
**Department of Health and
Mental Hygiene
Fiscal 2017 Budget Overview**

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

January 2016

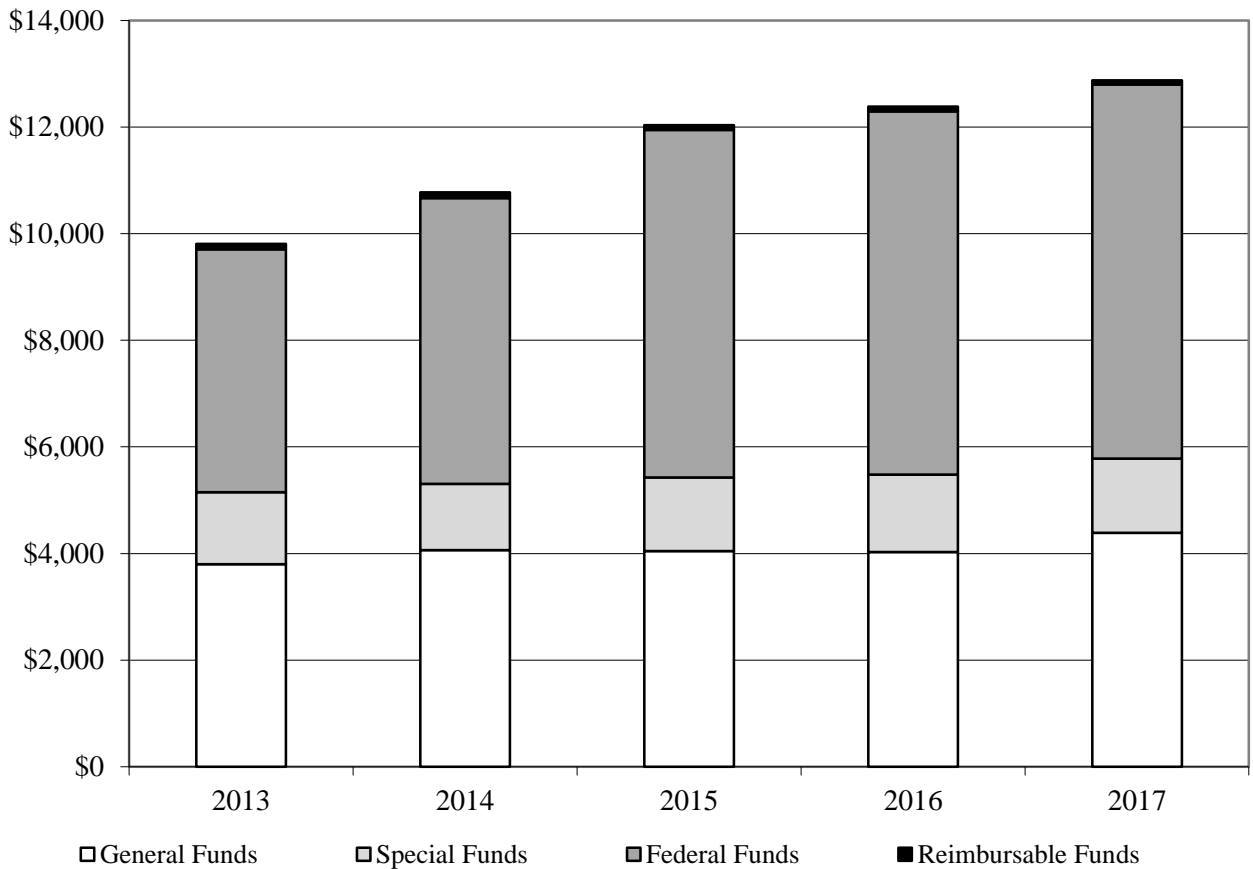
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Analysis of the FY 2017 Maryland Executive Budget, 2016

M00
Department of Health and Mental Hygiene
Fiscal 2017 Budget Overview

Department of Health and Mental Hygiene
Five-year Funding Trends
Fiscal 2013-2017
(\$ in Millions)



Note: Includes fiscal 2016 deficiencies and planned reversions as well as fiscal 2017 back of the bill reductions. Fiscal 2013 through 2017 data includes the funding for the Senior Prescription Drug Assistance Program, which is being transferred to the Department of Health and Mental Hygiene in fiscal 2017.

Source: Department of Legislative Services; Department of Budget and Management

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Budget Overview
Fiscal 2013-2017
(\$ in Millions)**

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>Change 2016-17</u>
General Funds	\$3,811	\$4,061	\$4,078	\$4,225	\$4,389	
Fiscal 2016 Deficiencies				2		
Planned Reversions and Back of Bill Reductions			-34	-200	-1	
Adjusted General Funds	\$3,811	\$4,061	\$4,044	\$4,028	\$4,387	\$359
Special Funds	\$1,353	\$1,245	\$1,380	\$1,450	\$1,392	
Fiscal 2016 Deficiencies						
Back of Bill Reductions					0	
Adjusted Special Funds	\$1,353	\$1,245	\$1,380	\$1,450	\$1,391	-\$59
Federal Funds	\$4,554	\$5,363	\$6,523	\$6,816	\$7,021	
Fiscal 2016 Deficiencies						
Back of Bill Reductions					0	
Adjusted Federal Funds	\$4,554	\$5,363	\$6,523	\$6,816	\$7,020	\$204
Reimbursable Funds	\$107	\$105	\$90	\$95	\$79	-\$16
Total	\$9,286	\$10,774	\$12,037	\$12,389	\$12,878	\$489
Annual % Change From Prior Year	2.0%	9.6%	11.9%	2.9%	3.9%	

Note: Includes fiscal 2016 deficiencies and planned reversions as well as fiscal 2017 back of the bill reductions. Fiscal 2013 through 2017 data includes the funding for the Senior Prescription Drug Assistance Program, which is being transferred to the Department of Health and Mental Hygiene in fiscal 2017.

