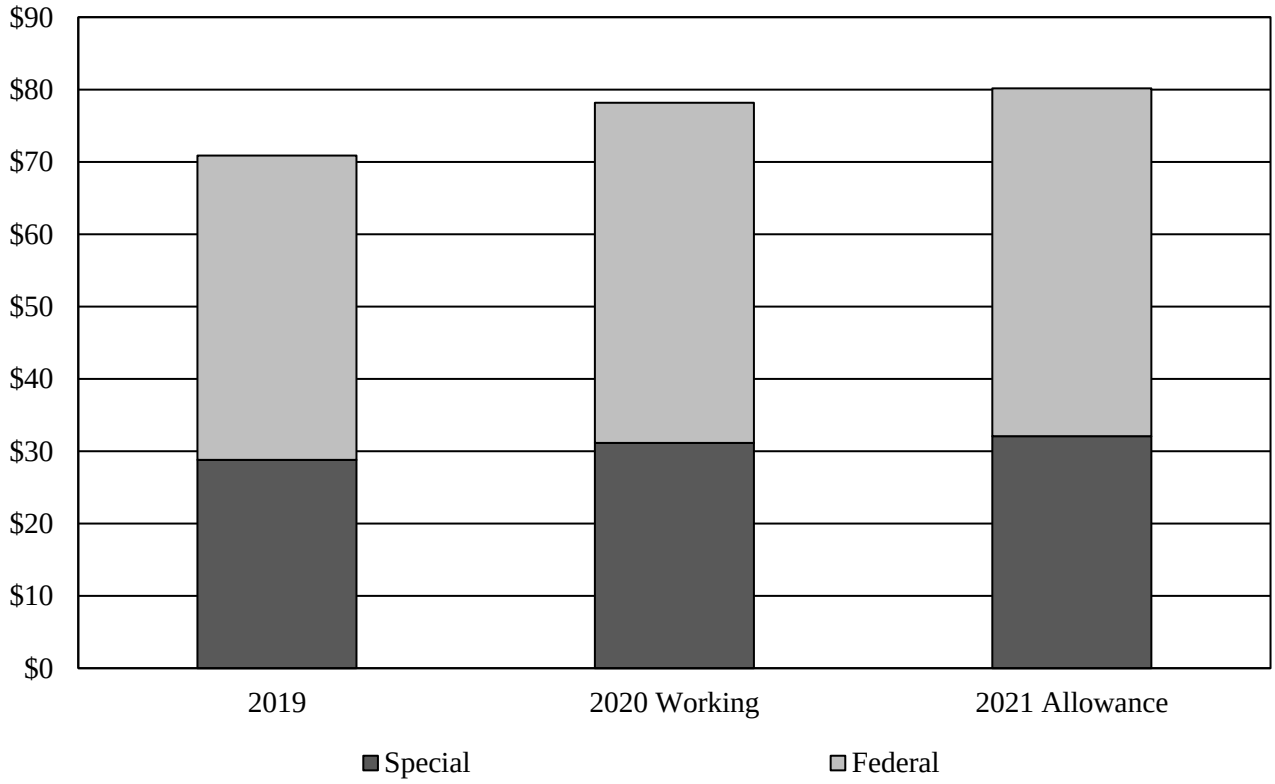
D78Y01
Maryland Health Benefit Exchange

Executive Summary

The Maryland Health Benefit Exchange (MHBE) provides a marketplace for individuals and small businesses to access affordable or no-cost health coverage.

Operating Budget Summary

Excluding the Reinsurance Program, the Fiscal 2021 Budget Increases By $2.0 Million or 2.5% to $80.2 Million
($ in Millions)



Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases. The fiscal 2021 allowance excludes the reinsurance program.

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- The Budget Reconciliation and Financing Act of 2020 proposes to reduce the mandated appropriation to MHBE from $35 million to $32 million beginning in fiscal 2021. The fiscal 2021 budget includes a contingent reduction due to this proposed change. In addition, the Governor's budget plan assumes $3 million of general fund revenue resulting from reduced spending in MHBE in fiscal 2020. However, this adjustment is not reflected in the fiscal 2020 working appropriation.

- While not reflected in the exhibit, the fiscal 2021 allowance of MHBE includes $461.2 million in funding for the first payments under the State Reinsurance Program, which will be based on calendar 2019 carrier expenditures. The payments are expected to be made in the first quarter of fiscal 2021.

Key Observations

- ***Reinsurance Cost Estimates Lowered but Uncertainty Remains:*** As submitted with the Section 1332 waiver request for the program, the reinsurance payments for calendar 2019 were expected to total $462 million. A recent actuarial estimate places the cost at $370 million. The new estimate is lower than the amount of federal funds received for the program. However, the wide variation in estimates emphasizes the uncertainty in the program until the first payments are made in fiscal 2021.

- ***Marylanders Enrolled in Qualified Health Plans Increase:*** In December 2019, MHBE announced the calendar 2020 enrollment in Qualified Health Plans from the open enrollment period. The number enrolled on and off the exchange (215,484) was 1.6% higher than the prior year. However, the share of those enrolled that qualified for an Advanced Premium Tax Credit declined by 3 percentage points.

Operating Budget Recommended Actions

		Funds
1.	Reduce funding for development of a reinsurance claims system that is not needed.	$ 210,000
2.	Reduce funding to better align with recent spending.	950,000
3.	Adopt narrative requesting data on enrollments related to the Maryland Easy Enrollment Health Insurance Program.	
4.	Adopt narrative requesting a report on actual reinsurance payments, an updated forecast, and planned use of provider assessment revenue.	
	Total Reductions	**$ 1,160,000**

Budget Reconciliation and Financing Act Recommended Actions

1. Alter the provision reducing the mandated appropriation for the Maryland Health Benefit Exchange to provide for a $31 million mandate rather than $32 million beginning in fiscal 2021.

Updates

- ***Resolution of Claim Related to Original Information Technology System:*** In June 2019, the Attorney General announced a settlement related to alleged violations of the False Claims Act with the International Business Machines Corporation and Cúram Software related to the original Health Insurance Exchange contract. The settlement totaled $14.8 million with Maryland's share equaling $2.8 million.

- ***Individual Mandate:*** In December 2019, the Fifth Circuit Court of Appeals affirmed the ruling in *Texas v. United States* that the individual mandate, as amended by the Tax Cuts and Jobs Act of 2017, is unconstitutional. The court remanded questions related to severability back to the District Court. However, in January 2020, the defendant states petitioned the Supreme Court for review of the ruling.

D78Y01
Maryland Health Benefit Exchange

Operating Budget Analysis

Program Description

The Maryland Health Benefit Exchange (MHBE) was created during the 2011 session in response to the federal Patient Protection and Affordable Care Act (ACA) of 2010. MHBE is intended to provide a marketplace for individuals and small businesses to access affordable or no-cost health coverage.

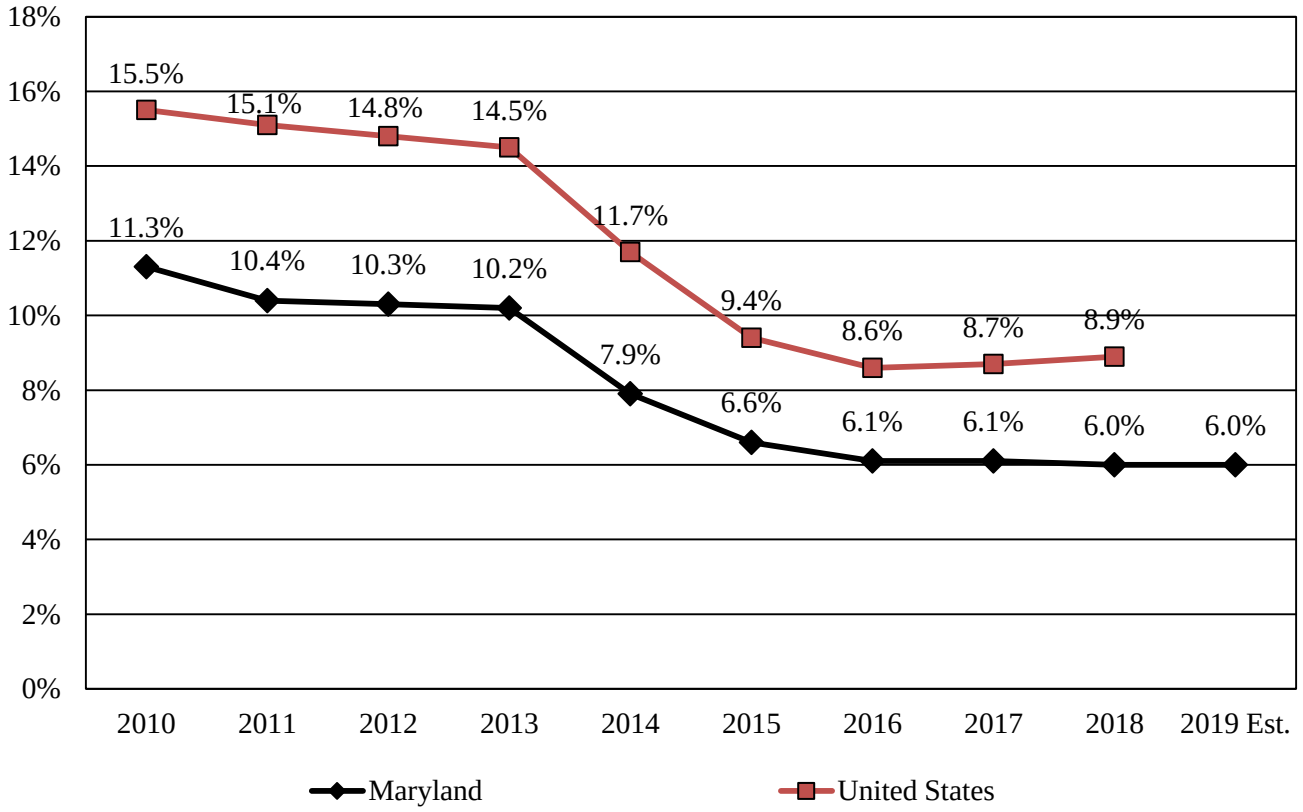
Through the Maryland Health Connection (MHC), Maryland residents can shop for health insurance plans; compare rates; and determine their eligibility for tax credits, cost-sharing reductions, and public assistance programs such as Medicaid. Once an individual or family selects a Qualified Health Plan (QHP) or available program, they enroll in it directly through MHC. Under the ACA, to be certified as a QHP, an insurance plan must meet certain requirements including providing at least 10 essential health benefits with no lifetime maximums and follow established limits on cost-sharing (deductibles, copayments, and out-of-pocket maximum amounts). The same rules apply to plans sold both in and out of the exchange, but in order to be sold on the exchange, a health plan must also be certified by the exchange as a QHP. Premium subsidies are only available to plans purchased on the exchange by eligible individuals.

