
Department of Health and Mental Hygiene Fiscal 2018 Budget Overview

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

January 2017

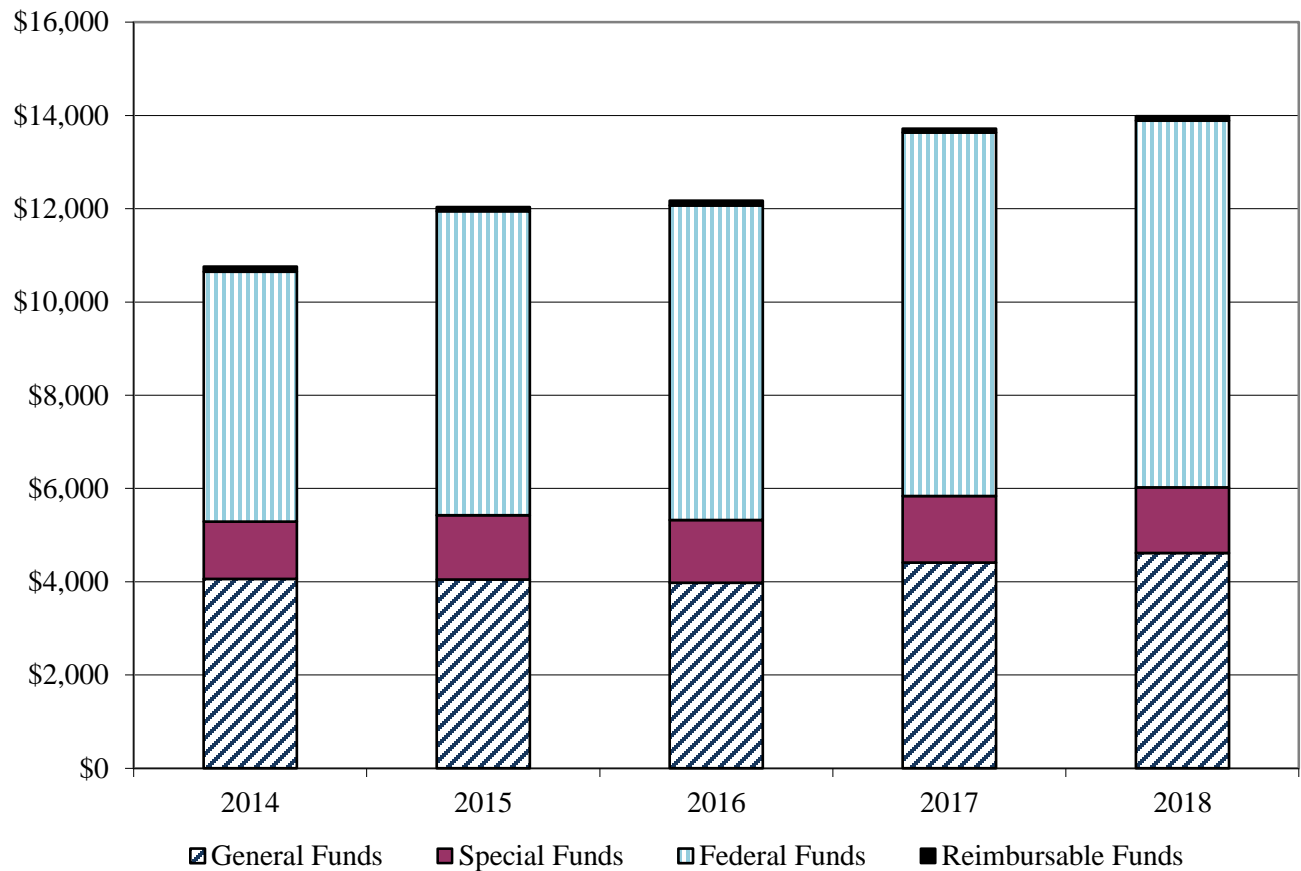
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Analysis of the FY 2018 Maryland Executive Budget, 2017

M00
Department of Health and Mental Hygiene
Fiscal 2018 Budget Overview

Department of Health and Mental Hygiene
Five-year Funding Trends
Fiscal 2014-2018
(\$ in Millions)



Note: Includes fiscal 2017 deficiencies and planned reversions as well as fiscal 2018 contingent actions and back of the bill reductions. Fiscal 2014 through 2018 data includes the funding for the Senior Prescription Drug Assistance Program, which was transferred to the Department of Health and Mental Hygiene in fiscal 2017.

