERAL FACTORS DRIVING THE BUDGET

The Department's behavioral health divisions, the Behavioral Health Administration (BHA) and the newly renamed Office of Civil and Forensic Mental Health (OCFMH), operate the state's public behavioral health system.

- With the launch of the BHA in FY 2022-23, that division now administers funding for community-based prevention, crisis response, treatment, and recovery support services for people with mental health and substance use disorders (referred to as "behavioral health" services).
- The OCFMH operates the state's Mental Health Institutes, which provide inpatient psychiatric hospitalization for individuals with mental health disorders as well as inpatient forensic programs serving individuals involved in the criminal justice system.

BHA AND COMMUNITY-BASED PROGRAMS AND SERVICES

The BHA contracts with 17 community mental health centers (centers) across the state to provide mental health services that are not otherwise available. Each center is responsible for providing a set of core services, ranging from public education to inpatient services. The BHA also contracts with four managed service organizations (MSOs) for the provision of substance use disorder treatment and detoxification services that are not otherwise available. MSOs subcontract with local treatment providers across the state to deliver these services. Finally, the Office also contracts with other organizations to provide certain types of treatment services or services targeting specific populations.

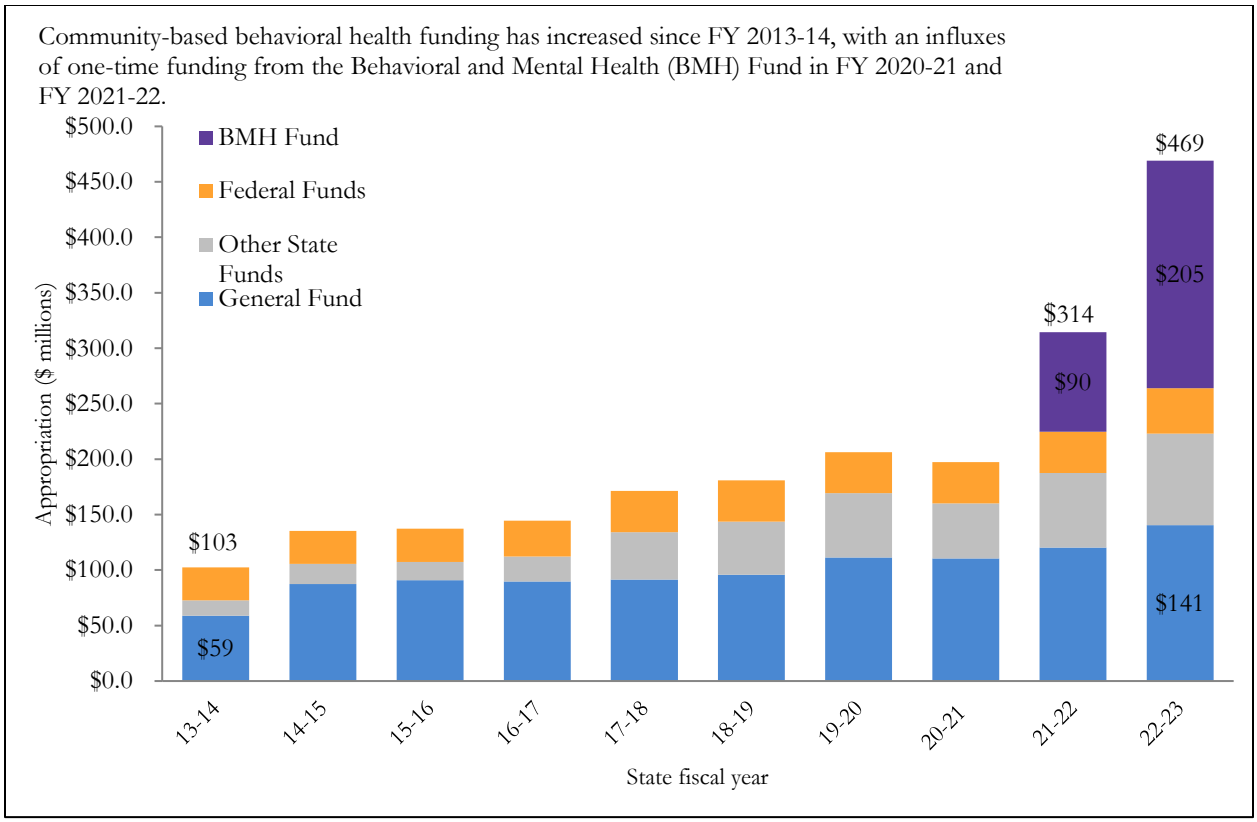
Most mental health and substance use disorder services for Medicaid-eligible clients are funded through the Department of Health Care Policy and Financing. Unlike the Medicaid program, behavioral health services provided through this department are not an entitlement. Thus, the number of individuals receiving services and the level of service provided is largely driven by the level of state and federal funds available each year. The General Assembly periodically adjusts funding for the centers, MSOs, and other community providers to account for inflationary changes and to ensure that programs are viable over the long-term. The rate changes are generally consistent with the common policy adopted by the Joint Budget Committee for a variety of community providers.

The General Assembly also appropriates additional funds for the provision of specific services or services targeting specific populations (e.g., alternative placements for people who would otherwise require hospitalization at a mental health institute, school-based behavioral health services for children, and services for juvenile and adult offenders).

General Fund appropriations provided more than half of the available funds in FY 2020-21. However, the FY 2021-22 appropriation included a one-time influx of $89.8 million cash funds from the Behavioral and Mental Health Cash Fund, which originated as federal stimulus funds in the American Rescue Plan Act (appropriated in S.B. 21-137). Those funds are available for expenditure through FY 2022-23. Similarly, the FY 2022-23 appropriation includes $205.2 million in one-time funding that originated as federal stimulus funds, and those funds are available through December of 2024.

Other significant sources of state funds include: the Marijuana Tax Cash Fund (MTCF), transfers from the Judicial Department from the Correctional Treatment Cash Fund, the Persistent Drunk Driver Cash Fund, and Medicaid funds transferred from the Department of Health Care Policy and Financing. Federal funds are primarily from the Mental Health Services Block Grant and the Substance Abuse Prevention and Treatment Block Grant.

The following chart depicts funding available for community-based behavioral health services since FY 2013-14.



Office of Civil and Forensic Mental Health

The Department administers and operates two mental health institutes that provide inpatient hospitalization for individuals with serious mental health disorders. These hospitals are located in Pueblo and on the Fort Logan campus in southwest Denver and serve three populations within two categories of resources.

- "Forensic" beds include services for:
  - Individuals with pending criminal charges who require inpatient evaluations of competency to stand trial and/or inpatient services to restore competency.
  - Individuals who have been found not guilty by reason of insanity.
- "Civil" beds include services for:
  - Adults and adolescents who are referred for admission by community mental health centers, local hospitals, or the Department's Division of Youth Services.

In addition to forensic beds at the institutes, the Department contracts with two vendors for *jail based* programs for individuals requiring competency evaluations or restoration services.

- The Restoring Individuals Safely and Effectively (RISE) Program is currently operated by Correct Care, LLC, at the detention facilities in Arapahoe and Boulder counties. Originally funded in FY 2013-14 for 22 beds, RISE expanded to support 114 beds by FY 2020-21. For FY 2021-22, the Department reduced the RISE contract to 92 beds to reallocate resources based on client acuity. The Department reports that it has further reduced the RISE beds for FY 2022-23 (to 78 beds).

- The Department is supporting an additional 12 beds at the Denver Restoration Treatment Unit (DRTU) at the Denver Detention Center.

Finally, the General Assembly approved a request in March 2018 to allow the Office to expand inpatient psychiatric bed capacity by contracting with one or more private hospitals. In FY 2020-21, the Department contracted for a total of 10 beds in private hospitals. For FY 2021-22, the Department reported a total of 18 contracted beds in private hospitals (including 8 funded with state funds and 10 supported by Consent Decree fines). For FY 2022-23, the Department is using federal stimulus funds to contract for a total of 74 private beds using additional federal stimulus funds for the increased number of private beds.

The Institutes are primarily supported by General Fund appropriations. Other sources of revenue include: patient revenues (including federal Medicaid funds transferred from the Department of Health Care Policy and Financing and federal Medicare funds), funds transferred from the Department of Corrections (DOC) for food services provided to DOC facilities on the Pueblo campus, and marijuana tax revenues that support certified addiction counselors at both Institutes. Funding for the institutes is affected by capacity, personnel costs, and operational costs (including medication expenses and the cost of purchasing medical services from local hospitals and medical providers). In FY 2018-19, the General Assembly provided $13.0 million to increase salaries for all direct care job classifications at both institutes as part of an effort to improve employee recruitment and retention.

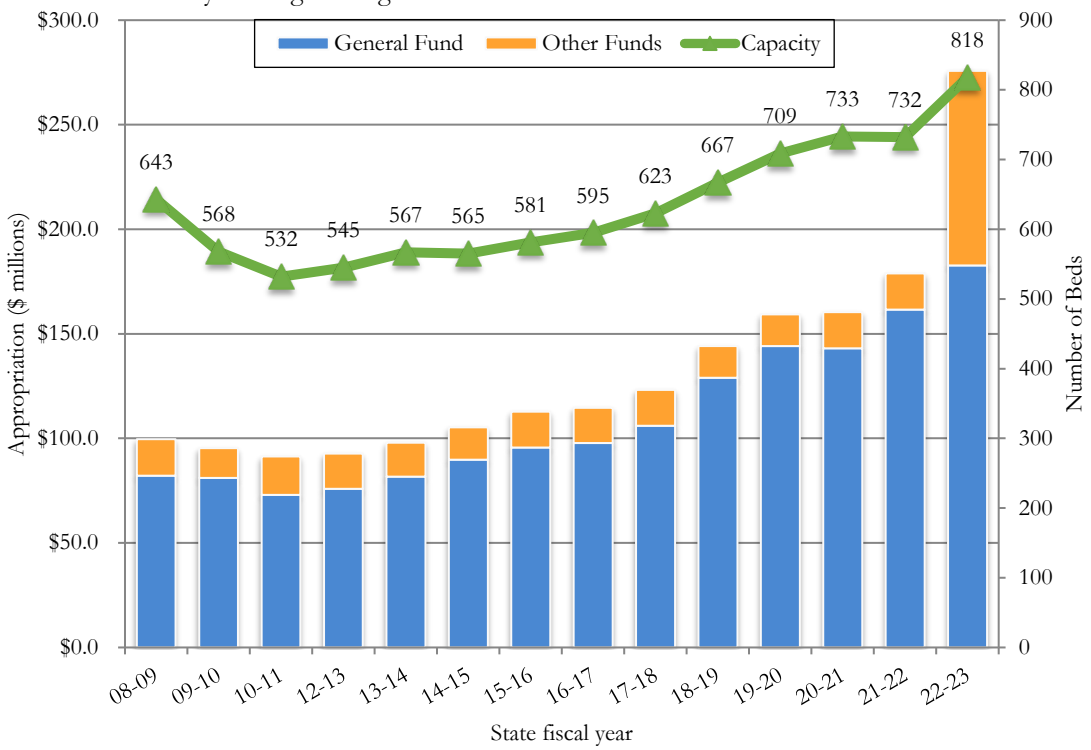
Total capacity has fluctuated with economic conditions (see chart on the following page). Total capacity of the institutes declined in FY 2003-04 during an economic downturn, increased gradually through FY 2008-09, and then declined again through the closure of certain units during the recession driven by the 2008 financial crisis and reductions in funding. However, the General Assembly subsequently worked to reverse this decline in capacity by providing funding for the Department to:

- Add contract bed capacity through the RISE Program and private hospitals.
- Expand by 20 the number of beds at the Pueblo Institute designed to serve long-term patients who are preparing to re-enter the community, thereby freeing up 20 existing adult beds in various units (although ongoing staffing challenges at Pueblo have not allowed the hospital to operate at capacity). <u>However, it is important to note staffing shortages in the past several years have again forced the closure of multiple units at Pueblo, with current capacity down 84 beds below the "funded" amount.</u>
- Relocate some existing programs and utilize vacant units at the Pueblo Institute to add 42 adult civil beds (with the same caution as in the previous bullet).
- Renovate and operate buildings at Fort Logan to support two new units, totaling 44 additional beds. While they had been anticipated to open in October 2022, the Department now reports that staffing challenges delayed that goal. Instead, one unit is opening in December 2022 and the Department hopes to open the other unit in summer of 2023.

During the 2022 Session, the General Assembly appropriated additional funding through H.B. 22-1303 (Increase Residential Behavioral Health Beds) to: (1) renovate an existing building at Fort Logan to provide 16 more residential beds; (2) reopen three Department of Human Services on July 1, 2023, to provide 18 additional beds; (3) contract for an additional 107 private beds beginning during FY 2022-23.

The following chart depicts recent changes in the Institutes' funding and potential/funded bed capacity. Capacity figures reflect both civil and forensic beds, including the RISE Program, funded private psychiatric beds, and the Denver Restoration Unit.

Funding and *potential* capacity decreased from FY 2008-09 to FY 2010-11 but have increased since then. Note: the capacities shown here do not reflect current unit closures driven by staffing shortages.



However, as noted above, the system is not currently operating at its "funded" capacity. The count of 818 potential beds shown for FY 2022-23 includes a total of shown above includes 106 beds that are not currently available because of staffing shortages.

The appropriations reflected in the chart above do not include amounts appropriated for capital construction, including:

- $5.4 million appropriated in FY 2017-18 for a new high-security unit at Pueblo that became operational in FY 2020-21).
- $17.8 million appropriated in FY 2019-20 for the renovation at Fort Logan to add the 44 beds discussed above.
- $7.0 million appropriated in FY 2022-23 for additional renovations at Fort Logan.
- $3.7 million appropriated in FY 2022-23 for renovation of existing group home buildings to create mental health residential facilities.