Performance Analysis: Managing for Results

1. Percent of Marylanders Uninsured Holds Steady

As shown in **Exhibit 1**, the percentage of Marylanders without insurance declined substantially beginning in 2013 consistent with national trends following the implementation of the ACA. The decline in Maryland continued to follow national trends through calendar 2016. The percentage of Marylanders that were uninsured declined slightly in calendar 2017 and held steady in calendar 2018, despite slight increases nationally. MHBE anticipates that the uninsured rate in Maryland stayed at the same level in calendar 2019.

Exhibit 1
Uninsured Rate in the United States and Maryland
Calendar 2010-2019 Est.

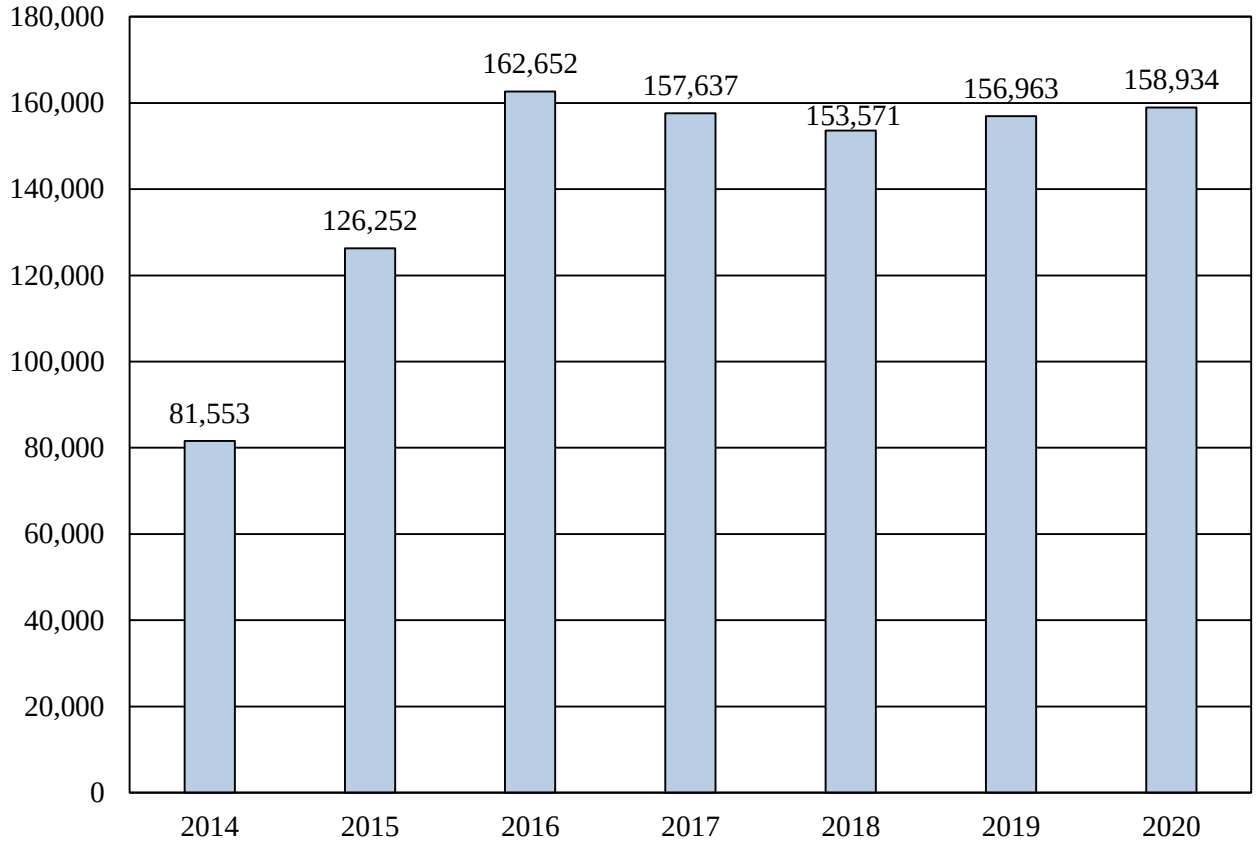


Source: U.S. Census Bureau American Community Survey; Maryland Health Benefit Exchange

2. Coverage in QHPs Increases

In December 2019, MHBE announced that 158,934 Marylanders enrolled in health insurance coverage through the exchange for coverage in calendar 2020, an increase of 1.3% compared to 2019. As shown in **Exhibit 2**, this level of enrollment was the highest since calendar 2016. MHBE noted that the number of individuals enrolled in QHPs increased in 20 of the 24 jurisdictions in the State. Anne Arundel, Prince George's, and Somerset counties and Baltimore City each experienced a decline in enrollment. However, the declines were relatively small (2% in Anne Arundel County and 1% in the other three jurisdictions). MHBE notes that an additional 56,550 individuals enrolled in private insurance off-exchange. The combined total of 215,484 was also 1.6% higher than the calendar 2019 enrollment.

Exhibit 2
Enrollment in Open Enrollment in a Qualified Health Plan through the Maryland Health Connection
Calendar 2014-2020