Numbers may not sum to total due to rounding.

Source: Department of Legislative Services; Department of Budget and Management

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Fiscal 2016 Deficiencies and Fiscal 2017 Back of the Bill Reductions**

<u>Program</u>	<u>Item</u>	<u>General Funds</u>	<u>Total Funds</u>
Fiscal 2016 Deficiencies			
Prevention and Health Promotion Administration	Funding to cover the State share of Certificate of Need expenses for the proposed new Regional Medical Center in Prince George’s County	\$1,456,208	\$1,456,208
Western Maryland Hospital Center	Funding to support the management staffing contract between Meritus and Western Maryland Hospital Center	829,114	829,114
Fiscal 2016 Deficiencies Total		\$2,285,322	\$2,285,322
Fiscal 2017 Back of the Bill Reductions			
DHMH	Reduction to reflect health insurance savings due to a revised collections estimate	-\$1,424,451	-\$1,808,029
Fiscal 2017 Back of the Bill Reductions Total		-\$1,424,451	-\$1,808,029

DHMH: Department of Health and Mental Hygiene

Source: State Budget

M00 – DHMH – Fiscal 2017 Budget Overview

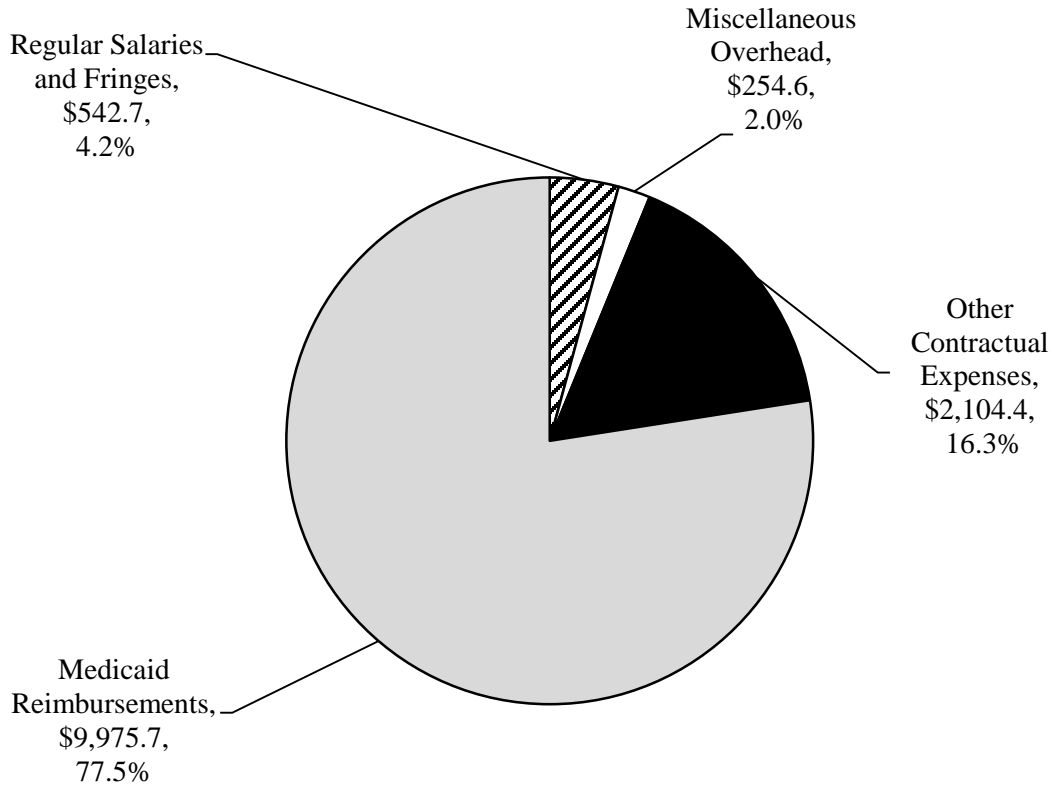
**Department of Health and Mental Hygiene
Fiscal 2016 2% Across-the-board Reduction Allocation**

<u>Program</u>	<u>Item</u>	<u>General Funds</u>	<u>Total Funds</u>
Administration	Reduction in minority health and health disparities grants (\$500,000); reduction in various information technology contracts (\$69,681); removal of 1 contractual position and a 50% reduction of another (\$28,721)	-\$723,402	-\$735,529
Health Occupation Boards	Various operating expenses within the Nursing Home Administrators and Residential Child Care Administrations boards	-10,000	-10,000
Public Health Administration	Reduction in funding for grants for Baltimore City Child and Adolescent Health Advocacy Program (\$60,000), school-based health center grant (\$37,784), and other operating expenditures, mainly for utility expenditures (\$215,932)	-313,716	-313,716
Prevention and Health Promotion	Elimination of grant to the University of Maryland Medical System for Montebello Rehabilitation Center	-442,730	-442,730
Chronic Hospitals	Reductions in laundry services (\$26,735), security contract (\$20,000), and transportation (\$10,000)	-56,735	-56,735
Behavioral Health Administration	Fund swaps due to higher federal award attainment	-1,375,000	0
Behavioral Health Administration	Decrease for mental health uninsured services (\$250,000) and substance use disorder services (\$200,000)	-450,000	-450,000
Behavioral Health Administration	2% operating expenses cut at all institutions	-814,890	-981,628
Developmental Disabilities Administration	Reduce general funds in anticipation of increased federal fund attainment	-3,995,501	-200,000
Developmental Disabilities Administration	Reductions at institutions including eliminating 6 positions at Holly Center (\$404,299) and other operating reductions (\$484,235)	-888,534	-888,534
Medicaid	Fund swap with Rate Stabilization Fund	-11,013,633	0
Medicaid	Planned reversions	-7,762,068	-16,329,592
Medicaid	Lower Managed Care Organization rates in Children’s Health Insurance Plan	-587,500	-2,500,000
Fiscal 2016 2% Across-the-board Reductions Total		-\$28,433,709	-\$22,908,464

Source: Department of Legislative Services; Department of Health and Mental Hygiene

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Functional Breakdown of Spending
Fiscal 2017 Allowance
(\$ in Millions)**



Note: Medicaid reimbursements include Maryland Children’s Health Program and Behavioral Health provider reimbursements.