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

M00 – DHMH – Fiscal 2018 Budget Overview

**Department of Health and Mental Hygiene
Budget Overview
Fiscal 2014-2018
(\$ in Millions)**

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>Change 2017-18</u>
General Funds	\$4,061	\$4,078	\$3,978	\$4,335	\$4,674	
Fiscal 2017 Deficiencies				93		
Fiscal 2018 Contingent Actions					-54	
Planned Reversions and Back of the Bill Reductions				-20	-1	
Adjusted General Funds	\$4,061	\$4,078	\$3,978	\$4,408	\$4,618	\$210
Special Funds	\$1,227	\$1,380	\$1,348	\$1,390	\$1,380	
Fiscal 2017 Deficiencies				38		
Fiscal 2018 Contingent Actions					26	
Back of Bill Reductions					0	
Adjusted Special Funds	\$1,227	\$1,380	\$1,348	\$1,428	\$1,406	-\$21
Federal Funds	\$5,363	\$6,523	\$6,746	\$6,963	\$7,867	
Fiscal 2017 Deficiencies				837		
Fiscal 2018 Contingent Actions					-7	
Back of Bill Reductions					0	
Adjusted Federal Funds	\$5,363	\$6,523	\$6,746	\$7,800	\$7,859	\$59
Reimbursable Funds	\$105	\$90	\$100	\$79	\$98	\$20
Total	\$10,756	\$12,071	\$12,172	\$13,715	\$13,982	\$267
Annual % Change from Prior Year	9.7%	12.2%	0.8%	12.7%	1.9%	

Note: Includes fiscal 2017 deficiencies and planned reversions as well as fiscal 2018 contingent actions and back of the bill reductions. Fiscal 2014 through 2018 data includes the funding for the Senior Prescription Drug Assistance Program, which was transferred to the Department of Health and Mental Hygiene in fiscal 2017.

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

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

**Department of Health and Mental Hygiene
Fiscal 2017 Deficiencies and Targeted Reversions**

<u>Program</u>	<u>Item</u>	<u>General Funds</u>	<u>Total Funds</u>
Fiscal 2017 Deficiencies			
Prevention and Health Promotion	A reduction to the appropriation to reflect the restructured grant payments for the proposed Prince George's Regional Medical Center.	-\$7,500,000	-\$7,500,000
Prevention and Health Promotion	Funding to upgrade salaries for the State medical examiners in order to meet recruitment, retention, and national accreditation requirements.	401,614	401,614
Behavioral Health	Funding to augment the State's effort to address the heroin and opioid epidemic.	2,000,000	2,000,000
Behavioral Health	Funding to cover the cost of inpatient psychiatric services for the Medicaid-eligible population.	7,000,000	7,000,000
Behavioral Health	Funding needed to establish a new 20-bed unit in the North Wing of the Clifton T. Perkins Hospital Center.	500,000	500,000
Behavioral Health	Funds for fuel, utilities, security services, and other operational costs at Crownsville Hospital Center.	471,397	593,400
Behavioral Health	Funds for behavioral health provider reimbursements and contractual services.	8,000,000	163,600,000
Medical Care Programs	Funds for medical provider reimbursements and contractual services.	82,061,705	801,500,000
Fiscal 2017 Deficiencies Total		\$92,934,716	\$968,095,014
Fiscal 2017 Targeted Reversions			
Behavioral Health	Restricted funding to restore positions at State hospitals.	-\$2,130,000	-\$2,130,000
Developmental Disabilities	Restricted funding to restore provider contracts.	-214,000	-214,000
Developmental Disabilities	Reduction for caseload trends.	-17,097,963	-17,097,963
Medical Care Programs	Restricted funding for an entry points study.	-100,000	100,000
Fiscal 2017 Targeted Reversions Total		-\$19,541,963	-\$19,341,963

Source: State Budget

**Department of Health and Mental Hygiene
Fiscal 2018 Contingent Actions and Back of the Bill Reductions**

Fiscal 2018 Contingent Reductions

<u>Program</u>	<u>Item</u>	<u>General Funds</u>	<u>Total Funds</u>
Public Health	Level funding the Core Public Health Services formula at the fiscal 2017 level.	-\$747,276	-\$747,276
Prevention and Health Promotion	Restructuring the operating grant for the Prince George's County Regional Medical Center.	-15,000,000	-15,000,000
Behavioral Health	Replacing general funds with special funds from the Maryland Community Health Resources Commission.	-3,750,000	0
Behavioral Health	Replacing general funds with special funds from the Senior Prescription Drug Assistance Program fund balance.	-1,086,000	0
Developmental Disabilities	Reducing the mandated provider rate increase from 3.5% to 2.0%.	-8,444,522	-15,456,181
Medical Care Programs	Replacing general funds with special funds by suspending the reduction in the Medicaid Deficit Assessment for fiscal 2018 only.	-25,000,000	0
Health Regulatory	Reducing the required appropriation for the Maryland Community Health Resources Commission.	0	-3,750,000
Fiscal 2018 Contingent Reductions Total		-\$54,027,798	-\$34,953,457