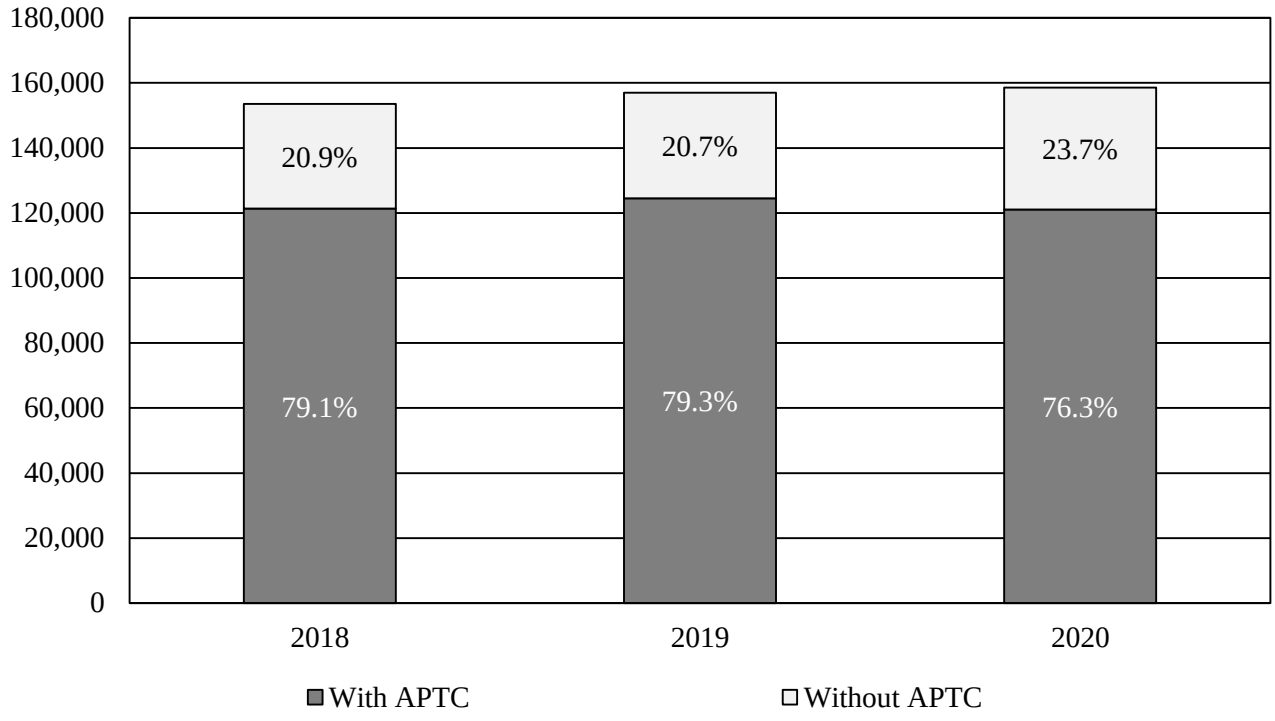


Source: Maryland Health Benefit Exchange

These figures do not account for any increases in enrollment that might follow the special enrollment periods associated with the implementation of the Maryland Easy Enrollment Health Insurance Program (MEEHP) (Chapters 423 and 424 of 2019). For tax year 2019, this program provides an option for individuals when filing tax returns to share information for the purpose of determining preliminary eligibility for Medicaid, the Maryland Children's Health Program (MCHP), and the Advanced Premium Tax Credit (APTC). A special enrollment period opens for individuals if the individual is preliminarily determined eligible. **The Department of Legislative Services (DLS) recommends adopting committee narrative requesting a report on the enrollment in QHPs with APTC, Medicaid, and MCHP resulting from MEEHP.**

As shown in **Exhibit 3**, more than 75% of individuals that enrolled in QHPs during open enrollment were eligible for APTC. However, the share of those enrolled for calendar 2020 that were eligible for APTCs decreased by 3 percentage points compared to calendar 2019.

Exhibit 3
Individuals Enrolled in a QHP during Open Enrollment That Were Eligible for APTCs
Calendar 2018-2020



APTC: Advanced Premium Tax Credit
QHP: Qualified Health Plan

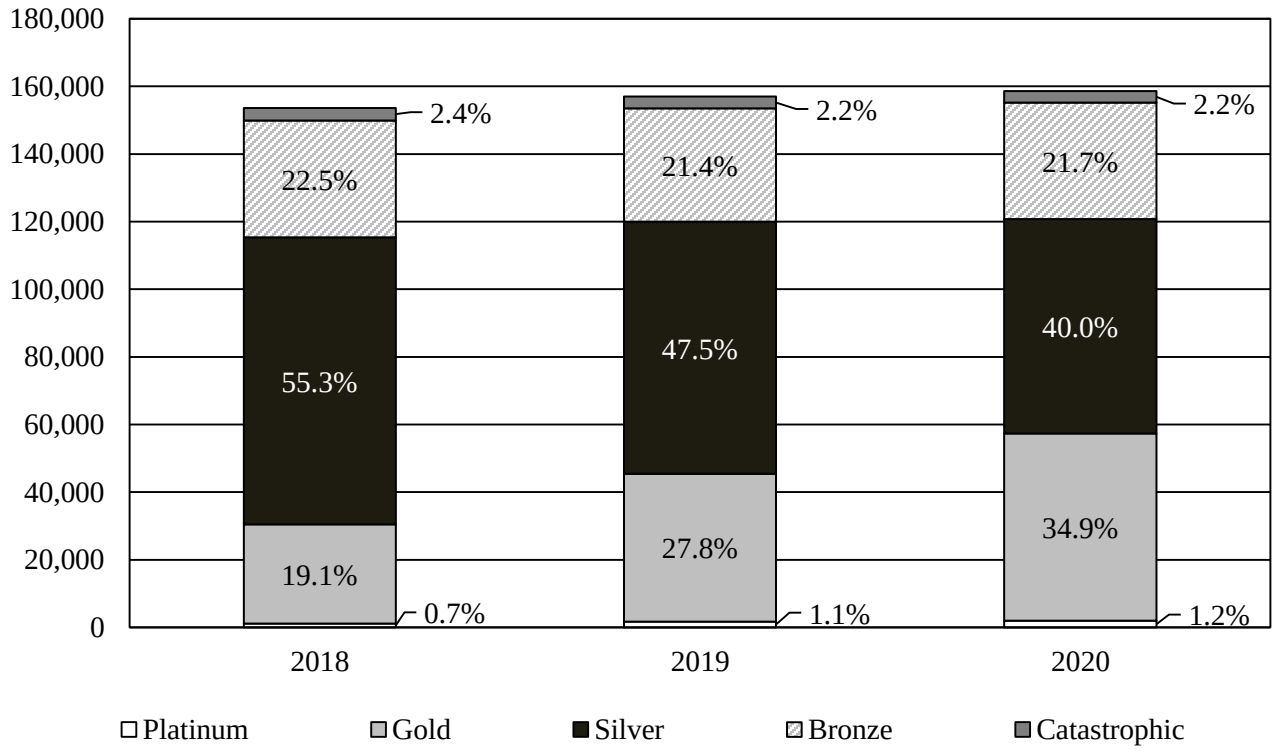
Note: Does not include 334 individuals who received assistance from the call center to complete application after the close of open enrollment.

Source: Maryland Health Benefit Exchange

Individuals enrolling through MHC are able to choose from a variety of coverage levels. In general, bronze plans require individuals to pay a higher share of medical costs and provide less generous coverage. The costs decrease and coverage increases for each higher level of plan (silver, gold, and platinum). As shown in **Exhibit 4**, the largest share of individuals that enroll in a QHP during open enrollment through MHC enroll in a silver plan. However, in calendar 2019 and 2020, the share of enrollments in these plans fell relative to other plans. The growth primarily occurred among gold

plans. In calendar 2020, the share of enrollments in silver plans (40%) was only 5.1 percentage points higher than gold plans, compared to a difference of 36.2 percentage points in calendar 2018. Several factors contribute to the increase in gold plans, including the lower cost of premiums relative to silver plans in recent years, lower overall costs of premiums due to the introduction of the reinsurance program for calendar 2019, and the introduction of value plans for calendar 2020. Value plans contain certain requirements for deductible levels and services offered before the deductible that reduce the out-of-pocket costs for individuals enrolled in these plans. While insurers were only required to offer value plans at the silver level for calendar 2020, insurers also offered value plans at the gold level.

Exhibit 4
Individual Enrollment in QHPs by Metal Level in Open Enrollment
Calendar 2018-2020



QHP: Qualified Health Plan

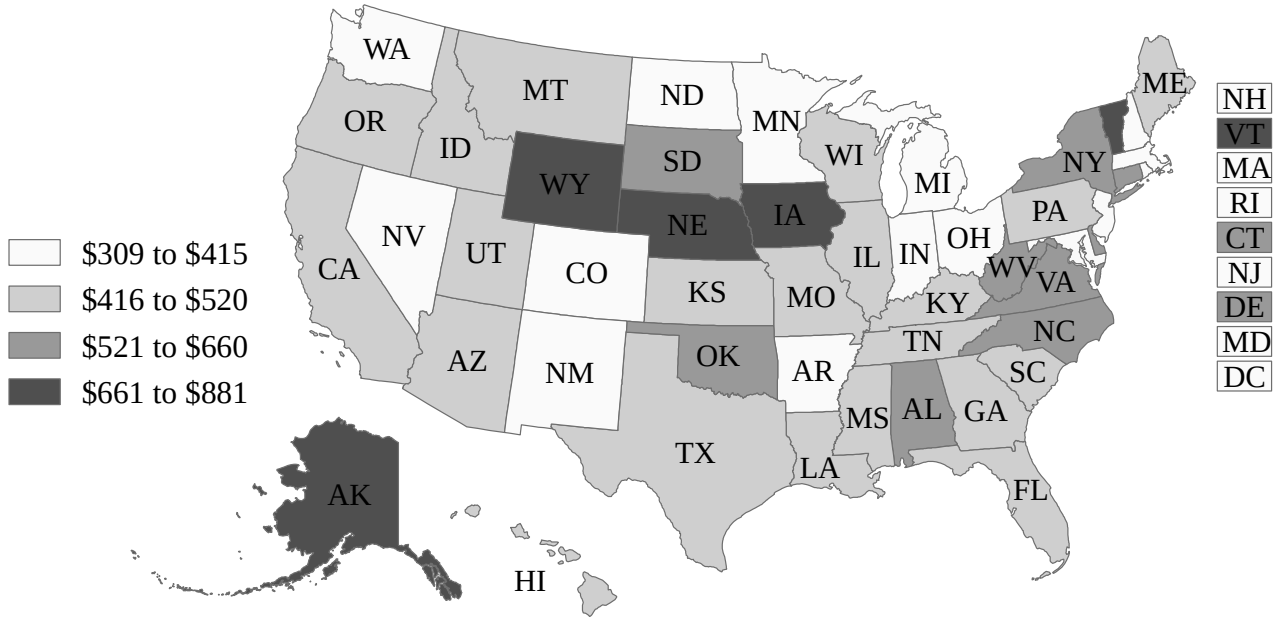
Note: Does not include 334 individuals who received assistance from the call center to complete application after the close of open enrollment.