Source: Department of Legislative Services; Department of Budget and Management

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Budget Overview: All Funding Sources
Fiscal 2015-2017
(\$ in Thousands)**

	<u>Actual 2015</u>	<u>Working 2016</u>	<u>Allowance 2017</u>	<u>\$ Change 2016-17</u>	<u>% Change 2016-17</u>
Medical Programs/Medicaid	\$8,726,943	\$8,731,801	\$9,157,167	\$425,366	4.9%
Provider Reimbursements	8,367,709	8,358,737	8,727,660	368,923	4.4%
Maryland Children’s Health Program	243,669	245,648	283,863	38,214	15.6%
Other	115,565	127,416	145,644	18,228	14.3%
Behavioral Health	\$1,547,108	\$1,666,513	\$1,681,053	\$14,540	0.9%
Program Direction	20,146	19,338	23,912	4,574	23.7%
Community Services	1,237,455	1,359,223	1,363,072	3,850	0.3%
Facilities	289,507	287,952	294,069	6,117	2.1%
Developmental Disabilities	\$978,359	\$1,087,971	\$1,151,460	\$63,488	5.8%
Program Direction	9,340	9,147	10,198	1,050	11.5%
Community Services	925,298	1,038,312	1,099,736	61,424	5.9%
Facilities	43,720	40,512	41,526	1,014	2.5%
Public Health Administration	\$124,934	\$145,779	\$139,874	-\$5,905	-4.1%
Targeted Local Health	46,236	50,157	53,981	3,825	7.6%
Other	78,698	95,622	85,893	-9,729	-10.2%
Prevention and Health					
Promotion Administration	\$331,570	\$363,471	\$360,917	-\$2,553	-0.7%
Women, Infants, and Children	106,466	115,250	115,436	186	0.2%
CRF Tobacco and Cancer	38,406	45,973	48,067	2,094	4.6%
Maryland AIDS Drug Assistance Program	37,749	57,628	45,296	-12,332	-21.4%
Other	148,949	144,619	152,118	7,499	5.2%
Other Budget Areas	\$327,620	\$393,046	\$388,845	-\$4,202	-1.1%
DHMH Administration	48,650	48,958	49,874	916	1.9%
Office of Health Care Quality	21,319	20,064	20,406	342	1.7%
Health Occupations Boards	30,560	37,256	38,160	904	2.4%
Chronic Disease Hospitals	49,320	50,290	49,896	-394	-0.8%
Health Regulatory Commissions	177,770	236,479	230,510	-5,969	-2.5%
Departmentwide Reductions	\$0	\$0	-\$1,808	-\$1,808	n/a
Total Funding	\$12,036,534	\$12,388,581	\$12,877,508	\$488,927	3.9%

CRF: Cigarette Restitution Fund

DHMH: Department of Health and Mental Hygiene

Note: For the purpose of this chart, fee-for-service community behavioral health expenditures for Medicaid recipients are shown under the Behavioral Health Administration as opposed to Medicaid where they are budgeted. Fiscal 2015 through 2017 funding includes funding for the Senior Prescription Drug Assistance Program, which is being transferred to DHMH in fiscal 2017. Includes fiscal 2016 deficiencies and planned reversions as well as fiscal 2017 back of the bill reductions. Numbers may not sum to total due to rounding.

Source: Department of Legislative Services; State Budget

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Budget Overview: General Funds Only
Fiscal 2015-2017
(\$ in Thousands)**

	<u>Actual 2015</u>	<u>Working 2016</u>	<u>Allowance 2017</u>	<u>\$ Change 2016-17</u>	<u>% Change 2016-17</u>
Medical Programs/Medicaid	\$2,403,394	\$2,347,732	\$2,640,262	\$292,530	12.5%
Provider Reimbursements	2,299,638	2,294,471	2,572,657	278,186	12.1%
Maryland Children’s Health Program	72,430	21,676	33,925	12,249	56.5%
Other	31,326	31,585	33,680	2,095	6.6%
Behavioral Health	\$839,520	\$856,743	\$886,256	\$29,513	3.4%
Program Direction	15,072	15,319	19,084	3,766	24.6%
Community Services	544,616	564,016	582,387	18,370	3.3%
Facilities	279,833	277,408	284,785	7,377	2.7%
Developmental Disabilities	\$565,876	\$602,913	\$635,767	32,854	5.4%
Program Direction	5,665	5,458	5,495	36	0.7%
Community Services	517,153	557,618	589,217	31,599	5.7%
Facilities	43,058	39,836	41,055	1,219	3.1%
Public Health Administration	\$98,809	\$100,155	\$105,104	\$4,949	4.9%
Targeted Local Health	41,743	45,664	49,488	3,825	8.4%
Other	57,066	54,491	55,615	1,124	2.1%
Prevention and Health Promotion Administration	\$53,261	\$38,719	\$37,510	-\$1,209	-3.1%
Women, Infants, and Children	51	65	65	0	0.0%
Cigarette Restitution Fund Tobacco and Cancer	0	0	0	0	
Maryland AIDS Drug Assistance Program	20	0	0	0	
Other	53,190	38,654	37,445	-1,209	-3.1%
Other Budget Areas	\$83,529	\$81,772	\$83,802	\$2,030	2.5%
DHMH Administration	24,462	24,207	25,057	850	3.5%
Office of Health Care Quality	13,803	11,816	12,575	759	6.4%
Health Occupations Boards	391	476	492	16	3.4%
Chronic Disease Hospitals	44,873	45,274	45,678	405	0.9%
Health Regulatory Commissions	0	0	0	0	
Departmentwide Reductions			-\$1,424	-\$1,424	0.0%
Total Funding	\$4,044,389	\$4,028,034	\$4,387,275	\$359,242	8.9%

