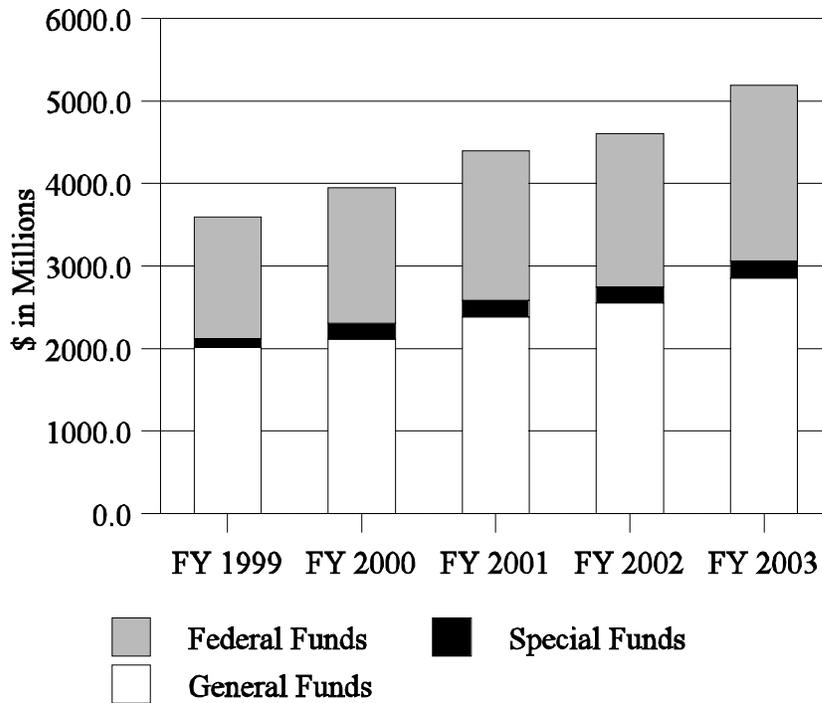

**Department of Health and
Mental Hygiene
Fiscal 2003 Budget Overview**

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

January 2002

M.00
Department of Health and Mental Hygiene
Fiscal 2003 Budget Overview

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



	<u>FY 1999</u>	<u>FY 2000</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>
General Funds	\$2,013.4	\$2,109.2	\$2,379.5	\$2,553.2	\$2,853.9
Special Funds	104.4	198.1	204.6	189.2	209.1
Federal Funds	1,476.4	1,635.9	1,809.1	1,864.3	2,127.2
Reimbursable Funds	8.4	10.4	10.5	13.3	12.6
Total	\$3,602.6	\$3,953.6	\$4,403.7	\$4,620.0	\$5,202.8

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

**Department of Health and Mental Hygiene
Adjustments to the Fiscal 2002 Appropriation**

Hiring Freeze/Cost Containment

As part of the State's response to its budget problems, the Department of Health and Mental Hygiene (DHMH) has had to reduce its fiscal 2002 general fund appropriation by \$26.396 million. Of this amount:

- \$10.774 million will be realized from the hiring freeze (almost two-thirds of which is found in the State-run psychiatric facilities); and
- \$15.622 million from other cost containment actions, notably including almost \$2.6 million in unrequested grant funds in the Alcohol and Drug Abuse Administration, \$2.6 million in operating cost reductions across the State-run psychiatric facilities, and \$1 million through implementation delays in the Developmental Disabilities Administration's Waiting List Initiative.

The hiring freeze will realize \$10.028 million in fiscal 2003. The savings realized from the hiring freeze in fiscal 2003 declines even though it applies to the whole fiscal year because of changes to the methodology used to calculate the initial hiring freeze allotment for the department. Other cost containment actions (including those which carry over from fiscal 2002) will total almost \$23.2 million.

Deficiency Appropriations

There are ten fiscal 2002 deficiency appropriations in DHMH totaling just over \$281.5 million (\$140,871,634 general funds, \$140,630,441 federal funds). Of these:

- Six deficiency appropriations totaling \$3,165,982 (\$200,000 general funds, \$2,965,982 federal funds) provide funds which broadly relate to terrorism response:
 - \$78,000 (federal funds) in DHMH Administration for emergency readiness training;
 - \$373,000 (federal funds) in DHMH Administration for emergency and disaster response;
 - \$940,000 (federal funds) in the Community Health Administration for emergency purchases of medicine and drugs, emergency hotline, contractual services, and equipment;
 - \$356,000 (federal funds) in the Chief Medical Examiner's office for medical supplies and increased workload;
 - \$1,000,000 (\$200,000 general funds, \$800,000 federal funds) in the Laboratories Administration for additional laboratory equipment and supplies, security, and increased workload; and
 - \$418,982 (federal funds) budgeted at Springfield Hospital but representing increased overtime resulting from the response to September 11, 2001, across the DHMH institutions.

M.00 - DHMH - Fiscal 2003 Budget Overview

- A \$1,157,423 (general funds) deficiency appropriation in DHMH Administration provide funds for a contingency fee to Maximus Inc. Maximus is helping DHMH maximize Medicaid and Medicare revenues. This fee is based on 8.5% of estimated increased State hospital patient recoveries derived from Maximus' work.
- Three deficiency appropriations in Medicaid totaling \$277,178,670 (\$139,514,211 general funds, \$137,664,459 federal funds) will include:
 - \$264,476,462 (\$134,089,566 general funds, \$130,386,896 federal funds) to provide funds for Managed Care Organization and nursing home rate increases and to cover costs associated with higher than anticipated enrollment and medical inflation;
 - \$1,505,957 (general funds) to cover increased medical costs in the Kidney Disease Treatment Services program; and
 - \$11,196,251 (\$3,918,688 general funds, \$7,277,563 federal funds) to cover costs associated with higher than anticipated enrollment and medical inflation in the Maryland Children's Health Program.