Source: Maryland Health Benefit Exchange

3. Premiums in Maryland Low Relative to Nation

The Kaiser Family Foundation provides information on the average monthly premium at various metal levels by state. For calendar 2020, this data indicates that the average monthly premium for the second lowest cost silver plan (the benchmark plan) in Maryland is the fourteenth lowest among states. The second lowest cost plan is the plan on which the APTC is based. **Exhibit 5** compares the average monthly premium for the benchmark plan in Maryland to other states.

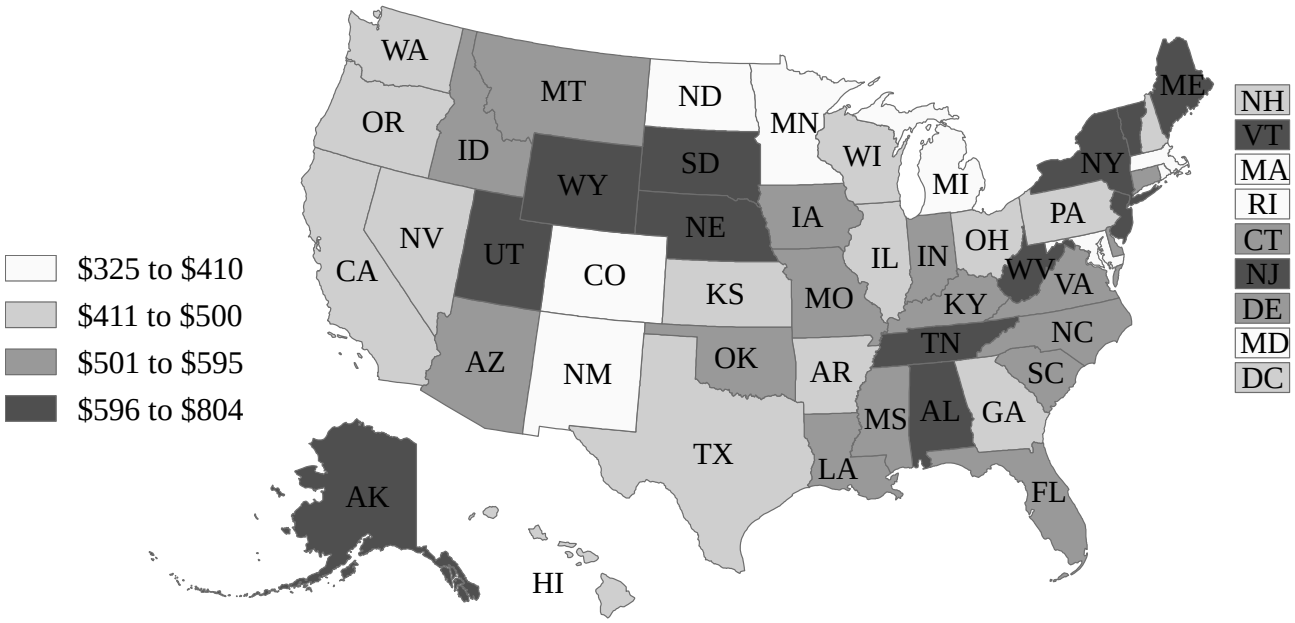
Exhibit 5
Average Monthly Premium for the Benchmark Plan
Calendar 2020



Source: Kaiser Family Foundation

Maryland has the fourth lowest average monthly premium for the lowest cost gold plan among states. **Exhibit 6** compares the average monthly premium for the lowest cost gold plan in Maryland to other states. In fact, the average monthly premium for the lowest cost gold plan in Maryland is estimated to be lower than the benchmark plan. Given this lower cost, it is unsurprising that individuals are shifting to gold plans, where the plan cost becomes even lower if an individual qualifies for an APTC. MHBE attributes the lower cost of some gold plans to loading of costs into silver plans which increases the value of APTC.

Exhibit 6
Average Monthly Premium for the Lowest Cost Gold Plan
Calendar 2020



Source: Kaiser Family Foundation

Fiscal 2019

MHBE's total fiscal 2019 spending was $12.2 million lower than the legislative appropriation, including $6.2 million in special funds. The largest portion of the underspending occurred as a result of savings in the call center contract due to favorable contract terms ($6.2 million in total funds, $2.6 million in special funds, and $3.6 million in federal funds). In addition to the cancellations, MHBE was also able to realign spending during the year due to savings from this contract ($4.4 million in total funds, $2.2 million in special funds, and $2.1 million in federal funds) to support other activities.

Similarly, in fiscal 2018, MHBE canceled $11.5 million in total funds, including $7.1 million in special funds, of which $6.7 million ($3.9 million in special funds) resulted from the call center contract.

Fiscal 2020

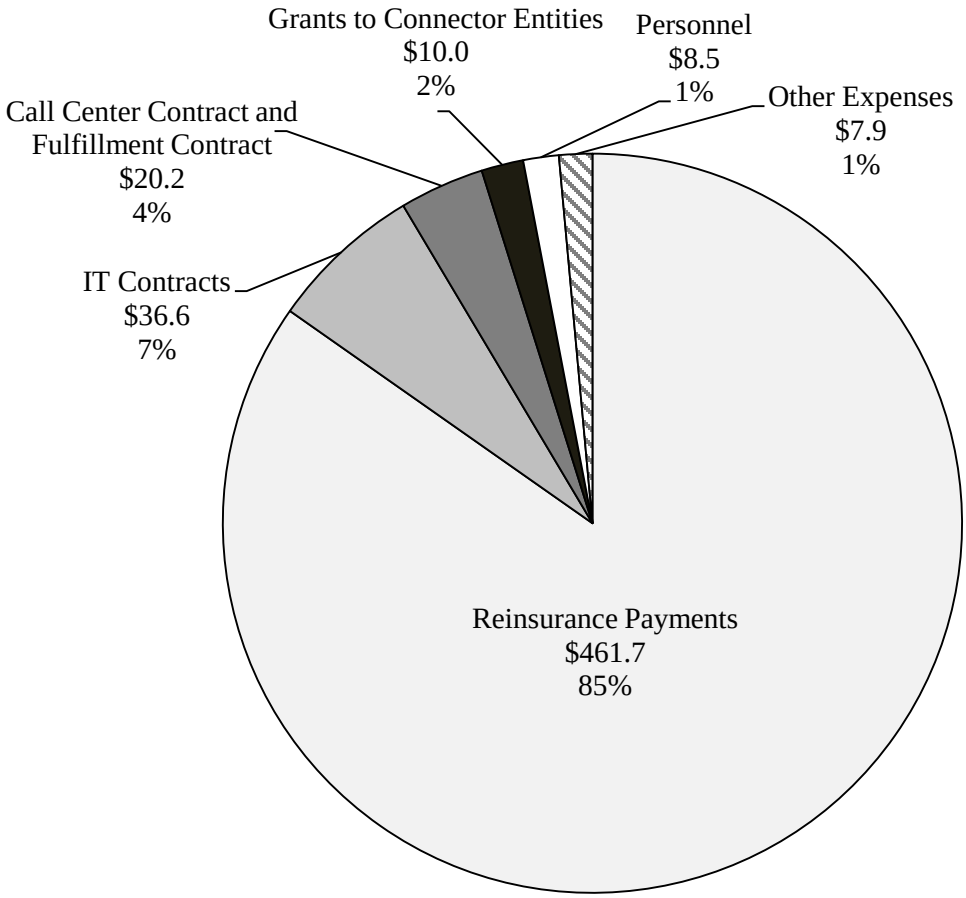
The Governor's fiscal 2021 budget assumes $3 million of general fund revenue resulting from lower than budgeted spending in MHBE. This is in addition to a reduction to the MHBE budget made in the 2019 session. Unspent funds from the annual $35.0 million in dedicated premium tax revenue, the source of MHBE's special funds, revert to the General Fund. No specific areas of underspending have been identified by MHBE in fiscal 2020, but, as noted, MHBE has regularly underspent its appropriation from the premium tax by more than $3 million. As a result of the combined actions, MHBE's fiscal 2020 working appropriation would total $31.1 million.

Fiscal 2021 Overview of Agency Spending

The fiscal 2021 allowance of MHBE, excluding the contingent reduction, totals $544.9 million. As shown in **Exhibit 7**, approximately 85% of the allowance is for the first year of payments in the State's reinsurance program. The actual amount of payments is uncertain (as will be discussed further in Key Observation 1 of this analysis). However, the budgeted amount accounts for the high end estimate, ensuring a sufficient appropriation for the payments. Aside from those payments, the fiscal 2021 allowance totals $83.2 million, or $80.2 million after accounting for the contingent reduction.