DHMH: Department of Health and Mental Hygiene

Note: For the purpose of this chart, fee-for-service community behavioral health expenditures for Medicaid recipients are shown under the Behavioral Health Administration as opposed to Medicaid where they are budgeted. Includes fiscal 2016 deficiencies and planned reversions as well as fiscal 2017 back of the bill reductions. Numbers may not sum to total due to rounding.

Source: Department of Legislative Services; State Budget

M00 – DHMH – Fiscal 2017 Budget Overview

**Proposed Budget Changes
Department of Health and Mental Hygiene
(\$ in Thousands)**

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
2016 Working Appropriation	\$4,028,034	\$1,449,919	\$6,815,881	\$94,748	\$12,388,581
2017 Governor’s Allowance	4,387,275	1,391,372	7,020,359	\$78,502	12,877,508
Amount Change	359,242	-58,547	204,478	-16,246	488,927
Percent Change	8.9%	-4.0%	3.0%	-17.1%	3.9%

Where It Goes:

Personnel

\$16,812

Employee and retiree health insurance	\$12,078
Retirement contribution	9,316
Other fringe benefit adjustments.....	396
Regular earnings	580
Abolished positions from privatization of certain hospital functions	-5,558

Major Programmatic Changes (Excluding Medicaid)

\$56,238

Behavioral Health Administration

Fee-for-Service Community Mental Health Services

-\$360

Regulated rate changes.....	\$14,787
Rate adjustment for community providers (2% increase).....	12,235
Enrollment and utilization for Medicaid State-funded and uninsured services	-5,529
Enrollment and utilization for Medicaid-eligible services.....	-21,853

Community Mental Health Grants and Contracts

\$3,764

Maryland Collaboration for Homeless Enhancement Services grant (federal funds)	\$1,427
Rate increase for Core Service Agencies.....	1,273
Increase in Community Mental Health Service Block grant (federal funds)....	1,064

Substance Abuse Services

\$687

Maryland Collaboration for Homeless Enhancement Services and Medication Assisted Treatment (federal funds)	\$2,187
Increased block grant and other federal funding.....	1,112
Synar Amendment penalty.....	-2,612

Institutions

\$2,594

Privatization contracts.....	\$4,491
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M00 – DHMH – Fiscal 2017 Budget Overview

Where It Goes:

Operating costs.....		-1,897
Program Direction	\$3,059	
Heroin Task Force initiatives		\$3,059
Developmental Disabilities Administration	\$60,796	
Rate increase for providers (3.5%)		\$36,103
Additional funding for annualization and expansion		21,161
Utilization review and rate-setting study		3,532
Public Health Administration	-\$6,455	
Core Local Public Health formula		\$3,825
Reduced funding for Ebola-related programs (federal funds)		-10,279
Prevention and Health Promotion Administration	-\$2,994	
Healthiest Maryland (federal funds)		\$4,014
Affordable Care Act maternal infant and child care home visiting (federal funds)		1,794
Synar funding (special funds)		1,878
Maryland Aids Drug Assistance Program (special funds)		-10,680
Regulatory Commissions	-\$4,854	
Integrated Care Networks (special funds).....		\$6,527
All-payer Model contracts (special funds).....		1,186
Expiring grants at Maryland Health Care Commission (federal funds).....		-2,492
Reduction in CRISP grants (special funds).....		-10,075
Medicaid/Medical Care Programs Administration	\$424,200	
Provider Reimbursements (Medicaid and MCHP)	\$404,941	
Provider rate increases (Medicaid, MCHP, and Community First Choice).....		\$320,697
Enrollment and Utilization.....		124,772
Hepatitis C kick payments to MCOs.....		64,984
Medicare Part A&B Premiums		24,489
Medicare Part D Clawback payment		18,100
Autism spectrum disorder additional services		13,390
Community First Choice (excluding rate increase)		6,744
Transportation grants (align to actuals).....		5,806
MMIS/Systems contracts		3,438
Health Homes.....		3,390
Miscellaneous adjustments		3,237
Graduate medical education payments.....		2,036
Nursing cost settlements		901

M00 – DHMH – Fiscal 2017 Budget Overview

Where It Goes:

Third-party Liability recovery contract.....	900
Supplemental payments to Federally Qualified Health Centers (align to actuals)	-1,831
School-based Services (reimbursable fund expenses)	-2,455
Balancing Incentive Payment Program administrative expenditures.....	-5,297
Money Follows the Person.....	-5,731
Waiver enrollment and eligibility services	-10,889
Hospital Presumptive Eligibility (federal funds only)	-18,060
Health Information Technology payments (federal funds, align to actual)	-26,740
Pharmacy rebates (federal funds only).....	-116,940

Other Program Changes

\$19,259

Health Information Exchange/Electronic Health Record Funding	\$13,802
Major Information Technology Development Projects	5,469
Kidney Disease Program.....	1,454
State Innovation Models (federal funds).....	-2,844
Other	1,378

Back of the Bill Health Insurance Reduction

-\$1,764

Other

-\$6,559

Total

\$488,927

CRISP: Chesapeake Regional Information System for our Patients

MCHP: Maryland Children’s Health Program

MCO: managed care organization

MMIS: Medicaid Management Information System II

Note: For the purpose of this chart, fee-for-service community behavioral health expenditures for Medicaid recipients are shown under the Behavioral Health Administration as opposed to Medicaid where they are budgeted. Includes fiscal 2016 deficiencies and planned reversions as well as fiscal 2017 back of the bill reductions. Fiscal 2016 and 2017 data includes funding for the Senior Prescription Drug Assistance Program, which is being transferred to the Department of Health and Mental Hygiene in fiscal 2017. Numbers may not sum to total due to rounding.

Source: Department of Legislative Services; State Budget

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Regular Employees
Fiscal 2015-2017**

	<u>Actual 2015</u>	<u>Working 2016</u>	<u>Allowance 2017</u>	<u>Change 2016-17</u>	<u>% Change 2016-17</u>
DHMH Administration	344.6	345.6	344.0	-1.6	-0.5%
Office of Health Care Quality	191.7	197.0	196.7	-0.3	-0.2%
Health Occupations Boards	268.7	282.7	279.7	-3.0	-1.1%
Public Health Administration	404.9	399.9	399.9	0.0	0.0%
Prevention and Health Promotion					
Administration	362.8	366.8	426.8	60.0	16.4%
Chronic Hospitals	511.8	510.8	495.3	-15.5	-3.0%
Behavioral Health Administration	2,900.9	2,900.6	2,800.9	-99.7	-3.4%
Administration	155.4	157.9	158.9	1.0	0.6%
Institutions	2,745.5	2,742.7	2,642.0	-100.7	-3.7%
Developmental Disabilities Administration	632.5	626.5	616.5	-10.0	-1.6%
Administration	152.0	152.0	152.0	0.0	0.0%
Institutions	480.5	474.5	464.5	-10.0	-2.1%
Medical Care Programs					
Administration	611.0	620.0	620.0	0.0	0.0%
Health Regulatory Commissions	102.7	103.7	103.7	0.0	0.0%
Total Regular Positions	6,331.6	6,353.6	6,283.5	-70.1	-1.1%

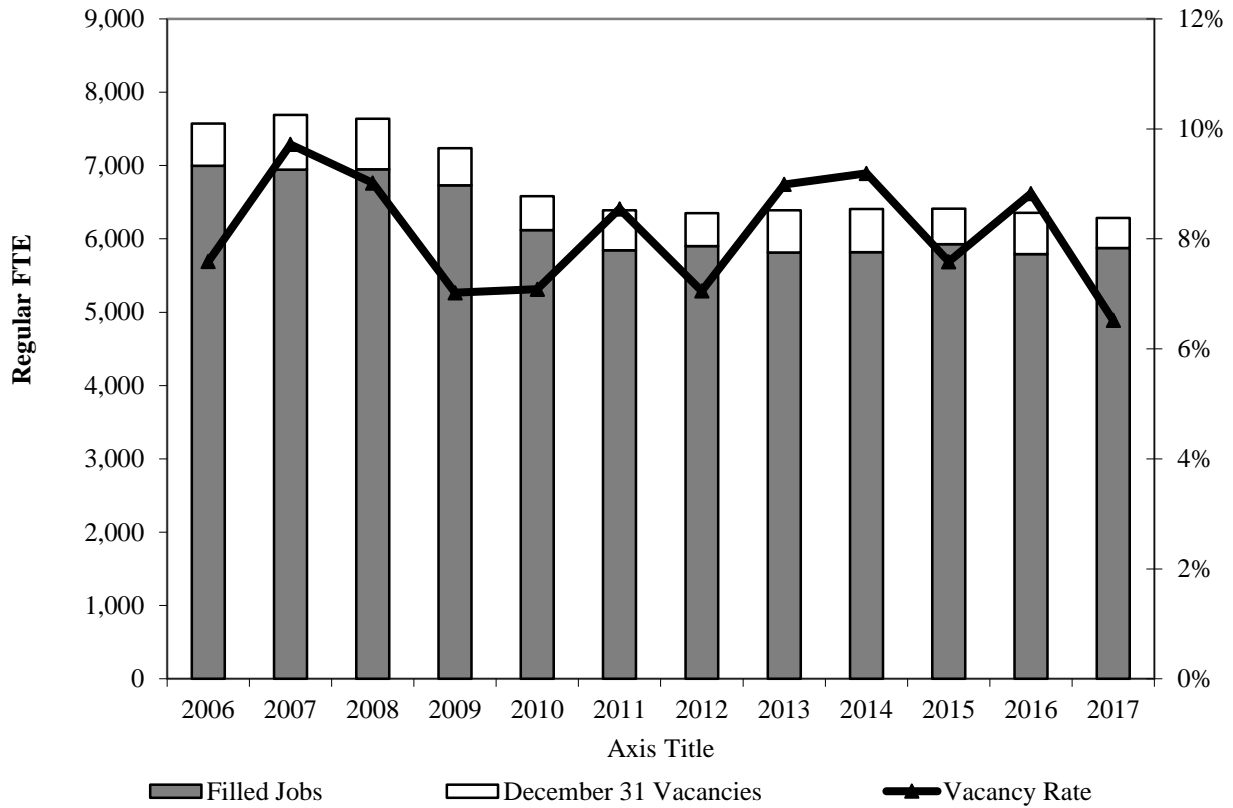
DHMH: Department of Mental Health and Hygiene

Note: Fiscal 2015 through 2017 positions includes positions for the Senior Prescription Drug Assistance Program, which is being transferred to DHMH in fiscal 2017.

Source: State Budget

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Regular Employee Filled Jobs and Vacancy Rates
Fiscal 2006-2017**



FTE: full-time equivalent

Note: Fiscal 2017 vacancy rate is based on budgeted turnover.

Source: Department of Legislative Services; Department of Health and Mental Hygiene

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Regular Employees – Vacancy Rates
December 31, 2015**

	<u>FTE Vacancies</u>	<u>FTE Positions</u>	<u>Vacancy Rate</u>
DHMH Administration	37.6	345.6	10.9%
Office of Health Care Quality	6.9	197.0	3.5%
Health Occupations Boards	34.1	282.7	12.1%
Public Health Administration	36	399.9	9.0%
Prevention and Health Promotion Administration	14.8	366.8	4.0%
Chronic Hospitals	63.5	510.8	12.4%
Behavioral Health Administration	297.5	2,900.6	10.3%
Developmental Disabilities Administration	58	626.5	9.3%
Medical Care Programs Administration	0.5	620.0	0.1%
Health Regulatory Commissions	11.8	103.7	11.4%
Total Regular Positions	560.7	6,353.6	8.8%

DHMH: Department of Health and Mental Hygiene
FTE: full-time equivalent

Source: Department of Budget and Management

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Contractual Employees
Fiscal 2015-2017**

	<u>Actual 2015</u>	<u>Working 2016</u>	<u>Allowance 2017</u>	<u>Change 2016-17</u>	<u>% Change 2016-17</u>
DHMH Administration	5.77	7.55	7.56	0.01	0.1%
Office of Health Care Quality	8.75	5.50	5.00	-0.50	-9.1%
Health Occupations Boards	12.38	15.47	14.40	-1.07	-6.9%
Public Health Administration	11.43	14.10	14.30	0.20	1.4%
Prevention and Health Promotion Administration	3.96	6.11	6.12	0.01	0.2%
Chronic Hospitals	20.09	18.01	18.27	0.26	1.4%
Behavioral Health Administration	215.66	221.60	210.03	-11.57	-5.2%
Administration	19.52	29.34	27.16	-2.18	-7.4%
Institutions	196.14	192.26	182.87	-9.39	-4.9%
Developmental Disabilities Administration	23.84	25.25	27.94	2.69	10.7%
Administration	3.95	8.00	10.00	2.00	25.0%
Institutions	19.89	17.25	17.94	0.69	4.0%
Medical Care Programs Administration	82.85	125.92	125.21	-0.71	-0.6%
Health Regulatory Commissions	0.00	0.00	0.00	0.00	n/a
Total Contractual Positions	384.73	439.51	428.83	-10.68	-2.4%

DHMH: Department of Health and Mental Hygiene

Source: Department of Budget and Management

M00 – DHMH – Fiscal 2017 Budget Overview

**Department of Health and Mental Hygiene
Budget Overview: Selected Caseload Measures**

Fiscal 2013-2017

	<u>Actual 2013</u>	<u>Actual 2014</u>	<u>Actual 2015</u>	<u>Working 2016</u>	<u>Allowance 2017</u>	<u>Change 2016-17</u>	<u>% Change 2016-17</u>
Medical Programs/Medicaid							
Medicaid Enrollees	842,237	898,508	917,756	847,353	875,987	28,634	3.4%
Maryland Children’s Health Program	111,132	114,648	122,955	136,980	146,031	9,051	6.6%
Affordable Care Act Medicaid Expansion		181,738	220,189	233,516	222,250	-11,266	-4.8%
Total	953,369	1,194,894	1,260,900	1,217,849	1,244,268	26,419	2.2%
Primary Adult Care ¹	73,464						
Developmental Disabilities Administration²							
Residential Services	6,040	6,107	6,209	6,445	6,502	57	0.9%
Day Services	13,353	13,810	14,133	14,638	14,937	299	2.0%
Support Services	8,011	8,259	8,306	9,141	8,931	-210	-2.3%
Total Services	27,404	28,176	28,648	30,224	30,370	146	0.5%
Resource Coordination	22,954	24,052	24,314	25,670	23,293	-2,377	-9.3%
Number of Individuals Served	24,445	25,183	25,315	26,705	28,205	1,500	5.6%
Average Daily Census at Institutions ³	155	144	137	143	128	-15	-10.5%
Behavioral Health Administration							
<i>Average Daily Populations at State-run Psychiatric Hospitals:</i>							
<i>Hospitals Excluding RICAs and Assisted Living</i>							
	949	942	975	954	954	0	0.0%
RICAs	65	66	66	70	70	0	0.0%
Assisted Living	56	55	53	60	57	-3	-5.0%
Total	1,070	1,063	1,094	1,084	1,081	-3	-0.3%
Clients Receiving State-funded Community Mental Health Services	14,104	11,297	11,505	11,800	11,800	0	0.0%
Clients with Substance Abuse Served in Various Settings:	70,930	67,531	70,300	71,840	73,500	1,660	2.3%

RICA: Regional Institutions for Children and Adolescents

¹ Effective January 1, 2014, the Primary Adult Care program ended and recipients became eligible for full Medicaid benefits under the Medicaid expansion option provided in the federal Affordable Care Act.

² Residential services include community residential services and individual family care. Day services include activities during normal working hours such as day habilitation services, supported employment, and summer programs. Support services include individual and family support, Community Supported Living Arrangements, and self-directed services.

³ The Developmental Disabilities Administration data includes secure evaluation and therapeutic treatment center units.

Source: Department of Legislative Services; Department of Health and Mental Hygiene

Issues

1. Cigarette Restitution Fund: Ongoing Litigation Has Significant Impact on Fiscal 2016 and 2017 Budget

Background

The Cigarette Restitution Fund (CRF) was established by Chapters 172 and 173 of 1999 and is supported by payments made under the Master Settlement Agreement (MSA). Through the MSA, the settling manufacturers pay the litigating parties – 46 states (Florida, Minnesota, Mississippi, and Texas had previously settled litigation), five territories, and the District of Columbia – substantial annual payments in perpetuity as well as conform to a number of restrictions on marketing to youth and the general public.

