SB 582

Department of Legislative Services

Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 582 (Senator Augustine)
Finance Health and Government Operations

Behavioral Health Care - Treatment and Access (Behavioral Health Model for Maryland)

This bill (1) establishes a Commission on Behavioral Health Care Treatment and Access; (2) creates a Behavioral Health Care Coordination Value-Based Purchasing Pilot Program; (3) extends for two years provisions relating to telehealth services; (4) requires the Maryland Health Care Commission (MHCC) to study and make recommendations regarding telehealth; and (5) requires the Maryland Department of Health (MDH) to apply for specified federal grant funds and inclusion in the state certified community behavioral health clinic (CCBHC) demonstration program. For fiscal 2025 through 2027, the Governor must include in the annual budget bill an appropriation of $600,000 for the pilot program. **The bill generally takes effect June 1, 2023. The pilot program takes effect October 1, 2023, and terminates November 30, 2027; the commission terminates June 30, 2027.**

Fiscal Summary

State Effect: No effect in FY 2023. MDH general fund expenditures increase by $397,700 in FY 2024 for the commission and pilot program; general fund expenditures in FY 2025 through 2027 reflect the mandated appropriation and ongoing contractual staff costs. Any impact on overall Medicaid expenditures from continuing telehealth coverage is indeterminate. Special fund revenues for the Maryland Insurance Administration (MIA) increase minimally in FY 2024 only, as discussed below. MDH can apply for federal grant funds and inclusion in the demonstration program, and MHCC can complete the required study, using existing budgeted resources. **This bill establishes a mandated appropriation for FY 2025 through 2027.**

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	-	$0	$0	$0	$0
GF Expenditure	$397,700	$723,300	$728,700	$734,300	$59,400
Net Effect	($397,700)	($723,300)	($728,700)	($734,300)	($59,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential increase in expenditures for some local governments to continue to reimburse for certain telehealth services. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Commission on Behavioral Health Care Treatment and Access

The purpose of the 38-member commission is to make recommendations to provide appropriate, accessible, and comprehensive behavioral health services that are available on demand to individuals in the State across the behavioral health continuum. The Governor, the President of the Senate, and the Speaker of the House must jointly designate the chair of the commission. The commission must:

- assess behavioral health services in the State to identify needs and gaps in services across the continuum, as specified;
- examine methods for reimbursing behavioral health care services and make recommendations on the most effective forms of reimbursement to maximize service delivery;
- compile findings of State-specific needs assessments related to behavioral health services;
- review recommendations and reports of State commissions, workgroups, or task forces related to behavioral health care services;
- conduct a needs assessment on the State's behavioral health care workforce, as specified;
- review trends and best practices from other states regarding policy and reimbursement strategies, as specified;
- examine and make recommendations related to the behavioral health of the geriatric and youth populations;
- examine and make recommendations to provide appropriate and adequate behavioral health services to individuals with developmental disabilities and complex behavioral health needs, specifically youth;
- assess the health infrastructure, facilities, personnel, and services available for the State's forensic population and identify deficiencies, as specified;
- make recommendations on expanding behavioral health treatment access for the State's court-ordered population;

- make recommendations on action plans regarding the behavioral health care system's capacity to prepare for and respond to future challenges, as specified;
- make recommendations to ensure that behavioral health treatment is provided in the appropriate setting, as specified;
- examine and review the use of harm reduction strategies to facilitate access to care; and
- examine methods to assist consumers in accessing behavioral health services.

The commission must meet at least three times annually and establish workgroups, as specified. The workgroups must meet at least twice per year and include members of the commission. Workgroups may include individuals invited by the commission to serve on the workgroup. By December 1, 2023, and annually thereafter, each workgroup must report and make recommendations to the commission.

By January 1, 2024, and annually thereafter, the commission must report to the Governor and the General Assembly on its findings and recommendations, including funding and legislative recommendations that are consistent with providing appropriate, accessible, and comprehensive behavioral health services that are available on demand to individuals in the State across the behavioral health spectrum. Any legislative recommendations that require funding must include an estimate of the funding required and information that supports that estimate. The commission report that must be submitted by January 1, 2024, must include the findings of specified needs assessments.

MDH must provide staff for the commission. Members of the commission may not receive compensation but are entitled to reimbursement under standard State travel regulations.

Behavioral Health Care Coordination Value-Based Purchasing Pilot Program

"Behavioral health care coordination" means a person-centered, team-based activity designed to (1) assess and meet the needs of an individual with a behavioral health condition and (2) help the individual navigate the health care system effectively and efficiently.

MDH must administer the pilot program, which must be operational for a three-year period (the pilot program terminates November 30, 2027). The purpose of the pilot program is to establish and implement an intensive care coordination model using value-based purchasing (VBP) in the specialty behavioral health system. MDH must identify at least 500 adults whose behavioral health condition or functioning places them at risk of hospital emergency department utilization or inpatient psychiatric hospital admission.