Outside of the reinsurance payments, the largest expenditure in MHBE ($36.6 million) is for information technology (IT) contracts, including enhancements to MHC, hosting of the data, and IT independent contractors that are primarily funded through contracts. In fiscal 2021, MHBE indicates that it is reducing the number of IT contracts to focus more on the use of IT independent contractors.

Exhibit 7
Overview of Agency Spending
Fiscal 2021 Allowance
($ in Millions)



IT: information technology

Note: Does not include the special fund contingent reduction for the agency, because the agency has not identified the activity that will be reduced. Includes the statewide personnel compensation adjustments.

Source: Governor's Fiscal 2021 Budget Books

Proposed Budget Change

Exhibit 8 shows the fiscal 2021 allowance compared to the fiscal 2020 working appropriation, accounting for the statewide employee compensation adjustments and the fiscal 2021 contingent

reduction. However, the year-to-year change is overstated due to the addition of the reinsurance payments, which are effectively a pass-through in the budget, and understated because the working appropriation does not account for the $3 million revenue assumption from fiscal 2020 underspending noted earlier. The fiscal 2021 allowance, excluding the reinsurance payments, and accounting for this revenue assumption, would increase by $2 million in total funds ($0.9 million in special funds).

Exhibit 8
Proposed Budget
Maryland Health Benefit Exchange
($ in Thousands)

How Much It Grows:	Special Fund	Federal Fund	Total
Fiscal 2019 Actual	$28,808	$42,068	$70,876
Fiscal 2020 Working Appropriation	34,148	47,033	81,182
Fiscal 2021 Allowance	120,684	421,209	541,893
Fiscal 2020-2021 Amount Change	$86,536	$374,176	$460,711
Fiscal 2020-2021 Percent Change	253.4%	795.6%	567.5%

Where It Goes:	Change
Personnel Expenses	
Employee and retiree health insurance	$155
Regular earnings primarily due to reclassifying positions	104
Employee retirement	84
2% general salary increase effective January 1, 2021	68
Annualization of 1% general salary increase effective January 1, 2020	33
Other fringe benefit adjustments	5
Reinsurance Program	
Reinsurance payments for plan year 2019	461,734
Development of a reinsurance claims system that will not be needed due to continuation of the availability of the federal Edge Server (a portion of these costs will be used for the Edge Server fee)	250
Actuarial services not budgeted in fiscal 2020 due to timing of waiver approval	150
Information Technology (IT) Contracts	
Maryland Health Connection enhancements including associated project management	2,030
Software licenses due to increased costs associated with a new software purchase, MD THINK, and changes in prices	569
Additional IT staff resources through independent contractors to reduce outside IT contracts	333
Replacement of equipment that is at the end of life or at the end of support	125

Where It Goes:	**Change**
Server utilization costs due to full year costs and actual experience with MD THINK partially offset by end of prior hosting contract	-100
Maintenance and operations for Maryland Health Connection primarily due to ending one contract to use more IT independent contractors	-2,163
Small Business Health Options Program (SHOP)	
Marketing for new SHOP	250
Third-party administrator costs due to a planned contractor change and switch to a per member per month fee	-100
Other Changes	
5.98 contractual full-time equivalents for paid internships	154
Printing/fulfillment contract	100
Statewide cost allocations	86
Call center contract	-70
Office of Administrative Hearings allocation	-92
Contingent reduction due to proposed change in mandate from $35 million to $32 million in the Budget Reconciliation and Financing Act of 2020	-3,000
Other adjustments	7
Total	**$460,711**

MD THINK: Maryland Total Human-services Information NetworK

Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases.

MHC Enhancements

The fiscal 2021 allowance of MHBE includes $9.75 million for enhancements related to MHC, an increase of $1.6 million compared to fiscal 2020, and is $2.3 million higher than the fiscal 2019 actual expenditures on enhancements. MHBE also reports that an increase of $0.4 million for project management is to support the planned enhancement work. These enhancements include routine changes to the website and mobile application as well as special enhancement projects. MHBE plans seven special enhancement activities in fiscal 2021, some of which were also planned for fiscal 2020 due to earlier phases or delays in timing.

- ***Small Business Health Options Program (SHOP) Platform Implementation:*** MHBE plans to develop a platform for SHOP eligibility and enrollment for employees of participating businesses, which also would provide standardized information on QHPs. The platform is expected to include account creation and management, registering businesses and determining eligibility, plan shopping, maintaining an employee census, broker access, plan management, and other notices and administrative functions.

- ***MEEHP:*** MHBE anticipates making additional improvements related to the ongoing implementation of MEEHP.

- ***Multi-factor Authentication:*** MHBE plans to provide for a multi-factor authentication process (a second option after username and password for additional security), such as another device. This is to be optional for customers with access to phones with email or access to texts. MHBE previously rolled this out in fiscal 2020 but delayed full implementation.

- ***User Experience Enhancements:*** MHBE expects to enhance the consumer portal to improve text and user interfaces based on recommendations from marketing studies.

- ***Mobile Application/Website Improvements:*** MHBE plans to implement enhancements to the consumer portal to make the website adaptable to viewing of different size devices and for different types of devices, including the mobile application and the traditional website, as well as other updates to the mobile application.

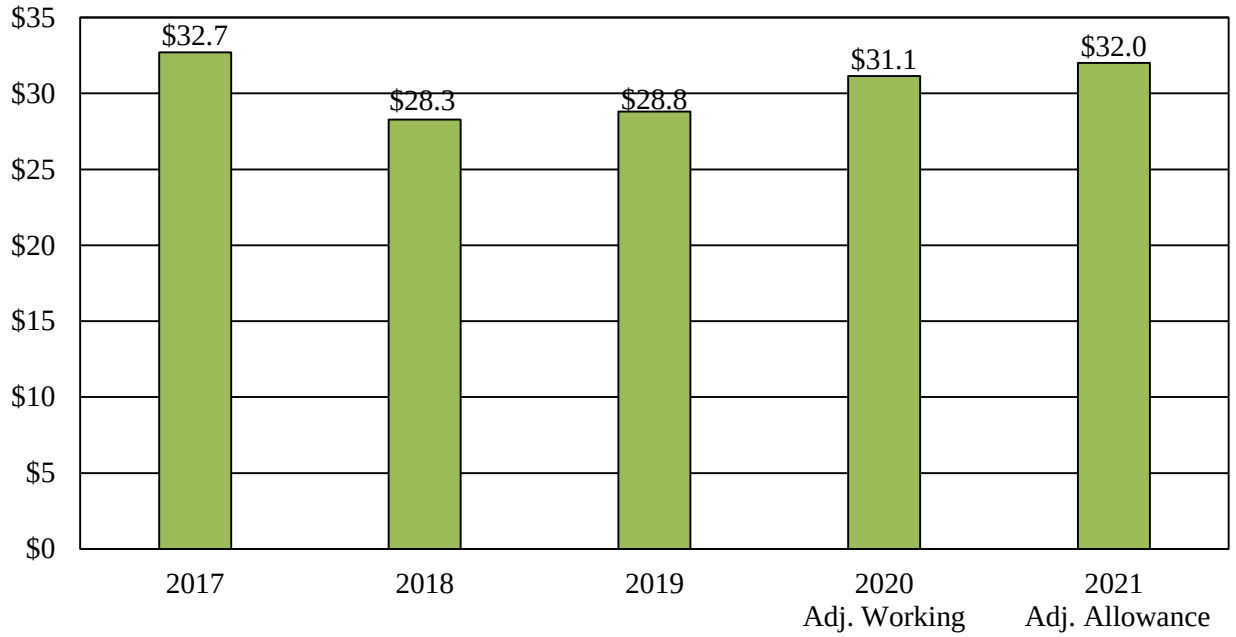
- ***Optical Character Recognition Technology:*** MHBE anticipates adding technology to allow for users to scan identification documents using their smartphones that would then prepopulate the application. This technology would improve data accuracy in applications and make signup easier.

- ***Automation of Processes:*** MHBE anticipates configuring software to allow for automation of certain work and systems to reduce manual effort for processing tasks. MHBE also expects that this technology will be able to assist in detecting fraud, waste, and abuse.