SUMMARY: FY 2022-23 APPROPRIATION & FY 2023-24 REQUEST

Department of Human Services Behavioral Health Divisions						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2022-23 APPROPRIATION:						
H.B. 22-1329 (Long Bill)	453,316,755	311,307,296	74,066,825	25,281,976	42,660,658	1,581.9
Other legislation	302,357,318	14,958,112	287,354,649	44,557	0	47.5
TOTAL	**$755,674,073**	**$326,265,408**	**$361,421,474**	**$25,326,533**	**$42,660,658**	**1,629.4**
FY 2023-24 REQUESTED APPROPRIATION:						
FY 2022-23 Appropriation	$755,674,073	326,265,408	$361,421,474	$25,326,533	$42,660,658	1,629.4
OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH DECISION ITEMS						
R1 State hospital quality assurance	783,260	783,260	0	0	0	6.5
R8 Forensic Services Division capacity expansion	3,704,803	3,704,803	0	0	0	23.2
R9 Salary increase for hospital medical staff	1,808,328	1,808,328	0	0	0	0.0
R10 Community provider rate	2,649,891	2,649,891	0	0	0	0.0
R12 Momentum Program funding	328,747	328,747	0	0	0	0.0
R14 OCFMH data management and reporting	236,314	236,314	0	0	0	2.8
BEHAVIORAL HEALTH ADMINISTRATION DECISION ITEMS						
BHA-R1 Behavioral Health Administration personnel	3,478,525	3,478,525	0	0	0	31.3
BHA-R2 Behavioral health services	5,500,000	5,500,000	0	0	0	0.0
BHA-R3 Behavioral health learning management system	753,386	753,386	0	0	0	0.9
BHA-R4 BHA community provider	5,246,702	3,491,583	1,751,187	3,932	0	0.0
BHA-R5 BHA technical adjustments	0	0	0	0	0	0.0
ANNUALIZATIONS AND OTHER ADJUSTMENTS						
Annualize prior year budget actions	3,610,940	2,937,171	172,321	153,838	347,610	9.1
Indirect cost assessments	672,016	0	382,645	143,030	146,341	0.0
Technical adjustments	70,375	50,015	20,360	0	0	0.0
Annualize prior year legislation	(291,219,493)	(3,507,753)	(287,667,183)	(44,557)	0	6.0
Non-prioritized requests	(1,629,385)	0	0	(1,629,385)	0	0.0
TOTAL	**$491,668,482**	**$348,479,678**	**$76,080,804**	**$23,953,391**	**$43,154,609**	**1,709.2**
INCREASE/(DECREASE)	($264,005,591)	$22,214,270	($285,340,670)	($1,373,142)	$493,951	79.8
Percentage Change	(34.9%)	6.8%	(78.9%)	(5.4%)	1.2%	4.9%

OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH DECISION ITEMS

R1 STATE HOSPITAL QUALITY ASSURANCE: The request includes an increase of $783,260 General Fund and 6.5 FTE to create a Quality Assurance Team for the state hospitals at Pueblo and Fort Logan, with the primary focus this funding on Pueblo. The increase shown here includes $637,385 and 6.0 FTE actually requested in this division and a total of $145,875 and 0.5 FTE for centrally appropriated amounts associated with the requested staff and an additional 0.5 FTE requested in Administration and Finance. The request responds to ongoing concerns about quality assurance at the two hospitals and challenges with remaining compliant with frequent and ongoing changes to regulatory requirements from the Centers for Medicare and Medicaid Services and the Department of Public Health and Environment (as illustrated by a July 2021 citation by the Department of Public

Health and Environment for "immediate jeopardy" violations impacting client safety[3]). The request includes:

- $535,260 to support the 6.5 FTE requested for the Quality Assurance Team which would include the following FTE: 1.0 health professional IV, 3.0 health professional III positions as "occurrence reporters", 1.0 project coordinator, and 1.0 policy advisor III to coordinate policies, records, and database activities. The request also includes 0.5 FTE electronic specialist to maintain additional cameras and equipment required by the recent citations. In the findings following the July 2021 incident, CDPHE stated that the hospital at Pueblo is not appropriately staffed to perform quality assurance activities and maintain patient safety.
- $248,000 per year for the next two years to continue to contract with a national consultant (that has assisted CMHIP in FY 2021-22 and FY 2022-23 in response to the July 2021 incident) to assist with the identification and correction of problem areas. The Department reports that in addition to assisting with the response to the July 2021 citation, the consultant has been instrumental in helping to identify areas of need and inform prompt action to address those areas before problems arise.

For more information, see the third issue brief in this document. The Department has identified this request as theory-informed.

R8 FORENSIC SERVICES DIVISION CAPACITY EXPANSION: The request includes an increase of $3.7 million General Fund and 23.2 FTE in FY 2023-24 (annualizing to $3.7 million and 25.0 FTE in FY 2024-25 and beyond) to expand staff and capacity in the Forensic Services Division (within the OCFMH). The request responds to the ongoing increase in forensic and competency workload (see the second issue brief in this document) and proposes to add:

- 19.0 FTE clinical and administration staff for competency evaluation and restoration services. That number includes the following FTE: 1.0 to create a new deputy director position for the Forensic Services Division, 5.0 psychologist I forensic evaluators, 1.0 psychologist II evaluator supervisor, 2.0 support staff, 1.0 social worker IV program coordinator, 6.0 health professional III forensic navigators, 2.0 contract social workers for case management, and 1.0 health professional III for jail-based restoration services.
- 6.0 FTE to create a Quality Assurance, Policy, and Records Management Work Unit to "ensure the quality of services provided by both internal staff and through contracted vendors."

For additional discussion of this request, see the third issue brief in this document. The Department has identified this request as theory-informed.

R9 SALARY INCREASE FOR HOSPITAL MEDICAL STAFF: The request includes an increase of $1.8 million General Fund in FY 2023-24 (and ongoing) to increase contracted medical staff salaries to improve recruitment and retention of qualified psychiatrists, internal medicine physicians, nurse practitioners, and physician assistants to serve the state hospitals in Pueblo and Fort Logan. The hospitals contract with the University of Colorado for these positions and the Department reports that the University has struggled to recruit qualified candidates for the positions at the current salaries. At the time the decision item was written, Fort Logan had a 29.4 percent vacancy rate for physicians and Pueblo's rate was 11.6 percent. The Department worked with the University and others to conduct

[3] The citation included a total of six violations, four of which were "immediate jeopardy" violations that require immediate correction in order to continue participating in Medicare and Medicaid.

a salary comparison and determined that the current salaries are below market rates and reports that the University's contract administrator has endorsed the increases. The Department last received a similar increase in FY 2018-19, although the salary increases were actually funded in two stages (FY 2018-19 and FY 2020-21). For additional discussion of this request, see the third issue brief in this document. The Department has identified this request as theory-informed.

R10 COMMUNITY PROVIDER RATE: The request includes a common policy 3.0 percent increase in community provider rates. For the OCFMH, the request equates to $2.6 million General Fund. *Community provider rates will be addressed in more detail during the common policy presentation in January.*

R12 MOMENTUM PROGRAM FUNDING: The request includes an increase of $328,747 General Fund to expand the availability of services provided through the Momentum Program. The program (operated through a contract with Rocky Mountain Human Services) provides intensive support services to allow forensic clients to receive competency services in the community rather than remaining in jail or a hospital. The contract requires the program to generally prioritize potential placements in the following order: (1) clients from the state hospitals with barriers to discharge that are preventing discharge without Momentum placement; (2) children and youth with significant placement barriers; and (3) all other clients having difficulties discharging from other hospitals or who are part of Forensic Community Based Services, Forensic Support Team, or Outpatient Community Restoration. Discharging these clients to the community with wrap-around services then makes beds available for additional clients in need of inpatient services.

Placements with existing funding have increased from 32 in FY 2020-21 to 58 in FY 2021-22. The Department estimates that the increase in funding would allow for 76 placements in FY 2023-24. For additional discussion of this request, see the third issue brief in this document. The Department has identified this request as theory-informed.

R14 OCFMH DATA MANAGEMENT AND REPORTING: The request includes an increase of $236,314 General Fund and 2.8 FTE for FY 2023-24 (annualizing to $234,038 and 3.0 FTE for FY 2024-25 and beyond) to provide staff to support information technology and data reporting systems improvements proposed through a companion information technology capital construction request (OSPB IT Capital Construction project 4 – OBH Information Management Systems and Data Reporting, with a briefing scheduled for December 13, 2022). The proposed system is intended to improve the efficiency of management and reporting for forensics data, protect sensitive information, and reduce the need for time-intensive and redundant data entry and management related to the forensics system. The proposed staff include 3.0 data management III positions (requested at the range minimum salary) to support the development and ongoing maintenance of the proposed system which is intended to serve both the state hospitals and the forensics programs.

For additional discussion of this request, see the third issue brief in this document. The Department has identified this request as theory-informed.

BEHAVIORAL HEALTH ADMINISTRATION DECISION ITEMS

BHA R1 BEHAVIORAL HEALTH ADMINISTRATION PERSONNEL: The request includes an increase of $3.5 million General Fund and 31.3 FTE in FY 2023-24 (increasing to $3.5 million and 34.0 FTE in FY 2024-25) for the next phase of the implementation of the BHA as established in H.B. 22-1278. That legislation requires the BHA to be fully operational by July 1, 2024, and added 25.9 new FTE to

the Department of Human Services for FY 2022-23 (a net increase of 14.7 FTE because it also transferred 11.2 existing FTE from the Department of Human Services to the Department of Public Health and Environment). The "base" for the FY 2023-24 appropriation adds 12.1 additional FTE to reflect the second-year impact of the bill as anticipated in the Final Legislative Council Staff Fiscal Note, for a total of 38.0 new FTE. This decision item (BHA R1) proposes an increase of an additional 31.3 FTE for FY 2023-24 to continue to build out the new agency. See the first issue brief in this document for additional discussion of this decision item.

BHA R2 BEHAVIORAL HEALTH SERVICES FOR CHILDREN AND YOUTH: The request includes an increase of $5.5 million General Fund (ongoing in subsequent years) above the current FY 2022-23 appropriation for behavioral health services provided through the Children and Youth Mental Health Treatment Act (CYMHTA). The Committee approved an interim supplemental request in September to add $3.0 million for this program in FY 2022-23 based on increasing caseload. The request for FY 2023-24 represents an increase of $2.5 million above the amount approved by the Committee (but not yet adjusted through an actual supplemental appropriation bill) for FY 2022-23.

BHA R3 BEHAVIORAL HEALTH LEARNING MANAGEMENT SYSTEM: The request includes an increase of $735,386 General Fund and 0.9 FTE in FY 2022-23 (increasing to $755,517 and 1.0 FTE in FY 2023-24 and beyond) to support the "learning management system" that the BHA is constructing pursuant to previous legislation (S.B. 21-137 and S.B. 22-181). The Department is currently expecting to spend a total of $11.4 million in one-time federal stimulus funding to develop the system, including:

- $5.0 million appropriated in S.B. 21-137 as part of the $18.0 million allocated for the Behavioral Health Workforce Development Program. That legislation requires the Department to develop an online training system that allows for accessible statewide training opportunities and an online training curriculum to support a geographically and culturally diverse behavioral health care workforce.
- $4.9 million appropriated in S.B. 22-181. That bill expanded the scope of the system and also required the Department to develop a criminal justice training curriculum that the Department is integrating into the main learning management system.
- $1.5 million in stimulus block grant funding (not appropriated by the General Assembly).

The Department has contracted with the University of Colorado (who has contracted with a vendor) to build the system. The Department's goal is to build on the core learning hub to provide a "one-stop shop" to support the needs of the behavioral health workforce. In addition to the training platform and curriculum, the Department intends to use the site as a way to connect workers to career pathways, track certifications not regulated by the Department of Regulatory Agencies (such as peer support specialists), provide tracking for continuing education and professional development credits, among other uses. Although the previous legislation provided funding for system development, the Department has not received funding for ongoing maintenance and support. This request seeks the funding and staff to maintain the system going forward.

BHA R4 COMMUNITY PROVIDER RATE: As with the division above, the request includes a common policy 3.0 percent increase in community provider rates for programs funded through the BHA. For this division, the request equates to $5.2 million General Fund. *Community provider rates will be addressed in more detail during the common policy presentation in January.*

BHA R5 TECHNICAL ADJUSTMENTS (REQUIRES LEGISLATION): The request proposes two statutory changes related to appropriations to the BHA that the Department has framed as technical adjustments. Please note that both adjustments require legislation and the Department is not requesting these as Joint Budget Committee bills. The changes include:

- A request to remove the statutory requirement that the Care Navigation Program contractor be the same contractor as the operator of the 24-hour statewide crisis hotline. House Bill 19-1287 (Treatment for Opioids and Substance Use Disorders) established the Care Navigation Program and required that the contractor for the program be the same as the contractor for the crisis hotline. It is staff' understanding that this was because the crisis system was the most analogous system at that time. However, the Department argues that conditions have changed and is requesting flexibility to compete the contract for the navigation system.
- A request to continuously appropriate the 988 Enterprise Cash Fund (established in S.B. 21-154 (988 Suicide Prevention Lifeline Network)) to allow the Department to respond to what it reports are unpredictable fluctuations in need for the funds.

ANNUALIZATIONS AND OTHER ADJUSTMENTS

ANNUALIZE PRIOR YEAR BUDGET ACTIONS: The request includes a net increase of $3.6 million total funds, including $2.9 million General Fund, and 9.1 FTE to reflect the FY 2023-24 impact of prior year budget actions, as summarized in the following table.

ANNUALIZE PRIOR YEAR BUDGET ACTIONS						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
Annualize prior year salary survey	$3,619,294	$2,945,525	$172,321	$153,838	$347,610	0.0
FY 2022-23 BA2 Behavioral Health Safety Net	80,611	80,611	0	0	0	1.2
FY 2022-23 R2 CMHIFL 44 bed operating	(88,965)	(88,965)	0	0	0	7.9
TOTAL	**$3,610,940**	**$2,937,171**	**$172,321**	**$153,838**	**$347,610**	**9.1**

INDIRECT COST ASSESSMENTS: The request includes an increase to these divisions' indirect cost assessments.

TECHNICAL ADJUSTMENTS: The request includes an increase to these divisions' indirect cost assessments.

ANNUALIZE PRIOR YEAR LEGISLATION: The request includes a net decrease of $291.2 million total funds (including a net decrease of $3.5 million General Fund) and a net increase of 6.0 FTE to reflect the FY 2023-234impact of bills passed in previous sessions, as summarized in the following table. The reduction is driven by the elimination of one-time funding provided in various 2022 bills.

ANNUALIZE PRIOR YEAR LEGISLATION					
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FTE
HB22-1256 Modifications to civil involuntary commitment	$576,814	$576,814	$0	$0	5.2
HB22-1278 Behavioral Health Administration	556,674	556,674	0	0	7.6
HB22-1061 Modifications to NGRI	33,539	33,539	0	0	0.5
HB22-1249 School security and behavioral health	0	6,000,000	(6,000,000)	0	0.0

ANNUALIZE PRIOR YEAR LEGISLATION					
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FTE
HB22-1281 Behavioral health-care continuum gap grant	(90,000,000)	0	(90,000,000)	0	(0.5)
SB22-196 Health needs of persons in criminal justice system	(50,700,000)	0	(50,700,000)	0	0.0
HB22-1303 Increase residential behavioral health beds	(46,432,445)	0	(46,432,445)	0	(7.0)
SB22-181 Behavioral health workforce	(36,806,984)	0	(36,806,984)	0	0.0
HB22-1386 Competency to proceed and restoration	(29,362,828)	0	(29,362,828)	0	0.0
HB22-1326 Fentanyl accountability	(13,755,154)	(10,630,154)	(3,125,000)	0	0.9
SB22-177 Investments in care coordination	(12,200,000)	0	(12,200,000)	0	0.0
HB22-1283 Youth and family behavioral health	(8,039,926)	0	(8,039,926)	0	0.0
SB22-148 CO Land-based tribe behavioral health grant	(5,000,000)	0	(5,000,000)	0	0.0
SB22-211 Repurpose Ridge View Campus	(44,557)	(44,557)	0	0	(0.4)
HB22-1378 Denver-metro regional navigation	(44,557)	0	0	(44,557)	(0.4)
HB22-1052 Promoting crisis services	(69)	(69)	0	0	0.1
TOTAL	**($291,219,493)**	**($3,507,753)**	**($287,667,183)**	**($44,557)**	**6.0**

NON-PRIORITIZED REQUESTS: The request includes a net decrease of $1.6 million reappropriated funds associated with decision items submitted by other departments. The request includes an increase of $273,706 reappropriated funds from the Department of Corrections associated with food services inflation which is more than offset by a decrease of $1.9 million originating from the Department of Health Care Policy and Financing associated with that Department's maternity equity decision item.

BHA R1 BEHAVIORAL HEALTH ADMINISTRATION PERSONNEL

House Bill 21-1097 (Establish Behavioral Health Administration) and House Bill 22-1278 (Behavioral Health Administration) created the Behavioral Health Administration BHA within the Department of Human Services. House Bill 22-1278 added $3.1 million total funds (including an increase of $3.7 million General Fund) and 25.9 new FTE for the BHA in FY 2022-23 in addition to moving some programs between the Department of Human Services and the Department of Public Health and Environment. For FY 2023-24, the BHA has submitted request R1, proposing increases of $3.5 million General Fund and 31.3 FTE (increasing to 34.0 FTE in FY 2024-25) to support the next phase of BHA implementation. Statute requires the agency to be fully operational by July 1, 2024.