A provider or network of providers selected to participate must (1) be licensed and in good standing with Medicaid; (2) have experience in providing community-based care coordination to specialty behavioral health program recipients; (3) use an electronic medical record for documenting care coordination activities and outcomes collection; and (4) have an automated data exchange with the State-designated health information exchange.

MDH must (1) provide reimbursement on a per member per month basis for the behavioral health care coordination activities that are not otherwise covered by Medicaid; (2) collect outcomes data on recipients of health care services under the pilot program; and (3) evaluate the effectiveness of the VBP purchasing model by analyzing outcome measures, as specified. If necessary to implement the pilot program, MDH must apply for an amendment to the State's § 1115 HealthChoice Demonstration.

Beginning in fiscal 2026, MDH must allocate a percentage of the mandated appropriation for the pilot program to reimbursement paid based on the achievement of specified outcome measures. In fiscal 2027, MDH must increase this percentage over the percentage allocated in fiscal 2026.

By November 1, 2027, MDH must report to the Governor and the General Assembly on its findings and recommendations from the pilot program.

Telehealth Provisions

For purposes of Medicaid and commercial health insurance, the bill extends for two additional years – through June 30, 2025 – telehealth provisions that are in effect from July 1, 2021, through June 30, 2023. Accordingly, the definition of "telehealth" includes an audio-only telephone conversation between a health care provider and a patient that results in the delivery of a billable, covered health care service. The Medicaid program and health insurance carriers must provide reimbursement for services appropriately provided through telehealth on the same basis and at the same rate as if the health care service were delivered in person.

MHCC must study and make recommendations regarding the delivery of health care services through telehealth, as specified, and report to the General Assembly by December 1, 2024.

Certified Community Behavioral Health Clinics

MDH must apply to the Substance Abuse and Mental Health Services Administration (SAMHSA) at the Center for Mental Health Services for (1) federal planning,

development, and implementation grant funds related to CCBHCs for fiscal 2025 and (2) inclusion in the state CCBHC demonstration program for fiscal 2026.

Current Law:

Telehealth

Chapters 70 and 71 of 2021 (the Preserve Telehealth Access Act of 2021) required MHCC to submit a report on the impact of providing telehealth services by December 1, 2022. MHCC contracted with the National Opinion Research Center at the University of Chicago to develop a technical report issued in October 2022. The report's findings were used by MHCC to develop telehealth coverage recommendations presented in a final report issued in December 2022.

MHCC recommended maintaining provisions in the Acts to ensure coverage flexibilities for somatic and behavioral health, noting that audio-only care should continue for behavioral health treatment, but some use guidelines in coverage of telehealth for somatic care are warranted. Specifically, the State should allow:

- a health care provider capable of providing telehealth services using audio-visual technology to deliver services using audio-only technology;
- use of audio-only for somatic care in the event of an audio-visual technology failure, a request by the patient, or at the clinical discretion of a treating health care provider without requiring documentation in the clinical record; and
- unrestricted use of audio-only for behavioral health based on patient consent to receive care via audio-only technology.

Regarding payment parity (reimbursing for a telehealth service on the same basis and at the same rate as if the service were delivered in person), MHCC proposed continuing payment levels for telehealth services relative to in-person care for 24 months. MHCC recommended studying payment parity for audio-visual and audio-only technologies and proposed that it submit a report to the General Assembly by December 1, 2024, that addresses:

- whether it costs more or less for providers to deliver telehealth;
- whether telehealth requires more or less clinical effort for a provider;
- whether there are aspects of telehealth that yield lower value, overuse, or conversely greater value that inform the debate on payment parity; and
- the adequacy of reimbursement for behavioral health services delivered in person and by telehealth.

Certified Community Behavioral Health Clinics

The federal CCBHC model is designed to ensure access to coordinated comprehensive behavioral health care. CCBHCs are required to serve anyone who requests care for mental health or substance use, regardless of their ability to pay, place of residence, or age. CCBHCs must meet standards for the range of services they provide and are required to get people into care quickly.

CCBHCs must provide nine core services either directly or through designated collaborating organizations: (1) crisis services 24 hours a day, 7 days a week; (2) treatment planning; (3) screening, assessment, diagnosis, and risk assessment; (4) outpatient mental health and substance use services; (5) targeted case management; (6) outpatient primary care screening and monitoring; (7) community-based mental health care for veterans; (8) peer, family support, and counselor services; and (9) psychiatric rehabilitation services. CCBHCs also provide care coordination to help people navigate behavioral health care, physical health care, social services, and other systems.

More than 450 CCBHCs operate nationally either through the federal CCBHC Medicaid Demonstration, through federal CCBHC Expansion (CCBHC-E) Grants, or through independent state programs. Six states operate under a Medicaid State Plan Amendment or § 1115 waiver. Maryland currently has 5 CCBHCs funded by federal CCBHC-E grants that serve residents of Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties.