Budget Reconciliation and Financing Act of 2020

The Budget Reconciliation and Financing Act (BRFA) of 2020 includes a provision that alters the mandated appropriation for MHBE from the premium tax on health insurance providers from $35 million to $32 million. The Governor's proposed fiscal 2021 budget includes a $3 million reduction contingent on the alteration of the mandate. **Exhibit 9** compares spending from the premium tax mandate (MHBE's primary source of State funding) in the most recent three years compared to the fiscal 2020 and 2021 budgets, accounting for the planned reversion and contingent reduction. In fiscal 2018 and 2019, MHBE spent less than $29 million. The fiscal 2021 allowance, including the contingent reduction, exceeds the fiscal 2019 spending by $3.2 million. **DLS recommends reducing the fiscal 2021 allowance to $30.84 million to better align with recent spending after accounting for personnel growth and anticipated SHOP changes. DLS also recommends altering the BRFA of 2020 to mandate $31 million rather than $32 million beginning in fiscal 2021.**

Exhibit 9
Maryland Health Benefit Exchange Fund Spending by Year
Fiscal 2017-2021 Allowance
($ in Millions)



Source: Governor's Fiscal 2019-2021 Budget Books; Department of Legislative Services

Personnel Data

	FY 19 Actual	FY 20 Working	FY 21 Allowance	FY 20-21 Change
Regular Positions	67.00	67.00	67.00	0.00
Contractual FTEs	0.00	0.00	5.98	5.98
Total Personnel	**67.00**	**67.00**	**72.98**	**5.98**

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	2.65	3.95%
Positions and Percentage Vacant as of 12/31/19	5.00	7.46%
Vacancies Above Turnover	2.35	

- The turnover expectancy slightly decreases between fiscal 2020 (4.03%) and 2021 (3.95%). Although the vacancies as of January 1, 2020, exceed the level needed to meet budgeted turnover, 4 of the 5 positions have been vacant for less than four months.

- The fiscal 2021 allowance includes 5.98 new contractual full-time equivalents (FTE). MHBE reports that the new contractual FTEs are intended to be used for paid internships. MHBE indicates that it has previously advertised for internships in marketing, IT, and policy, but the agency had difficulty filling the internships because they were unpaid.

Issues

1. Uncertainty Regarding Cost and Funding for Reinsurance Program

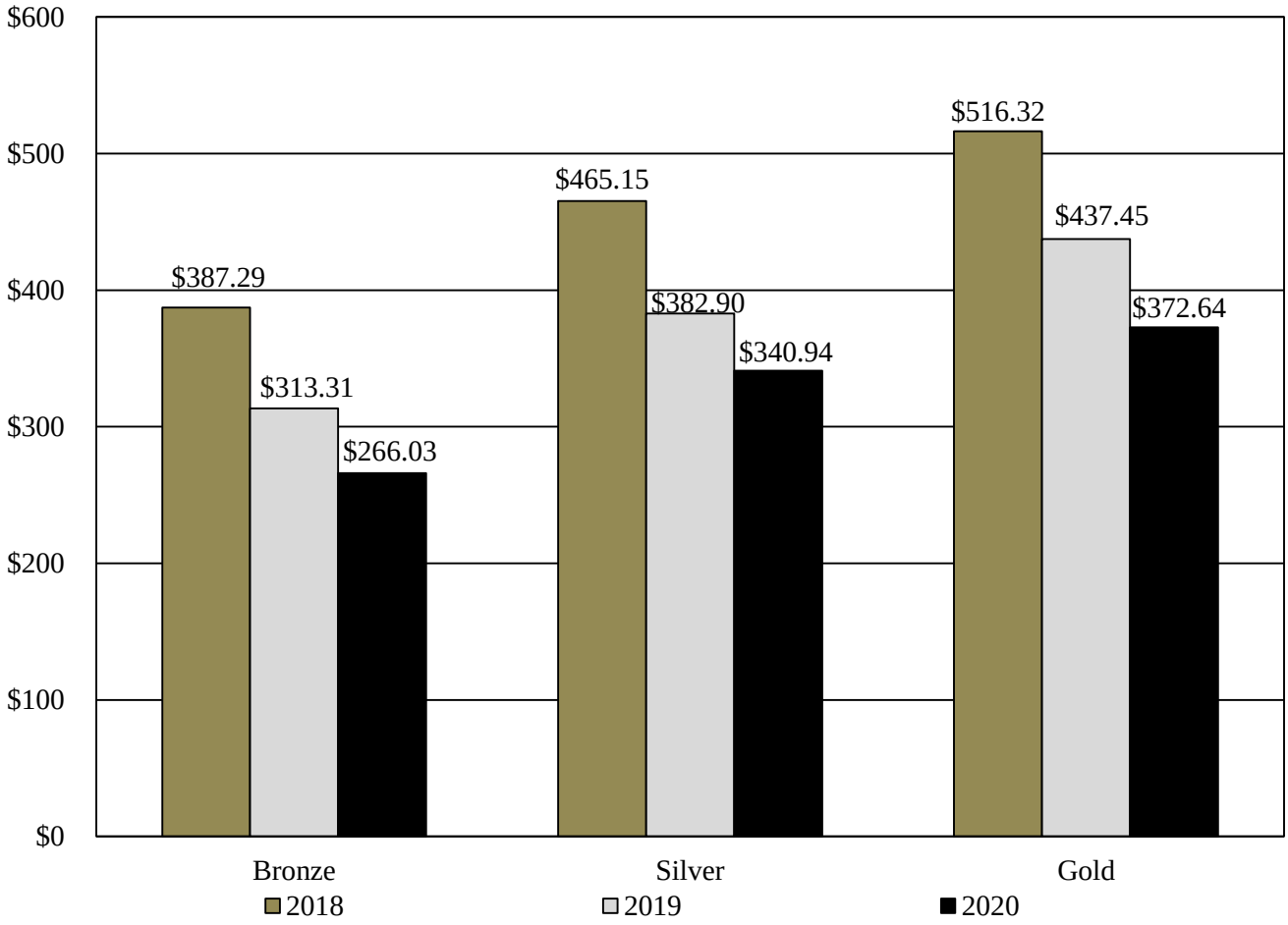
Reinsurance is insurance for carriers that protects against significant losses. Chapters 6 and 7 of 2018 required MHBE to submit an application for a State Innovation Waiver under Section 1332 of the ACA to establish a State Reinsurance Program and seek federal pass-through funding. The federal government approved the waiver in August 2018. The waiver is approved through 2023.

In calendar 2019, the State Reinsurance Program provided reinsurance to carriers offering individual health benefit plans in the State. Carriers that incurred total annual claims costs on any individual between a $20,000 attachment point (the dollar amount of insurer costs above which an insurer is eligible for reinsurance) and a cap of $250,000 are to be reimbursed for 80% of those claims costs. Payments are expected to be made in the first quarter of fiscal 2021 after the plan-year ends and all costs have been recorded and reconciled. MHBE has maintained the same parameters for the State Reinsurance Program in calendar 2020.

Impact of Rates in the Individual Market

Approval of the Section 1332 Waiver and the availability of federal pass-through funds for the State Reinsurance Program has substantially reduced individual market premium rates approved by the Maryland Insurance Administration (MIA) for the 2019 and 2020 plan years. MIA indicates that the average premium rate decreases were 13.2% for 2019 and 10.3% in 2020. **Exhibit 10** provides examples of the monthly premiums for the 2018 through 2020 plan years as calculated by MIA for various metal levels for the Carefirst BlueChoice plans. The combined decrease between 2018 and 2020 in the sample bronze premium totaled 31.3%, while silver and gold decreases were 26.7% and 27.8%, respectively. The magnitude of change varies between the two carriers offering coverage and plan types.

Exhibit 10
Sample Monthly Premiums for a 40-year-old in a Carefirst BlueChoice Plan
Calendar 2018-2020



Note: Actual premiums will vary from sample rates based on carrier, plan, age, and other factors. These premiums represent samples of premiums without the Advanced Premium Tax Credit. The examples in this exhibit are for individuals living in the Baltimore Metro Area (Anne Arundel, Baltimore, Harford, and Howard counties and Baltimore City).

Source: Maryland Insurance Administration

Estimated Yearly Cost of Reinsurance Program Decreased, but Uncertainty Remains

As shown in **Exhibit 11**, in the actuarial analysis submitted with the Section 1332 Waiver request, Wakely Consulting Group (Wakely) estimated a 2019 cost of the reinsurance program at $462 million. However, an estimate produced in 2019 by Lewis & Ellis, as part of an actuarial analysis

to determine program parameters, had a lower estimated 2019 cost at $370 million. The original waiver application estimated costs for two full years with partial year funding in a third year based on estimated claims run-out costs. Lewis & Ellis estimated costs for six full years with a seventh year of partial funding reflecting estimated claims run-out costs. The additional timeframe reflects the known waiver period plus additional years based on the estimated availability of funding.

Exhibit 11
Reinsurance Funding Cost Comparison
Calendar 2019-2025
($ in Millions)

	2019	2020	2021	2022	2023	2024	2025	Total Estimated Cost
Wakely (Waiver Application)	$462.0	$459.0	$223.0					$1,144.0
Lewis & Ellis (2020 Analysis)	$370.3	$400.1	$426.8	$457.8	$490.0	$523.6	$228.1	$2,896.6

Source: Lewis & Ellis Actuaries and Consultants; Wakely Consulting Group

While the time periods vary, it is clear that assumptions used to estimate costs and actual program activity can lead to significantly different results. **Exhibit 12** provides information on assumptions used in these reports for 2019. In the first two years of the program, Lewis & Ellis estimated costs that are $91.6 million and $58.9 lower, respectively. It would not be unexpected that the estimates might vary as Lewis & Ellis had the benefit of information available on filed and approved rates in 2019 as well as enrollment numbers. However, even for 2019, until final claims data has been received, actual costs cannot be definitively determined.