The distribution of MSA funds among the states is determined by formula, with Maryland receiving 2.26% of MSA monies, which are adjusted for inflation, volume, and prior settlements. In addition, the State collects 3.3% of monies from the Strategic Contribution Fund, distributed according to each state’s contribution toward resolution of the state lawsuits against the major tobacco manufacturers.

The use of the CRF is restricted by statute. Activities funded through the CRF in fiscal 2015 include the Tobacco Use Prevention and Cessation Program; the Cancer Prevention, Education, Screening, and Treatment Program; substance abuse treatment and prevention; the Breast and Cervical Cancer Program; Medicaid; tobacco production alternatives; legal activities; and nonpublic school textbooks.

The Nonparticipating Manufacturer Adjustment

One of the conditions of the MSA was that the states take steps toward creating a more “level playing field” between participating manufacturers (PM) to the MSA (and thus subject to annual payments and other restrictions) and nonparticipating manufacturers (NPM) to the agreement. This condition is enforced through another adjustment to the states’ annual payments, the NPM adjustment. The PMs have long contended that the NPMs have avoided or exploited loopholes in state laws that give them a competitive advantage in the pricing of their products. If certain conditions are met, the MSA provides a downward adjustment to the contribution made by PMs based on their MSA-defined market share loss multiplied by three. This adjustment is known as an NPM adjustment. The agreement also allows PMs to pursue this adjustment on an annual basis.

Under the MSA, PMs have to show three things in order to prevail and reduce their MSA payments:

- a demonstrable loss of market share of over approximately 2%;

M00 – DHMH – Fiscal 2017 Budget Overview

- that the MSA was a significant factor contributing to that loss of market share; and
- a state was not diligently enforcing its qualifying statute.

The qualifying statute is intended to create a more level playing field with regard to the price between the PMs and the NPMs. Originally included in the MSA as a model statute, Maryland's qualifying statute was enacted in 1999 (Chapter 169), with subsequent revisions in the 2001 and 2004 sessions.

As shown in **Exhibit 1**, litigation regarding the NPM adjustment started in 2005, beginning with the NPM adjustment for sales year 2003. Arbitration regarding the "diligent enforcement" issue for 2003 commenced in July 2010. As further shown in the exhibit, Maryland was 1 of 15 states that did not settle with the PMs during the arbitration process and was 1 of 6 states that were found to not have diligently enforced its qualifying statute. Among the findings made by the arbitration panel were that Maryland lacked dedicated and trained personnel to conduct enforcement efforts and that the Comptroller's office, in particular, failed to meaningfully participate in enforcement efforts.

Exhibit 1 **Nonparticipating Manufacturer Litigation Timeline**

<u>Date</u>	<u>Item</u>
April 2004	PMs give notice to state attorneys general that they were pursuing an NPM adjustment with respect to a loss of market share in sales year 2003. A similar adjustment is sought for subsequent sales years. The PMs may place that portion of their annual payments they believe should be reduced under this process into an escrow account. Some PMs elect to do this, reducing the funding available to the states in any given year.
March 2006	An economic firm rules for PMs that MSA participation was a significant factor in the PMs' market share loss, which had previously been calculated by the MSA Independent Auditor. Similar rulings are made for subsequent sales years.
April 2006	Additional PMs place disputed payments related to 2003 NPM Adjustment into escrow account.
Calendar 2006-2009	Maryland (like many other states) argues that the issue of whether it diligently enforced its Qualifying Statute should be made in State courts. The PMs prevail in that the diligent enforcement issue is subject to the MSA's arbitration clause.
January 2009	Most states sign an agreement to enter into arbitration. The agreement includes a 20% refund of the liability of each joining state that is eventually determined to not have diligently enforced.
July 2010	Arbitration proceedings begin for 46 states, the District of Columbia, and various territories.
November 2011	PMs file statements of contest against all but 15 states in the arbitration.

M00 – DHMH – Fiscal 2017 Budget Overview

<u>Date</u>	<u>Item</u>
March-June 2013	Twenty other states and the District of Columbia enter into a settlement agreement with the PMs – leaving 15 states, including Maryland, to proceed with arbitration.
September 2013	Six states (Indiana, Kentucky, Maryland, Missouri, New Mexico, and Pennsylvania) are determined to not have diligently enforced their qualifying statute for sales year 2003. These states not only lose payments from PMs that have been held in escrow for that sales year, but also see a reduction in their future MSA payments for the states that are found to have diligently enforced their qualifying statutes. In addition to the \$16 million placed in escrow for that sales year, and after the 20% refund resulting from entering into arbitration, Maryland sees a reduction in its April 2014 MSA payment of \$67 million.
November 2013	Maryland petitions the Baltimore City Circuit Court to vacate the arbitration award finding that Maryland did not diligently enforce its qualifying statute during 2003 as well as the arbitration panel’s judgment reduction.
February 2014	A hearing is held in Baltimore City Circuit Court. Supplemental briefs are filed by both sides in March through May 2014.
July 2014	The Baltimore City Circuit Court denies Maryland’s petitions.
August 2014	Maryland appeals the Baltimore City Circuit Court’s decision to the Maryland Court of Special Appeals.
October 2015	The Court of Special Appeals finds that arbitration panel’s judgement reduction was incorrect, resulting in a payment back to Maryland of approximately \$40 million from the original \$67 million reduction from April 2014. Meanwhile, arbitration regarding Maryland’s diligent enforcement during sales year 2004 is expected to begin within calendar 2017.