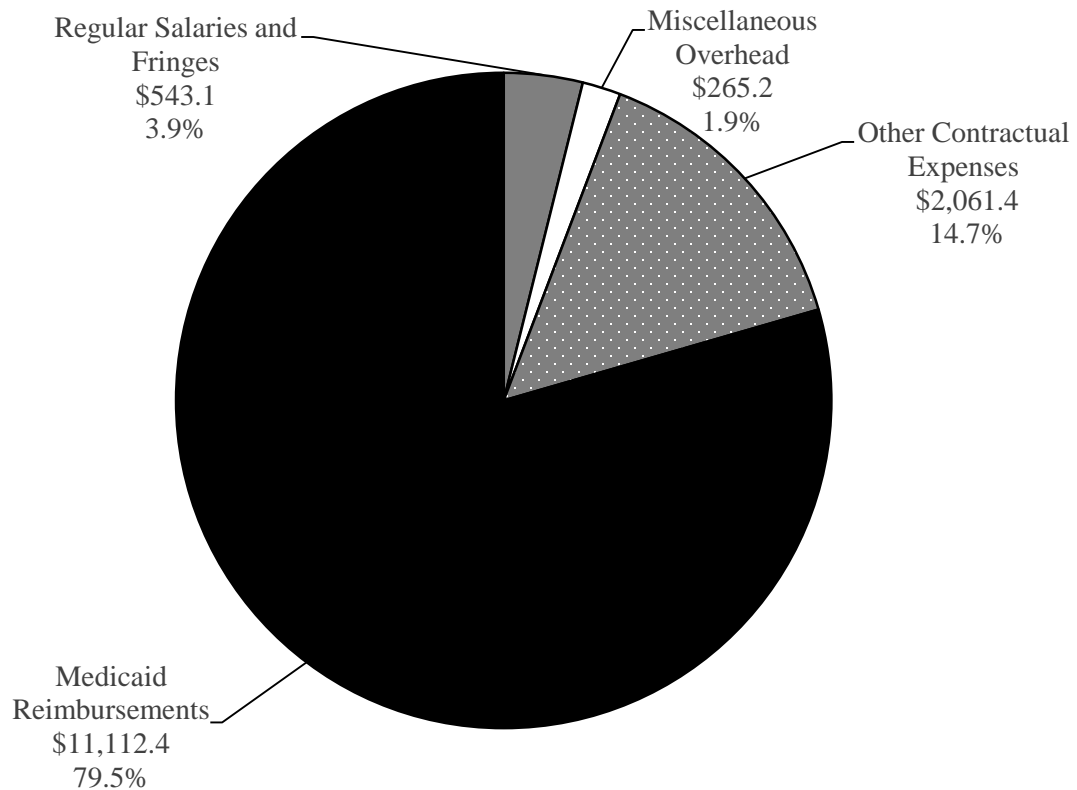
Fiscal 2018 Back of the Bill Reductions

DHMH	Reduction to the amount of the retirement reinvestment contribution.	-\$1,421,108	-\$1,856,338
Fiscal 2018 Back of the Bill Reductions Total		-\$1,421,108	-\$1,856,338

DHMH: Department of Health and Mental Hygiene

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

**Department of Health and Mental Hygiene
Functional Breakdown of Spending
Fiscal 2018 Allowance
(\$ in Millions)**



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

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

M00 – DHMH – Fiscal 2018 Budget Overview

**Department of Health and Mental Hygiene
Budget Overview: All Funding Sources
Fiscal 2016-2018
(\$ in Thousands)**

	<u>Actual 2016</u>	<u>Working 2017</u>	<u>Allowance 2018</u>	<u>\$ Change 2017-18</u>	<u>% Change 2017-18</u>
Medical Programs/Medicaid	\$8,647,075	\$9,821,821	\$9,973,727	\$151,906	1.5%
Provider Reimbursements	8,300,018	9,392,860	9,543,288	150,428	1.6%
Maryland Children's Health Program	236,849	283,863	275,510	-8,353	-2.9%
Other	110,208	145,098	154,929	9,831	6.8%
Behavioral Health	\$1,716,180	\$1,861,511	\$1,978,807	\$117,296	6.3%
Program Direction	20,070	24,041	24,525	484	2.0%
Community Services	1,406,260	1,541,934	1,656,969	115,035	7.5%
Facilities	289,850	295,536	297,313	1,777	0.6%
Developmental Disabilities	\$1,040,690	\$1,133,876	\$1,147,582	\$13,707	1.2%
Program Direction	8,884	10,235	8,743	-1,492	-14.6%
Community Services	990,460	1,082,231	1,097,233	15,002	1.4%
Facilities	41,345	41,411	41,607	196	0.5%
Public Health Administration	\$140,281	\$140,464	\$141,698	\$1,234	0.9%
Targeted Local Health	50,318	53,981	53,981	0	0.0%
Other	89,963	86,483	87,717	1,234	1.4%
Prevention and Health Promotion Administration	\$331,820	\$368,839	\$382,929	\$14,090	3.8%
Women, Infants, and Children	110,445	115,472	112,592	-2,880	-2.5%
Cigarette Restitution Fund Tobacco and Cancer	47,386	48,075	48,102	26	0.1%
Maryland AIDS Drug Assistance Program	27,385	36,507	30,632	-5,875	-16.1%
Other	146,604	168,784	191,603	22,819	13.5%
Other Budget Areas	\$314,149	\$388,404	\$359,217	-\$29,187	-7.5%
DHMH Administration	47,412	49,888	50,844	956	1.9%
Office of Health Care Quality	18,063	20,615	19,902	-713	-3.5%
Health Occupations Boards	32,989	42,941	39,862	-3,079	-7.2%
Chronic Disease Hospitals	49,435	49,447	48,477	-970	-2.0%
Health Regulatory Commissions	166,251	225,512	200,132	-25,380	-11.3%
Departmentwide Reductions	\$0	\$0	-\$1,856	-\$1,856	
Total Funding	\$12,190,196	\$13,714,914	\$13,982,104	\$267,190	1.9%