Exhibit 12
Reinsurance Fund Assumptions Used in Cost Comparison
Calendar 2019

	Wakely	Lewis & Ellis	% Change
No Reinsurance Enrollment	171,526	178,628	4.1%
Enrollment with Reinsurance	181,522	194,128	6.9%
Enrollment with APTC	103,620	110,847	7.0%
Total Nongroup Monthly Premium PMPM (No Reinsurance)	**$726**	**$643**	**-11.4%**
Total Nongroup Monthly Premium PMPM (With Reinsurance)	**$508**	**$460**	**-9.5%**

APTC: Advanced Premium Tax Credit
PMPM: per member per month

Source: Lewis & Ellis Actuaries and Consultants; Wakely Consulting Group

Given the sensitivity of estimates to changes in enrollment, it is worth noting that 2020 open enrollment numbers show an on-and-off exchange number of 215,484 compared to the 192,969 estimated by Lewis & Ellis for that year. Enrolled members tend to decrease throughout the year, which means that open enrollment figures overstate actual enrollment during the year. However, the 11.7% increase compared to the estimate is likely to translate to higher enrollment throughout the year, even if it is not at that level. Enrollment among those eligible for APTC (121,066) also exceeds that level estimated by Lewis & Ellis (111,401) by 8.7%. Given the differences in enrollment, reinsurance program costs will vary by an unknown magnitude and direction from the Lewis & Ellis estimate.

Revenue Estimates Change, Influencing Cost to the State

The reinsurance program is funded through two sources: (1) federal pass-through funds, available due to estimated savings from APTC due to lower premiums; and (2) a health insurance provider fee imposed by the State. Chapters 37 and 38 of 2018 created a 2.75% assessment on specified health insurance carriers for calendar 2019 only to fund the program. Chapters 597 and 598 of 2019 extended the assessment through calendar 2023; however, for calendar 2020 through 2023, the assessment is 1% rather than 2.75%. As shown in **Exhibit 13**, the fiscal note for the respective legislation estimated revenues from both commercial carriers and Medicaid Managed Care Organizations subject to the assessment to total $948.3 million over the five-year period. However, the receipts of the required 2.75% assessment in calendar 2019 total $328 million, rather than the $365 million previously estimated. This has also reduced DLS' estimate of future assessment receipts, reducing the five-year estimated receipts by $91.6 million, in part due to the lower base upon which future years were calcuated and a lower inflation rate.

Exhibit 13
Health Insurance Provider Fee Assessment Estimates
Calendar 2019-2023
($ in Millions)

	2019	2020	2021	2022	2023	Total
Original Estimate	$364.9	$134.5	$141.8	$149.5	$157.7	**$948.3**
Updated Estimate	327.5	124.0	129.3	135.1	140.8	**$856.7**
Difference	**-$37.4**	**-$10.5**	**-$12.5**	**-$14.5**	**-$16.8**	**-$91.6**

Note: Updated estimates assume a 5% increase for medical inflation per year, while the original estimate assumes the non-Medicaid Managed Care Organization premiums grow by 5.6%.

Source: Maryland Insurance Administration; Department of Legislative Services

In contrast, the federal pass-through revenue is expected to be higher, at least for calendar 2019. Wakely estimated that the 2019 federal pass-through amount would total $303.6 million, an amount below what was needed to support the reinsurance program at the level thought necessary and the reason for the need to add a State funding source. However, the actual federal pass-through received by the State for 2019 was $373 million. Lewis & Ellis estimated a higher federal pass-through in 2020 ($324.8 million) than Wakely ($318.8 million) due to different assumptions about enrollment and premium costs as discussed previously. Preliminary estimates for 2020 indicate the federal pass-through funds could be even higher than was estimated by Lewis & Ellis, but the final numbers will not be known until later in the year.

Given the changes in estimated costs for the program and revenue receipt, no State funds from the assessment are currently expected to be needed to support the 2019 costs of the program. **Exhibit 14** compares the State responsibility under the cost and federal pass-through estimates by Lewis & Ellis with the estimates of available assessment funding. Based on the current estimated costs and revenues, the available funds from the provider assessment would be sufficient for the waiver period but fall short of the needed funds by approximately $111.7 million, if the program is extended to 2025 without a waiver extension as anticipated in the Lewis & Ellis forecast. Presumably, if no waiver renewal is granted, MHBE would have to scale back the reinsurance program accordingly.

Exhibit 14
State Funding Requirement Compared to Available Funds
Calendar 2019-2025
($ in Millions)

	2019	2020	2021	2022	2023	2024	2025	Total
Estimated Reinsurance	$370.3	$400.1	$426.8	$457.8	$490.0	$523.6	$228.1	**$2,896.6**
Estimated Pass-through	373.0	324.8	373.9	410.1	449.1			**1,930.9**
Needed State Funds	**-$2.7**	**$75.2**	**$52.9**	**$47.7**	**$40.9**	**$523.6**	**$228.1**	**$968.4**
Estimated Provider Assessment Fee	$327.5	$124.0	$129.3	$135.1	$140.8			**$856.7**

Note: Numbers may not sum due to rounding.

Source: Lewis & Ellis Actuaries and Consultants; Department of Legislative Services

Fiscal 2021 Allowance

Despite the recent lower estimates of reinsurance payments for calendar 2019, the fiscal 2021 allowance includes $461.7 million to support the reinsurance payments for calendar 2019. The funding includes $373.1 million of federal funds (the actual level of pass-through funds available for calendar 2019) and $88.6 million of special funds from the provider assessment. Any funds beyond what is needed for those payments would generally be expected to be canceled at year-end closeout and be available for future payments.

Additional Uncertainty Surrounding Provider Assessment

The significant uncertainty surrounding both the revenues and expenditures prior to any payments in the program highlights the need for caution in terms of estimating excess funding from the provider assessment beyond what is needed for reinsurance payments. However, additional options for use of the provider assessment are under consideration. MHBE established an Affordability Workgroup to develop recommendations to reduce out-of-pocket costs and maximize affordability for both subsidized and unsubsidized workgroups. The workgroup noted that the largest portion of the remaining uninsured are those between ages 19 and 34. The workgroup noted that adding these individuals to the market would lower the cost of insurance for all by improving the risk pool. The workgroup recommended creating a young adult subsidy. The workgroup indicated that a study would be necessary to determine whether this would be best done with a Section 1332 Waiver or without one. MHBE also contracted with Lewis & Ellis to perform a study of the impact of (1) a young adult subsidy; (2) a subsidy for individuals with incomes between 400% and 600% of the federal poverty guidelines; and (3) the small group market.

HB 196 and SB 124 authorize the provider assessment to be used for a State-based health insurance subsidies program and authorize MHBE to allocate the funds between the reinsurance program and the subsidy program in a manner that maximizes the long-term affordability of health plans in the individual market. The legislation does not specify the type of subsidy that would be provided but instead requires MHBE, in consultation with the Insurance Commissioner, to establish program eligibility and payment parameters beginning in calendar 2021. **Given the uncertainty regarding the cost of the reinsurance program, including the extent to which the existing revenue source will be needed for that purpose, and consideration by MHBE of offering additional subsidies, DLS recommends committee narrative requesting a report on the calendar 2019 related payments for the reinsurance program, an updated forecast through the waiver period that incorporates the actual payments, and plans to use the provider assessment revenue for any other purpose than the reinsurance program in fiscal 2021.**

Operating Budget Recommended Actions

		Amount Reduction	
1.	Reduce funding for the development of a reinsurance claims system that is not needed. The Maryland Health Benefit Exchange (MHBE) was notified in January 2020 that the Edge Server (the federal system for claims) would continue to be available, after it was initially expected to end after 2020. This reduction leaves $40,000, which is the level of funding that MHBE anticipates requiring for the annual fee for the Edge Server.	$ 210,000	SF
2.	Reduce funding to better align with recent spending levels. In fiscal 2018 and 2019, the Maryland Health Benefit Exchange spent less than $29 million of the $35 million mandated funding from the premium tax. While a reduction, this action provides for growth compared to fiscal 2019 to account for personnel and planned changes to the Small Business Health Options Program. This reduction may be allocated among programs and objects.	950,000	SF

3. Adopt the following narrative:

Maryland Easy Enrollment Health Insurance Program: Chapters 423 and 424 of 2019 created the Maryland Easy Enrollment Health Insurance Program (MEEHP) to allow for the sharing of information between the Comptroller and the Maryland Health Benefit Exchange (MHBE) for the purpose of determining eligibility for Medicaid, Maryland Children's Health Program (MCHP), or Advanced Premium Tax Credits (APTC). For tax year 2019, individuals may authorize the sharing of information after indicating that they are interested in obtaining minimum essential coverage. MHBE will make a preliminary determination of eligibility and provide notice to the individual. The committees are interested in understanding the impact of this change on enrollment. The committees request that MHBE submit a report on Medicaid, MCHP, and enrollment in Qualified Health Plans with an APTC that result from MEEHP for tax year 2019 filings.