SUMMARY

- House Bill 21-1097 and H.B. 22-1278 established the BHA within the Department of Human Services as the lead behavioral health agency for the State. While it is housed within the Department of Human Services, the Commissioner of the BHA is a cabinet-level position. The bills require the BHA to be fully operational by July 1, 2024. Thus, while H.B. 22-1278 requires a number of structural changes to the State's behavioral health system, many of those changes may not be in place until the end of FY 2023-24.

- The FY 2022-23 Long Bill moved the existing programs, funding, and staff for community-based behavioral health services out of the Office of Behavioral Health and into a newly created division (the BHA), so the majority of the agency's staff and funding are continuing the preexisting programs. However, H.B. 22-1278 did appropriate an additional $3.7 million General Fund and 25.9 FTE to the BHA for FY 2022-23 to stand up the agency and its new responsibilities. The Final Legislative Council Staff Fiscal Note for H.B. 22-1278 anticipated that the changes made in FY 2022-23 would require $5.1 million and 38.0 FTE in FY 2023-24 (an increase of $1.4 million and 12.1 FTE above the FY 2022-23 appropriation) to "annualize" those changes. That annualization is included in the FY 2023-24 request.

- For FY 2023-24, BHA request R1 proposes an increase of $3.5 million General Fund and 31.3 additional FTE (annualizing to 34.0 FTE in FY 2024-25) for the next phase of BHA implementation. Combined with $5.1 million in requested "base" funding associated with the FY 2022-23 appropriation and annualization, the request represents an increase of $8.6 million in "new" funding for the implementation of the BHA (above the programmatic funding that predated the creation of the new agency).

RECOMMENDATION

Staff recommends discussing the BHA's plans for implementation at the upcoming hearing. Staff recommends that the questions address the agency's progress to date (in FY 2022-23), its plans for FY 2023-24 (including the resources requested through BHA R1), and its expectations for full implementation in FY 2024-25.

DISCUSSION

House Bill 21-1097 required CDHS to create the BHA in collaboration with HCPF (which is a major payer for behavioral healthcare through Medicaid), the Division of Insurance (which oversees commercial insurance), and the Department of Public Health and Environment (CDPHE). The bill required the Department to develop a plan for the creation of the BHA by November 1, 2021, [4] and required the establishment of the BHA with specified duties by July 1, 2022.

House Bill 22-1278 established the BHA and specified the duties of the new agency as the statewide leader in behavioral health policy and services. The BHA officially launched in July 2022. However, many of the structural changes (to programs, contractual relationships, and funding) are not required until July 2024 (for FY 2024-25).

The Department estimates that the BHA is 30.0 percent operational as of October 2022 and intends to be 50.0 percent operational (based on newly hired staff) by the end of FY 2022-23. As required by the two bills, the BHA expects to be fully operational as of July 1, 2024 (with the staff requested through BHA R1 representing a component of the next phase of implementation).

ROLE OF THE BHA

While CDHS and HCPF account for the majority of state level funding for behavioral health, the inventory informing the BHA plan identified more than 100 programs spread across 9 different state departments (at least 14 state agencies) and totaling more than $1.5 billion in total funds.[5] That count does not include programs operated by local governments or other partners.

In contrast to the plan for the Department of Early Childhood, the BHA legislation did not involve large scale movements of programs between agencies. Instead, the legislation places responsibility for leadership and coordination with the BHA but leaves nearly all of the existing programs in place in their current departments, at least for the time being. The two exceptions to that theme were: (1) moving a variety of prevention-related programs from the Department of Human Services to CDPHE to centralize prevention responsibilities in that department and (2) moving licensing responsibilities for "behavioral health entities" from CDPHE to the BHA to centralize behavioral health provider licensing within the BHA. Other than those limited moves, the current plan for the BHA focuses on the BHA providing leadership, coordination, and standardization across the existing programs and agencies.

GOVERNANCE STRUCTURE

The BHA will be housed within CDHS, at least until 2024. In terms of leadership, a cabinet-level Commissioner heads the BHA as a peer to the executive directors of other departments, with assistance and advice from an advisory council representing a broad spectrum of stakeholders in behavioral health. In turn, a variety of working groups or committees will support the Advisory Council.

[4] The report is available at: https://drive.google.com/file/d/13H2jGAApljrItLdeljywwB4PvjDNcv6-/view

[5] The departments include: CDHS, HCPF, CDHPE, Corrections, Education, Judicial, Labor and Employment, and Public Safety.

FY 2022-23 APPROPRIATIONS

The FY 2022-23 Long Bill reorganized behavioral health-related appropriations to the Department to reflect the new role of the BHA. Those changes moved $247.5 million total funds (including $126.4 million General Fund) from the OBH into the into the newly created BHA division in the Long Bill, leaving the forensic programs and the state hospitals in the OBH.

House Bill 22-1278 appropriated an additional $3.7 million General Fund and 25.9 FTE to the BHA for FY 2022-23 to support the first phase of implementing the agency's *new* responsibilities (in addition to the programs and resources transferred from (OBH). The new appropriations in H.B. 22-1278 included funding for leadership staff and operations; finance (particularly since the BHA is operating largely independently of the finance structure in the Department); quality and standards; statewide programs, technical assistance, and innovation; strategy, planning, and engagement; and data strategy and analytics.

FY 2023-24 REQUEST

The Committee may wish to consider the request for FY 2023-24 in two parts: (1) the continuation of phase 1 reflecting the FY 2023-24 impact of the appropriations in H.B. 22-1278; and (2) the "new" appropriations for "phase 2" requested in BHA R1.

PHASE 1 – ANNUALIZATION OF H.B. 22-1278. Building on the base of appropriations in H.B. 22-1278, the Final Legislative Staff Fiscal Note for that bill anticipates a need for $5.1 million and 38.0 FTE for the FY 2023-24 impact of the appropriations provided for FY 2022-23 (an increase of $1.4 million and 12.1 FTE above the FY 2022-23 appropriations). That amount is spared throughout multiple divisions within the Department (including the BHA and other divisions that are supporting the BHA's operations). The Department's request includes a total increase of $1.2 million General Fund and the 12.1 FTE assumed in the Fiscal Note to "annualize" the bill. Of that total, $556,674 General Fund and 7.1 FTE are actually within the BHA (with the entire increase requested for the Community Behavioral Health Administration Program Administration line item).

PHASE 2 – BHA R1 AND NEW APPROPRIATIONS FOR FY 2023-24: BHA request R1 proposes an additional increase of $3.5 million General Fund and 31.3 additional FTE (annualizing to 34.0 FTE in FY 2024-25) for the next phase of BHA implementation. The requested staff fit into seven categories built around the BHA's additional responsibilities as defined in H.B. 22-1278. The proposed positions are briefly outlined below.

Quality and Standards (6.0 FTE): One focus of the BHA is evaluating and promoting the use of clinical best practices statewide. A related goal is ensuring that managed care practices in the state support access to high-quality services. The FY 2022-23 appropriation added 6.0 FTE for quality and standards work. Request R1 includes an additional 6.0 FTE, including:

- 1.0 FTE nurse consultant to provide medical consultation services to the quality and standards division and the BHA as a whole.
- 5.0 FTE project manager I positions to perform licensing duties for all licensed facility types and to support the development of the BHA's grievance policy.

Statewide Programs, Technical Assistance, and Innovation (2.0 FTE): House Bill 22-1278 added 5.0 FTE to provide dedicated resources for workforce development, technical assistance, and system navigation support. Request R1 seeks 2.0 FTE program manager II positions to improve and ensure collaboration

between the workforce development, care coordination, and clinical services units, as well as technical assistance provided through those programs.

Finance (6.0 FTE): House Bill 22-1278 provided funds for 6.0 new FTE in finance to support budgeting, accounting, contracting, grants, and provider rate analysis. Request R1 seeks 6.0 additional FTE for FY 2023-24, including:

- 1.0 FTE budget and policy analyst III to serve as the safety net budget analyst.
- 1.0 FTE budget and policy analyst V to supervise the budget unit and manage the BHA's independent (of CDHS) budget process as well as the collaborative interdepartmental behavioral health budget process.
- 1.0 FTE contract administrator III to support expanded contracting functions at the BHA, such as universal contract provisions and value-based payment requirements.
- 1.0 FTE grants specialist III to focus on additional and non-traditional behavioral health grant opportunities.
- 1.0 FTE rate/financial analyst III to provide analytical support to inform statewide multi-payer strategy.
- 1.0 FTE rate/financial analyst IV to function as the manager of rate and payment reform and financial strategy unit.

Strategy, Planning and Engagement (5.0 FTE): House Bill 22-1278 added 2.0 FTE to support new functions/responsibilities for the agency, including statewide grievance support, stakeholder and community engagement, and interagency relationships with the other agencies with behavioral health responsibilities. Request R1 proposes five additional FTE:

- 1.0 FTE liaison III to support coordination across BHA teams to ensure strategic planning.
- 3.0 FTE liaison IV for outreach outside of the BHA. That includes one position specifically focused on the BHA's strategy for homelessness prevention and resolution, one position specifically focused on direct engagement with the community for BHA strategic planning, and one position to support collaboration among state agencies and local governments.
- 1.0 FTE project manager II to design and implement the BHA's strategy to engage and collaborate across multiple state agencies and local governments around key behavioral health initiatives.

Policy and External Affairs (2.0 FTE): Request R1 seeks 2.0 positions focused on policy and external affairs, that would add to related positions in leadership and operations funded in H.B. 22-1278 (that bill funded a communications manager, a legislative liaison, a community engagement specialist, and a marketing and communications specialist). Anticipating increased involvement in legislative and policy discussions for the BHA and across partner agencies, the request for FY 2023-24 includes:

- 1.0 FTE liaison III to "drive external partnerships and administer continuous stakeholder engagement forums." The position is proposed as subject matter expert in BHA rule planning and legislative implementation.
- 1.0 FTE policy advisor IV to support continuous rule development and drive rule drafting/updating, in addition to providing behavioral health policy expertise.

Health IT (9.0 FTE): The BHA reports that one of the major drivers for the agency's creation was the fragmentation of data collection, systems, and processes across the behavioral health system. In response, the BHA is developing a multi-year strategy to grow and evolve the "behavioral health technology ecosystem" to collect and utilize a growing amount of data to improve services. In addition

to the existing data staff previously in OBH, H.B. 22-1278 supported an additional data manager position for FY 2022-23. Request R1 proposes 9.0 additional FTE for FY 2023-24:

- 1.0 FTE project manager II to oversee a team of specialists to incorporate data analytics into best practice dissemination and assistance.
- 4.0 FTE statistical analyst III positions to support a variety of data initiatives. One position would serve as the lead for "community-engaged and community-guided" data initiatives to incorporate disempowered and oppressed communities in the data analysis system. One position would focus on the spatial and tabular needs of the BHA, including geographic information systems and other spatial data resources. The additional two positions would support monitoring and evaluation activities.
- 1.0 FTE statistical analyst IV to oversee a team of data visualization specialists.
- 3.0 FTE data management IV positions. One would be the data standards and conversion specialist who ensures the agency is using health information standards appropriately and effectively. Another position would be a business intelligence analyst that focused on the use of information to support decision making. The final position would be a public facing product domain systems specialist/administrator.

Operations (4.0 FTE): House Bill 22-1278 provided funding to support an operations director and a human resources specialist. Request R1 seeks 4.0 additional FTE focused on operations:

- 1.0 FTE human resources specialist III to assist with all aspects of hiring and human resources.
- 3.0 FTE program assistant I positions to provide support for the variety of new teams at the BHA.

POINTS TO CONSIDER

Staff will continue to work with the Department to understand workload measures and how these positions fit in with the existing BHA staff (both the FTE associated with H.B. 22-1278 and the pre-existing staff that moved from OBH to the new agency). The amount of organization and budgetary change taking place in FY 2022-23 and FY 2023-24 makes description of the "current state" of the BHA challenging because it is rapidly changing. The amount of movement also makes analysis of the (significant) incremental increase proposed in request R1 challenging.

However, it is clear that H.B. 22-1278 added significant new responsibilities to the BHA, for capacities and programs that did not exist in the Department prior to the creation of the new agency. Staff assumes that those changes will require additional staff as the BHA moves toward full implementation.

Staff also notes that the Department's "plan" for the BHA (submitted in the fall of 2021) anticipated a need for $3.4 million in additional funding and 40.0 FTE in FY 2023-24, similar amounts to those requested in R1. Those amounts are difficult to compare because the timing of implementation may have varied between the Department's original plan and the final legislation. However, the request is roughly in alignment with the incremental increase that the Department had anticipated in the planning document.

UPDATE ON FORENSIC SERVICES AND COMPETENCY

For over a decade, the Department of Human Services and the General Assembly have been working to address issues related to competency evaluation and restoration services, including significant additional investments during the 2022 Session. A 2019 consent decree sets requirements for the timing of evaluation and restoration services. In spite of the State's efforts, the waitlist for competency services is at an all-time high, forcing additional time in jail for individuals awaiting services and continuing to require the maximum payment fines and fees under the consent decree. This issue brief provides an update on the actions taken during the 2022 Session, and the status of competency services, related decision items submitted for FY 2023-24, and potential costs for FY 2023-24 associated with the consent decree.

SUMMARY

- The Department of Human Services (DHS) is responsible for evaluating the competency of individuals charged with a crime and for providing competency restoration services when an individual is determined to be incompetent to proceed to trial. The Colorado Mental Health Institute at Pueblo (CMHIP) provides these services unless the Court authorizes these services to be provided in another setting such as in jail or in the community.

- In 2011, Disability Law Colorado brought legal action against the Department of Human Services to challenge the length of time pretrial detainees wait in Colorado jails to receive competency evaluations or competency restoration services. This legal action resulted in the current consent decree, entered into in March 2019. Thus, for over a decade, the Department of Human Services and the General Assembly have been working to address issues related to competency evaluation and restoration services, with repeated investments to expand capacity for those services at the Mental Health Institutes, in jail-based programs, and in the community.

- During the 2022 Session, the General Assembly appropriated significant additional funding for forensic and competency services, including multiple appropriations of one-time stimulus funds as well as ongoing changes (including $11.7 million General Fund and 95.9 FTE to operate 44 new beds at Fort Logan.

- In spite of those investments, the waitlist for competency services has again been at an all-time high in the fall of 2022, and the inpatient system is operating well below its potential capacity, largely because of staffing challenges at both of the state hospitals. Unit closures at Pueblo have left 84 beds unavailable there, and Fort Logan has had to delay the opening of the two new units (and 44 beds) in the current year as a result of hiring challenges.

- The FY 2022-23 appropriation includes $12.0 million General Fund for fines and costs associated with the consent decree. Staff and the Department expect that the State will continue to pay the maximum amount allowed under the consent decree in both FY 2022-23 and FY 2023-24. However, the Department has indicated that it expects $12.0 million to be sufficient for FY 2023-24, with no change from the FY 2022-23 appropriation.

RECOMMENDATION

Staff recommends that the Committee discuss the status of competency services with the Department at the upcoming hearing. Specifically, staff recommends that the Committee ask the Department to address:

- An update on system capacity, including the changes made during the 2022 session with both one-time and ongoing funding.
- The ongoing drivers of the waitlist for competency services and anticipated budgetary implications of the lack of compliance with the Consent Decree.
- Any plans to staff the Mental Health Institute at Pueblo and reopen the closed units and to staff the new units at Fort Logan.
- How the one-time investments made in the 2021 and 2022 legislative sessions fit into the Department's overall efforts to address competency, particularly in combination with the FY 2023-24 decision item requests related to competency.
- Its ongoing efforts to work cooperatively with local behavioral healthcare providers and stakeholders within the criminal justice system to implement community-based competency restoration education services that are integrated with locally available behavioral health services as required by S.B. 17-012.
- Any additional options that could allow the State to achieve compliance with the consent decree and provide competency services in a timely manner.