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. Fiscal 2016 through 2018 funding includes funding for the Senior Prescription Drug Assistance Program, which was transferred to DHMH in fiscal 2017. Includes fiscal 2017 deficiencies and planned reversions as well as fiscal 2018 contingent actions and back of the bill reductions. Numbers may not sum to total due to rounding.

Source: Department of Legislative Services; State Budget

M00 – DHMH – Fiscal 2018 Budget Overview

**Department of Health and Mental Hygiene
Budget Overview: General Funds Only
Fiscal 2016-2018
(\$ in Thousands)**

	Actual	Working	Allowance	\$ Change	% Change
	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2017-18</u>	<u>2017-18</u>
Medical Programs/Medicaid	\$2,292,807	\$2,643,235	\$2,774,017	\$130,783	4.9%
Provider Reimbursements	2,235,845	2,576,529	2,708,883	132,355	5.1%
Maryland Children's Health Program	26,726	33,925	32,878	-1,046	-3.1%
Other	30,236	32,782	32,256	-526	-1.6%
Behavioral Health	\$871,336	\$912,546	\$962,807	\$50,261	5.5%
Program Direction	15,338	19,176	17,766	-1,410	-7.4%
Community Services	575,276	607,239	657,518	50,279	8.3%
Facilities	280,722	286,130	287,523	1,393	0.5%
Developmental Disabilities	\$592,850	\$618,330	\$642,926	\$24,596	4.0%
Program Direction	4,920	5,504	5,136	-368	-6.7%
Community Services	547,192	571,886	596,302	24,415	4.3%
Facilities	40,739	40,940	41,488	549	1.3%
Public Health Administration	\$101,399	\$105,602	\$106,318	\$716	0.7%
Targeted Local Health	45,825	49,488	49,488	0	0.0%
Other	55,574	56,114	56,830	716	1.3%
Prevention and Health Promotion					
Administration	\$38,719	\$45,173	\$52,263	\$7,089	15.7%
Women, Infants, and Children	65	65	65	0	0.0%
Cigarette Restitution Fund Tobacco and Cancer	0	0	0	0	
Maryland AIDS Drug Assistance Program	0	0	0	0	
Other	38,654	45,108	52,198	7,089	15.7%
Other Budget Areas	\$80,735	\$83,462	\$81,331	-2,131	-2.6%
DHMH Administration	23,170	25,042	23,604	-1,438	-5.7%
Office of Health Care Quality	11,900	12,705	12,778	72	0.6%
Health Occupations Boards	514	470	499	30	6.3%
Chronic Disease Hospitals	45,152	45,245	44,450	-795	-1.8%
Health Regulatory Commissions	0	0	0	0	
Departmentwide Reductions		\$0	-\$1,421	-\$1,421	
Total Funding	\$3,977,845	\$4,408,348	\$4,618,241	\$209,894	4.8%

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 2017 deficiencies and planned reversions as well as fiscal 2018 contingent actions and back of the bill reductions. Numbers may not sum to total due to rounding.

Source: Department of Legislative Services; State Budget

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

	<u>General</u>	<u>Special</u>	<u>Federal</u>	<u>Reimb.</u>	<u>Total</u>
	<u>Fund</u>	<u>Fund</u>	<u>Fund</u>	<u>Fund</u>	
2017 Working Appropriation	\$4,408,348	\$1,427,661	\$7,800,403	\$78,502	\$13,714,914
2018 Governor's Allowance	<u>4,618,241</u>	<u>1,406,272</u>	<u>7,859,255</u>	<u>98,336</u>	<u>13,982,104</u>
Amount Change	\$209,894	-\$21,389	\$58,852	\$19,833	\$267,190
Percent Change	4.8%	-1.5%	0.8%	25.3%	1.9%

Where It Goes:

Personnel

-\$953

Overtime	\$5,445
Salary adjustments	1,336
Retirement contribution	-1,818
Turnover adjustments.....	-2,254
Employee and retiree health insurance	-4,246
Other fringe benefit adjustments.....	584

Behavioral Health Administration

Fee-for-Service Community Behavioral Health Services

\$111,637

Enrollment and utilization for Medicaid-eligible services.....	\$49,641
Applied Behavioral Analysis transfer and fiscal 2018 annualization	31,102
Rate adjustment for community providers (2% increase).....	16,233
Regulated Rate Changes	11,374
Cost settlements	4,198
Enrollment and utilization for Medicaid State-funded and uninsured services	1,258
Money Follows the Person.....	-220
Institutions for Mental Disease funding	-1,949

Community Mental Health Grants and Contracts

-\$1,444

Rate increase for Core Service Agencies (2%)	\$1,143
Decrease in mental health federal grant funds	-1,191
Core Service Agency program reductions	-1,396

Substance Use Disorder Services

\$3,769

Rate increase for uninsured (2%).....	\$2,853
Problem Gambling fund.....	1,732
Fee-for-service and uninsured enhancements	291
Federal fund grant changes	-1,106

Institutions

-\$3,248

M00 – DHMH – Fiscal 2018 Budget Overview

Where It Goes:

Crownsville deficiency	-\$593
Privatization contract backout.....	-2,655

Program Direction **\$950**

Prescription Drug Monitoring Program (new special and federal funds)	\$1,719
Heroin Task Force initiatives	-769

Developmental Disabilities Administration **\$13,875**

Fiscal 2018 expansion.....	\$28,090
Rate increase for providers (2%)	20,813
Annualization of fiscal 2017 expansion.....	5,300
Community Services capped waiver.....	5,000
Utilization review audits	2,730
Individual and Family Support waiver.....	2,400
Financial management services	1,418
Forensic and eligibility evaluations	850
Reduction of the base.....	-52,726

Prevention and Health Promotion Administration **\$15,275**

HIV Care Formula Grants.....	\$9,600
Prince George's County Regional Medical Center.....	7,500
HIV state rebates.....	6,347
Immunizations and vaccines for children	1,875
Epidemiology and lab capacity	903
Immigrant health.....	872
Ebola disease monitoring.....	-350
HIV prevention services.....	-1,047
HIV health services.....	-1,708
Women, Infants, and Children	-2,885
HIV client services – MADAP	-5,832

Regulatory Commissions **-\$26,003**

Integrated Care Networks (special funds).....	\$2,000
Shock Trauma equipment grants.....	600
Contingent reduction for Community Health Resources Commission	-3,750
Uncompensated care fund.....	-24,853

Medicaid/Medical Care Programs Administration **\$151,906**

Enrollment.....	\$202,447
Rate assumptions	92,517
Medicare Part A & B premiums (increase driven primarily by Part B premium costs).....	28,695
Medicare Part D Clawback payment	22,190
Utilization	17,134
School Based Services (Reimbursable Fund expenses).....	16,408
Nursing Home cost settlements.....	13,551
Major IT projects	10,893

M00 – DHMH – Fiscal 2018 Budget Overview

Where It Goes:

Hepatitis C payments to MCOs	7,374
MMIS and other systems contracts.....	4,754
Hospital Presumptive Eligibility for Inmates.....	3,000
Utilization reviews	2,747
Prior Year Grant Activity.....	2,240
Community First Choice administrative costs	1,687
Money Follows the Person.....	1,494
Applied Behavioral Analysis transfer of funding to BHA.....	-3,149
Health IT payments.....	-3,282
Federally Qualified Health Centers supplemental payments	-7,670
Waiver enrollment and eligibility services	-7,977
Maryland Children’s Health Program.....	-8,353
Hospital Presumptive Eligibility	-8,520
Savings from pharmacy rebates	-238,853
Other	2,581

Back of the Bill Health Insurance Reduction **-\$1,856**

Other **\$3,282**

Total **\$267,190**

BHA: Behavioral Health Administration

IT: Information Technology

MCO: managed care organization

MADAP: Maryland AIDS Drug Assistance Program

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. Fiscal 2016 through 2018 funding includes funding for the Senior Prescription Drug Assistance Program, which was transferred to the Department of Health and Mental Hygiene in fiscal 2017. Includes fiscal 2017 deficiencies and planned reversions as well as fiscal 2018 contingent actions and back of the bill reductions. Numbers may not sum to total due to rounding.

Source: Department of Legislative Services; State Budget

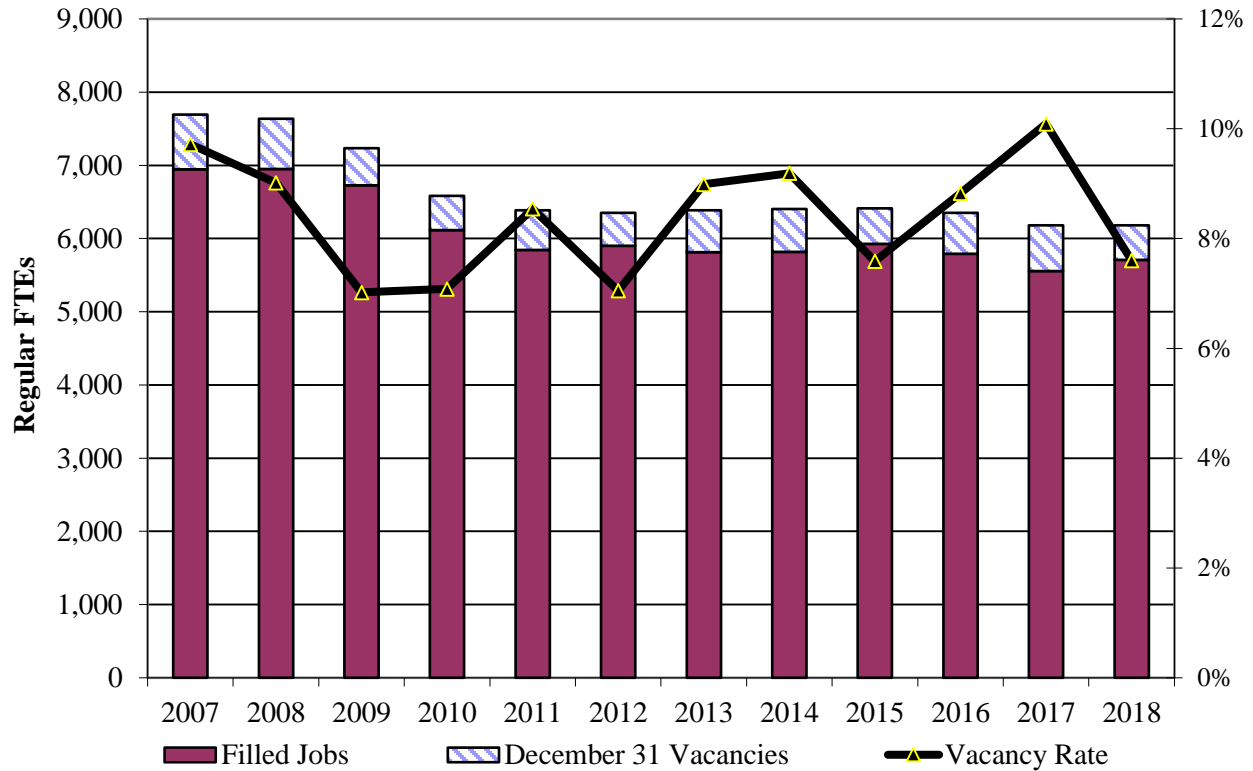
**Department of Health and Mental Hygiene
Regular Employees
Fiscal 2016-2018**

	Actual	Working	Allowance	Change	% Change
	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2017-18</u>	<u>2017-18</u>
DHMH Administration	345.6	336.0	336.0	0.0	0.0%
Office of Health Care Quality	197.0	196.7	196.7	0.0	0.0%
Health Occupations Boards	282.7	266.6	266.6	0.0	0.0%
Public Health					
Administration	399.9	388.9	391.9	3.0	0.8%
Prevention and Health Promotion					
Administration	366.8	419.8	417.8	-2.0	-0.5%
Chronic Hospitals	510.8	467.3	467.3	0.0	0.0%
Behavioral Health Administration	2,900.6	2,802.7	2,802.7	0.0	0.0%
Administration	158.9	165.9	165.9	0.0	0.0%
Institutions	2,741.7	2,636.8	2,636.8	0.0	0.0%
Developmental Disabilities					
Administration	626.5	600.5	600.5	0.0	0.0%
Administration	152.0	154.0	154.0	0.0	0.0%
Institutions	474.5	446.5	446.5	0.0	0.0%
Medical Care Programs					
Administration	620.0	603.5	603.5	0.0	0.0%
Health Regulatory Commissions	103.7	98.9	97.9	-1.0	-1.0%
Total Regular Positions	6,353.6	6,180.9	6,180.9	0.0	0.0%

DHMH: Department of Mental Health and Hygiene

Source: State Budget

**Department of Health and Mental Hygiene
Regular Employee Filled Jobs and Vacancy Rates
Fiscal 2007-2018**



FTE: full-time equivalent

Note: Fiscal 2018 vacancy rate is based on budgeted turnover.

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

M00 – DHMH – Fiscal 2018 Budget Overview

**Department of Health and Mental Hygiene
Regular Employees – Vacancy Rates
December 31, 2016**

	<u>FTE Vacancies</u>	<u>FTE Positions</u>	<u>Vacancy Rate</u>
DHMH Administration	26.50	336.00	7.89%
Office of Health Care Quality	14.00	196.70	7.12%
Health Occupations Boards	22.00	266.60	8.25%
Public Health Administration	37.40	388.90	9.62%
Prevention and Health Promotion Administration	57.00	419.80	13.58%
Chronic Hospitals	64.00	467.30	13.70%
Behavioral Health Administration	272.85	2,802.65	9.74%
Developmental Disabilities Administration	70.00	600.50	11.66%
Medical Care Programs Administration	47.00	603.50	7.79%
Health Regulatory Commissions	13.00	98.90	13.14%
Total Regular Positions	623.75	6,180.85	10.09%

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

Source: Department of Budget and Management

**Department of Health and Mental Hygiene
Contractual Employees
Fiscal 2016-2018**

	Actual <u>2016</u>	Working <u>2017</u>	Allowance <u>2018</u>	Change <u>2017-18</u>	% Change <u>2017-18</u>
DHMH Administration	6.04	7.53	8.31	0.78	10.4%
Office of Health Care Quality	4.24	5.50	5.50	0.00	0.0%
Health Occupations					
Boards	10.03	39.40	49.65	10.25	26.0%
Public Health Administration	15.78	17.30	21.30	4.00	23.1%
Prevention and Health Promotion					
Administration	4.63	6.40	7.70	1.30	20.3%
Chronic Hospitals	20.34	19.10	19.15	0.05	0.3%
Behavioral Health Administration	189.85	224.94	214.55	-10.39	-4.6%
Administration	7.70	14.52	14.27	-0.25	-1.7%
Institutions	182.15	210.42	200.28	-10.14	-4.8%
Developmental Disabilities					
Administration	17.39	24.40	24.71	0.31	1.3%
Administration	5.82	10.43	10.00	-0.43	-4.1%
Institutions	11.57	13.97	14.71	0.74	5.3%
Medical Care Programs					
Administration	85.37	137.00	124.36	-12.64	-9.2%
Health Regulatory Commissions	0.00	1.00	1.00	0.00	0.0%
Total Contractual Positions	353.67	482.57	476.23	-6.34	-1.3%

DHMH: Department of Health and Mental Hygiene

Source: Department of Budget and Management

M00 – DHMH – Fiscal 2018 Budget Overview

**Department of Health and Mental Hygiene
Budget Overview: Selected Caseload Measures
Fiscal 2014-2018**

	Actual 2014	Actual 2015	Actual 2016	Working 2017	Allowance 2018	Change 2017-18	% Change 2017-18
Medical Programs/Medicaid							
Medicaid Enrollees	898,508	918,343	852,692	894,406	921,310	26,904	3.0%
Maryland Children's Health Program	114,648	122,955	134,932	145,703	151,302	5,599	3.8%
Affordable Care Act Medicaid Expansion	181,738	220,189	236,834	289,292	311,652	22,360	7.7%
Total	1,194,894	1,261,487	1,224,458	1,329,401	1,384,264	54,863	4.1%
Developmental Disabilities Administration¹							
Residential Services	6,107	6,209	6,260	6,615	6,425	-190	-2.9%
Day Services	13,810	14,133	13,827	15,046	14,273	-773	-5.1%
Support Services	8,259	8,306	7,823	8,494	8,908	414	4.9%
Total Services	28,176	28,648	27,910	30,155	29,606	-549	-1.8%
Resource Coordination	24,052	24,314	25,670	19,918	23,366	3,448	17.3%
Number of Individuals Served	25,183	25,315	23,380	25,570	28,698	3,128	12.2%
Average Daily Census At Institutions ²	144	137	128	121	117	-4	-3.3%
Behavioral Health Administration							
<i>Average Daily Populations at State-run Psychiatric Hospitals:</i>							
Hospitals excluding RICAs and Assisted Living	942	975	970	966	960	-6	-0.6%
RICAs	66	66	66	66	66	0	0.0%
Assisted Living	55	53	53	57	58	1	1.8%
Total	1,063	1,094	1,089	1,089	1,084	-5	-0.5%
Number Receiving Community Mental Health Services							
Medicaid-eligible ³	158,643	22,395	24,395	25,000	25,000	0	0.0%
Medicaid-ineligible	11,297	11,505	11,323	11,323	11,100	-223	-2.0%
Total	169,940	33,900	35,718	36,323	36,100	-223	-0.6%
Clients with Substance Abuse Served in Various Settings	39,115	32,091	31,368	32,500	32,500	0	0.0%

RICA: Regional Institutions for Children and Adolescents

TBA: to be announced

¹ 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.

² The Developmental Disabilities Administration data includes secure evaluation and therapeutic treatment center units.

³ Beginning with fiscal 2015, count only includes Medicaid-eligible individuals receiving State-only funded services.

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

Issues

1. Cigarette Restitution Fund: Ongoing Litigation Has Significant Impact on Fiscal 2018 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, for fiscal 2008 through 2017, 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. This payment, however, ended with fiscal 2017.