Other Changes

The department has lost 16 positions since the fiscal 2002 legislative appropriation. As part of the State's terrorism response, 18 PINs were transferred from DHMH to the Department of General Services. These positions were taken as follows:

- Deputy Secretary Operations: 3 PINs;
- Springfield Hospital: 11 PINs; and
- Rosewood: 4 PINs.

However, under the "Rule of 50" DHMH added two PINs in the Community and Family Health Administrations.

M.00 - DHMH - Fiscal 2003 Budget Overview

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

	FY 2001 <u>Actual</u>	FY 2002 <u>Working Approp.</u>	FY 2003 <u>Allowance</u>	FY02-03 <u>\$ Change</u>	Percent Change FY 02-03
Medical Programs/Medicaid	\$2,736,530	\$2,860,532	\$3,309,469	\$448,937	15.7%
Provider Reimbursements	2,582,525	2,672,052	3,077,803	405,751	15.2%
Maryland Children's Health Program (MCHP)	96,632	123,536	163,426	39,890	32.3%
Other	57,373	64,944	68,240	3,296	5.1%
Mental Hygiene Administration	\$684,107	\$654,898	\$716,797	\$61,899	9.5%
Program Direction	5,468	5,765	6,531	766	13.3%
Community Services	441,731	403,350	445,841	42,491	10.5%
Facilities	236,908	245,783	264,425	18,642	7.6%
Developmental Disabilities Administration	\$438,798	\$474,036	\$525,336	\$51,300	10.8%
Program Direction	4,658	4,665	4,820	155	3.3%
Community Services	368,619	403,226	453,265	50,039	12.4%
Facilities	65,521	66,145	67,251	1,106	1.7%
Community and Family Health Administrations	\$224,782	\$277,239	\$269,377	(\$7,862)	-2.8%
Targeted Local Health	57,031	61,435	66,639	5,204	8.5%
Women, Infants, and Children (WIC)	50,725	51,780	52,092	312	0.6%
Cigarette Restitution Fund (CRF) Initiatives	32,637	74,256	58,930	(15,326)	-20.6%
Other	84,389	89,768	91,716	1,948	2.2%
Alcohol and Drug Abuse Administration	\$97,334	\$117,147	\$134,490	\$17,343	14.8%
Other Budget Areas	\$222,110	\$236,162	\$247,381	\$11,219	4.8%
DHMH Administration	38,538	48,825	42,742	(6,083)	-12.5%
Office of Health Care Quality	11,997	13,231	15,219	1,988	15.0%
Health Occupations Boards	15,849	15,635	18,311	2,676	17.1%
Chronic Disease Hospitals	36,508	37,218	42,635	5,417	14.6%
AIDS Administration	43,592	48,668	49,090	422	0.9%
Chief Medical Examiner	5,625	5,225	6,312	1,087	20.8%
Laboratories Administration	18,479	18,543	20,535	1,992	10.7%
Health Regulatory Commissions	51,522	48,817	52,537	3,720	7.6%
Total Funding	\$4,403,661	\$4,620,014	\$5,202,850	\$582,836	12.6%

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

Source: State Budget

M.00 - DHMH - Fiscal 2003 Budget Overview

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

	<u>FY 2001 Actual</u>	<u>FY 2002 Working Approp.</u>	<u>FY 2003 Allowance</u>	<u>FY02-03 \$ Change</u>	<u>Percent Change FY 02-03</u>
Medical Programs/Medicaid	\$1,342,836	\$1,432,267	\$1,628,151	\$195,884	13.7%
Provider Reimbursements	1,278,602	1,356,525	1,536,164	179,639	13.2%
MCHP	34,281	42,215	55,600	13,385	31.7%
Other	29,953	33,527	36,387	2,860	8.5%
Mental Hygiene Administration	\$469,449	\$493,938	\$538,090	\$44,152	8.9%
Program Direction	4,697	4,979	5,587	608	12.2%
Community Services	232,957	249,185	273,820	24,635	9.9%
Facilities	231,795	239,774	258,683	18,909	7.9%
Developmental Disabilities Administration	\$319,678	\$339,387	\$377,398	\$38,011	11.2%
Program Direction	4,274	4,105	4,493	388	9.5%
Community Services	250,490	269,776	306,343	36,567	13.6%
Facilities	64,914	65,506	66,562	1,056	1.6%
Community and Family Health Administrations	\$105,217	\$115,236	\$120,770	\$5,534	4.8%
Targeted Local Health (Core Services)	52,538	56,942	62,146	5,204	9.1%
WIC	1,000	750	1,000	250	33.3%
CRF Initiatives	0	0	0	0	0.0%
Other	51,679	57,544	57,624	80	0.1%
Alcohol and Drug Abuse Administration	\$50,137	\$67,425	\$83,206	\$15,781	23.4%
Other Budget Areas	\$92,140	\$104,934	\$106,309	\$1,375	1.3%
DHMH Administration	26,844	36,875	30,265	(6,610)	-17.9%
Office of Health Care Quality	8,161	8,790	10,657	1,867	21.2%
Health Occupations Boards	165	156	161	5	3.2%
Chronic Disease Hospitals	30,258	31,481	35,225	3,744	11.9%
AIDS Administration	5,171	6,165	6,433	268	4.3%
Chief Medical Examiner	5,625	5,225	6,312	1,087	20.8%
Laboratories Administration	15,916	16,242	17,256	1,014	6.2%
Health Regulatory Commissions	0	0	0	0	0.0%
Total Funding	\$2,379,458	\$2,553,187	\$2,853,925	\$300,738	11.8%