DISCUSSION

For over a decade, the Department of Human Services and the General Assembly have been working to address issues related to competency evaluation and restoration services. Previous JBC Staff briefings have provided significant historical context and detail on this topic, including the General Assembly's many efforts through funding and legislation to address competency issues.[6]

This issue brief does not seek to repeat that historical context. Rather, this issue brief seeks to provide an update on the status of competency services and the Consent Decree with Disability Law Colorado.

BACKGROUND

The Department of Human Services (DHS) is responsible for evaluating the competency of individuals charged with a crime and for providing competency restoration services when an individual is determined to be incompetent to proceed to trial. The Colorado Mental Health Institute at Pueblo (CMHIP) provides these services unless the Court authorizes the provision of services in another setting such as in jail or in the community.

COMPETENCY EVALUATION

The court may order a psychiatric evaluation to determine whether an individual with pending criminal charges (the defendant) is competent to proceed at a particular stage of the criminal proceeding[7]. The issue of competency may be raised by the court, the defense, the prosecution, or the State Board of

[6] For detailed discussions from prior years, see the issue briefs beginning on page 12 of the FY 2019-20 briefing (available at https://leg.colorado.gov/sites/default/files/fy2019-20_humbrf4.pdf) and on page 13 of the FY 2020-21 briefing (available at https://leg.colorado.gov/sites/default/files/fy2020-21_humbrf3.pdf).

[7] Section 16-8.5-101, et seq., C.R.S.

Parole. A defendant is determined to be "incompetent to proceed" if he or she has a mental disability or developmental disability that: (1) prevents him or her from having sufficient present ability to consult with the defense attorney with a reasonable degree of rational understanding in order to assist in the defense; or (2) prevents him or her from having a rational and factual understanding of the criminal proceedings[8].

Please note that the standard for competency is lower than the standard imposed for a sanity evaluation, in part because it only measures the defendant's "present" ability rather than the defendant's mental status at the time of the crime. The competency status of a defendant can change at any time based on factors such as whether they are taking their medication consistently.

The Department of Human Services is statutorily obligated to conduct a court-ordered competency evaluation and provide a report to the court[9]. The evaluation can be conducted by or under the direction of the Department by a licensed physician who is a psychiatrist or a licensed psychologist. A competency evaluator is required to have some training in forensic competency assessments, or be in forensic training and practicing under the supervision of a psychiatrist or licensed psychologist who has forensic expertise.

The court is required to release the defendant on bond if the defendant is otherwise eligible for bond, and the court is required to order that the evaluation be conducted on an outpatient basis or at the place where the defendant is in custody. The court may, however, order the defendant placed in the custody of the Department to conduct an evaluation under certain circumstances. The Department refers to evaluations that occur at CMHIP, CMHIFL, within the Restoring Individuals Safely and Effectively (RISE) Program, the Denver Restoration Unit, or in private inpatient psychiatric beds as "inpatient" evaluations. An "outpatient" evaluation is also conducted by CMHIP staff or CMHIP contractors, but the evaluation is done at the county jail, prison, or juvenile detention facility where the defendant is in custody, or at another location in the community if the defendant is released on bond.

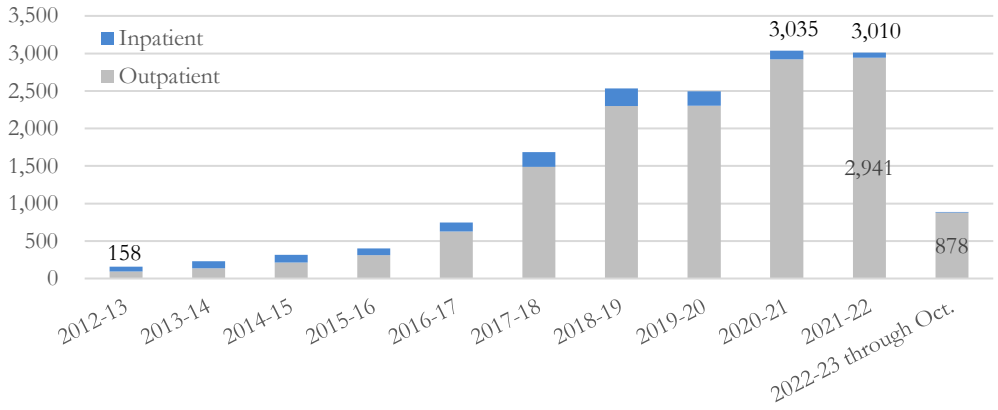
Not all competency evaluation orders result in the completion of a competency report to the court, as the competency examination order may be subsequently withdrawn by the court for a variety of reasons (e.g., the charges were dropped or new orders were issued to change the evaluation location between inpatient and outpatient settings).

The number of court ordered competency evaluations has grown dramatically in recent years, from 158 in FY 2012-13 to 3,035 in FY 2020-21, with a small decrease to 3,010 in FY 2021-22 (see the chart on the following page). Staff notes that the vast majority of the evaluations are now provided in an outpatient setting, most often in jail, rather than transferring to CMHIP for the evaluations. In FY 2021-22, 1,894 (64.4 percent) of the 2,941 outpatient evaluations were jail-based.

[8] It is staff's understanding that there is a long-standing legal recognition that a criminal trial of an incompetent defendant violates the defendant's right to due process of law and the right to have assistance of counsel for his defense.

[9] Please note that while H.B. 18-1109 created a process for the State Board of Parole to refer a case to the sentencing trial court for a finding of competency, the Department of Human Services is not responsible for conducting the competency evaluation and is not required to take custody of an offender for competency restoration services.

The number of court ordered competecy evaluations has grown dramatically in the past 10 years, although the exams have shifted largely to outpatient settings.



COMPETENCY RESTORATION SERVICES

If a defendant is determined competent to proceed, the court orders that the suspended proceeding continue (or, if a mistrial has been declared, the court resets the case for trial). If a defendant is determined to be incompetent to proceed, the court has several options[10]:

- If the defendant is charged with certain offenses (misdemeanors, misdemeanor drug offenses, or petty offenses) and is eligible for civil certification then the court shall will order dismissal of charges once the certification process is initiated. Similarly, the statute directs the court to dismiss charges when the defendant is incompetent to proceed and it is determined that restoration is unlikely.
- If the defendant is on bond or summons, the court is required to order outpatient restoration unless the Department recommends inpatient restoration services. The court must require, as a condition of bond, that the outpatient services occur.
- If the defendant is in custody on a misdemeanor, petty offense, or traffic offense, and is determined to be incompetent to proceed, the court must schedule a bond hearing within seven days of the determination, with a presumption that the court will order a personal recognizance bond and outpatient services. The statute requires the court to make "findings of fact that extraordinary circumstances exist to overcome the presumption of release by clear and convincing evidence."
- If the court finds the defendant is not eligible for release from custody or not able to post the bond, the court may commit the defendant to the custody of the Department so that the defendant can receive restoration to competency services on an inpatient basis.

It is staff's understanding that services that are provided to restore an individual's competency may differ from those provided to a patient with a different legal standing (e.g., an involuntary civil commitment), and may not necessarily address all of a patient's symptoms or mental health needs[11].

[10] Section 16-8.5-111, C.R.S.

[11] In a 2003 decision [*Sell v. United States*, 539 U.S. 166 (2003)], the U.S. Supreme Court imposed limits on the right of a lower court to order the forcible administration of antipsychotic medication to a criminal defendant who had been determined to be incompetent to stand trial for the sole purpose of making them competent and able to be tried.

The Department currently utilizes a multidisciplinary team consisting a psychiatrist, psychologist, social worker, nursing staff, mental health clinicians, and other clinical disciplines. Once the defendant's multidisciplinary treatment team determines that competency has been restored, the Department conducts a competency evaluation. If the Department evaluator agrees, the Department prepares a report to the court; the court determines whether the defendant is restored to competency. At such time as the Department recommends to the court that the defendant is restored to competency, the defendant may be returned to custody of the county jail or to previous bond status and the case proceeds. The court is required to credit any time the defendant spent in confinement.

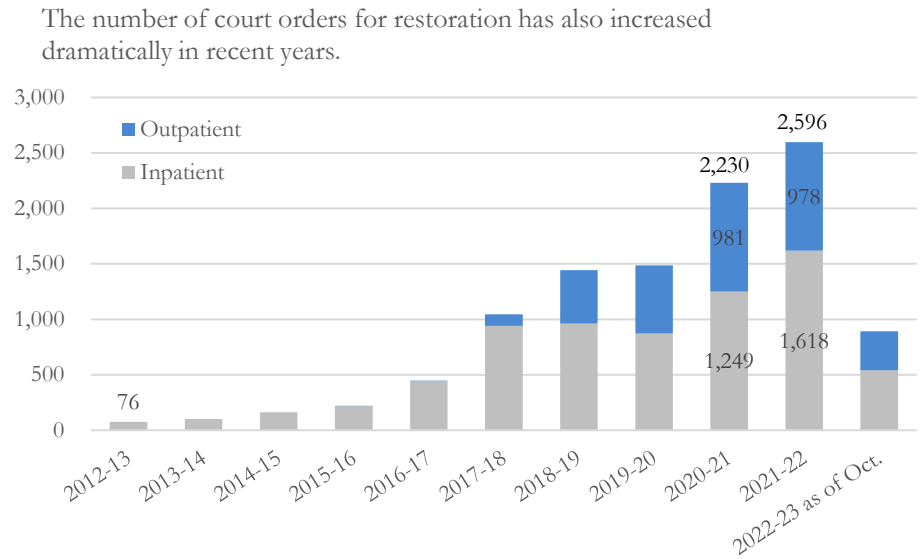
An individual may not be confined for purposes of receiving competency restoration treatment for a period in excess of the maximum term of confinement that could be imposed for the offenses with which the defendant is charged, less any earned time[12]. The court is required to review the case at least every three months with regard to the probability that the defendant will eventually be restored to competency and the need for continued confinement.

Current statute also specifies timelines for the recurring review of competency proceedings to assess the likelihood of successful restoration. If the court finds that there is substantial probability that the defendant will not be restored to competency within the foreseeable future, the court may order the release of the defendant from commitment through one or more of the following options[13]:

- Upon motion of the district attorney, the defense, or the court itself, the court may terminate the proceeding.
- The court or a party may commence a civil proceeding for involuntary commitment if the defendant meets the requirements for such commitment[14].
- The court or a party may initiate an action to restrict the rights of an individual with a developmental disability who is eligible for services[15].

Similar to the trend in evaluations, the number of court ordered restoration services has also increased dramatically in the past 10 years. The following chart illustrates changes in the number of court-ordered competency *restorations* since FY 2012-13, with the most significant increases occurring in the last four fiscal years. The chart breaks out the setting in which the restoration treatment was provided (inpatient includes both CMHIP and the RISE program). While the number of court orders that allow competency restoration to happen on an outpatient basis has increased, the majority (56.0 percent) were still required to be conducted on an inpatient basis in FY 2021-22.

[12] Section 16-8.5-116 (1), C.R.S
[13] Section 16-8.5 116 (2), C.R.S.
[14] Article 65 of Title 27, C.R.S.
[15] Article 10.5 of Title 27, C.R.S.



INCREASING FUNDED CAPACITY – BUT STILL NOT MEETING DEMAND

ACTIONS THROUGH FY 2021-22

The General Assembly has taken repeated actions to increase capacity for competency services in recent years.

- Those changes have included adding units at CMHIP and shifting existing capacity from civil beds to forensic beds, increasing forensic capacity but decreasing the beds and services that would otherwise have been available for civil patients. However, staff notes that the "funded capacity" at CMHIP continues to be an illusion. While the FY 2022-23 appropriation assumes that CMHIP should have 516 total beds available (including 422 forensic beds and 94 civil beds), staffing shortages have forced the complete closure of three units and partial closure of one additional unit, reducing CMHIP's actual capacity by 84 beds in the current year.[16] At present, the Pueblo's adolescent beds are the hospital's only beds that are accessible to the public. The other civil patients all started as forensic patients but their status shifted to civil during their stay at CHMIP.
- The RISE program has also grown, from 22 beds in the initial appropriation to an upper limit of 114 by FY 2020-21. In FY 2021-22, the Department adjusted the contract to account for a bed guarantee of 92 beds to account for the program's beds that are actually utilized and an increased bed rate from the Arapahoe County Sheriff's Department. For FY 2022-23, the number has reduced to 78 beds.
- In addition, the Department has General Fund appropriations to cover 8 additional private psychiatric beds. In FY 2021-22, the Department also used a temporary allocation from the Consent Decree fines (as authorized by the Fines Committee) to cover an *additional* 12 private beds at a newly established Denver Restoration Unit. The Fines Committee approved the use of the consent decree funds on a time-limited basis during the pandemic, and those funds are not from the Department's appropriations. According to the Department, those changes were necessary because increased levels of acuity were not appropriate for the available RISE beds.
- Recognizing the shortfall and growing waitlist for competency services (discussed below), the Governor's Office also allocated $19.7 million in federal stimulus funds from the American Rescue Plan Act of 2021 to contract for an additional 64 competency beds in private hospitals in FY 2021-22.

[16] One of the closed adult units has been repurposed as a medical unit for COVID-positive patients.

ACTIONS FROM THE 2022 LEGISLATIVE SESSION

The General Assembly took a number of actions during the 2022 Session to add capacity related to the competency system. Major actions include:

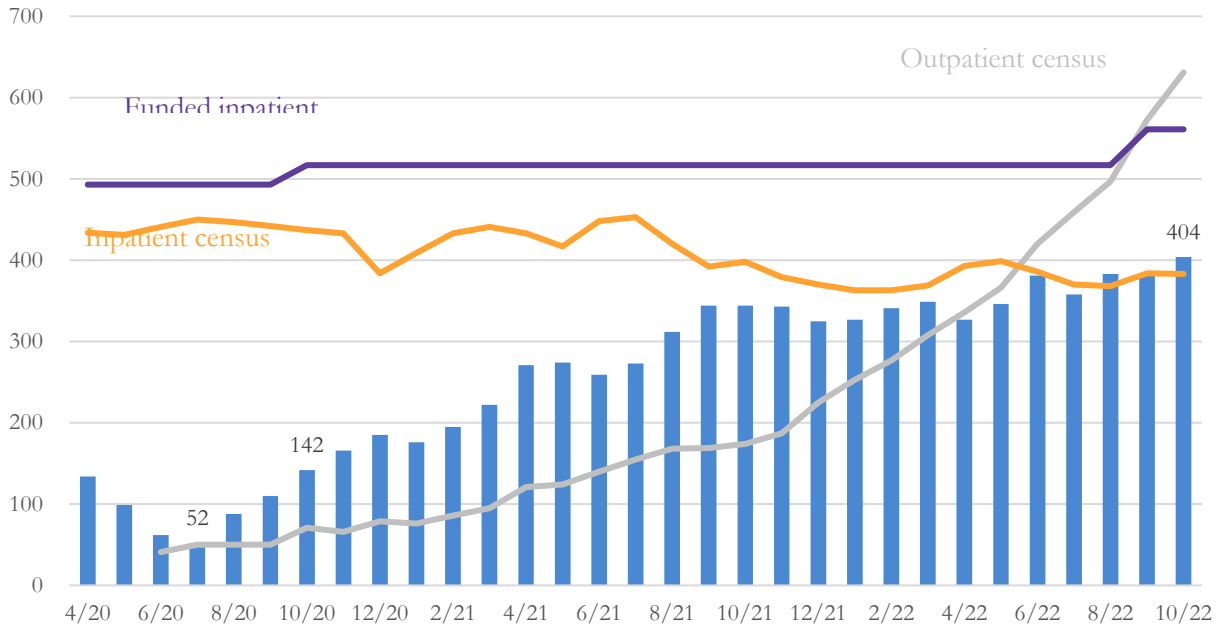
- An increase of $11.7 million General Fund and 95.9 FTE for FY 2022-23 to staff the two new units (44 beds) at Fort Logan. While opening has been delayed by staffing challenges, the Department held an event to celebrate the opening of the first unit on December 5, 2022.
- House Bill 22-1303 (Increase Residential Behavioral Health Beds) appropriates a total of $57.8 million cash funds from the Behavioral and Mental Health Cash Fund (originating as federal ARPA funds) to the Department of Human Services. That includes $7.0 million for capital construction to renovate a building at Fort Logan to add at least 16 more inpatient beds and $3.7 million for capital construction to renovate two group homes and provide mental health residential facilities, as well as operating funding for those facilities for FY 2023-24 and part of FY 2024-25. In addition, the bill also appropriates $33.5 million to support additional contract beds. Because all of these appropriations are from the ARPA funds, they are available through December 30, 2024.
- House Bill 22-1386 (Competency to Proceed and Restoration to Competency) makes changes to statute related to competency evaluations and proceedings. The bill makes the following appropriations: (1) $28.6 million from the Economic Recovery and Relief Cash Fund (originating as ARPA funds) for additional contract beds; and (2) $800,000 from the Behavioral and Mental Health Cash Fund (also originating from ARPA) to conduct a feasibility study for the renovation of a hospital facility in Adams County. Those appropriations remain available through December 30, 2024.

CONTINUED GROWTH IN THE WAITLIST

In spite of increasing investments in capacity for inpatient competency services, the waitlist for competency services has continued to grow since July 2020. While it is still too early to expect to see results from many of the investments made during the 2022 Session, the trend remains concerning. The chart below attempts to summarize the major relevant variables.

- As shown by the blue bars in the chart, the waitlist has grown from a low of 52 individuals awaiting services in June 2020 (when the waitlist was arguably artificially low due to COVID impacts) to more than 400 individuals as of the end of October 2022 (the waitlist bars reflect the actual waitlist as of the last day of each month).
- As shown by the various lines on the chart, the inpatient and outpatient censuses have fluctuated significantly over that period, while the waitlist has continued to grow. The inpatient census has also remained well below the system's theoretical (funded) capacity.

Following reductions to the waitlist (bars) in early 2020, it has grown to more than 400 individuals since then.



IMPLICATIONS FOR THE CONSENT DECREE AND APPROPRIATIONS

In March 2019, DHS reached an agreement with the plaintiffs in a federal lawsuit concerning the length of time that pre-trial detainees wait for court-ordered competency services. The parties filed the agreement in federal court in the form of a consent decree. The consent decree resolves the lawsuit and replaces the previous Settlement Agreement. The consent decree will be legally binding and judicially enforceable through December 1, 2025 (unless the Department sustains a two-year period of compliance, in which case the Consent Decree is terminated). Until the consent decree is terminated, DHS' compliance will be overseen by the Court and a Special Master (Groundswell Services, Inc., and its team of forensic mental health experts).

The consent decree requires CDHS to take a number of actions (for detail on the broader requirements of the decree, please see the FY 2020-21 JBC Staff Briefing Document for the Office of Behavioral Health).[17] Directly relevant to this discussion, the consent decree establishes a new set of timeframes for competency evaluation and restoration services and reduces those timeframes over time.

- For competency evaluations, the consent decree requires CDHS to offer admission for inpatient competency evaluations within 21 days as of June 1, 2019, and within 14 days as of July 1, 2020. For competency evaluations conducted in a county jail, DHS is required to complete the evaluation within 28 days as of June 1, 2019, and within 21 days as of July 1, 2020[18].

[17] See discussion beginning on page 21 at: https://leg.colorado.gov/sites/default/files/fy2020-21_humbrf3.pdf

[18] These timeframes apply to the following 20 counties: Adams; Alamosa; Arapahoe; Boulder; Broomfield; Crowley; Custer; Denver; Douglas; El Paso; Elbert; Fremont; Huerfano; Jefferson; Larimer; Mesa; Otero; Pueblo; Teller; and Weld. The remaining counties are subject to longer timeframes associated with a "hold and wait" process that requires the sheriff to transport the individual to nearest county where services are available, with longer applicable timeframes.

- For competency restoration services, CDHS must offer inpatient treatment with seven days to pretrial detainees who have been ordered to receive inpatient restoration treatment and who: (1) appear to have a mental health disorder that results in the individual being a danger to others or to him or herself, or to be gravely disabled; or (2) have a mental health disorder and delaying hospitalization beyond seven days would cause harm to the individual or to others. For other pretrial detainees who have been ordered to receive inpatient competency restoration treatment, the consent decree establishes maximum timeframes for DHS to offer admission that start at 56 days as of June 1, 2019, and progressively decrease over time to 28 days by July 1, 2021.

In addition, the consent decree establishes fines for each day that a pretrial detainee waits for services beyond those specified timeframes.

- The fines range from $100 to $500 per detainee per day, and the consent decree capped the total amount of fines at $10.0 million for FY 2019-20. That cap increases based on inflation in subsequent years, however, and the Department and JBC Staff anticipate that the State will owe more than $10.0 million in FY 2022-23.
- Actual fines and costs paid for the consent decree were lower in FY 2020-21 ($2.0 million) and FY 2021-22 ($6.1 million) based on impacts associated with COVID-19. However, the maximum returned to the original $10.0 million plus an inflationary increase for FY 2022-23.
- The FY 2022-23 appropriation provides $12.0 million based on inflationary increases since 2020. At this time the Department has not requested change in funding associated with the consent decree for FY 2023-24.

Staff recommends discussing the outlook for competency proceedings with the Department at its upcoming hearing. Staff recommends that those discussions include anticipated progress based on the actions taken in the past several sessions as well as how the Department's proposed increases for FY 2023-24 fit into the picture. Based on the available information, staff and the Department agree that it appears likely that the fines and fees will reach the cap again in FY 2023-24, although the Department currently expects $12.0 million General Fund to be sufficient to cover the fines for the year. Thus, it does not appear that a change in appropriations is necessary for FY 2023-24.

POINTS TO CONSIDER AND FRAME OF REFERENCE

As is clear from the discussion and data above, the competency issue has remained challenging and intractable. While the State's investments have grown significantly, the waitlist and non-compliance with the consent decree have actually worsened, at least since the middle of 2020. However, staff offers the following points for the Committee's consideration, for potential discussion at the hearing, and for overall context.

First, the combination of timing and staffing challenges mean that we don't actually know what impact many of these changes will have. The General Assembly allocated large amounts of money to this problem in the 2022 Session and the impacts of those changes are not yet visible. On the other hand, the persistent and ongoing staffing challenges at the state hospitals risk undermining the State's progress because those critical pieces of the system (suited to the highest acuity and most challenging clients) cannot operate at capacity.

Second, staff thinks it is important to understand that Colorado is not unique in struggling with this specific issue. In response to a question from staff, OCFMH conducted an informal survey of every state to assess the status of competency issues across the nation. While the survey was informal and

one cannot be sure that the data and definitions are truly comparable, it is clear from the results that *many* states are struggling with this issue. (The Department's entire response to staff's question is attached as Appendix D).

The Department received responses from 42 states and the District of Columbia and collected additional information from states' judicial websites, annual reports, and other publicly available sources. Based on that informal survey:

- **Challenges and waitlists are widespread.** While comparison to any particular state is problematic based on the available information, 27 of the 42 responding states reported that they currently have waitlists. South Carolina and the District of Columbia were not included as having waitlists but did report struggling with increasing caseloads, particularly since the start of the pandemic.
- **At least nine other states reported that they currently have consent decrees in place or were in legal action that could result in a consent decree**.
- **Of the 27 states that reported waitlists, Colorado appears to be in the "middle of the pack"** in terms of both the size of the waitlist and the average waiting period for services. There were 13 states that appeared to have longer waitlists, and those states ranged in size from Kansas (roughly half of Colorado's population) to Texas (more than five times Colorado's population) and California (nearly 7 times the population). Meanwhile, some states that appear to have smaller waitlists actually seem to have longer waiting periods for services.

The Department's response also includes some additional information on policies and practices that appear to be correlated with reduced (or no) waitlists. According to the Department the following policies appear to be correlated:

- Some states have laws that always or usually divert certain misdemeanor offenses into the civil mental health system rather than the forensic/competency system. House Bill 22-1386 states a preference that some defendants (for low-level misdemeanors and petty offenses) be released on bond for outpatient services. However, that bill does not require those actions and does not divert those patients into the civil system.
- Colorado's timelines for dismissal of charges (if a defendant has not been restored to competency) are tied to maximum sentences for the alleged offenses, which the Department reports is typical in many states. However, some states such as New York and California are more rigid in their timelines for dismissal for patients that have not been restored to competency.
- Some states limit who can be directed to inpatient services, at least at first. Directing more clients to services in the community can maintain capacity for higher acuity clients and higher-level charges in the inpatient system, while allowing the population directed to the community to transition to inpatient if community-based services are unsuccessful.
- Finally, the Department has indicated that policies for court-ordered involuntary medications seem to be correlated with reduced waitlists because patients that adhere to medication plans may be restored to competency sooner, thereby maintaining "flow" in the system.

With respect to all of these policies, the Department has emphasized that balancing patient/client concerns and public safety requires a robust behavioral health system and safety net to maintain the safety of both patients and the public with additional services in the community. Looking toward the FY 2023-24 budget process, the following issue brief discusses the Department's decision items for OCFMH and competency.

FY 2023-24 OCFMH DECISION ITEMS

The Department has submitted five decision items for the Office of Civil and Forensic Mental Health (OCFMH) that directly relate to the division's workload and either maintaining or increasing capacity in the forensic behavioral health system. Totaling $6.9 million General Fund and 32.5 FTE in FY 2023-24, the requests include resources to: (1) support a quality assurance team for the state hospital at Pueblo to improve patient safety and sustain capacity at the hospitals in response to a finding by the Department of Public Health and Environment; (2) expand capacity across multiple programs in the Forensic Services Division in response to the division's increasing workload; (3) increase salaries for medical staff (physicians, nurse practitioners, and physician assistants) at the state hospitals to improve recruitment; (4) increase funding and capacity for the Momentum Program which provides intensive wrap-around services for clients in the community; and (5) develop and maintain improved data and reporting systems to support the division.

SUMMARY

- The Department has submitted five decision items seeking increases in funding for OCFMH for FY 2023-24. Totaling $6.9 million General Fund and 32.5 FTE, those items seek to maintain and/or increase capacity throughout the forensic services and competency system.

- The five items are intended to: (1) provide a quality assurance team for the state hospitals (focused primarily on Pueblo) to improve patient safety and sustain capacity; (2) expand staffing and capacity across multiple OCFMH programs in response to increasing workload; (3) increase salaries for specific medical staff (psychiatrists, internal medicine doctors, nurse practitioners, and physician assistants) at the state hospitals to improve recruitment and the ability fill those essential positions; (4) increase funding for intensive wrap-around services provided through the Momentum Program; and (5) develop and maintain improved data and reporting systems.

- Taken as a group, these decision items would impact multiple facets of the forensic/competency system. The increases would follow significant investments of one-time funds by both the General Assembly and the Governor's Office over the past two years (see the next issue brief in this document) as the State continues efforts to improve forensic services and reduce the waitlist.

RECOMMENDATION

Staff recommends that the Committee discuss these decision items with the Department at its upcoming hearing. Staff recommends that the Committee discuss how these five decision items would interact with (and hopefully complement) the significant one-time funding provided in the past two sessions as the State works to improve forensic services for patients and reduce the competency waitlist.

DISCUSSION

The previous issue brief outlines the ongoing challenges facing the State regarding forensic services and competency, as well as actions taken to date by the General Assembly and the Governor's Office

(using one-time funds under the control of the Governor). For FY 2023-24, the Department has proposed five decision items specific to OCFMH, totaling $6.9 million General Fund and 32.5 FTE (see table below). The sections following the table briefly describe each decision item and its justification in relation to forensic services and competency.

FY 2023-24 OCFMH Decision Items				
	FY 2023-24		FY 2024-25	
	General Fund	FTE	General Fund	FTE
R1 State Hospital QA Funding[1]	$783,260	6.5	$783,260	6.5
R8 Forensic services division capacity expansion	3,704,803	23.2	3,697,389	25.0
R9 Salary increase for hospital medical staff	1,808,238	0.0	1,808,238	0.0
R12 Momentum Program funding	328,747	0.0	328,747	0.0
R14 OCFMH data management and reporting	236,314	2.8	234,034	3.0
Total	**$6,861,362**	**32.5**	**$6,851,668**	**34.5**

[1] Current expectations would reduce the amount for R1 to $535,260 in FY 2025-26 with the elimination of $248,000 in contract consultant funding that year.

REQUEST R1 – STATE HOSPITAL QUALITY ASSURANCE FUNDING

Request: Request R1 seeks an increase of $783,260 General Fund and 6.5 FTE in FY 2023-25, with that same amount continuing in FY 2024-25. The request proposes to create a quality assurance team for the state hospitals at Pueblo and Fort Logan with the team FTE housed at, and nearly all of the money requested for, Pueblo (only $50,000 is requested within the Fort Logan line items). The Department indicates that this is the minimum number of staff required by a corrective action plan negotiated with the Department of Public Health and Environment (CDPHE) for the hospital at Pueblo. The requested FTE include:

- 4.0 health professional FTE (1.0 health professional IV and 3.0 health professional III) as "occurrence reporters" and quality assurance monitors. These positions would be responsible for the actual monitoring and implementation of the hospitals' improved quality assurance activities.
- 2.0 FTE (including a project coordinator and a policy advisor III) to maintain the hospitals' policies and ensure compliance with what appear to be ongoing and frequent changes in regulations. These positions would track changes in law and regulations affecting the hospitals and ensure that the policies remain in alignment (and work with the occurrence reporters to ensure that the policies are actually followed and implemented with fidelity).
- 0.5 FTE electronic specialist III to maintain the expanded camera system required by the corrective action plan.

Two items of note for the request itself include:

- Under the Department's current expectations, the total would decrease to $535,260 and 6.5 FTE in FY 2025-26 with the termination of $248,000 funding to support ongoing work with a national consulting firm for the next two years.
- Unlike most General Fund requests for additional FTE, the pay date shift does not apply to this request because the positions are either already hired or in the process of being hired with one-time funding in FY 2022-23.

Justification: The request responds to a corrective action plan agreed to by the Department of Human Services and CDPHE in response to critical incident from July 2021. On July 27, 2021, a patient at Pueblo attempted suicide by hanging and was hospitalized. On August 12, 2021, CDPHE conducted an inspection on behalf of the Center on Medicare and Medicaid Services (CMS) in

response to that incident to verify the hospital's ability to comply with the CMS "conditions of participation." That survey identified six findings related to patient safety, including four "immediate jeopardy" deficiencies that required immediate action by the hospital to address the deficiencies.[19]

The hospital addressed the four immediate jeopardy deficiencies over the following 16 days, during which the hospital was not allowed to admit patients. As directed by the corrective action plan, the Department immediately contracted a national consultant to inform necessary changes to policies and practices at the hospital. The hospital contracted with Chartis for that work and continues to work with the consultant to ensure compliance.

The Department applied for one-time ARPA funding from the Governor's Office for FY 2021-22 and received funding to address the issues for that year. The contract with Chartis began on September 10, 2021, less than two months after the incident in question, with an initial encumbrance of $300,000. However, the consultant costs $500 per hour and the contract was amended twice to increase the encumbrance to a total of $999,500 for FY 2021-22 and further amended to add $320,000 for FY 2022-23.

The four immediate jeopardy findings were then downgraded to "condition level deficiencies. As of October 2022, two of those condition level deficiencies remain:

- Failure to provide adequate resources for quality assurance and performance improvement activities, including an incident management system, updated video monitoring cameras, suicide mitigated doors, and adequate quality assurance monitoring for follow up to complaints (**this remaining finding is the subject of R1)**.
- Locking patient bedroom doors (automatically locking doors are only permitted for seclusion/restraint rooms).

According to the Department, the services and advice of the consultant have been instrumental to addressing the deficiencies and maintaining the hospital's ability to continue to accept and serve patients. In addition to the 6.5 state FTE, the request includes $248,000 per year for the next two years (FY 2023-24 and FY 2024-25) to retain the support of the consultants on an as-needed basis. However, at a rate of $500 per hour and $4,000 per day, relying on the consultants for ongoing day-to-day support is cost prohibitive and the Department is requesting the additional funding and FTE to support a quality assurance team on an ongoing basis. As noted by the department, the total request for FY 2023-24 (for 6.5 FTE *and* a continued contract for $248,000) is less costly than 10 months of the consultant contract in FY 2021-22.

Points to Consider: As a major point of context, the state hospitals remain central to the Department's forensic services and are central to any efforts to comply with the consent decree. Based on the current models, any effort to reduce or eliminate the waitlist and achieve compliance with the consent decree will require maintaining services at the hospitals. Based on the response to the July 2021 incident and the resulting directed action plan, it appears that Pueblo requires a significant increase in quality assurance work to both improve patient safety and maintain the hospital's ability to

[19] CMS defines three levels of deficiency: (1) immediate jeopardy requires immediate correction or the facility will be placed in a 23-day termination track; (2) condition level deficiencies indicate a critical health or safety breach and must be corrected within 30-90 days; and (3) standard level deficiencies are less emergent and can be addressed through the standard budget process.

operate. Based on the available information, staff agrees that these positions appear to be necessary for both reasons.

It is unfortunate that the Committee is in the position of evaluating positions that are already in place. Given the timing of the incident in late July 2021, staff understands that crafting a decision item for the November 1, 2021, budget request was probably not realistic. While a supplemental request for FY 2021-22 or a budget amendment for FY 2022-23 may have been feasible in January 2022, the Department secured one-time funding for the associated costs in FY 2021-22 and reports that it is still working to secure adequate funding from one-time sources for FY 2022-23. According to the Department, there is no funding available within existing resources to support these positions going forward.

REQUEST R8 – FORENSIC SERVICES DIVISION CAPACITY EXPANSION

Request: Request R8 seeks an increase of $3,704,803 General Fund and 23.2 FTE for FY 2023-24 (adjusting to $3,697,389 and 25.0 FTE in FY 2024-25) to increase capacity in the Forensic Services Division (within OCFMH) in response to the ongoing increase in forensic/competency workload. The request includes the following increases in positions (shown as full FTE as they would be reflected in FY 2024-25):

- 19.0 FTE clinical and administration staff for evaluation and restoration services. That amount includes 1.0 new deputy director for the division, 6.0 forensic evaluators and 2.0 support staff within Court Services, 6.0 forensic navigators and 3.0 social workers in the Forensic Support Team, and a clinical masters level position in Jail-based Restoration Services.
- 6.0 FTE to create a Quality Assurance, Policy, and Records Management Work Unit to support the division to monitor and ensure the quality of services provided by both internal staff and through contracted vendors.

Justification: The request responds to the ongoing increase in workload facing Forensic Services (discussed in some detail in the previous issue brief in this document). Staff has attempted to summarize the Department's justification for the various types of positions below, by line item (note the funding amounts shown do not include centrally appropriated items such as employee benefits).

Administration - $101,754 and 1.0 FTE deputy director: The Division's workload and workforce have approximately doubled since the division was first created in 2018, which predated the consent decree. The Department argues that the additional workload, the increasing complexity of the workload, and the additional legal and policy demands on the division warrant the creation of the deputy director position to provide additional leadership and guidance to the various programs within the division. The Department has indicated that the position will be responsible for working with the human resources team on investigations, employee retention, and staff development, as well as working with the Chief Financial Officer's office on contract issues. The Department has pointed to a particular need for leadership and guidance for jail-based and outpatient services with an emphasis on quality assurance and compliance.

Forensic Support Team - $1.1 million and 9.0 positions (6.0 FTE forensic navigators, 1.0 FTE social worker (program coordinator), and 2.0 contract social workers that would not actually be state FTE): The Forensic Support Team was created in response to the consent decree in 2019 to address client needs while they are in jail awaiting services. The team is the primary point of contact for all other stakeholders in the competency process. Prior to FY 2022-23, the FTE were reflected in the Court Services line item.

However, the General Assembly moved the relevant funding and FTE into a separate "Forensic Support Team" line item in FY 2022-23 based on the distinctive functions of the staff.

- The current budget includes $1.5 million and 19.0 FTE (16.0 FTE forensic navigators, 2.0 FTE program coordinators, and 1.0 FTE program assistant). The forensic navigators provide care coordination for competency evaluation and restoration clients who are in jail while awaiting services. In addition, the navigators provide status updates on these clients through written reports and court attendance, attending staffings to transition clients and engaging in policy committees and workgroups. The forensic navigators all work remotely as their duties are focused within 55 county jails across the state and all 22 judicial districts.
- The Department is trying to target manageable caseloads for the forensic support team and fill gaps in specific judicial districts. The team has seen a 69 percent increase in client census between July 1, 2020, and June 30, 2022. Their workload has also changed as the team has shifted from only supporting clients deemed incompetent to proceed (and awaiting services) to also supporting those in jail awaiting evaluation services.
- In addition to the costs directly related to the new FTE, the request includes $163,951 in additional travel funding (the team has extensive travel costs to support clients in disbursed areas) and $99,792 to support clients transitioning from incarceration with transportation vouchers, hygiene items, and, when appropriate, bridge gaps related to access to healthcare and housing.

Court Services – $1.7 million and 8.0 FTE (5.0 FTE forensic evaluators, 1.0 FTE forensic evaluator supervisor and 2.0 FTE support staff): As discussed in the previous issue brief, Department staff are responsible for court ordered competency evaluations, including those conducted in inpatient settings, in jails, and in the community.

- The Department argues that the additional positions will allow for an estimated 66 additional evaluations per month (12 per month per evaluator and 6 per month for the supervisor), helping to address the increasing workload for court ordered evaluations.
- As of November 2, 2022, the Department reported that there were 6 people waiting for inpatient competency evaluations, 163 waiting for an evaluation to be conducted in jail, and 252 waiting for an outpatient evaluation.

While the Department reports that it is brining 60-80 people off of the competency waitlist per month, the number of court orders continues to outpace those reductions, resulting in ongoing growth in the waitlist.

Jail-based Competency Restoration Program - $67,139 and 1.0 FTE: The request includes an increase to support a clinical masters level position (Health Professional III) to add capacity to that program. According to the request, clinical members on this team assist in coordinating admissions to and discharges from the program, provide technical assistance and training for program start-up, audit contracted restoration programs in jails and private hospitals, and provide oversight for client care at jail-based and private hospital programs. The Department is submitting this request in response to increasing workload and in an effort to improve services in the affected programs.

Quality Assurance (New Line Item Requested) - $371,716 and 6.0 positions: The Department is proposing to create a Quality Assurance, Policy, and Records Management Work Unit to support the entire Forensic Services Division. The Department argues that the additional staff are necessary to ensure the quality of services provided both through internal staff and through external (contract) vendors, particularly in light of the increasing workload and complexity of the division's activities. The

proposed staff would set standards for documentation and services and complete quality checks of those services to assess compliance with standards and policies to mitigate risks to clients and the community. In a response to JBC Staff questions, the Department states that:

> *"Our programs also do not currently have the resources to oversee quality of services or assist with standardized program audit processes or reviews of internal work quality driven by the consent decree, including continued process mapping of programs (internal and external), updating and reviewing data, and auditing the efficacy of evaluations and how this impacts the waitlist. Additionally, the Division lacks a point person to oversee the creation, renewal, and review of operational policies as well as tracking of staff training on these policies. All of these duties are currently overseen ad hoc by staff whose jobs would be full time without these additional duties and who are not necessarily trained in these types of audits, policy review, or data management. This has been problematic in Court Hearings when judges have asked for a Departmental policy or when staff inquire about what policy they should reference when working with stakeholders."*

Points to Consider: This is a large request and would represent a significant increase in both funding and staff for the division. Given the ongoing challenges with the waitlist and the competency degree, as well as the various programs' increasing workload, staff agrees that additional resources are likely to be necessary. Staff will continue to work with the Department in an effort to better understand the workload measures and assumptions for the specific positions requested.

REQUEST R9 – SALARY INCREASE FOR HOSPITAL MEDICAL STAFF

Request: Request R9 proposes an increase of $1.8 million General Fund in FY 2023-24 and ongoing in subsequent years to support salary increases for psychiatrists, internal medicine physicians, nurse practitioners, and physician assistants employed in the two state hospitals. These positions are actually employed on contract with the University of Colorado (CU) – and the proposed salary increases would be built into the contract with CU for FY 2023-24 and beyond. The following table shows the current and requested base salary levels for each category of impacted position. As shown in the table, the request represents an increase of approximately 10.0 percent in the base salary for every category of position. The Committee should note that this is just the base salary, excluding benefits, any contract administration fees, and any potential stipends for especially hard to fill positions.

BASE SALARY COMPARISONS FOR CU CONTRACT MEDICAL STAFF UNDER REQUEST R9

	MEDICAL DOCTORS			NURSE PRACT. AND PHYS. ASSIST.		
YEARS OF EXPERIENCE	FY 2022-23	FY 2023-24 REQ.	PCT. CHANGE	FY 2022-23	FY 2023-24 REQ.	PCT. CHANGE
0-4	$227,766	$251,000	10.2%	$124,236	$136,660	10.0%
5-9	232,321	256,020	10.2%	126,721	139,393	10.0%
10-14	234,599	258,030	10.0%	127,963	140,760	10.0%
15-19	236,877	261,040	10.2%	129,205	142,126	10.0%
20+	239,154	263,550	10.2%	130,448	143,493	10.0%

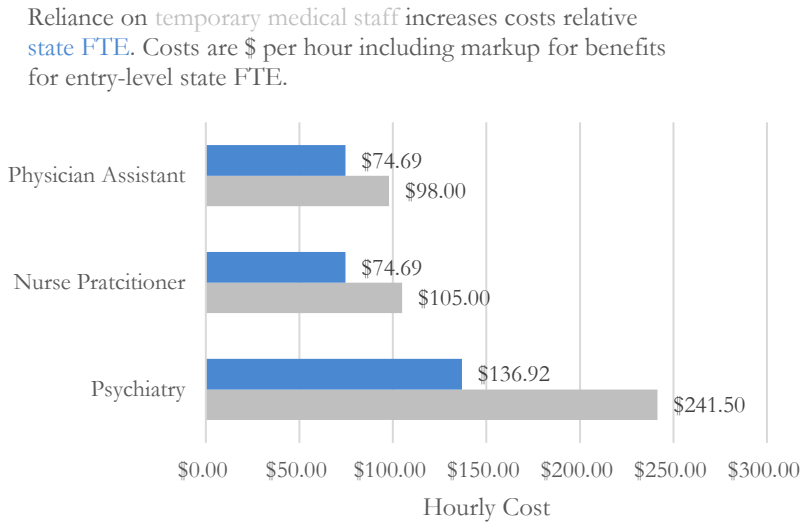
The requested salaries are based on market evaluations by the Department and CU – and the contract office at CU has approved the requested changes.

Justification: The Department reports that the hospitals continue to struggle to recruit and hire these critical positions and that the hospitals' medical teams have not been fully staffed since at least April 2018. At Fort Logan, the current vacancy rate for all medical staff contracted through CU is between

35 and 40 percent, and the vacancy rate for psychiatrists is 50 percent. Pueblo has not been able to hire a new permanent psychiatrist since 2012 and reports that all of the current psychiatrists are nearing retirement.

The General Assembly approved a similar pay increase in FY 2018-19 (actually funded in two installments in FY 2018-19 and FY 2020-21). The Department reports that the last increase did improve recruitment and they were able to hire three new psychiatrists (at Fort Logan) after the second phase of the salary increase went into effect. However, that effect seems to have worn off in the face of a national provider shortage and the hospitals are again struggling to recruit and hire.

In order to keep units open, the hospitals have increasingly resorted to temporary contract staff, which come at higher cost. The following graphic shows the current (FY 2022-23) entry level salaries for each type of position (on an hourly basis) and the current cost of temporary/contract staff to cover those positions.



Even at the upper end of the salary scale (for staff with 20 or more years of experience), current pay for the CU-contracted doctors is well below the temporary cost (which applies regardless of experience). For example, psychiatrists at the hospitals with more than 20 years of experience would earn $143.77 per hour (including benefits) in FY 2022-23, still approximately $98 below the $241.50 paid for temporary staff (although not all of that goes to the temporary staff because the agency withholds some costs).

In addition to the increased cost, the Department also reports that reliance on temporary medical staff impacts morale. The temporary staff earn more than permanent staff that may have more experience and are in the hospital for longer terms. In addition, the temporary staff may have black-out dates in their contracts that require time off during specific periods such as the holidays. As a result, permanent staff may be required to work less desirable (and potentially more stressful) shifts while making less money and managing consequences associated with temporary staff turnover.

Points to Consider: First, the hospitals simply cannot operate without direct care medical staff. These are essential positions and the Department/CU have been unable to fill them. This request reflects an ongoing challenge facing the hospitals for all types of staffing. However, it also points to specific dynamics that have come up in both of staff's site visits to Pueblo, in relation to both the medical staff affected by this request and to nursing staff.

- The two state hospitals are essential components of the behavioral health continuum, and especially for forensics (since nearly all of the beds are currently dedicated to forensic clients).
- The hospitals are already struggling to find medical staff based on available resources (with other challenges undoubtedly contributing) and facing significant vacancies.
- Those challenges have forced the hospitals to turn to temporary contract staff in order to keep units open and operating – with the temporary staff costing significantly more than the state FTE would if the hospitals could fill the positions.
- This further reduces the resources available for permanent staff and contributes to ongoing morale and patient care challenges if contract staff are paid more and have preferable schedules based on the dictates of their contracts.

REQUEST R12 – MOMENTUM PROGRAM FUNDING

Request: Request R12 proposes an increase of $328,747 General Fund in FY 2023-24 (and ongoing) to expand the Momentum Program. Following the creation of the outpatient competency restoration program in 2018, the Department started contracting with Rocky Mountain Human Services to operate the Momentum Program in FY 2019-20 to provide intensive wrap-around services for outpatient forensic clients to improve their chances of success living in the community. The program accepted its first clients in FY 2019-20 and the first full year of operations was FY 2020-21.

Participation in the program has grown from 32 referrals in FY 2020-21 (with $390,028 in actual expenditures) to 58 in FY 2021-22 (with $670,373 in actual expenditures). The Department contracts with Rocky Mountain Human Services for a variety of programs, and now both OCFMH and the BHA are in the same contract. That flexibility has allowed the Department to increase funding for Momentum within the existing resources of the contract because some other programs had lower expenditures than were anticipated. However, the Department reports that increasing work with the BHA will reduce that flexibility, and the Department is targeting $950,000 in expenditures for Momentum in FY 2023-24.