State Fiscal Effect:

Commission on Behavioral Health Care Treatment and Access

MDH must staff the commission, which, among other things, must assess behavioral health services in the State to identify needs and gaps in services; make recommendations on the most effective forms of reimbursement to maximize service delivery; conduct a workforce needs assessment; make recommendations related to the geriatric, youth, forensic, and court-ordered populations; and submit annual reports on the commission's findings and recommendations, including legislative recommendations and funding estimates. The commission takes effect June 1, 2023, and terminates June 30, 2027. Given the significant work the commission is tasked with, MDH requires additional personnel.

Therefore, MDH general funds increase by $121,107 in fiscal 2024, which accounts for a 90-day start-up delay from the bill's June 1, 2023 effective date. MDH has determined that two regular full-time positions are needed. However, the Department of Legislative Services (DLS) advises that the added responsibilities of the commission are not permanent and, thus, may be performed by contractual employees. This estimate reflects the cost of

hiring two health policy analysts advanced beginning September 1, 2023, to staff the commission. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate does not reflect any costs to provide commission members with expense reimbursements, as permitted under the bill.

Contractual Positions	2.0
Salaries and Fringe Benefits	$106,119
Operating Expenses	14,988
Total FY 2024 Commission Personnel Expenditures	**$121,107**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. The contractual positions terminate June 30, 2027, the termination date of the commission.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act (ACA).

Behavioral Health Care Coordination Value-Based Purchasing Pilot Program

MDH must establish the VBP Pilot Program, which takes effect October 1, 2023, and operate the pilot program for a three-year period (fiscal 2025 through 2027). The pilot program terminates November 30, 2027, at which time MDH must submit a final report on its findings and recommendations. MDH advises that it will require additional personnel and a one-time consultant to implement the pilot program.

Therefore, MDH general fund expenditures increase by $276,610 in fiscal 2024, which accounts for the pilot program's October 1, 2023 effective date. MDH has determined that two regular full-time positions are needed. However, DLS advises that the added responsibilities of the pilot program are not permanent and, thus, may be performed by contractual employees. This estimate reflects the cost of hiring one program administrator and one coordinator of special programs to evaluate VBP models, review consultant proposals, and implement and evaluate the pilot program. It includes salaries, fringe benefits, one-time start-up costs, one-time contractual costs for a consultant to assist in the development of the pilot program (including developing rates and providing training), and ongoing operating expenses.

	FY 2024	FY 2025
New Contractual Positions	2.0	-
Salaries and Fringe Benefits	$96,792	$122,326
One-time Consultant	165,000	0
Pilot Program Provider Reimbursement	0	475,533
Operating Expenses	14,818	2,141
Total Pilot Program Expenditures in FY 2024 and 2025	**$276,610**	**$600,000**

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

In fiscal 2025 through 2027, an annual mandated appropriation of $600,000 is provided for the pilot program. This analysis assumes that this appropriation covers ongoing personnel costs as well as provider reimbursement. The contractual positions terminate November 30, 2027, the date on which the pilot program terminates and the same month that the final report on the pilot program must be submitted.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the ACA.

Telehealth Provisions

Medicaid expenditures (and federal fund revenues) for specified telehealth services continue through fiscal 2025. Any impact on overall Medicaid expenditures from continuing coverage as specified under the bill is indeterminate. Special fund revenues increase minimally for MIA in fiscal 2024 only from the $125 rate and form filing fee; any additional workload for MIA can be absorbed with existing budgeted resources. There is no impact on the State Employee and Retiree Health and Welfare Benefits Program.

MHCC can complete the required study on the delivery of health care services through telehealth and report to the General Assembly using existing budgeted resources.

Certified Community Behavioral Health Clinics

MDH advises that it plans to apply for a SAMHSA planning grant for the implementation of CCBHCs in fiscal 2025. Thus, MDH can apply for federal grant funds related to CCBHCs using existing budgeted resources. SAMHSA planning grants are funded at a 65% federal matching rate. To the extent grant funds are received, MDH federal fund revenues increase in fiscal 2025. MDH also advises that it can apply for inclusion in SAMHSA's state CCBHC demonstration program for fiscal 2026 using existing budgeted resources. This analysis does not reflect any cost associated with participation in the demonstration program.

Small Business Effect: Health care providers can continue to receive reimbursement for telehealth services provided through audio-only conversations through fiscal 2025. Medicaid and carriers must reimburse health care providers for telehealth services on the same basis and at the same rate as if the service were delivered in person. Small business behavioral health providers may benefit from additional reimbursement under the VBP Pilot Program in fiscal 2025 through 2027.

Additional Comments: To the extent that expenditures on the pilot program improve individuals' behavioral health and reduce the need for other behavioral health services (including emergency room visits and hospitalizations), overall expenditures are offset, potentially significantly.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years; however, legislation with similar provisions has been proposed. For example, see SB 637 and HB 935 of 2022.

Designated Cross File: HB 1148 (Delegate Moon, *et al.*) - Health and Government Operations.

Information Source(s): Governor's Office of Crime Prevention, Youth, and Victim Services; Department of Human Services; Department of Budget and Management; Maryland Insurance Administration; Department of Juvenile Services; Maryland Department of Health; Department of Legislative Services

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