The use of the CRF is restricted by statute. Activities funded through the CRF in fiscal 2018 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 support.

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%;

- 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.
March-June 2013	20 other states and the District of Columbia enter into a settlement agreement with the PMs – leaving 15 states, including Maryland, to proceed with arbitration.

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<u>Date</u>	<u>Item</u>
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 \$53 million from the original \$67 million reduction from April 2014.
February 2016	The Court of Appeals denies the PM's appeal of the Court of Special Appeals' decision.
October 2016	The U.S. Supreme Court denies the PM's appeal, ending litigation for sales year 2003.
Early 2017	Arbitration begins on sales year 2004.

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 resulted in \$53.2 million in relief within the fiscal 2016 budget. The decision was appealed to the Maryland Court of Appeals by the PMs, but their appeal was denied by the Court of Appeals in February 2016, and further denied by the U.S. Supreme Court in October 2016, bringing an end to the litigation concerning sales year 2003

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. The expected settlement date for this arbitration at this point is unclear. In order for the decision to have an effect upon fiscal 2018 revenues, a decision would have to be reached prior to the payment date of April 15, 2018. However, it is also possible that the State could once again lose the decision, resulting not only in the loss of the \$16 million revenue assumption, but a further decline in revenues which would be based upon how many other states were also found to have not diligently enforced their statutes.

Further, for each disputed year since 2004 with some exceptions, 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 \$156 million could be realized in revenue from the disputed payments account, which would include the \$16 million revenue assumption for fiscal 2018.

Fiscal 2016-2018 CRF Programmatic Support

Exhibit 2 provides CRF revenue and expenditure detail for fiscal 2016 to 2018.

CRF revenues have declined over the three years shown in Exhibit 2. Maryland received a one-time arbitration payment in fiscal 2016. Since only \$40.0 million of this payment was scheduled to be spent within the Medicaid program, the remaining balance of \$13.2 million, which resulted from the arbitration award being larger than expected, fell to the fund balance, resulting in the large fund balance accrued at the end of fiscal 2016. The other major reason for the three-year decline is strategic contribution payments ending at the close of fiscal 2017. The decline is partially offset by an assumption of \$16.0 million in revenues from the arbitration of sales year 2004 in time for the fiscal 2018 payment. However, this is based upon the assumption that the State not only wins the sales year 2004 arbitration case, but does so in time for the payment date within 2018.

Exhibit 2
Cigarette Restitution Fund Budget
Fiscal 2016-2018
(\$ in Millions)

	<u>2016 Actual</u>	<u>2017 Working</u>	<u>2018 Projection</u>
Beginning Fund Balance	\$3.5	\$25.2	\$3.9
Settlement Payments	135.8	138.4	162.9
NPM and Other Shortfalls in Payments ¹	-17.4	-17.5	-17.4
Awards from Disputed Account	0.0	0.0	0.0
Other Adjustments ²	33.6	33.6	5.3
Tobacco Laws Enforcement Arbitration	53.2	0.0	16.0
Subtotal	\$208.7	\$179.7	\$170.6
Prior Year Recoveries	\$1.8	\$1.8	\$2.0
Total Available Revenue	\$210.5	\$181.5	\$172.6
Health			
Tobacco	\$9.4	\$9.7	\$9.7
Cancer	24.8	25.1	25.2
Substance Abuse	21.0	21.5	21.5
Medicaid	104.4	89.7	81.8
Breast and Cervical Cancer	13.2	13.2	13.2
Subtotal	\$172.9	\$159.2	\$151.3
Other			
Aid to Nonpublic Schools	\$5.8	\$11.1	\$13.1
Crop Conversion	6.0	5.8	5.8
Attorney General	0.6	1.5	1.5
Subtotal	\$12.4	\$18.4	\$20.4
Total Expenses	\$185.3	\$177.6	\$171.8
Ending Fund Balance	\$25.2	\$3.9	\$0.8

NPM: nonparticipating manufacturer

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

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

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

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

There are two deficiency appropriations from the CRF in fiscal 2017. The first is for \$22.9 million for the Medicaid budget to help offset the general fund costs for medical provider reimbursements and contractual services. This would bring total spending on Medicaid from CRF up

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to \$89.7 million, which is a decrease of \$14.7 million from fiscal 2016. The second deficiency is \$600,000 for the Office of the Attorney General to help cover some of the increase in costs incurred from litigating the arbitration cases previously discussed. This funding level is continued in fiscal 2018.

After accounting for the two deficiencies, expenditures in fiscal 2018 decline by approximately \$5.8 million compared to fiscal 2017. Most of the expenditures are relatively flat compared to fiscal 2017, with two exceptions. The largest decrease is in lower payments for Medicaid, which decrease by \$7.9 million. This is partially offset by the largest increase, which is approximately \$2.0 million for the Broadening Options and Opportunities for Students Today, or the BOOST program.