Justification: The Department (including both OCFMH and the BHA) contracts with Rocky Mountain Human Services for a variety of services, including the Momentum Program. Momentum provides intensive wrap-around services to forensic clients in order to allow them to live in the community with outpatient treatment. According to the Department, because of the high cost of services and the limited amount available for Momentum, it is the program of last resort as the Department attempts to serve eligible clients in the community and prevent further involvement with the criminal justice system or the need for inpatient psychiatric care.

The contract requires the program to generally prioritize potential placements in the following order:

- Clients from the state hospitals with barriers to discharge that are preventing discharge without Momentum placement.
- Children and youth with significant placement barriers.

- All other clients having difficulties discharging from other hospitals or who are part of Forensic Community Based Services, Forensic Support Team, or Outpatient Community Restoration.

It is important to note that discharging these clients from inpatient care to Momentum services then makes beds available for additional clients in need of inpatient services.

Placements with existing funding have increased from 32 in FY 2020-21 to 56 in FY 2021-22. The current contract for this year (FY 2022-23) includes 47 placements although the Department has stated that the number is difficult to predict. The Department estimates that the increase in funding would allow for 76 placements in FY 2023-24. The Department has identified this request as theory-informed.

Costs per client vary widely but the Department assumes an average cost of approximately $12,500 per client served by Momentum based on recent years' costs. Among others, the services supported by Momentum include:

- Benefits acquisition for things such as long-term care and Social Security Disability Insurance.
- Housing assistance and temporary housing.
- Facilitation of medical and dental care.
- Support for vehicle repairs to allow clients to work and attend treatment.
- Gift cards for fuel, food, hygiene products, etc.

While the cost per client appears significant, it equates to approximately 12 days of inpatient psychiatric care for an adult at CMHIP. In that context, with the added benefit to the client of being in the community (assuming that Momentum is able to successfully support the client to stay in the community), the cost of Momentum is less striking.

Points to Consider: Staff notes that the program currently serves approximately 6 percent of outpatient competency clients, and while the increase from 56 clients in FY 2021-22 to 76 in FY 2023-24 is large in percentage terms (35.7 percent), the 76 clients still represent only 6.1 percent of outpatient referrals. Given the limited availability of Momentum Services, it seems especially important that the Department target those referrals to the clients that need the services the most in order to be successful in the community. Staff suggests that if the program continues to show promising results with successfully treating this population without inpatient care (and keeping that care available for even higher acuity clients) and additional clients would benefit from the program then the General Assembly may wish to consider further expansion in subsequent years.

REQUEST R14 – OCFMH DATA MANAGEMENT AND REPORTING

Request: Request R14 proposes an increase of $236,314 General Fund and 2.8 FTE for FY 2022-23 (annualizing to $234,038 and 3.0 FTE for FY 2023-24 and beyond) to provide staff to support information technology and data reporting systems improvement proposed through a companion information technology capital construction request (OSPB IT Capital Construction project 4 – OBH Information Management Systems and Data Reporting, with a briefing scheduled for December 13, 2022). That capital IT request seeks $2.1 million General Fund for the actual system development, while this request (R14) seeks funding for the staff to support the development and ongoing maintenance of the proposed system which is intended to serve both the state hospitals and the forensics programs.

Justification: The proposed systems is intended to improve the efficiency of data management and reporting for forensics data, protect sensitive information, and reduce the need for time-intensive and redundant data entry related to the forensics system. The Department reports that the current workflow requires manual data entry and "data pulls" from a number of disparate systems, requiring large amounts of forensic staff time to complete necessary reports and data analyses. The goal of the new system is to eliminate much of that redundancy and house the data in a system that will be more usable (and more useful).

As noted above, this (operating) request for 3.0 additional positions is linked to the $2.0 million capital information technology request. Staff is not attempting to speak to the merits of the capital request but does agree that the new system will likely require additional staff for maintenance and support if approved. If effective, that would allow the existing staff to focus more on client services and spend less time on data entry and manipulation.

Points to Consider: Staff will continue to work with the Department to better understand the request and the need for the upgraded system. If the Committee approves the (much larger) capital information technology request, then, based on the available information, staff expects that additional staff would make sense to support and maintain the system. Staff notes that the Department has requested the three data management III positions at the range minimum (an annual salary of approximately $53,000). Staff appreciates that the request aligns with the Committee's common policy regarding salaries for new FTE – but is also uncertain that the Department will be able to successfully hire and retain staff in these positions.

ONE-TIME FUNDING AUTHORIZED IN RECENT LEGISLATIVE SESSIONS

During the 2020B, 2021, and 2022 legislative sessions, the General Assembly allocated significant one-time funding to the Department of Human Services that included $46.0 million originating as state General Fund and $482.4 million originating as federal Coronavirus State Fiscal Recovery funds (ARPA funds). Within those totals, $19.0 million General Fund and $424.0 million that originated as federal funds were directed to behavioral health programs within the Department. In addition, as of the end of FY 2021-22, the Department's behavioral health programs had received and spent $11.7 million in federal funding allocated by the Governor (and not appropriated by the General Assembly).

SUMMARY

- During the 2021 and 2022 legislative sessions, the General Assembly allocated $443.0 million in one-time funds to the Department of Human Services for behavioral health programs. This amount includes $19.0 million General Fund and $424.0 million that originated as federal stimulus funds.

- The General Fund appropriations include $9.0 million appropriated in H.B. 21-1258 (Mental Health Screenings) for the Temporary Youth Mental Health Services Program and $10.0 million appropriated n H.B. 22-1326 (Fentanyl) for substance use treatment and prevention services. The allocations of money that originated as federal funds span uses across the continuum of behavioral health services.

- Because the majority of the allocations are from the 2022 Session, only a small portion of that money has been spent to date.

RECOMMENDATION

Staff recommends that the Committee seek updates from all departments during their budget hearings on the use of significant one-time allocations of federal and state funding. For the behavioral health divisions covered in this document, staff recommends that the Committee ask the Department and the Behavioral Health Administration to provide additional information on the anticipated impact of these funds on the continuum of behavioral health services in Colorado as well as the anticipated impact on competency services and the State's efforts to comply with the consent decree.

DISCUSSION

During the 2020B, 2021, and 2022 legislative sessions, the General Assembly allocated $528.4 million in one-time funding to the Department of Human Services through appropriations and transfers. For many programs, authority was provided to expend the funds through FY 2023-24 or beyond. To assist the Committee in tracking the use of these funds, the tables below show the sum of allocations provided for FY 2020-21, FY 2021-22, and FY 2022-23 and expenditures through FY 2021-22 by the original source of the funds (General Fund, federal Coronavirus State Fiscal Recovery Funds, and other funds).

ALLOCATION AND EXPENDITURE OF ONE-TIME GENERAL FUND

DEPARTMENT OF HUMAN SERVICES BEHAVIORAL HEALTH PROGRAMS ONE-TIME GENERAL FUND			
BILL NUMBER AND SHORT TITLE	APPROPRIATION/ TRANSFER OF FUNDS	ACTUAL EXPENDITURE OF FUNDS THROUGH FY 2022	BRIEF DESCRIPTION OF PROGRAM AND ANTICIPATED USE OF THE FUNDS
H.B. 21-1258 Mental health screenings in school	9,000,000	5,520,000	For the Temporary Youth Mental Health Services Program.
H.B. 22-1326 Fentanyl	10,000,000	0	For substance use treatment and prevention services.
TOTAL	**$19,000,000**	**$5,520,000**	

ALLOCATION AND EXPENDITURE OF ONE-TIME FEDERAL CORONAVIRUS STATE FISCAL RECOVERY FUNDS (ARPA FUNDS)

DEPARTMENT OF HUMAN SERVICES BEHAVIORAL HEALTH PROGRAMS ONE-TIME ARPA FUNDS			
BILL NUMBER AND SHORT TITLE	APPROPRIATION/ TRANSFER OF FUNDS	ACTUAL EXPENDITURE OF FUNDS THROUGH FY 2022	BRIEF DESCRIPTION OF PROGRAM AND ANTICIPATED USE OF THE FUNDS
S.B. 21-137 Behavioral Health Recovery Act	10,000,000	10,000,000	For managed service organizations for increasing access to substance use disorder treatment and recovery
S.B. 21-137 Behavioral Health Recovery Act	2,000,000	597,862	Services for school-aged children and parents by community mental health center school-based clinicians
S.B. 21-137 Behavioral Health Recovery Act	5,000,000	376,471	Colorado crisis system services in response to COVID-19 impacts on the behavioral health of Colorado residents
S.B. 21-137 Behavioral Health Recovery Act	2,000,000	0	Behavioral health and substance use disorder treatment for children, youth, and their families
S.B. 21-137 Behavioral Health Recovery Act	1,000,000	556,980	Mental health awareness campaign
S.B. 21-137 Behavioral Health Recovery Act	18,000,000	1,517,481	Behavioral health workforce development program
S.B. 21-137 Behavioral Health Recovery Act	26,000,000	478,746	Behavioral health statewide care coordination infrastructure
S.B. 21-137 Behavioral Health Recovery Act	9,000,000	3,119,934	County-based Behavioral Health Grant program
S.B. 21-137 Behavioral Health Recovery Act	500,000	191,219	Guardianship services for individuals transferring out of mental health institutes
S.B. 21-137 Behavioral Health Recovery Act	5,000,000	292,675	Jail based behavioral health services
S.B. 21-137 Behavioral Health Recovery Act	3,250,000	1,053,371	Community mental health centers for COVID-19 response
S.B. 21-137 Behavioral Health Recovery Act	5,000,000	239,904	Pilot program for residential placement of children and youth with high acuity physical, mental, or behavioral health needs
S.B. 21-137 Behavioral Health Recovery Act	3,000,000	33	High-risk families cash fund in the Dept. of Human Services
S.B. 21-137 Behavioral Health Recovery Act	300,000	0	Office of the Ombudsman for Behavioral Health Access to Care
S.B. 21-288 American Rescue Plan Act of 2021 Cash Fund	$0	$8,111,560	Part of the $300.0 million in ARPA funds continuously appropriated to the Governor, used to fund private competency beds

DEPARTMENT OF HUMAN SERVICES BEHAVIORAL HEALTH PROGRAMS ONE-TIME ARPA FUNDS			
BILL NUMBER AND SHORT TITLE	APPROPRIATION/ TRANSFER OF FUNDS	ACTUAL EXPENDITURE OF FUNDS THROUGH FY 2022	BRIEF DESCRIPTION OF PROGRAM AND ANTICIPATED USE OF THE FUNDS
S.B. 21-288 American Rescue Plan Act of 2021 Cash Fund	$0	$1,853,982	Part of the $300.0 million in ARPA funds continuously appropriated to the Governor, used to fund residential youth beds
S.B. 21-288 American Rescue Plan Act of 2021 Cash Fund	0	1,742,863	Part of the $300.0 million in ARPA funds continuously appropriated to the Governor, used to fund CMHIP administrative staff
S.B. 22-148 Tribal facility	5,000,000	0	For the Colorado-land Based Tribe Behavioral Health Services Grant Program.
S.B. 22-177 Care coordination	12,200,000	0	For behavioral health administration care coordination infrastructure.
S.B. 22-181 Workforce investments	36,806,984	0	For behavioral health care provider workforce development, planning, education, and related costs.
S.B. 22-196 Criminal justice direct investments	50,700,000	0	For behavioral health administration program costs to address health needs of persons in the criminal justice system;
H.B. 22-1243 School security and school behavioral health services funding	$6,000,000	$0	For the Temporary Youth Mental Health Services Program.
H.B. 22-1281 Community Behavioral Health Grant Program	90,000,000	0	Includes $75.0 million for the Behavioral Health Care Continuum Gap Grant Program and $15.0 million for the Substance Use Workforce Stability Grant Program
H.B. 22-1283 Youth and family residential care	43,039,926	0	Makes the following appropriations: $7,500,000 to expand substance use residential beds for adolescents; $2,500,000 for the crisis response service system; $35,000,000 for capital costs and $539,926 for building maintenance costs for a youth neuro-psych facility at the Colorado Mental Health Institute at Fort Logan.
H.B. 22-1303 Adult residential care	57,844,419	0	Makes the following appropriations: $3,692,111 for capital construction costs related to renovating existing properties to create mental health residential facilities; $6,991,567 for capital construction costs related to renovation of inpatient beds at the Colorado Mental Health Institute at Fort Logan (CMHIFL); $6,578,266 for operation of additional beds at CMHIFL; $39,854,179 for mental health facility oversight, operating costs, contract beds, and renovation of mental health residential facilities; $728,296 for administrative costs.
H.B. 22-1326 Fentanyl	3,000,000	0	For jail-based behavioral health services related to integrated behavioral health services.
H.B. 22-1386 Competency beds	28,562,828	0	To the Office of Behavioral Health for purchased inpatient bed capacity.
H.B. 22-1386 Competency beds	800,000	0	To support a feasibility study of the renovation of a facility in Adams County to provide inpatient beds for competency services.
TOTAL	**$424,004,157**	**$30,133,081**	

IMPLEMENTATION UPDATES AND ITEMS OF NOTE

S.B. 21-137 BEHAVIORAL HEALTH RECOVERY ACT: The Department reports that spending for some of the programs in S.B. 21-137 is somewhat slower than expected but is generally on pace to use the funds prior to expiration. The Department expects spending for statewide care coordination infrastructure ($26.0 million), the workforce development program ($18.0 million), and the statewide

pilot program for residential placement of children and youth ($5.0 million) to increase significantly in FY 2022-23. For the two larger programs, the first year was dedicated to lower-cost activities such as meeting, collaborating, and project planning, with expenditures expected to increase in FY 2022-23 with software development underway. The Department reports slow spending of the $300,000 allocated to the Office of the Ombudsman for Behavioral Health Access to Care based on a lack of resources internally.

S.B. 21-288 AMERICAN RESCUE PLAN ACT: The Department received allocations (by the Governor) of $27.0 million for private beds and $1.8 million for the state hospitals at Pueblo and Fort Logan. For private beds, the Department expects to have 90.0 percent of the funds spent by the end of FY 2022-23, primarily for contracted civil and competency restoration beds, as well as jail-based restoration services. The money for the state hospitals was fully expended in FY 2021-22.

H.B. 22-1283 YOUTH AND FAMILY BEHAVIORAL HEALTH CARE: The bill includes a total of $43.0 million in appropriations to the Department, including $7.5 million to expand substance use residential beds, $2.5 million for crisis response system services, and $35.6 million associated with the construction of a new neuro-psychiatric facility at Fort Logan. The Department reports that the efforts are underway for all of these uses (no money was spent in FY 2021-22 because it is a 2022 bill), and that the neuro-psychiatric facility project is in the early stages of development.

H.B. 22-1303 INCREASE RESIDENTIAL BEHAVIORAL HEALTH BEDS: The bill includes a total of $50.7 million in appropriations to the Department for a variety of uses, including capital construction funds to renovate existing group homes in Pueblo and Broomfield and to renovate a facility at Fort Logan to add 16 additional beds there (initially for competency purposes). Those projects are in the early stages of development and the Department has hired a director for the transitional step-down program. The Department (OCFMH) expects to issue a request for proposals for 107 contracted step down beds in December 2022.

H.B. 22-1386 COMPETENCY TO PROCEED AND RESTORATION TO COMPETENCY: The bill appropriates $29.4 million to the Department, including $28.6 million for purchased psychiatric bed capacity and $800,000 for a feasibility study to renovate a facility in Adams County. The Department reports that it will begin spending down the money for purchased bed capacity in January 2023 and anticipates full spend down before the end of CY 2024.