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

Source: State Budget

M.00 - DHMH - Fiscal 2003 Budget Overview

**Governor's Proposed Budget
Department of Health and Mental Hygiene
(\$ in Thousands)**

<u>How Much It Grows:</u>	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
2001 Working Appropriation	\$2,553,186	\$189,219	\$1,864,350	\$13,259	\$4,620,014
2002 Governor's Allowance	<u>2,853,923</u>	<u>209,138</u>	<u>2,127,211</u>	<u>12,578</u>	<u>5,202,850</u>
Amount Change	\$300,737	\$19,919	\$262,861	(\$681)	\$582,836
Percent Change	11.8%	10.5%	14.1%	(5.1)%	12.6%

Where It Goes:

Personnel Expenses	\$27,963	
Annualization of fiscal 2002 cost-of-living adjustment (COLA)		\$6,771
Health insurance		5,450
Increments		4,042
Other fringe benefits		3,567
Annualization of fiscal 2002 ASR (salary adjustments for nurses)		2,985
Workers' compensation		2,853
New positions (37 full-time equivalent (FTE) positions)		1,549
Annualization of hiring freeze		746
Tobacco Settlement Initiatives	(\$17,575)	
Governor's Initiative to Conquer Cancer in Maryland		(7,366)
Governor's Initiative to End Smoking in Maryland		(10,209)
Purchase of Care/Medicaid (exc. Medical Care Programs Administration)		
Alcohol and Drug Abuse Administration	\$14,957	
Baltimore City Enhancement		9,000
S.T.O.P. grants		4,890
Annualization of fiscal 2002 provider COLA		1,067
Mental Hygiene Administration	\$39,807	
Community services fee-for-service funding		28,784
Community placement initiative (fiscal 2002 annualization and fiscal 2003 expansion)		5,500
Annualization of fiscal 2001 rate increase for private psychiatric hospitals		3,594
Administrative Service Organization contract increase		2,476
School-based Mental Health Services		2,000
Residential Treatment Center rate increase		1,061
Annualization of fiscal 2002 provider COLA		872
State-run psychiatric hospital drug costs		843
Elimination of carryover account		(5,323)

M.00 - DHMH - Fiscal 2003 Budget Overview

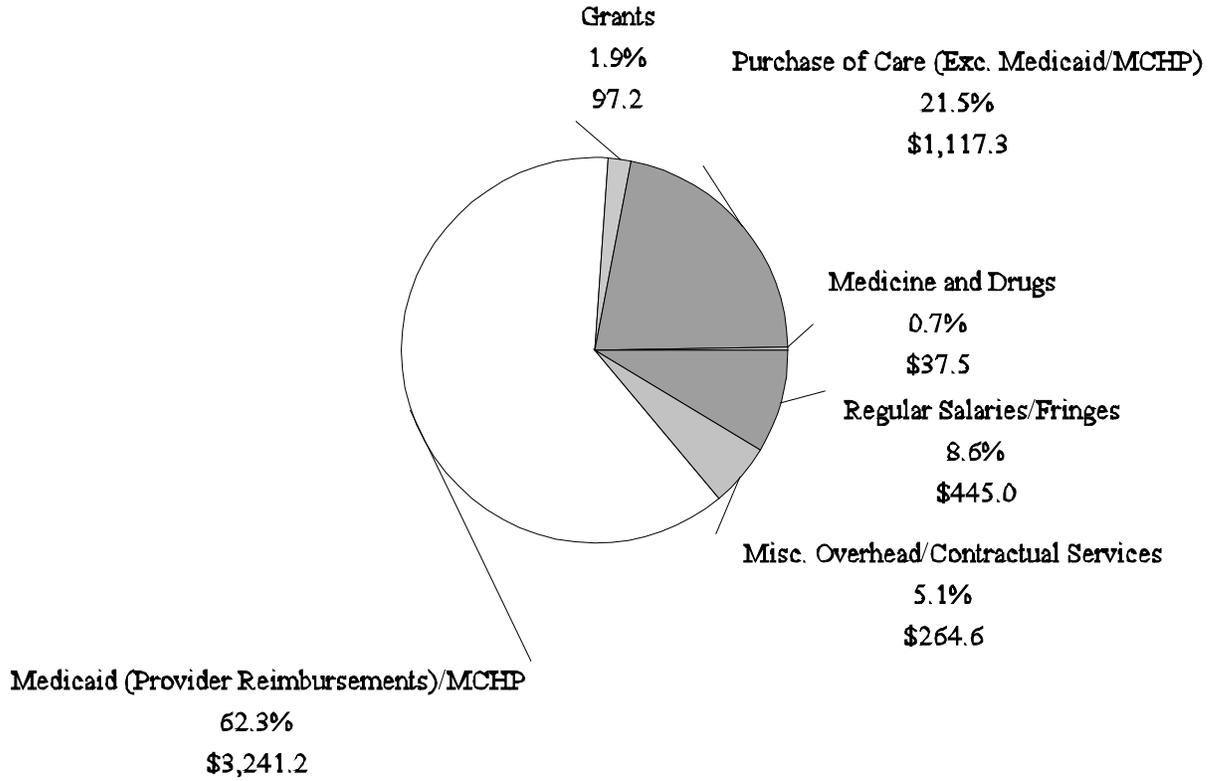
Where It Goes:

Developmental Disabilities Administration	\$48,557	
Waiting List Initiative		18,801
Wage initiative (Chapters 109 and 110, Acts of 2001)		16,164
Annualization of fiscal 2002 provider COLA		7,694
Downsizing initiative		5,898
Medicaid/Medical Care Programs Administration	\$447,409	
Changes in Medicaid enrollment and medical inflation		392,250
Physician rate increase		50,000
Maryland Children's Health Program		39,889
Enhancements to Nursing Home formula (Chapter 212, Acts of 2000)		20,000
Kidney Disease Program -- treatment costs		1,770
Pharmacy/other cost containment actions		(20,500)
Nursing home cost containment and early recoveries		(36,000)
Other Programs	\$5,630	
Health Services Cost Review Commission Uncompensated Care Fund		2,400
Increased drug costs at the Chronic Hospitals		2,076
Laboratory supplies (bioterrorism response)		639
Community and Family Health annualization of fiscal 2002 provider COLA		515
Fuel and Utilities		3,121
Targeted Local Health (Core Service) Formula Increase and Fiscal 2002 COLA and ASR Annualization		6,125
Miscellaneous Overhead (travel, communications, equipment, etc.)		(545)
Other		7,387
Total Change		\$582,836

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

M.00 - DHMH - Fiscal 2003 Budget Overview

**Department of Health and Mental Hygiene
Fiscal 2003 Allowance
Functional Breakdown of Spending
(\$ in Millions)**



M.00 - DHMH - Fiscal 2003 Budget Overview

Budget Reconciliation Act and the Impact on DHMH

In order to balance the fiscal 2002 and 2003 budgets, the Governor is proposing to transfer monies from a variety of sources into the State general fund through a Budget Reconciliation Act. For DHMH, there are a number of fund balances being tapped.

Utilization of Fund Balances in Budget Reconciliation Act

<u>Fund</u>	<u>Proposed Fund Balance Reduction</u>
HSCRC Uncompensated Care	\$2,900,000
State Board of Nursing	400,000
Miscellaneous Health Occupation Boards	300,000
HSCRC Administration	100,000
Total	\$3,700,000

Source: State Budget

M.00 - DHMH - Fiscal 2003 Budget Overview

**Department of Health and Mental Hygiene
Regular Employees (FTE)
Fiscal 2001 through 2003**

<u>Program</u>	<u>FY 2001 Actual</u>	<u>FY 2002 Working Approp.</u>	<u>FY 2003 Allowance</u>	<u>FY02-03 Change</u>	<u>Percent Change FY 02-03</u>
DHMH Administration	549.30	548.80	548.30	(0.50)	-0.1%
Office of Health Care Quality	209.8	228.80	229.80	1.00	0.4%
Health Occupations Boards	196	199.00	205.00	6.00	3.0%
Community and Public Health Administration	356.4	382.40	382.40	0.00	0.0%
AIDS Administration	68	68.00	68.00	0.00	0.0%
Chief Medical Examiner	72	75.00	75.00	0.00	0.0%
Chronic Hospitals	595.5	626.00	626.00	0.00	0.0%
Laboratories Administration	271	278.00	287.50	9.50	3.4%
Alcohol and Drug Abuse Administration	54	55.00	55.00	0.00	0.0%
Mental Hygiene Administration	3,924.6	3,938.15	3,938.15	0.00	0.0%
Administration	96.9	100.35	100.35	0.00	0.0%
Institutions	3,827.7	3,837.80	3,837.80	0.00	0.0%
Developmental Disabilities Administration	1,472.7	1,459.20	1,459.20	0.00	0.0%
Administration	145.5	152.5	152.5	0.00	0.0%
Institutions	1,327.2	1,306.70	1,306.70	0.00	0.0%
Medical Care Programs Administration	545.7	575.70	594.70	19.00	3.3%
Health Regulatory Commissions	98.1	101.70	103.70	2.00	2.0%
Total Regular Positions	8,413.1	8,535.75	8,572.75	37.00	0.4%

Source: State Budget

M.00 - DHMH - Fiscal 2003 Budget Overview

There are 37 additional regular FTEs in the fiscal 2003 allowance compared to the fiscal 2002 working appropriation. Of these 37 positions, 19 represent the transfer of the Disability Waiver Unit from the Department of Human Resources into the Medical Care Programs Administration. There are 18.5 other FTE new positions, notably 9.5 FTEs in the Laboratories Administration as part of the State bioterrorism response and 6 FTEs in the Health Occupations Boards. Offsetting these new positions was the abolition of one 0.5FTE position.

The department's vacancy rate as of December 31, 2001, was 10.45%, or 893.65 FTEs. The department's budgeted turnover is 6.04% which would require 517.79 positions to remain vacant to meet turnover. If personnel cost containment is added to that amount, a higher "turnover" rate of 8.44% is found which would require an estimated 723.54 positions to remain vacant to meet turnover.

Additionally, many existing vacancies are in direct care positions in State-run psychiatric hospitals, positions that DHMH has struggled to fill based on a combination of low State salaries and general demand for health care professionals. Ostensibly these positions are exempt from the State hiring freeze, but clearly DHMH will need to keep many of these positions vacant to meet turnover and hiring freeze requirements.

M.00 - DHMH - Fiscal 2003 Budget Overview

**Department of Health and Mental Hygiene
Contractual Employees (FTE)
Fiscal 2001 through 2003**

<u>Program</u>	<u>FY 2001 Actual</u>	<u>FY 2002 Working Approp.</u>	<u>FY 2003 Allowance</u>	<u>FY02-03 Change</u>	<u>Percent Change FY02-03</u>
DHMH Administration	22.42	31.10	29.1	-2	-6.4%
Office of Health Care Quality	2.9	2.4	5.4	3	125.0%
Health Occupations Boards	12.58	9.87	18.26	8.39	85.0%
Community and Public Health Administration	25.99	32.09	28.1	-3.99	-12.4%
AIDS Administration	0	0	0	0	0.0%
Chief Medical Examiner	0.25	2	2	0	0.0%
Chronic Hospitals	30.11	24.19	19.7	-4.49	-18.6%
Laboratories Administration	15.4	25.3	19.15	-6.15	-24.3%
Alcohol and Drug Abuse Administration	15.23	28.2	22.57	-5.63	-20.0%
Mental Hygiene Administration	188.7	180.8	196.48	15.68	8.7%
Administration	1.04	0.04	0.79	0.75	1875.0%
Institutions	187.66	180.76	195.69	14.93	8.3%
Developmental Disabilities Administration	83.27	75.05	78.65	3.6	4.8%
Administration	20.91	39.38	38.88	-0.5	-1.3%
Institutions/Community	62.36	35.67	39.77	4.1	11.5%
Medical Care Programs Administration	48.37	107.31	109.29	1.98	1.8%
Health Regulatory Commissions	3	0	0	0	0.0%
Total Contractual Positions	448.22	518.31	528.7	10.39	2.0%

Source: State Budget

M.00 - DHMH - Fiscal 2003 Budget Overview

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

<u>Program</u>	<u>FY 2001</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>Percent Change FY02-03</u>
Medical Programs/Medicaid				
Medicaid enrollees	441,748	464,400	470,000	1.2%
Maryland Children's Health Insurance	86,004	103,558	117,263	13.2%
Developmental Disabilities Administration				
Residential services	4,407	4,761	4,812	1.1%
Day services	8,452	9,279	9,464	2.0%
In-home support services	6,194	6,511	7,464	14.6%
Average daily census at institutions	508	466	422	(9.4%)
Mental Hygiene Administration				
Average daily population (ADP) at State-run psychiatric hospitals	1,294	1,276	1,272	(0.3%)
Number receiving community mental health services:				
● Medicaid eligible	65,831	67,831	70,831	4.4
● Uninsured	15,606	16,106	16,606	3.1
Alcohol and Drug Abuse Administration				
Residential services	5,633	6,100	6,400	4.9%
Outpatient services	20,798	30,000	30,000	0.0%

Note: Only 428,000 Medicaid enrollees were assumed in the fiscal 2002 legislative appropriation.

Source: State Budget

Issues

1. The Health of the State Health Department

Concern about funding levels for a variety of programs in the Department of Health and Mental Hygiene (DHMH) was prevalent during fiscal 2002 budget deliberations as well as hearings held during the 2001 interim. Certainly, the Governor's fiscal 2003 allowance provides DHMH with a substantial increase over the fiscal 2002 working appropriation, almost \$583 million (12.6%). General fund support increases by almost \$301 million (11.8%).

Most is increased support in entitlement funding, for example much of the growth in Medicaid. Other significant increases result from State law, for example the implementation of the Developmental Disabilities Administration (DDA) wage parity bills, the formulaic increase in core serving funding, and funding for S.T.O.P grants, or to support personnel expenses. Nonetheless, there is also funding for discretionary program expansion such as the DDA waiting list initiative, ongoing DDA and the Mental Hygiene Administration (MHA) community placement (downsizing) initiatives, additional drug treatment funding for Baltimore City, and the Medicaid physician rate enhancement.

A strong argument can continue to be made that DHMH's base remains underfunded in the allowance in a number of ways:

- The Department of Legislative Services' (DLS) estimates that the fiscal 2003 Medicaid allowance is underfunded by \$80 million in general funds. This underfunding would be worse but for the use of the Cigarette Restitution Fund (CRF) dollars for Medicaid in fiscal 2003 and cost containment actions.
- MHA received no fiscal 2002 deficiency even though the Office of Legislative Audits in its closeout review reported prior year deficits of as much as \$23 million being rolled into fiscal 2002. Additionally, DLS has previously pointed out that the fiscal 2002 appropriation was \$22 million lower than actual fiscal 2001 expenditures, and the fiscal 2002 appropriation was underfunded by an additional \$3.5 million because the fiscal 2001 rate increase for private psychiatric hospitals was not included in the fiscal 2002 budget. Thus, the fiscal 2002 budget deficit can be expected to be significant. The fiscal 2003 allowance also barely rises to actual fiscal 2001 expenditure levels. In addition to tapping many one-time funding sources, MHA has already implemented a number of service reductions in order to control costs, including limiting access to the nonentitlement services.
- The Maryland Primary Care Program has seen significant enrollment expansion, and it too is facing a fiscal 2002 shortfall of over \$1 million. Enrollment in the program has been capped in order to reduce potential deficits.

M.00 - DHMH - Fiscal 2003 Budget Overview

At the same time as this underfunding and ongoing fiscal pressure has resulted in service reductions in some programs, as noted above, the fiscal 2003 allowance does contain other areas of service expansion. Some of this is mandated by State law, but other program expansion is discretionary. Expansion of discretionary funding at a time when entitlement programs are underfunded and fiscal 2002 deficits are expected, and unprovided for, in other programs seems at best unwise.

The department should explain why the fiscal 2003 allowance chooses to fund discretionary program increases rather than address issues of entitlement underfunding as well as expected fiscal 2002 deficits in other programs.

2. The Health Insurance Portability and Accountability Act of 1996: Congress Issues a Temporary Reprieve but Will It Help?

During budget deliberations in the 2001 session, the issue of the State's compliance with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) was highlighted. Indeed, based on concern that DHMH did not appear to have done adequate planning to become HIPAA compliant ahead of mandated deadlines, the fiscal 2002 budget bill withheld funds pending the production of a plan, with budget estimates, to achieve compliance. That report was delivered in August 2001 although many questions remained unresolved.

Background: HIPAA and DHMH

For states and all healthcare organizations HIPAA establishes:

- uniform transaction and code set requirements;
- privacy standards;
- the adoption of unique identifier codes;
- security and electronic signature standards; and
- penalties for noncompliance.

The most pressing impact of HIPAA relates to provisions that address the need for standards for electronic transactions and other administrative simplification issues as well as the need to conform to security and privacy standards.

In DHMH, systems that need to comply with HIPAA would be those that involve:

- claims submissions and attachments processing;
- enrollment and eligibility transactions;

M.00 - DHMH - Fiscal 2003 Budget Overview

- claims payment and remittance notices; or
- health care referrals or claims authorization.

These standards would be required in such programs as:

- Medicaid (Medicaid Management Information System);
- Mental Hygiene Administration (Hospital Management Information System);
- Alcohol and Drug Abuse Administration (Substance Abuse Management Information System);
- Developmental Disabilities Administration (DDA Electronic Billing System);
- Community and Family Health Administrations; and
- Laboratories Administration.

Initial compliance deadlines for certain aspects of HIPAA (transactions and code sets) were October 2002, with privacy rules effective April 2003. Additional rules regarding identifiers, security and enforcement have been published as draft rules but not yet finalized. However, Congress enacted legislation (HR 3323) which was signed by President Bush in December 2001 that delayed the implementation of the transactions and code sets requirements until October 2003. Ironically, many large health care organizations such as the American Hospital Association, the Association of American Medical Colleges, and the Federation of American Hospitals opposed the delay because they argued it unfairly penalized those organizations that had worked to be compliant in a timely manner.

What It Takes to Be HIPAA Compliant: DHMH's August 2001 Report

Does this delay mean that DHMH will now meet the upcoming deadlines? Probably not. Included in DHMH's recently submitted plan were a variety of timelines for completing assessments, developing project management plans, and plan implementation. DHMH concedes that those timelines have now been pushed back by 6 to 12 months.

The same report also included preliminary cost estimates for HIPAA compliance. Estimates for fiscal 2003 were \$5.9 million (\$1.6 million general funds, \$4.3 million federal funds) in Medicaid, and \$5.4 million (all general funds) in non-Medicaid programs. However, as shown in **Exhibit 1**, funds made available in the fiscal 2003 allowance for non-Medicaid programs fall well short of those estimates.

Exhibit 1

**Department of Health and Mental Hygiene
Current Estimates of HIPAA Compliance through Fiscal 2006
(\$ in Thousands)**

	<u>Prior Years</u>	<u>FY 2002</u>	<u>FY 2003</u>	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>
Medicaid	\$845	\$1,887	\$6,125	\$2,451	\$2,451	\$2,451
General Funds	\$220	\$308	\$983	\$260	\$260	\$260
Federal Funds	625	1,579	5,142	2,191	2,191	2,191
Non-Medicaid (General Funds Only)	\$0	\$850	\$973	\$4,800	\$4,800	\$4,800
Total	\$845	\$2,737	\$7,098	\$7,251	\$7,251	\$7,251
General Funds	\$220	\$1,158	\$1,956	\$5,060	\$5,060	\$5,060
Federal Funds	625	1,579	5,142	2,191	2,191	2,191

Note: Non-Medicaid general fund estimates for fiscal 2004 to 2006 are based on original report's request after adjusting for the fiscal 2003 allowance.

Source: Department of Health and Mental Hygiene (IRMA)

As shown in Exhibit 1, Medicaid has been able to obtain funds in-line with the estimates, undoubtedly due to the availability of federal dollars earned at a 90% matching rate. Non-Medicaid programs have not been so fortunate. Much of the \$973,000 appropriation for fiscal 2002 is being spent doing the needs assessment for what will be required in the future. Indeed, the costs identified in the report for fiscal 2003 relate to federal electronic security standards which have not yet been finalized (although the draft rules indicated stringent standards). The more immediate problem, compliance with transactions and code sets, remains far from resolved even in terms of the assessment of the problem.

DHMH is confident, however, that they will be able to meet privacy standard requirements because they feel State privacy standards are as strong as federal standards. Much of the compliance costs in that area actually involve printing costs for informed consent forms for example, rather than information technology costs.

M.00 - DHMH - Fiscal 2003 Budget Overview

Summary

Clearly DHMH will need to take advantage of the extension granted by Congress to implement transaction and code set requirements. Without that extension many non-Medicaid programs would have been in non-compliance in October 2002. However, it still remains uncertain as to what the actual costs of HIPAA compliance will be, and it is unlikely that DHMH can be HIPAA compliant in terms of transactions and code sets in October 2003.

DLS concluded in last year's analysis that even though the initial compliance deadlines at that time were in fiscal 2003, realistically expenditures must occur in fiscal 2002. DHMH did not contradict that statement. Despite the one-year respite for transaction and code set compliance, the same conclusion holds. Compliance in October 2003 (fiscal 2004) requires expenditures in fiscal 2003, and the fiscal 2003 allowance in the non-Medicaid area is almost certainly insufficient.

As one HIPAA consultant put it, prior to the recent deadline extensions, "even if the deadline is extended, agencies must maintain current time lines as solutions will take longer than expected" (Cap Gemini Ernst & Young).

Failure to meet transaction standards or the wrongful disclosure of information carry significant penalties: transaction penalties of up to \$25,000 annually for multiple violations of the same standard in a calendar year, and fines of up to \$250,000 and/or imprisonment for knowing misuse of individually identifiable health information. Additional impacts could include claims not being honored and the bad press that would accompany this as well as accreditation issues.

While out-year costs remain very much an estimate since many out-year tasks remain undefined, they will undoubtedly be significant for a department which is struggling with deficits in, and growing demand for, existing programs.

The Secretary should brief the committees on how DHMH's understanding of HIPAA compliance has changed in the past year and why compliance timelines as detailed in the August 2001 report have been allowed to slip as well as address the apparent inadequacy of the funding dedicated to this problem in the Governor's fiscal 2003 allowance.