MSA: Master Settlement Agreement

NPM: nonparticipating manufacturer

PM: participating manufacturer

Source: Office of the Attorney General; 2003 NPM Adjustment Arbitration Ruling, September 2013; Department of Legislative Services

As also noted in the exhibit, Maryland not only forfeited \$16 million that the PMs placed in escrow for the 2003 sales year, but under the MSA arbitration framework, also saw its fiscal 2014 payment reduced by \$67 million based on the arbitration panel’s assessment that those states which settled before arbitration could not be found as non-diligent. Thus, Maryland was found to be amongst a small handful of states that would have to cover the entire cost of the 2003 NPM settlement payment. In October 2015, the Maryland Court of Special Appeals determined that the arbitration panel erred in calculating Maryland’s 2003 NPM adjustment liability, which could result in \$50 million in relief within the fiscal 2016 budget, \$40 million of which is already included in the current working appropriation for Medicaid. However, a *writ of certiorari* has been filed by the PMs with the Maryland Court of Appeals, who have yet to decide if they will now take up the decision.

Beyond the 2003 Sales Year

The NPM adjustment is in dispute for future years; thus, unless it is settled or Maryland’s diligence is not contested, there will be future arbitrations assessing Maryland’s enforcement for future years. It is worth noting that although the arbitration ruling found that Maryland was not diligent in enforcing its qualifying statute in the 2003 sales year, the ruling also notes that the State did take actions to position it “well for diligent enforcement in 2004.” Data regarding the extent of noncompliant packs of cigarettes, NPM escrowing, and enforcement efforts support this comment not only for the 2004 sales year but also subsequent years.

Those states that did settle with the PMs realized a one-time cash windfall with the release of funds from disputed payments escrow accounts for sales years 2003 through 2012. However, under the terms of the settlement, the PMs were given credit for future payments from those states (*i.e.*, reducing the payments to those states), and those states had to enact new legislation and will be held to an enhanced standard in NPM adjustment disputes beginning in 2015.

The PMs have sought a multistate arbitration related to sales year 2004 for Maryland and those other states that did not settle the 2003 sales year litigation. Arbitration regarding Maryland’s diligent enforcement during sales year 2004 is expected to begin within calendar 2017. Further, for each disputed year since 2004, an amount has been withheld and deposited into a disputed payments account. If the State were to be found to have diligently enforced the statute in subsequent years, a potential total of \$120 million could be realized in revenue from the disputed payments account.

Fiscal 2015-2017 CRF Programmatic Support

Exhibit 2 provides CRF revenue and expenditure detail for fiscal 2015 to 2017.

Exhibit 2
Cigarette Restitution Fund Budget
Fiscal 2015-2017
(\$ in Millions)

	<u>2015 Actual</u>	<u>2016 Working</u>	<u>2017 Allowance</u>
Beginning Fund Balance	\$9.3	\$3.6	\$16.3
Settlement Payments	131.2	130.8	130.8
NPM and Other Shortfalls in Payments ¹	-17.5	-17.5	-17.5
Awards from Disputed Account	0.0	0.0	0.0
Other Adjustments ²	21.2	34.9	34.9
Tobacco Laws Enforcement Arbitration	0.0	50.0	0.0
Subtotal	\$144.2	\$201.7	\$164.5

M00 – DHMH – Fiscal 2017 Budget Overview

	<u>2015 Actual</u>	<u>2016 Working</u>	<u>2017 Allowance</u>
Prior Year Recoveries	\$2.4	\$1.1	\$1.1
Total Available Revenue	\$146.6	\$202.8	\$165.6
Health Uses			
Tobacco	\$7.5	\$9.7	\$9.7
Cancer	18.9	25.1	25.1
Substance Abuse	21.0	21.0	21.0
Medicaid	70.7	104.4 ³	66.8
Breast and Cervical Cancer	12.0	13.2	13.2
Subtotal	\$130.2	\$173.5	\$135.9
Other Uses			
Aid to Nonpublic School	5.7	6.1	11.1
Tobacco Transition Program	6.5	6.0	5.8
Attorney General	0.5	0.9	0.9
Subtotal	\$12.8	\$13.0	\$17.8
Total Expenses	\$143.0	\$186.5	\$153.7
Ending Fund Balance	\$3.6	\$16.3	\$11.9

NPM: nonparticipating manufacturer

¹The NPM adjustment represents the bulk of this total adjustment.

²Other adjustments include the strategic contribution payments and the National Arbitration Panel Award.

³The working appropriation includes \$4 million of Cigarette Restitution Funds in Medicaid withheld for additional support for nonpublic schools. In this exhibit, that funding is assumed not to be spent and falls to balance.

Note: Numbers may not sum to total due to rounding.

Source: Department of Legislative Services; Department of Budget and Management

The largest change for fiscal 2016 is in the revenue assumption related to the nonparticipating manufacturer litigation previously discussed. The revenue assumption related to the payback from the State’s successful appeal of the prior arbitration ruling should result in a \$50 million increase in revenue for fiscal 2016, which is higher than the anticipated increase of \$40 million last year. However, with no significant increases in spending for fiscal 2016, other than \$2 million for Synar-related tobacco

M00 – DHMH – Fiscal 2017 Budget Overview

prevention activities, which is consistent with the intent of the General Assembly, these increased revenues flow through to the fund balance for fiscal 2016.

For fiscal 2017, CRF support is anticipated to remain similar to fiscal 2016, minus the one-time tobacco enforcement payment. Without that one-time funding, Medicaid expenditures decrease significantly in fiscal 2017. All other expenditures for fiscal 2017 are relatively the same as they were in fiscal 2016, with the exception of one new program receiving CRF support. The fiscal 2017 allowance contains \$5 million for Student Assistance Organization Business Entity Grants. With this new funding, the projected ending fund balance for CRF at the end of fiscal 2017 is currently \$11.9 million.