APPENDIX A
NUMBERS PAGES
(DIGITAL ONLY)

Appendix A details actual expenditures for the last two state fiscal years, the appropriation for the current fiscal year, and the requested appropriation for next fiscal year. This information is listed by line item and fund source. ***Appendix A is only available in the online version of this document.***

Note: The numbers pages are not currently available but will up updated for FY 2023-24 for figure setting purposes.

APPENDIX B
FOOTNOTES AND INFORMATION REQUESTS

UPDATE ON LONG BILL FOOTNOTES

The General Assembly includes footnotes in the annual Long Bill to: (a) set forth purposes, conditions, or limitations on an item of appropriation; (b) explain assumptions used in determining a specific amount of an appropriation; or (c) express legislative intent relating to any appropriation. Footnotes to the 2022 Long Bill (H.B. 22-1329) can be found at the end of each departmental section of the bill at https://leg.colorado.gov/bills/hb22-1329. The Long Bill footnotes relevant to this document are listed below.

54 Department of Human Services, Behavioral Health Administration, Community-based Mental Health Services, Assertive Community Treatment Programs and Other Alternatives to the Mental Health Institutes -- It is the General Assembly's intent that $545,631 of this General Fund appropriation be allocated to a community mental health center in western Colorado for the purpose of providing behavioral health services for individuals who seek care from the emergency department of a regional medical center and who are diagnosed with physical health conditions that may be exacerbated by co-occurring mental health conditions.

COMMENT: This footnote was first included in the FY 2016-17 Long Bill (though subsequently adjusted) in connection with a $500,000 General Fund increase in the appropriation for "Services for Indigent Mentally Ill Clients" to expand access to inpatient psychiatric care for individuals who are diagnosed with physical health conditions that are exacerbated by co-occurring mental health problems. This footnote was included to specify the General Assembly's intent in making the appropriation. The Department used a request for proposal process and awarded the funds to Mind Springs Health. The General Assembly amended the footnote mid-year (through S.B. 17-163) after staff became aware that the funding was unlikely to be spent based on procurement-related delays and footnote language that did not reflect the manner in which the services are being provided. Several appropriations in the behavioral health section of the Department's Long Bill appropriations were reorganized in FY 2017-18. As a result, this footnote now references the relevant funding in the "Assertive Community Treatment Programs and Other Alternatives to the Mental Health Institutes" line item.

The appropriation has been increased and modified as follows:

- *FY 2017-18:* The General Assembly increased this appropriation by $7,009 General Fund consistent with the statewide policy concerning community provider rates.
- *FY 2018-19:* The General Assembly increased this appropriation by $5,070 General Fund consistent with the statewide policy concerning community provider rates.
- *FY 2019-*20: The General Assembly increased this appropriation by $5,121 General Fund consistent with the statewide policy concerning community provider rates.

- *FY 2020-21*: The General Assembly increased the appropriation reflected in the footnote by $9,827 General Fund. The Department was not in compliance with the footnote due to budget balancing reductions that impacted this line item.
- *FY 2021-*22: The General Assembly increased this appropriation by $7,905 General Fund consistent with the statewide policy concerning community provider rates.
- *FY 2022-23:* The General Assembly increased this appropriation by $10,699 General Fund consistent with the statewide policy concerning community provider rates.

55 Department of Human Services, Behavioral Health Administration, Substance Use Treatment and Prevention Services, Treatment and Detoxification Programs -- It is the General Assembly's intent that this appropriation be used to provide services and to expand access to residential treatment services for individuals with substance use disorders, including initial expenses necessary to establish, license, and begin operating one or more programs that provide these services, such as building renovations, furnishing, and equipment.

COMMENT: This footnote added to the FY 2021-22 Long Bill to indicate the intent of the General Assembly with respect to this appropriation. The Department reports that it is compliant with this footnote.

56 Department of Human Services, Behavioral Health Administration, Integrated Behavioral Health Services, Circle Program and Other Rural Treatment Programs for People with Co-occurring Disorders -- It is the General Assembly's intent that this appropriation be used to: support the community-based Circle Program; support the provision of a full continuum of co-occurring behavioral health treatment services in southern Colorado and the Arkansas Valley; and expand access to residential treatment services in one or more rural areas of Colorado for individuals with co-occurring mental health and substance use disorders. It is also the General Assembly's intent that the appropriation may be used to provide services and to cover initial expenses necessary to establish, license, and begin operating one or more programs that provide these services, such as building renovations, furnishing, and equipment.

COMMENT: This footnote was modified for the FY 2019-20 Long Bill, in coordination with the consolidation of two line items that support treatment for individuals with co-occurring mental health and substance use disorders: "Community-based Circle Program" and "Rural Co-occurring Disorder Services." There were two existing footnotes that expressed legislative intent concerning the line items; this footnote consolidated those to express similar intent. Additionally, the Department indicated that it was seeking legislative clarification that it is authorized to fund services in other co-occurring treatment facilities in other regions of the State while new facilities are being established. This footnote is intended to address that issue. The Department reports that it is compliant with this footnote.

57 Department of Human Services, Office of Behavioral Health, Mental Health Institutes at Ft. Logan; Mental Health Institutes at Pueblo; Forensic Services; and Consent Decree Fines and Fees -- In addition to the transfer authority provided in Section 24-75-108, C.R.S., the Department is authorized to transfer up to 5.0 percent of the total appropriations in this subsection among line items in this subsection.

COMMENT: This footnote was first included in the FY 2014-15 Long Bill. The FY 2014-15 Long Bill included two format changes to maintain a transparent delineation of expenditures at the mental health institutes while allowing the Department more flexibility to manage these appropriations and minimize the number mid-year appropriation adjustments. First, funding for outside medical expenses was removed from the Personal Services line items for each Institute and placed in a two new line item appropriations for "Contract Medical Services" – one for each Institute. Second, the above footnote was added to allow the Department to transfer up to 10 percent of the total appropriations in the Mental Health Institutes subsection of the Long Bill, starting in FY 2014-15. The footnote was modified in FY 2019-20 to reduce the allowable transfer authority from 10.0 percent to 5.0 percent.

The Department reports that it is in compliance with this footnote.

UPDATE ON LONG BILL REQUESTS FOR INFORMATION

The Joint Budget Committee annually submits requests for information to executive departments and the judicial branch via letters to the Governor, other elected officials, and the Chief Justice. Each request is associated with one or more specific Long Bill line item(s), and the requests have been prioritized by the Joint Budget Committee as required by Section 2-3-203 (3), C.R.S. Copies of these letters are included as an Appendix in the annual Appropriations Report (Appendix H in the FY 2022-23 Report):
https://leg.colorado.gov/sites/default/files/fy22-23apprept.pdf

There were no requests for information directly relevant to this document for FY 2022-23.

APPENDIX C
DEPARTMENT ANNUAL PERFORMANCE REPORT

Pursuant to Section 2-7-205 (1)(b), C.R.S., the Department of Education is required to publish an **Annual Performance Report** for the *previous fiscal year* by November 1 of each year. This report is to include a summary of the Department's performance plan and most recent performance evaluation for the designated fiscal year. In addition, pursuant to Section 2-7-204 (3)(a)(I), C.R.S., the Department is required to develop a **Performance Plan** and submit the plan for the *current fiscal year* to the Joint Budget Committee and appropriate Joint Committee of Reference by July 1 of each year.

For consideration by the Joint Budget Committee in prioritizing the Department's FY 2023-24 budget request, the FY 2021-22 Annual Report and FY 2022-23 Performance Plan can be found at the following link:

https://www.colorado.gov/pacific/performancemanagement/department-performance-plans

APPENDIX D
DEPARTMENT RESPONSE WITH MULTI-STATE COMPETENCY DATA

Office of Civil and Forensic Mental Health Response to JBC Staff Question seeking comparative data on competency waitlists from other states.

1. **JBC Staff Question: How much of an outlier are we compared to other states in terms of waitlists and/or consent decrees?**

Short Answer: Although the many variables impacting states' waitlists for competency services make side-by-side comparisons difficult, Colorado appears to be about in the middle of the other 27 states that reported having a waitlist. There are 9 states that are in a consent decree or are currently respondents in lawsuits that may result in consent decrees.

Methodology & Sources

The Forensic Services Division in OCFMH conducted an informal survey of other states to see where Colorado fits on the national landscape of competency issues. Forty-two states and the District of Columbia responded to this informal request for information. Information was collected primarily through direct communication to OCFMH staff. Further statistics were obtained from states' judicial websites, states' annual reports, and other publicly available sources.

Limitations: This was an informal survey without resources for validating data or accounting for differences in state practices or reporting methods. For example, several states only had data through July 2022, while others only provided averages for their waitlists. One state's (Mississippi) waitlist number includes all individuals awaiting mental health services, not just competency services. **Accordingly, the waitlist information below provides a helpful snapshot of the national landscape when considered in totality, but it should not be used to make specific comparisons of Colorado to another state.** Many factors impact waitlists, such as the rate at which competency is raised, crime trends, demographic factors, state policies and reporting practices, and access to mental health services.

Scope: This informal survey only asked about the waitlist prior to treatment; it does not ask about treatment or discharge rates. It does not consider the reason a person is on the waitlist. States were asked about the length of time clients remain on the waitlist and for any narrative explanations they chose to provide. OCFMH staff also reviewed crime statistics across states and national rankings of states on access to mental health services.

Informal Findings

Of the 42 states and the District of Columbia that responded to OCFMH staff's outreach, 27 states responded that they have a waitlist for competency services and provided the number of people on the list. Additionally, South Carolina and the District of Columbia are excluded from the table below because they did not provide a number of people on the waitlist, but representatives stated they are struggling to keep up with increasing orders for admission since the pandemic (S.C.) and have COVID-related delays for admission (D.C.). There are 9 states that are in a consent decree or are currently respondents in lawsuits that may result in consent decrees.

Of those 28 states (including Colorado) with a known waitlist, Colorado is just about in the middle in raw numbers, with 13 states with more people on the waitlist than Colorado and 14 states with fewer than Colorado. Waitlist numbers alone are an incomplete picture. Some states with more people on the waitlist have much shorter length of time waiting (e.g. New York), while some states with fewer people on the waitlist have longer waiting times (e.g., Alabama). See table 1 below.

The estimated national average (of 43 states who responded to our informal survey) for finding defendants incompetent following an evaluation is 50%. **Colorado is just below the national estimated average at 48% finding of incompetence for all competency evaluations.**

Waitlists are attributed to many factors such as rates of incompetence findings, criminal filings, state policies for competency, and access to mental health services. Many states noted the impacts of the COVID-19 pandemic, limited bed space in hospitals, and limited staffing resources. Given the many variables which impact states differently, and differences in state policies and reporting practices, it is difficult to draw side-by-side comparisons of one state to another or to isolate the impact of any particular variable.

Even in light of these limitations, informal observations raise several hypotheses on the impact of state policy on competency waitlists, particularly the positive impacts of a strong mental health system. In general, states with greater access to mental health services in the community seem to have lower recidivism and fewer people on the waitlist. For example, the following policies and practices appear to be correlated with reduced or no waitlists:

- Restrictions on which defendants can enter the competency system, such as certain misdemeanors always or usually being diverted to the civil mental health system.
    - Colorado law does not currently have a clear or effective path for individuals to be diverted to community-based mental health services or civil voluntary or involuntary commitment under Title 27 Article 65. This is partially a statutory issue but more fundamentally a resource issue: the behavioral health safety net established by HB 22-1278 is not required to go into effect until July 2024.

    - Colorado's HB 22-1386 is a small step in this direction by establishing a clear preference for bond and outpatient services individuals who have committed lower-level misdemeanors and petty offenses. In this way, the bill aims to reduce the waitlist for inpatient services. However, Colorado law only prefers a less restrictive involvement in the competency system for these individuals; it does not require it or divert these individuals directly to the civil system.
- Firm timelines on dismissal, i.e., if a defendant is not restored in a certain amount of time, the criminal case is dismissed.
    - Colorado has timelines on dismissal that are tied to the maximum sentence for the alleged offenses. These may be extended for good cause. Colorado's laws in this area are aligned with typical practices across other states. Two exceptions are California and New York, where timelines tend to be applied more rigidly.
- Limitations on court orders for inpatient restoration. In one state, incompetent defendants in "victimless crime" cases begin receiving restoration services in the community for the first 90 days, after which they may be ordered to inpatient if they did not comply or need greater services.

Each of these policies and practices is, in one way or another, diverting or restricting involvement with the criminal justice system for incompetent defendants. This inherently raises concerns for individual and community safety; for these policies to be successful, it is crucial for these individuals to have adequate access to civil (up to and including involuntary commitment) and community-based behavioral health services.

A robust continuum of care (from inpatient to outpatient) is critical. The Department's budget requests for R-12 Momentum Program Funding and R-8 Forensic Services Division Capacity Expansion both directly impact the ability for Colorado to safely serve more clients in the community. The two requests work in tandem: first, the 6.0 FTE for additional Navigators from the Forensic Services request will support individuals transitioning into the community from jails and individuals in outpatient restoration, primarily by coordinating the continuity of care until Momentum or another community agency starts services. Second, the Momentum request allows that particular program to serve additional clients. At the requested funding amount, we anticipate Momentum will serve 76 outpatient restoration clients in FY 2023-24.

Additionally, it seems that a policy or practice of court-ordered involuntary medication is correlated with lower or no waitlist. This is because defendants who adhere to their prescribed medications are more likely to be found competent in a shorter period of time, which reduces the waitlist for others.

Table 1: Informal Survey of States: Non-Standardized Estimates of Numbers of People on a Waitlist for Competency Services

State	Est. People on Waitlist	Estimated Average Days Waiting	Est. Population U.S. Census July 2021	(Population Ratio to CO)
Texas	2,300	800 days	29,527,941	(5.1)
New Mexico	2,274	210 days	2,115,877	(0.4)
Mississippi	2,225*	350 days	2,949,965	(0.5)
California	1,600	144 days	39,237,836	(6.8)
New York	1,500	40 days	19,835,913	(3.4)
Kansas	720	365 days	2,934,582	(0.5)
Louisiana	616	218 days	4,624,047	(0.8)
Iowa	600	123 days	3,193,079	(0.5)
Indiana	533	253 days	6,805,985	(1.2)
Kentucky	499	180 days	4,509,394	(0.8)
Arizona	487	60 days	7,276,316	(1.3)
Florida	450	214 days	21,781,128	(3.7)
Pennsylvania	433	180 days	12,964,056	(2.2)
Colorado	**409**	120 days	**5,812,069**	(1.0)
North Carolina	400**	199 days	10,551,162	(1.8)
Georgia	368	220 days	10,799,566	(1.9)
Missouri	210	266 days	6,168,187	(1.1)
Washington	161	130 days	7,738,692	(1.3)
Illinois	150	2431 days	12,671,469	(2.2)
Idaho	129	180 days	1,900,923	(0.3)
Alabama	103	596 days	5,039,877	(0.9)
Michigan	90	183 days	10,050,811	(1.7)
Tennessee	90	60 days	6,975,218	(1.2)
Montana	71	125 days	1,104,271	(0.2)
Oregon	70	9 days	4,246,155	(0.7)
Nebraska	69	67 days	1,963,692	(0.3)
Alaska	56	360 days	732,673	(0.1)
Wyoming	30	90 days	578,803	(0.1)

* Mississippi does not distinguish mental health services from competency services, so this number is much higher than other states at least in part for that reason.
** This NC waitlist number is an estimate from a community partner's July 2022 report.