Information Request	Author	Due Date
Enrollment resulting from MEEHP	MHBE	July 15, 2020

4. Adopt the following narrative:

Reinsurance Program Costs and the Provider Assessment: The State Reinsurance Program is in place for plan year 2019. However, due to claims run out and the need to know full year claims data, the actual cost of the program for that year remains uncertain. Estimates have differed substantially for both the first year and out-year costs. Given the uncertainty regarding the cost of the reinsurance program, including the first payments to be made in fiscal 2021, the committees request that the Maryland Health Benefit Exchange (MHBE) report on the payments made for the reinsurance program for plan year 2019 (including the amount by each fund source) and an updated forecast in spending and funding needs over the waiver period. In addition, to the extent that not all of the provider assessment funds included in the fiscal 2021 budget are needed for that purpose, MHBE should report on the planned use of those funds in fiscal 2021, including for an additional or new subsidy program or whether the funds will be canceled to be used in a later fiscal year.

Information Request	**Author**	**Due Date**
Reinsurance program costs and planned use of the provider assessment	MHBE	September 30, 2020

Total Special Fund Reductions **$ 1,160,000**

Budget Reconciliation and Financing Act Recommended Actions

1. Alter the provision reducing the mandated appropriation for the Maryland Health Benefit Exchange to provide for a $31 million mandate rather than $32 million beginning in fiscal 2021.

Updates

1. Resolution of Claim Related to Original IT System

In October 2011, the State issued a Request for Proposals to procure a system to develop the State's health insurance exchange. In February 2012, MHBE awarded a contract to Noridian Administrative Services for the development of the Health Insurance Exchange (HIX). The system experienced a number of problems following the initial rollout in October 2013. As a result, the contract with Noridian was terminated, and MHBE replaced the HIX system.

In June 2019, the Attorney General announced a settlement related to alleged violations of the False Claims Act with the International Business Machines Corporation (IBM) and Cúram Software. The alleged violations resolved under this settlement relate to misrepresentations made during the original HIX contract procurement process, including the development status of the Cúram software, the ability of the existing functionality of the software to meet the State's requirements, and the ability to integrate the software with other software needed to provide a properly functioning website. The settlement totaled $14.8 million with Maryland's share equaling $2.8 million. The State share goes to the General Fund.

This settlement is the second settlement related to the original HIX product. A prior settlement was announced in July 2015 with Noridian. Cúram was a subcontractor on that project. IBM completed its acquisition of Cúram during the procurement process. That settlement totaled $45 million, the State share of which was $12.6 million.

2. U.S. Court of Appeals Affirmed Ruling That the Individual Mandate Is Unconstitutional, Further Review on Full ACA Pending

In *Texas v. United States*, 20 states filed suit in the U.S. District Court, Northern District of Texas arguing that the ACA, as amended by the Tax Cuts and Jobs Act of 2017 (which eliminated the tax penalty of the individual mandate), is no longer constitutional because it is not supported by a tax penalty. In December 2018, Judge Reed Charles O'Connor ruled in favor of the plaintiffs, concluding that since Congress has eliminated the penalty for not complying with the individual mandate, the mandate is no longer permissible under Congress's taxing power and is thus unconstitutional. The judge found the individual mandate to be "essential" to and inseverable from the ACA and thus declared the entire law to be invalid. The defendants appealed the case to the Fifth Circuit Court of Appeals.

On December 18, 2019, the Fifth Circuit Court of Appeals issued its decision. The court affirmed the ruling that the individual mandate, as amended by the Tax Cuts and Jobs Act of 2017, is unconstitutional. However, the court remanded the question of severability of the individual mandate from the rest of the ACA back to the District Court indicating that a more careful review be conducted with a more precise explanation about how the constitutionality of the individual mandate impacts the constitutionality of other portions of the ACA, as they exist post-2017. In addition, the Fifth Circuit Court of Appeals remanded to the District Court whether the relief (ending ACA enforcement either

partially or in whole) should be limited to the plaintiff states rather than nationwide, as the federal government argued on appeal.

According to the Congressional Research Service, parties have 45 days to file a petition for hearing or a rehearing *en banc* (a review by the entire Fifth Circuit Court of Appeals) in cases in which the United States is a party. Parties also generally have 90 days to petition the Supreme Court for review. If accepted for review by the Supreme Court, oral arguments would typically be expected to occur in the next term (beginning October 2020). However, absent these actions, the District Court will take up the severability analysis directed by the Fifth Circuit Court of Appeals.

In January 2020, the defendant states petitioned the Supreme Court for review, specifically requesting an expedited decision so that it could be addressed in the current term. The U.S. House of Representatives joined the states in requesting the review. The expedited review was denied. As a result, any review would not be expected until the next term.

Appendix 1
2019 *Joint Chairmen's Report* Responses from Agency

The 2019 *Joint Chairmen's Report* (JCR) requested that the Maryland Health Benefit Exchange (MHBE) prepare one report. An electronic copy of the full JCR response can be found on the Department of Legislative Services Library website.

- ***Potential Federal Liability:*** The fiscal 2018 State closeout audit report identified a potential liability of $28.4 million related to certain misallocated expenditures under federal establishment grants spent by MHBE. The issue was originally identified by the U.S. Department of Health and Human Services Office of the Inspector General (OIG). In August 2019, MHBE inquired on the status of resolution of a difference of opinion between OIG and the Center for Medicaid and Medicare Services (CMS) on this potential misallocation with CMS. MHBE stated that CMS noted that there is no formal audit resolution finding available yet and expressed that OIG should rely on CMS communications and determination that MHBE followed guidance when allocating funds. The same finding was included in the fiscal 2019 State closeout audit.

Appendix 2
Object/Fund Difference Report
Maryland Health Benefit Exchange

Object/Fund	FY 19 Actual	FY 20 Working Appropriation	FY 21 Allowance	FY 20 - FY 21 Amount Change	Percent Change
Positions					
01 Regular	67.00	67.00	67.00	0.00	0%
02 Contractual	0.00	0.00	5.98	5.98	n/a
Total Positions	**67.00**	**67.00**	**72.98**	**5.98**	**8.9%**
Objects					
01 Salaries and Wages	$ 7,620,155	$ 7,837,520	$ 8,185,629	$ 348,109	4.4%
02 Technical and Spec. Fees	10,921	11,786	165,435	153,649	1303.7%
03 Communication	109,433	101,318	114,681	13,363	13.2%
04 Travel	24,332	22,360	24,332	1,972	8.8%
08 Contractual Services	51,931,487	61,876,461	524,819,094	462,942,633	748.2%
09 Supplies and Materials	29,330	58,616	63,129	4,513	7.7%
10 Equipment – Replacement	336,361	0	0	0	0.0%
11 Equipment – Additional	303,242	350,000	475,000	125,000	35.7%
12 Grants, Subsidies, and Contributions	9,532,904	10,000,000	10,000,000	0	0%
13 Fixed Charges	977,691	890,181	911,192	21,011	2.4%
Total Objects	**$ 70,875,856**	**$ 81,148,242**	**$ 544,758,492**	**$ 463,610,250**	**571.3%**
Funds					
03 Special Fund	$ 28,808,289	$ 34,128,494	$ 123,604,365	$ 89,475,871	262.2%
05 Federal Fund	42,067,567	47,019,748	421,154,127	374,134,379	795.7%
Total Funds	**$ 70,875,856**	**$ 81,148,242**	**$ 544,758,492**	**$ 463,610,250**	**571.3%**

Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases.

Appendix 3
Fiscal Summary
Maryland Health Benefit Exchange

Program/Unit	FY 19 Actual	FY 20 Wrk Approp	FY 21 Allowance	Change	FY 20 - FY 21 % Change
01 Maryland Health Benefit Exchange	$ 40,600,129	$ 44,897,223	$ 45,971,542	$ 1,074,319	2.4%
02 Major Information Technology Development	30,275,727	36,251,019	37,053,450	802,431	2.2%
03 Maryland Health Insurance Program	0	0	461,733,500	461,733,500	0%
Total Expenditures	**$ 70,875,856**	**$ 81,148,242**	**$ 544,758,492**	**$ 463,610,250**	**571.3%**
Special Fund	$ 28,808,289	$ 34,128,494	$ 123,604,365	$ 89,475,871	262.2%
Federal Fund	42,067,567	47,019,748	421,154,127	374,134,379	795.7%
Total Appropriations	**$ 70,875,856**	**$ 81,148,242**	**$ 544,758,492**	**$ 463,610,250**	**571.3%**

Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases.