



Department Priority: BA-08 Resources to Comply with Consent Decree

Summary of Funding Change for FY 2026-27

Fund Type	FY 2026-27 Base Request	FY 2026-27 Incremental Request	FY 2027-28 Incremental Request
Total Funds	\$252,555,530	\$30,054,714	\$35,452,817
General Fund	\$232,849,674	\$30,054,714	\$35,452,817
Cash Funds	\$6,739,206	\$0	\$0
Reappropriated Funds	\$12,966,650	\$0	\$0
Federal Funds	\$0	\$0	\$0
FTE	1,451.9	10.0	13.0

Summary of Request

Problem or Opportunity

Since 2019, the Colorado Department of Human Services (CDHS, Department) has operated under a Consent Decree wherein the Department agreed to reduce wait times for individuals waiting in jail for competency services. Despite significant progress toward meeting the time frames established in the Consent Decree, on December 15, 2025, the plaintiff in the case, Disability Law Colorado (DLC), sent a letter alleging that CDHS had violated the Consent Decree. If the court agrees with DLC, the state could be subject to significant penalties. To avoid this outcome, the state will need to demonstrate meaningful progress towards further compliance with the Consent Decree.

Proposed Solution

The Department proposes allocating \$30 million in FY 2026-27 toward increasing the number of inpatient psychiatric beds available to CDHS and supporting operating costs related to these services to bring the state into compliance by December 2027.

Fiscal Impact of Solution

CDHS requests \$30 million GF/TF in FY 2026-27, \$35.5 million GF/TF in FY 2027-28, and \$35.4 million ongoing to increase beds and cover operating costs. The requested solution does not require statutory changes.

Requires Legislation	Colorado for All Impacts	Revenue Impacts	Impacts Another Department?	Statutory Authority
No	Positive	No	No	Section 16-8.5-111 (2)(c) and (8), C.R.S.

Background and Opportunity

In 2011, Disability Law Colorado (DLC) sued the Colorado Department of Human Services (Department, CDHS) in federal district court, alleging that the length of time defendants wait in jail to receive competency evaluations to determine if they are incompetent to proceed with trial, as well as the length of time that these individuals wait in jail for competency restoration treatment, violated those individuals’ constitutional rights. That lawsuit culminated with the entry of a Consent Decree against CDHS in 2019.

The Consent Decree requires CDHS to provide competency services, including both evaluations and restoration treatment, for individuals waiting in jail within certain time frames. If the Department does not comply with these time frames, it is subject to substantial monetary penalties, with fines ranging from \$100 to \$500 per individual per day waiting beyond the timeframes. Despite significant progress toward meeting the time frames established in the Consent Decree, and ongoing partnership with both the legislature and Joint Budget Committee to meet the state’s obligations, the state has paid approximately \$55 million in total penalties for exceeding the time frames since 2020. This amount reflects a cap on the annual penalties—without this cap, the amount would be \$242 million.

The number of individuals on the competency waitlist reached its highest point of 483 individuals waiting in the summer of 2023. Thanks to a number of efforts and investments at the State, over the course of the subsequent year, the waitlist decreased significantly and reached a low of 208 in October of 2024. However, due to increasing restoration treatment orders, the waitlist began to climb again and has hovered in the mid-300s for more than a year now.

On December 15, 2025, DLC sent a letter to the Special Masters overseeing the case and the Department alleging that CDHS had materially violated the Consent Decree. The Special Master then forwarded the letter to the district court, prompting a status conference to discuss next steps. Ultimately, If the court agrees that the Department is

in material violation of the Consent Decree, the state could be subject to significant penalties, including higher monetary fines, liquidated damages, and contempt sanctions. To avoid a court-ordered solution, the state will need to demonstrate meaningful progress – above and beyond what it has already implemented – towards further compliance with the Consent Decree. The Consent Decree expires on December 1, 2027 and the proposed solutions described below are designed to achieve substantial compliance by that date.

Proposed Solution and Anticipated Outcomes

CDHS proposes adding inpatient psychiatric beds to existing resources within the Office of Civil and Forensic Mental Health (OCFMH), and repurposing other beds, in order to ensure compliance with the requirements of the Consent Decree. Estimated projections suggest that, given steady numbers of court orders for restoration treatment and sustained rates of admissions to treatment, a phased addition of 94 inpatient beds added over FY 2026-27 and FY 2027-28 will bring CDHS into substantial compliance with admission timeframe requirements of the Consent Decree. This influx of beds can be further supported by moving and repurposing existing beds in order to allow available inpatient resources to more efficiently support Consent Decree compliance. Five additional beds have already been approved by the Joint Budget Committee (JBC) through action on CDHS budget request R-04. OCFMH is proposing several bed moves and additions as solutions to create an additional 89 new competency beds and timely comply with the Consent Decree.

Table 1: Summary of Ongoing Changes in BA-08 Decision Item

Component	New Competency Beds	New Civil Bed Offsets	Costs	FTE
Jail-Based Restoration	16	-	\$2,459,808	-
Contracted Private Restoration Beds	27	-	\$10,347,750	-
Contracted Private Restoration Beds in CDHS R-04 Request	5	-	-	-
Repurposing CMHHIP L2 Unit	22	24	\$10,512,000	-

Component	New Competency Beds	New Civil Bed Offsets	Costs	FTE
Additional Staff for L2	-	-	\$640,228	6.0
Civil Beds to Divert Individuals from Competency System	24	24	\$10,512,000	-
OCFMH Oversight	-	-	\$888,342	7.0
Totals	94	48	\$35,360,128	13.0

Increase Bed Numbers in Jail-Based Restoration

OCFMH’s Jail-Based Restoration (JBR) program enables individuals to be restored to competency in a jail setting for those who have higher level charges. Inpatient restoration in a hospital is most appropriate for individuals who require an acute level of psychiatric care. However, some individuals require inpatient restoration not because of their acute psychiatric needs, but because their high-level criminal charges preclude community-based restoration, and the needs of these individuals may not require the same intensity of care as an inpatient hospital setting. For those who do not require an acute level of care and are not released on bond, the jail-based setting has proven successful for restoration. These programs are vital to meeting the demands of the Consent Decree because only a small number of restoration settings will accommodate defendants with high-level charges, and wait times therefore tend to be longer for these individuals.

JBR programs contract with mental health providers to oversee all of the same mental health treatments that would be available in a psychiatric hospital and deliver these services within the jails. The recent successes of these JBR programs include:

- 55 dismissals of cases, allowing these individuals to either return to the community or be placed on a civil certification;
- 24 orders that were converted to outpatient restoration treatment orders;
- Increased transfer of higher acuity clients to inpatient hospitals, ensuring the appropriate level of care;
- Average length of stay below 100 days; and

- Development and implementation of an involuntary medication administration program for individuals with standing court orders prior to admission.

JBR programs currently provide 96 beds for competency restoration services. The Department has established that there is the potential to expand these services to add an additional 16 beds beginning July 1, 2026. Increasing the census in JBR will impact the waitlist not only by increasing available beds, but by increasing beds that can serve individuals with low mental health acuity and high-level criminal charges, who are often those with the longest waits for beds.

Increase Private Hospital Restoration Bed Contracts

In an effort to establish additional avenues for treating competency patients, in 2019 the Department began to partner with private hospitals to contract for the provision of psychiatric care and services for patients committed to the custody of CDHS requiring inpatient restoration treatment. At that time, OCFMH contracted for eight beds at Peak View Hospital, and expanded to an additional five beds at Denver Health early in 2020. This small program saw success in treating patients, restoring defendants to competency, and assisting the department in more quickly providing services to defendants who were waiting to receive them. Based on the success of that program and the increased level of need for inpatient beds in the face of closed units in the mental health hospitals during the COVID-19 pandemic, additional private hospital beds were funded with emergency cash funds beginning in 2020. Similarly, H.B. 22-1386 provided funding from the economic recovery and relief cash fund in order to support the Department in sustaining and expanding this program to increase the availability of competency restoration and other inpatient mental health services through private hospitals. Funding for these beds transitioned to General Fund as a result of CDHS budget request R-01 for FY 2024-25.

These contracts for private hospital beds demonstrate strong partnerships with hospitals that already provide psychiatric care for those experiencing serious mental illness. With psychiatric care infrastructure already in place at these facilities, the private hospitals can expand to offer restoration services in order to serve additional patients in partnership with OCFMH. These hospitals generally do not take the most acute or high profile forensic patients—OCFMH will almost always serve these patients directly through the state mental health hospitals. However, because the private hospitals are taking patients with more moderate acuity, the length of stay prior to restoration in these beds trends lower than in other settings. While the most acute patients take priority for beds at the state hospitals as they become available, the

private hospital beds allow for patients with more moderate needs to move more quickly off the waitlist, helping increase the efficiency with which defendants are able to stop waiting in jail and access services.

OCFMH is currently funded to contract with private hospitals for 78 competency restoration beds. Recent JBC actions related to CDHS budget request R-04 for FY 2026-27 increased this number by five. The Department has established that OCFMH could enter into additional contracts for 27 more restoration beds at private hospitals in order to increase the effect of this program on the waitlist.

Repurpose L2 Unit at CMHHIP to Increase Secure Competency Beds

The L2 unit at the Colorado Mental Health Hospital in Pueblo (CMHHIP) is a 22-bed unit in the most secure building at the hospital. This unit currently houses the Adolescent Behavioral Treatment Unit (ABTU), a unit for treating both juvenile competency patients and civil adolescent patients. By maintaining ABTU in L2, the Department loses access to beds that could be used to treat competency patients with both the highest mental health acuity and the highest level of criminal charges. By moving ABTU to an alternate location, and offsetting the loss of beds in that location, the Department can increase available competency beds by 22 beds where patients with the most critical areas of need can be treated.

ABTU could be relocated to the Colorado Mental Health Hospital in Fort Logan (CMHHIFL), where the F1 unit would provide a stand-alone space that would have the level of security and autonomy necessary to operate an adolescent unit on that campus. F1 currently serves 24 adult civil patients, and the building would require only slight modifications in order to serve the needs of the adolescent patients currently served by ABTU. Furthermore, relocating ABTU to the Denver Metro Area would pose the added benefits of providing a wider applicant pool for professionals specializing in work with adolescents and allowing for inpatient adolescent treatment in a location closer to where more youth have family support.

Making this switch would carry small one-time construction costs to update F1 and ensure the space is appropriate to serving adolescent patients, including creating space for a school. It would also necessitate hiring 6.0 additional direct care staff at CMHHIP in order to staff L2 appropriately for high-acuity adult patients, rather than the adolescent patients it houses now. Furthermore, the Consent Decree requires that the Department maintain the same number of civil beds within the State in order to ensure the availability of civil treatment is not disrupted by the competency crisis. Because this move would take 24 adult civil mental health beds offline at CMHHIFL in F1, the Department will need to contract with a private hospital for 24 civil beds to offset this

loss and ensure the State continues to offer the same quantity and quality of civil mental health services to adult patients.

Contract for Civil Beds to Divert Individuals from the Competency System

It is not uncommon for courts to dismiss charges for individuals who enter the State mental health hospitals as competency restoration patients while those patients are receiving inpatient treatment. These patients often stay at the hospitals as voluntary patients or on civil certifications after charges are dismissed, sustaining the vital mental health treatment the patient needs, but occupying a bed that could otherwise be used for additional competency restoration treatment. As a result, there are currently 57 patients at CMHHIP on civil certifications or voluntary status, despite the fact that CMHHIP only admits forensic patients. If some of these patients who do not require high-security beds could be moved to private hospital beds, it could simultaneously provide a more appropriate treatment environment for those patients and free beds at CMHHIP for additional competency restoration patients.

In addition to existing civil patients currently at CMHHIP, HB23-1138 established an off-ramp from the competency system to the civil certification system for defendants who would be better served by civil certification than criminal prosecution. While implementation of this system has been slow, the Department has recently experienced some success in moving individuals off of the competency waitlist into civil beds using this method. With available contracted civil beds at partner hospitals, and with staff at CDHS dedicated to requesting this resolution in criminal courts and supporting certification in civil courts, CDHS hopes to use contracted civil beds to increase utilization of this tool and move individuals out of the competency system without waiting in jail for a competency bed.

The Department anticipates that contracting for 24 additional civil beds at a private hospital could allow CMHHIP to move civil patients to a more appropriate environment of care and free beds for competency restoration, while also creating an ongoing source of civil beds to divert individuals off the waitlist as appropriate.

The above projects, paired with the 5 new beds already funded for FY 2026-27, should bring the Department to 94 new competency beds, which is the total estimated to be necessary to bring the Department into compliance with the Consent Decree by December of 2027. Table 1 outlines the totals coming from each project.

Table 2: New Competency Beds

Source	New Competency Beds	New and/or Offset Civil Beds
CDHS R-04 Request	5	-
Additional JBR Beds	16	-
Additional Private Beds	27	-
Repurpose L2	22	24
Civil Bed Diversions	24	24
Totals	94	48

OCFMH Oversight

In addition to the costs necessary to implement the new projects listed above associated with these beds, OCFMH will require an additional eight staff members to provide administrative oversight within the Department. These eight individuals will oversee new contracts, provide competency restoration education for newly contracted beds, coordinate admissions to the additional beds, and support court processes related to diverting defendants from the waitlist to civil certifications.

Supporting Evidence and Evidence Designation

Evidence designation is not applicable to this request because the request only changes the funding level for an existing program previously authorized by legislation. The change in the level of funding will not affect the quality or quantity of services provided to patients.

Promoting Colorado for All

The Department has identified this request as having positive impacts on in-need populations because it increases the number of people with serious mental illness served in psychiatric inpatient hospital beds. This includes people of color, individuals with serious mental illness who have additional co-occurring disabilities, and many experiencing poverty or homelessness. Drastically reducing the competency waitlist and coming into compliance with the Consent Decree means fewer individuals will be waiting in jail for an inpatient hospital bed. Because the request increases available

services without significantly modifying service delivery, it does not change who has access to services among those who are in need of services.

Assumptions and Calculations

Number of New Competency Beds

Based on current rates of inpatient competency restoration orders, an average of 69 new defendants are placed on the competency waitlist each month. Therefore, the Department estimates that between July of 2026 and December of 2027, 1,242 new individuals will be added to the competency waitlist. In addition to these new additions, based on recent averages, the Department projects that 364 individuals will be on the competency waitlist at the beginning of July 2026, meaning the Department will be ordered to admit 1,606 total individuals over the course of those 18 months.

The Department currently has 419 beds dedicated to competency restoration treatment in various settings. Based on OCFMH admissions data, with a 95% occupancy rate, each bed admits an average of 0.178 patients per month. Therefore, over the 18 month period between July of 2026 and December of 2027, the Department can expect to admit 1,275 individuals off the waitlist within existing resources. This leaves a waitlist of 331 in December of 2027, which is comparable to waitlist numbers over the past year. Such stagnant waitlist numbers between now and the end of the Consent Decree would not constitute meaningful progress toward compliance with the provisions of the agreement.

The Department assumes 94 new beds could be added through this request on the timeline laid out in Table 2. The Department further assumes that it will take one month from the time the new beds come online before they reach full occupancy. Maintaining again the average admissions rate of 0.178 patients per bed per month, the total number of possible admissions to these new beds is also included in the table.

Table 3: Timeline for New Competency Beds

Source	New Competency Beds	Date Online	Months of Admissions Before 12/27	Total Admissions Before 12/27
CDHS R-04 Request	5	July 1, 2026	17	14
Additional JBR Beds	16	July 1, 2026	17	46
Additional Private Beds	27	July 1, 2026	17	78

Source	New Competency Beds	Date Online	Months of Admissions Before 12/27	Total Admissions Before 12/27
Repurpose L2	22	November 1, 2026	13	48
Civil Bed Diversions	24	January 1, 2027	11	45
Total				231

The 243 admissions calculated in Table 2 can then be offset by an anticipated bed occupancy rate of 95%, which leaves 231 total admissions to these beds within the timeframe. With those 231 admissions offsetting the 331 anticipated orders to inpatient restoration treatment that cannot be accommodated within existing resources, the Department would ultimately be left with a waitlist of 100. While the waitlist would not be fully eliminated, the Department believes that the court could consider this number substantial compliance with the Consent Decree based on meaningful progress.

Costs for Additional JBR Beds

Based on current costs for existing JBR beds, OCFMH anticipates that the rate to contract an additional 16 beds will be \$421.20 per bed per day. Over the course of a typical year, this rate comes to \$2,459,808 for the 16 additional beds. Given that OCFMH expects to begin contracting for the additional beds on July 1, 2026, the cost will be \$2,459,808 in FY 2026-27, \$2,466,547 in FY 2027-28 (at 366 days in the year), and \$2,459,808 ongoing.

Costs for Additional Private Restoration Beds

OCFMH generally calculates anticipated costs for contracted private beds at an estimated rate of \$1,200 per bed per day. However, given that OCFMH already contracts for a number of private beds for the same purpose, the Office believes that existing contracts and relationships with private providers can allow for these particular beds to be contracted at a lower rate of \$1,050 per bed per day. Over the course of a typical year, this rate comes to \$10,347,750 for the additional 27 beds. Given that OCFMH expects to begin contracting for the additional beds on July 1, 2026, the cost will be \$10,347,750 in FY 2026-27, \$10,376,100 in FY 2027-28 (for 366 days in the year), and \$10,347,750 in FY 2028-29 and ongoing.

Costs to Repurpose L2

In order to move ABTU to F1 on the CMHHIFL campus, the building will require some limited upgrades, including privacy fencing to maintain separation from other buildings

containing adult units, protective glass around the nurses' station, and furniture for the space that will become the school. The Department estimates that these building modifications will cost \$300,000. This funding will be necessary on July 1, 2026 in order to move ABTU as quickly as possible after the start of FY 2026-27.

The 24 contracted civil beds at a private hospital to offset civil beds currently in F1 will be contracted at the same rate as private competency beds, \$1,200 per bed per day. For 24 beds, this cost would come to \$10,512,000 per year. In order to facilitate beginning building modifications as immediately as possible, the Department anticipates beginning to contract for these beds on July 1, 2026, meaning the cost will be \$10,512,000 for FY 2026-27, \$10,540,800 for FY 2027-28 (at 366 days in the year), and \$10,512,000 in FY 2028-29 and ongoing.

In order for L2 to serve high acuity adult patients, rather than adolescent patients, the staffing ratios will need to change. This change will require an increase of 6.0 FTE for additional direct care staff: 2.0 FTE Nurse I, 2.0 FTE LPN II, and 2.0 FTE Client Care Aide II. All of these positions will provide direct bedside care to high acuity patients on the L2 unit. Due to difficulty hiring and retaining direct care nursing staff, CMHHIP has requested these positions with salaries at Step Year 5, rather than minimums. Because competency patients cannot be placed on L2 until building modifications have concluded in F1 and ABTU patients have moved, OCFMH anticipates opening L2 to competency patients on November 1, 2026. As such, staff will need to be hired for eight months in FY 2026-27. The anticipated cost for these FTE are reported in the attached [FTE worksheet](#) and come to \$420,360 in FY 2026-27 and \$640,228 in FY 2027-28 and ongoing.

Costs for Contracted Civil Beds for Diversion

Based on current costs for existing private hospital bed contracts and anticipated rates for potential new contracts, OCFMH calculates anticipated costs for these beds at an estimated rate of \$1,200 per bed per day. The Department intends to begin contracting for these beds on January 1, 2027. As such, anticipated costs include 24 beds for 181 days in FY 2026-27, at a total cost of \$5,212,800, for 366 days in FY 2027-28, at a total cost of \$10,540,800, and for 365 days in FY 2028-29 and ongoing, for a total cost of \$10,512,000.