3. Olmstead: The Report of the Community Access Steering Committee Is In

Background: The Olmstead Decision

L.C. v. Olmstead (119 S.Ct. 2176) created additional awareness in the states as to the need to develop more opportunities for individuals with disabilities through more accessible systems of cost-effective community-based services. The case was brought by two Georgia women with disabilities including mental retardation and mental illness who were living in state institutions although it was clinically appropriate that they be served in the community.

M.00 - DHMH - Fiscal 2003 Budget Overview

Suit was brought under the Americans with Disabilities Act of 1990 (ADA) claiming that these women were deprived of the right established in ADA to live in the most integrated setting appropriate. The Supreme Court agreed and held that under ADA no person may be required to live in an institution or nursing home if they can live in the community with the right support.

In *Olmstead*, the Supreme Court indicated that a state could establish compliance with ADA if it can demonstrate, among other things, that it has a comprehensive, effectively working plan for placing qualified persons with disabilities in less restrictive settings. The Centers for Medicare and Medicaid Services (CMS) also offered guidance to states about what constituted an effective plan.

What Has Been Maryland's Response? The Report of the Community Access Steering Committee

The State has been incrementally moving toward an assessment of what it takes to respond to *Olmstead*. Indeed, Maryland has been no different than most other states in this regard, with an estimated 37 states forming some sort of task force or commission to respond to *Olmstead*. According to the National Conference of State Legislatures, as of August 2001, four states--Missouri, North Carolina, Ohio, and Texas--had issued final comprehensive plans that appeared to meet the recommendations laid out by CMS, although implementation was contingent on state funding. Other states, including Maryland, have issued reports which are not necessarily intended to be considered as comprehensive plans under the CMS guidelines but nevertheless contain recommendations to address the *Olmstead* decision.

Maryland's response, the report of the Community Access Steering Committee, was released in July 2001. Included in the report were a series of recommendations focused on three major goals:

- building community capacity;
- helping individuals currently in institutions move to the community; and
- helping people stay in the community.

Within each goal, were multiple recommendations. These recommendations and the status of those recommendations are provided in **Exhibit 2**.

As can be seen in Exhibit 2:

- Many of the committee's recommendations were administrative in nature. According to DHMH, the majority of these recommendations are being acted upon, although some are being further reviewed.
- Some recommendations involve expanding services but do not specify funding sources or funding amounts. For example, the exploration of opportunities to develop pooled funding on a regional basis to expand limited transportation resources, or expanding crisis response and respite care programs for people who live in the community.

Exhibit 2

Recommendations of Community Access Steering Committee

<u>Goals and Recommendations</u>	<u>Annual Funding Requirements</u>	<u>Status</u>
Building Community Capacity		
<i>Improve Compensation for Community-based Direct Care Workers</i>		
<ul style="list-style-type: none"> ● Increase and restructure reimbursement rates in the Medicaid Personal Care Program ● Automatic inflationary adjustment in community mental health service rates ● Increase compensation for direct care staff working with developmentally disabled in the community 	<p>\$6.4 million GF \$6.4 million FF</p> <p>\$6 million GF \$4 million FF</p> <p>\$11.2 million GF \$5 million FF</p>	<p>Not funded in fiscal 2003.</p> <p>Not funded in fiscal 2003. SB 10/2003 introduced (non-departmental).</p> <p>Year one of five year plan in fiscal 2003 allowance.</p>
<i>Enhance Efforts to Coordinate and Develop Affordable Accessible Housing</i>		
<ul style="list-style-type: none"> ● Convene workgroup to develop and implement strategies to increase the availability of housing resources for individuals with disabilities ● Create housing liaison function between DHMH and DHCD to coordinate problem-solving and resource development for DHMH-funded populations ● Initiate efforts to work with public housing authorities on the issues 		<p>Established.</p> <p>Liaison to be located in DHCD. Awaiting approval from DBM.</p> <p>Beginning to undertake this work.</p>
<i>Enhance Availability of Accessible Transportation for People with Disabilities</i>		
<ul style="list-style-type: none"> ● Explore opportunities to develop pooled funding on a regional basis in order to expand limited transportation resources ● Expand responsibilities of State Coordinating Committee for Human Services to more comprehensively address transportation needs 	<p>Cost not stated</p>	<p>No funding in fiscal 2003. Costs being explored.</p> <p>Under further review.</p>
<i>Create Interagency Workgroup to Coordinate Programs for People with Disabilities</i>		
		<p>Established.</p>

Exhibit 2 (Continued)