Costs for OCFMH Oversight Staff

Between 16 new JBR beds and 32 new private hospital beds (including the 5 beds funded by R-04), OCFMH will be overseeing 48 new contracted restoration beds beginning on July 1, 2026. To manage these 48 beds, the program oversight team must

assign clinical staff to review documentation for individuals on the waitlist. This staff will also coordinate admissions with the JBR team and the private hospital admissions teams. The required clinical workload, encompassing clinical documentation review, submission of treatment reports to courts and admission/discharge coordination with restoration programs, is estimated at one FTE for every 20 beds managed. This work will require 2.0 FTE Social Work/Counselor IV, and these FTE are expected to begin at the time the new contracts take effect on July 1, 2026. The total cost for these positions is outlined in the attached [FTE worksheet](#) is expected to be \$288,923 in FY 2026-27 and \$278,153 in FY 2027-28 and ongoing.

These 48 beds, as well as the 24 civil beds contracted to offset the civil beds lost when ABTU moves to F1, will also comprise a volume of contracted work that will require additional contract oversight. As a result, OCFMH will require 1.0 FTE Contract Administrator I. This position will oversee contracts, billing and bed census tracking for the additional forensic and civil beds. This position is expected to begin July 1, 2026 in order to support contracts that will begin at that time. The total cost for this position is outlined in the attached [FTE worksheet](#) is expected to be \$84,945 in FY 2026-27 and \$79,560 in FY 2027-28 and ongoing.

Since contracting civil beds for forensic diversion, and working to ensure appropriate forensic clients are able to transition to the civil system of care, is new work for OCFMH, the Office will hire a small team to support and oversee this work. This team will include 1.0 FTE Program Management I, 1.0 FTE Health Professional IV, 1.5 FTE Psychologist I, and 0.5 FTE Program Assistant I. The program manager position will oversee the contract for these civil beds, taking the lead on drafting its programmatic requirements and serving as the primary contractor contact. This role will also supervise the Admissions Coordinator (Health Professional IV). The Admissions Coordinator will be responsible for ensuring bed occupancy and coordinating the legal documentation for civil certifications with the courts and receiving hospitals. The psychologists will be needed to review competency evaluations that recommend civil certification and complete the filing of the certification process with civil courts. Finally, the Program Assistant will provide essential support to this team by managing data collection, tracking court-required documents, and coordinating patient transportation.

Given that the Department anticipates beginning the first contracts for these beds on January 1, 2027, this team is expected to begin work on October 1, 2026 in order to ensure contracts are in place, develop program protocols and expectations, and identify clients for admission ahead of the first patient admissions. Due to difficulty hiring clinical workers within OCFMH, clinical positions are requested with salaries at

Step Year 5, except psychologists, who are listed with salaries at Midpoints. Psychologist hiring and retention at current salary rates has been a major driver to Consent Decree noncompliance because of high vacancy rates among competency evaluator psychologist FTE. The total cost for these positions is outlined in the attached [FTE worksheet](#) is expected to be \$428,129 in FY 2026-27 and \$530,628 in FY 2027-28 and ongoing.

Total Anticipated Costs

Given the assumptions and calculations in the sections above, CDHS estimates total cost for all portions of the outlined projects as outlined in Table 3.

Table 4: Total Costs

Expense	FY 2026-27	FY 2027-28	Ongoing
Additional JBR Beds	\$2,459,808	\$2,466,547	\$2,459,808
Contracted Private Restoration Beds	\$10,347,750	\$10,376,100	\$10,347,750
Building Modifications to F1	\$300,000	-	-
F1 Civil Bed Offsets	\$10,512,000	\$10,540,800	\$10,512,000
Additional Staff for L2	\$420,360	\$640,228	\$640,228
Civil Diversion Beds	\$5,212,800	\$10,540,800	\$10,512,000
OCFMH Oversight Staff	\$801,996	\$888,342	\$888,342
Total	\$30,054,714	\$35,452,817	\$35,360,128