Recommendations of Community Access Steering Committee

<u>Goals and Recommendations</u>	<u>Annual Funding Requirements</u>	<u>Status</u>
Helping People Move from Institutional Settings to the Community		
<i>Fund and Support DHMH Plans to Help Individuals Transition from State-operated Facilities to the Community</i>		
<ul style="list-style-type: none"> ● Continue transition of individuals with mental illness from State-run psychiatric facilities to the community 	<ul style="list-style-type: none"> \$2.5 million GF \$1.5 million FF 	<ul style="list-style-type: none"> Funding for 60 persons targeted for transition in fiscal 2003 allowance.
<ul style="list-style-type: none"> ● Continue transition of individuals with developmental disabilities from State Residential Centers to the community 	<ul style="list-style-type: none"> \$2.9 million GF \$2.9 million FF 	<ul style="list-style-type: none"> Funding for 65 persons targeted for transition in fiscal 2003 allowance.
<ul style="list-style-type: none"> ● Conduct peer outreach and other education efforts in institutional settings 		<ul style="list-style-type: none"> Ongoing in MHA and DDA.
<i>Fund and Support Efforts to Help Individuals Transition from Private Facilities Serving Individuals Receiving Government Assistance</i>		
<ul style="list-style-type: none"> ● Conduct outreach and education in nursing homes and chronic hospitals 	<ul style="list-style-type: none"> Cost not stated 	<ul style="list-style-type: none"> Ongoing and plans are being implemented to expand efforts.
<ul style="list-style-type: none"> ● Provide assessment services to individuals who self-identify/refer with patient's consent 	<ul style="list-style-type: none"> Cost not stated 	<ul style="list-style-type: none"> Provided.
<ul style="list-style-type: none"> ● Expand Medicaid waiver for Adults with Physical Disabilities and Waiver for Older Adults as appropriate 	<ul style="list-style-type: none"> Cost not stated 	<ul style="list-style-type: none"> Expansion proposed for fiscal 2003: 1,000 new slots for older adults; 100 new slots for adults with physical disabilities.
<ul style="list-style-type: none"> ● Establish transition fund to assist individuals who move from private facilities to the community 	<ul style="list-style-type: none"> Cost not stated 	<ul style="list-style-type: none"> Transition funds are allocated in the waivers and in other areas.
<ul style="list-style-type: none"> ● Adopt more liberal methods for determining financial eligibility and adopt more consistent medical eligibility standards 	<ul style="list-style-type: none"> Cost not stated 	<ul style="list-style-type: none"> Under further review.

Exhibit 2 (Continued)

Recommendations of Community Access Steering Committee

<u>Goals and Recommendations</u>	<u>Annual Funding Requirements</u>	<u>Status</u>
Helping People Stay in the Community		
<i>Promote Education and Counseling on Community Options</i>		
<ul style="list-style-type: none"> ● Pursue measure to inform the public and key groups about community integration ● Enhance awareness, visibility, and understanding about State programs that support people with disabilities in the community ● Expand anti-stigma programs 	Cost not stated	<p>Ongoing.</p> <p>Newsletter in development.</p> <p>Under further review.</p>
<i>Ensure Appropriate Access and Coordination between Various Public Programs and Private Insurance</i>		
<ul style="list-style-type: none"> ● Pursue private insurance coverage of evidence-based best practice community support services ● Pursue changes to make Medicaid and Medicare allowable reimbursements comparable ● Develop and implement a plan for acute general and private hospitals to remove disincentives to admit and treat patients thereby reducing transfers to State-run psychiatric hospitals ● Explore opportunities to remove barriers to employment for people with disabilities and create peer support programs 	Cost not stated	<p>Under discussion between MHA and MIA.</p> <p>Under discussion with Maryland Congressional Delegation.</p> <p>Under further review.</p> <p>Under further review.</p>
<i>Expand Crisis Response and Respite Care Programs for People who Live in the Community</i>	Cost not stated	Action plan developed.

Note: If the report did not note a cost but DLS believes some cost could be incurred to implement the recommendation, the phrase "Cost not stated" is applied under annual funding requirements.

Source: Final Report of the Community Access Steering Committee; Department of Health and Mental Hygiene; Department of Legislative Services

M.00 - DHMH - Fiscal 2003 Budget Overview

- A number of the report's recommendations did contain specific funding levels or supported ongoing downsizing initiatives which are funded in the fiscal 2003 allowance. For example, implementing the first year of a five-year plan established by Chapters 109 and 110, Acts of 2001 to increase wages for direct care workers caring for the developmentally disabled, and continuing to support the transition of individuals from State psychiatric hospitals and DDA facilities.
- Other recommendations contained specific funding levels which are not found in the in the fiscal 2003 allowance. For example, increasing reimbursement rates for Medicaid personal care attendants and providing for a regular inflation adjustment for community mental health services.

Dissent from the Community Access Steering Committee Report

Four members of the committee, the four community members of the committee who either have disabilities or have a child with disabilities, dissented from the report. They argued that the report does not present a comprehensive plan to ensure community-based care for persons with disabilities and that the report fails to set specific goals and timelines for implementation of goals and recommendations. This dissent was subsequently articulated to the Governor in a September 21, 2001, report from the Maryland Civil Rights Coalition for People with Disabilities.

The Coalition's report made six general points:

- State institutions continue to require significant State support and prevent funds from being added to community-based programs. They remain open because "State officials are unwilling to accept the political risks of downsizing and closing them."
- The State has been slow in accessing federal funds to support community integration.
- The report recognizes that a quality community-based workforce is required to ensure quality in community programs but provides little guidance about how to secure such a stable, well-paid, and well-trained community-based workforce.
- Outreach and peer support programs are inadequate.
- Income eligibility limits for Medicaid should be raised to 100% of the federal poverty limit.
- More efforts should be made to expand opportunities for persons with disabilities to maintain Medicaid coverage after they obtain employment which provides them with an income that would otherwise make them Medicaid-eligible.

In considering these points, DLS would note that closure of State institutions has, at least in recent years, proven difficult although downsizing initiatives continue. However, support for downsizing of State-run psychiatric hospitals has foundered due to MHA's budget woes on the community side of the mental health system and demand for these facilities remains high due to changes in the private insurance market. DLS would also note that the report does make three significant funding recommendations in the

M.00 - DHMH - Fiscal 2003 Budget Overview

area of workforce improvement, even though only one of these recommendations is funded in the fiscal 2003 allowance (and that was legislation passed last session prior to the release of the committee's report).

Conclusion

The dissent to the Community Access Steering Committee's report expressed by the committee's community members and subsequently reflected in material developed by the disability advocacy community reflects the fact that the Olmstead decision will continue to be used in the ongoing fight for resources for persons with disabilities.

The department should respond to the September 21, 2001, report from the Maryland Civil Rights Coalition for People with Disabilities.