

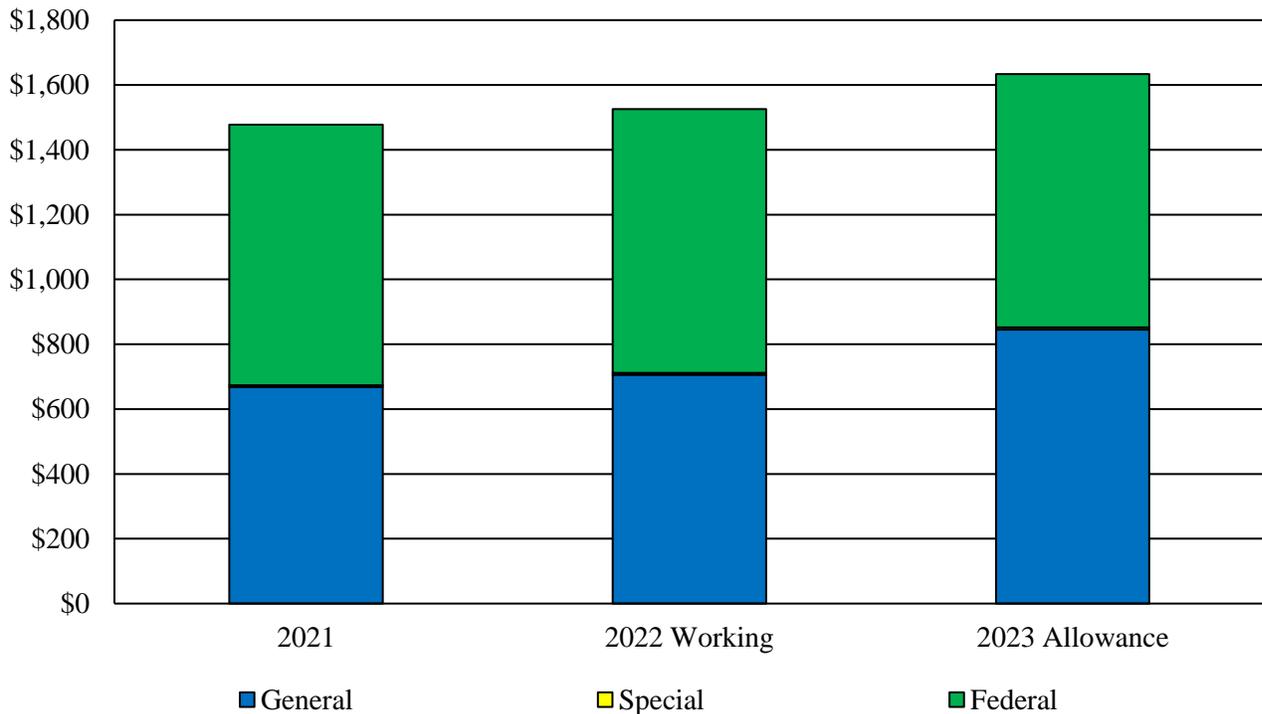
M00M
Developmental Disabilities Administration
Maryland Department of Health

Executive Summary

The Maryland Department of Health (MDH) Developmental Disabilities Administration (DDA) provides direct services to intellectually and developmentally disabled (DD) individuals in State facilities and through the funding of a coordinated community-based service delivery system.

Operating Budget Summary

Fiscal 2023 Budget Increases \$107.8 Million, or 7.1%, to \$1.63 Billion
(\$ in Millions)



Note: Numbers may not sum due to rounding. The fiscal 2022 working appropriation includes deficiency appropriations and targeted reversions. The fiscal 2023 allowance includes supplemental funding from Supplemental Budget No. 1. The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which include cost-of-living adjustments, increments, bonuses, and may include annual salary review adjustments.

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- As enacted, the fiscal 2022 budget accounted for only two quarters of the Enhanced Federal Medical Assistance Percentage (eFMAP). The fiscal 2023 budget plan assumes a reversion of \$20 million in fiscal 2022 from DDA to account for savings related to the eFMAP due to the extension of the national public health emergency into the third quarter. The national public health emergency was extended into the fourth quarter as well, which due to timing was not accounted for in the development of the budget as introduced. As a result, an additional \$21.5 million of general fund savings replaced by an equal amount of federal funds is realized through Supplemental Budget No. 1 of fiscal 2023.
- Most of the fiscal 2023 increase occurs in the Community Services program to cover the expansion of waiver services/new placements (\$30.2 million) and the mandated 4% provider rate increase (\$57.4 million).
- Supplemental Budget No. 1 to the fiscal 2023 budget adds \$85 million related to the 10% enhanced match on home- and community-based services (HCBS) authorized in the American Rescue Plan Act (ARPA) to the fiscal 2023 allowance. This is the same level of funding previously added to the fiscal 2022 budget for this purpose.

Key Observations

- ***Individuals Served by All DDA Waivers Increases:*** In fiscal 2021, the number of individuals receiving services through a DDA waiver increased by 3%, to 16,716; however, the number of individuals receiving community services decreased by 1.06%. In that year, of individuals receiving community services, 97.7% were enrolled in a DDA waiver, which was an increase from 93.5% in fiscal 2020, meeting DDA’s goal. However, this percentage was slightly lower than the fiscal 2019 prepandemic levels by 0.2 percentage points.
- ***Number of DDA Community Vaccinated Against COVID-19 Improves:*** As of January 21, 2022, DDA reported that 15,896 DDA participants had been vaccinated for COVID-19, or 92% of the total DDA participants receiving services. Further, as of January 28, 2022, the agency reported that 4,301 participants had been given their booster shot.
- ***Report on Community Services Utilization Received:*** A cost analysis highlighting the differences between billing in Long Term Services and Supports (LTSS) and Provider Consumer Information System 2 (PCIS2) was included, showing that pilot providers have received approximately 62.2% higher dollar amounts for claims than what the providers would have received under the fee-for-service (FFS) rates. Information on utilization by services for those that have transitioned to the system indicates that claims to date through the system are primarily for personal supports and targeted case management.

Operating Budget Recommended Actions

1. Add language restricting funds pending a report on Community Services utilization data collection and spending forecasts.
2. Add language restricting funds in the Community Services program to that purpose only.
3. Adopt committee narrative requesting submission of Community Services utilization data.

Updates

- ***Some Appendix K Provisions Maintained Indefinitely:*** Appendix K: Emergency Preparedness and Response was a standalone appendix created by the Centers for Medicare and Medicaid Services (CMS) to allow flexibility for HCBS authority at the state level during emergencies, such as providing services via telehealth, adjustments in the maximum shift hours for providers, and the locations in which services could be provided. An additional amendment to DDA’s waiver programs allowed some Appendix K provisions to extend beyond the pandemic with some of these being sustained indefinitely throughout the State.
- ***Status of Federal Disallowance:*** MDH continues to navigate the appeals process with CMS after receiving a formal disallowance letter in June 2018 regarding \$34.2 million in federal funds overbilled for residential habilitation add-on services.

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Operating Budget Analysis

Program Description

Section 7-101 of the Health – General Article defines a developmental disability as a severe chronic disability that is attributable to a physical or mental impairment, other than the sole diagnosis of mental illness, or to a combination of mental and physical impairments; is manifested before an individual attains the age of 22; and is likely to continue indefinitely, among other characteristics. Examples include autism, cerebral palsy, epilepsy, intellectual disability, and other neurological disorders. MDH DDA provides direct services to DD individuals in two State Residential Centers (SRC) and a Secure Evaluation and Therapeutic Treatment unit, which shares a campus with one of the SRCs. Previously, these SRCs were included within this analysis but beginning with fiscal 2023, are contained within the MDH Administration analysis. Most DDA-funded services are provided through a coordinated community-based service delivery system.

DDA’s key goals include:

- the empowerment of DD individuals and their families to choose services and supports that meet their needs;
- the integration of DD individuals into community life;
- the provision of quality supports that maximize individual growth and development; and
- the establishment of a fiscally responsible, flexible service system that makes the best use of available resources.

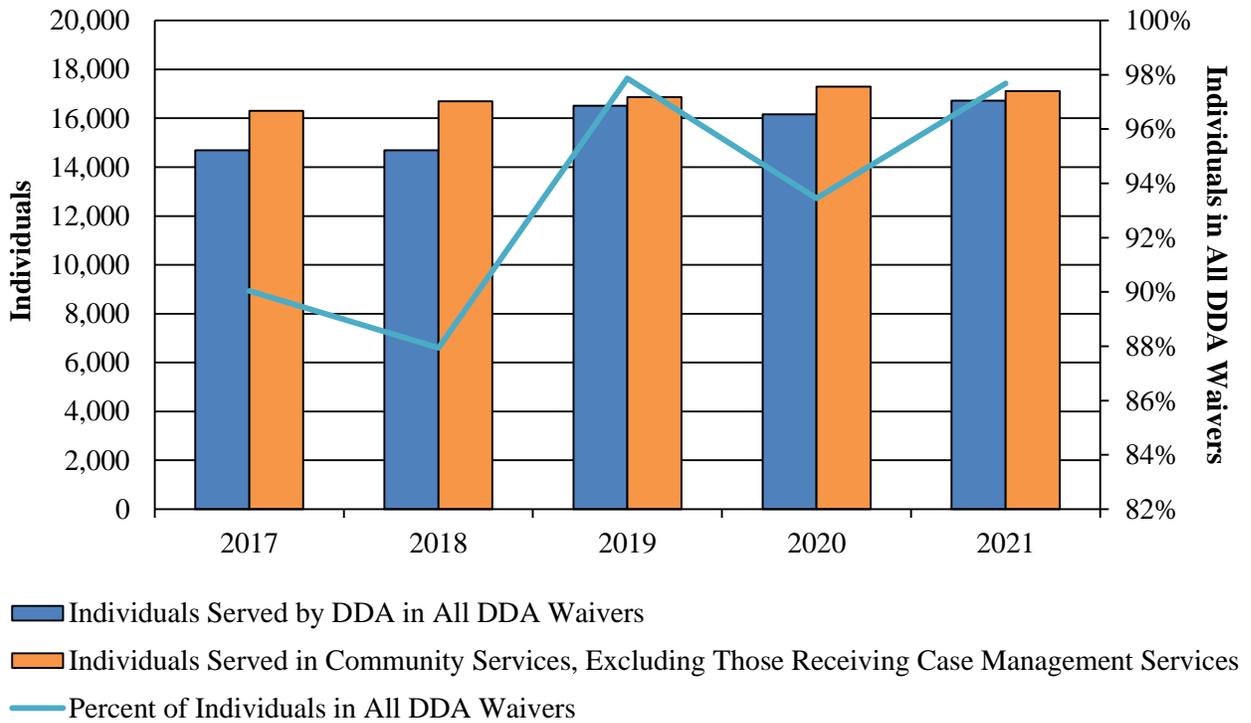
Performance Analysis: Managing for Results

1. Individuals Served by DDA Across All DDA Waivers Increases

One of DDA’s primary goals is to increase the number of eligible individuals receiving community-based services and enrolled in an HCBS waiver by 0.3 percentage points over the prior fiscal year. Enrolling eligible individuals into an HCBS allows for claiming federal funds for services provided. **Exhibit 1** illustrates the growth in individuals served by DDA across all waivers by count and percentage. In fiscal 2021, DDA had 97.7% of individuals receiving community services enrolled in DDA waivers, which was an increase from 93.5% in fiscal 2020, meeting DDA’s goal. On January 19, 2021, CMS approved an amendment to remove the spending caps previously placed on individuals in the Community Supports and Family Supports waiver programs (\$25,000 and \$12,000 per individual, respectively). In this amendment, CMS also updated the number of enrolled individuals

and changed eligibility criteria. The increase was also partially influenced by a slight decrease in the number of individuals served overall in DDA in fiscal 2021. Despite these changes, this percentage of enrolled DDA participants in fiscal 2021 was lower than fiscal 2019 pre-pandemic levels by 0.2 percentage points.

**Exhibit 1
Individuals Served by DDA Across All DDA Waivers
Fiscal 2017-2021**



DDA: Developmental Disabilities Administration

Source: Maryland Department of Health; Department of Budget and Management

Waiver Slots and Costs Per Individual

DDA offers three waiver programs under Medicaid: Community Pathways; Community Supports; and Family Supports. The Community Pathways waiver supports children and adults in receiving meaningful day, support, and residential services based on their assessed need. The Community Supports waiver provides similar services to children and adults but does not include residential services. The Family Supports waiver supports children under the age of 21, providing support services to DD children and their families. The services can include environmental modifications, assistive technology, and transportation, among others.

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Of the 16,716 individuals served by the three Medicaid waivers, Community Pathways is the most utilized waiver with 15,339 individuals, or 92%, served in fiscal 2021. An additional 6% of DD individuals, or 1,057, are served through the Community Supports waiver, with the remaining 2%, or 320 individuals, utilizing the Family Supports waiver.

Exhibit 2 outlines the availability of slots, the number reserved for transitioning youth and emergency placements, and the cost per slot in fiscal 2022, as of December 8, 2021. When an individual fills a slot, the slot is considered “used.” This count is maintained throughout the fiscal year to date and includes individuals who have since left the program. If an individual in a slot moves out-of-state or otherwise leaves, the slot is still considered “used.” However, “active” slots are those currently filled by an individual. The utilization of Community Pathways slots has increased over the data reported for fiscal 2021. However, the general distribution remains similar, with Community Supports comprising a slightly higher share of utilized slots compared to fiscal 2021.

Exhibit 2
DDA Waiver Slots by Waiver
Fiscal 2022 (as of December 8, 2021)

<u>Waiver</u>	<u>Total Slots</u>	<u>Reserved</u>	<u>Used</u>	<u>Active</u>	<u>Cost</u>
Community Pathways	15,800	775 for transitioning youth	15,566	15,478	Unknown at this time
Community Supports	1,950	478 for transitioning youth	1,390	1,372	Originally capped at \$25,000 per person per year, but the cap was removed
Family Supports	400	28 for emergency placements and other groups	311	292	Originally capped at \$12,000 per person per year, but the cap was removed

DDA: Developmental Disabilities Administration

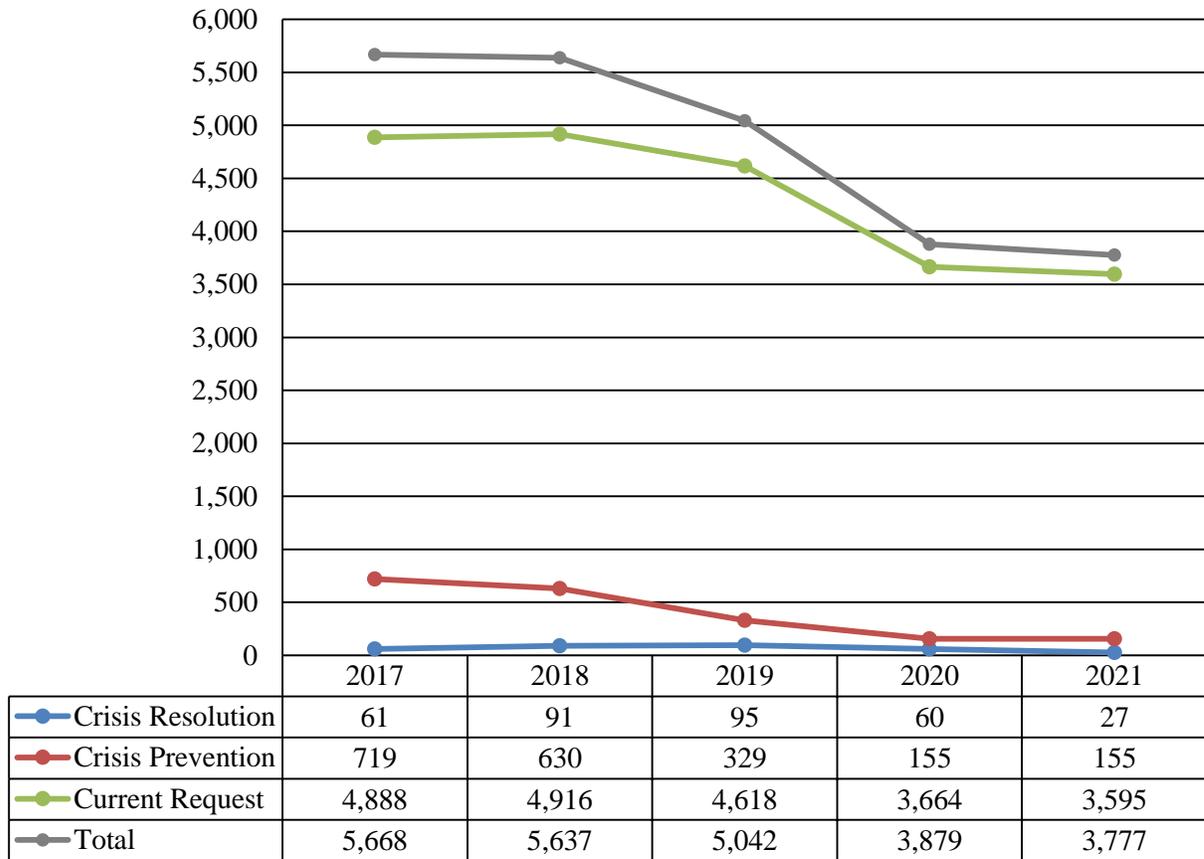
Source: Maryland Department of Health

MDH should comment on the efforts that the department is taking to increase utilization of the available slots as current numbers show a number of authorized waiver slots are not utilized. Additionally, MDH should comment on the impact of unfilled slots on the ability to use the 10% eFMAP to expand waiver slots and provide updated cost estimates per waiver program.

2. Community Services Waiting List Placements

DDA tracks the community services waiting list of over 3,700 individuals who meet the statutory requirement of having a developmental disability, as shown in **Exhibit 3**. These individuals are broken into priority categories based on need from highest need, or crisis resolution (individuals at risk for harm or homelessness without services), to lowest need, or current request (no risk of harm or homelessness). Additionally, all DD individuals on the waiting list for DDA-funded services may receive case management from coordinators of community services.

Exhibit 3
Point-in-time Community Services Waiting List Counts
Fiscal 2017-2021



Note: The Developmental Disabilities Administration also tracks individuals on the community services waiting list who do not meet the statutory requirement for having a developmental disability. These individuals are grouped into a supports only category and are not included in the count.

Source: Maryland Department of Health

In recent fiscal years, the number of individuals on the waiting list had been decreasing. Previously, DDA reported that the expansion of funding has allowed more new placements for individuals in the crisis resolution category and for transitioning youth aging out of the educational system, foster care, or the Maryland State Department of Education Autism waiver. As of June 30, 2021, there were 6,023 DD individuals on the waiting list between DD-eligible and supports only, which is a decrease of 103 individuals from the year prior. As shown in Exhibit 2, the decrease in the waiting list excluding supports only was 102, which occurs primarily in the current request (69) and crisis resolution (33) categories. **DDA should comment on the current status of the wait list.**

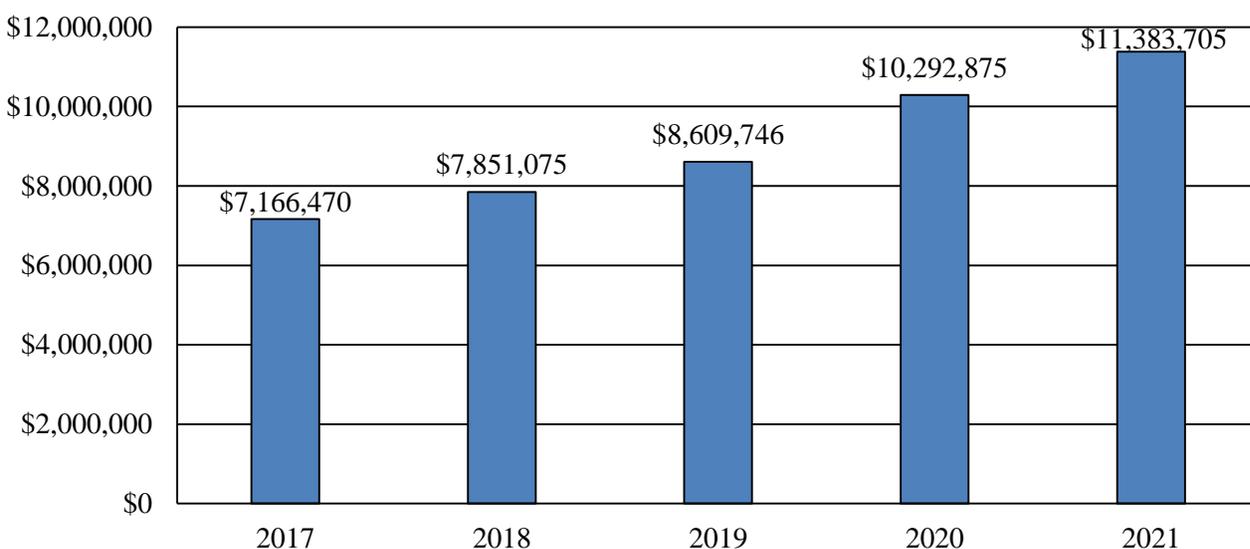
Transitioning youth qualify for a reserved category on the waiting list to allow for their applications for DDA-funded services upon aging out. Between graduation and being enrolled in DDA services, qualifying transitioning youth are eligible for meaningful day and employment services through the Governor’s Transitioning Youth Initiative. Due to the COVID-19 pandemic, some transitioning youth were unable to complete the DDA waiver enrollment application process, impacting their ability to receive meaningful day and employment services during their transition to DDA. Through the state of emergency, transitioning youth who would have otherwise aged out and been disenrolled from services are able to submit the DDA waiver application by June 2022 to be considered for DDA funding and services as provided in an Emergency Preparedness and Response Appendix (Appendix K).

3. Waiting List Equity Fund Continues to Grow

The Waiting List Equity Fund (WLEF) was established to ensure that funding associated with individuals served in an SRC follows them when they are transitioned to a community-based care setting. Statute dictates how the WLEF funds may be used, preventing the funds from being used to supplant funds for emergency placements or transitioning youth, as well as restricting them to the first year of an individual’s placement in the community. After the initial year, the individual becomes part of the base budget. **Exhibit 4** highlights the growth in the WLEF balance over the last five fiscal years primarily due to low spending from the fund. Between fiscal 2020 and 2021, the WLEF grew by \$1.09 million. This is a slightly smaller growth than the fund saw between fiscal 2019 and 2020 of \$1.68 million.

MDH should comment on any progress in considering options to adjust statute to expand the allowable uses of the WLEF to reduce the growing balance.

Exhibit 4
Waiting List Equity Fund Balance
Fiscal 2017-2021



Source: Maryland Department of Health; Department of Legislative Services

Fiscal 2022

eFMAP

The Families First Coronavirus Response Act provided eFMAP of 6.2 percentage points on qualifying expenses during the nationally declared health emergency during the COVID-19 pandemic. The declaration, made by the U.S. Secretary of Health and Human Services (HHS), applied to certain Medicaid claims, including eligible spending under DDA’s three waiver programs beginning January 1, 2020. The fiscal 2022 budget as enacted reduced general fund spending in DDA by \$37.5 million in general funds in anticipation of the receipt of the eFMAP for the first two quarters of the fiscal year. The fiscal 2023 budget plan assumes an additional \$20 million of general fund savings as a reversion due to the extension of the national public health emergency into the third quarter of fiscal 2022. Subsequent to the budget introduction, the national public health emergency was extended into the fourth quarter, and as a result, Supplemental Budget No. 1 included a proposed deficiency appropriation to recognize an additional \$21.5 million of general fund savings and add an equivalent federal fund appropriation in fiscal 2022. However, to date, the associated federal funds for the first three quarters have not been added to the fiscal 2022 budget for DDA, while these additions have occurred for other areas of MDH’s budget. **MDH should comment on why the additional federal funds from the first three quarters have not been added to the budget.**

HCBS-related eFMAP

The American Rescue Plan increased the FMAP for qualifying Medicaid HCBS spending by 10 percentage points from April 1, 2021, through March 31, 2022. The value of 10% enhanced match must be reinvested in HCBS by March 31, 2024. The reinvested funds are eligible for a federal match, meaning that no general funds are required to support the spending enhancements. In fiscal 2022, \$85 million was added by budget amendment for DDA for reinvestments. Supplemental Budget No. 1 to the fiscal 2023 budget provides \$85 million in federal funds for fiscal 2023.

Language in the fiscal 2022 Budget Bill, requires DDA to spend at least 75% of federal funds attained by the department from the eFMAP authorized in the ARPA for a one-time rate increase paid to Medicaid home- and community-based providers. The language also limited the use of the remaining 25% to certain purposes including a one-time rate increase for self-directed services, grants to providers for the development of resources and infrastructure to enhance independence and inclusive opportunities, and administrative expenses. Administrative expenses were limited to 5% of the funds and limited the use to expedite new placements and improving the processing of person-centered plans. The language also restricted funds pending a report on the federal funds attained and the use of these funds.

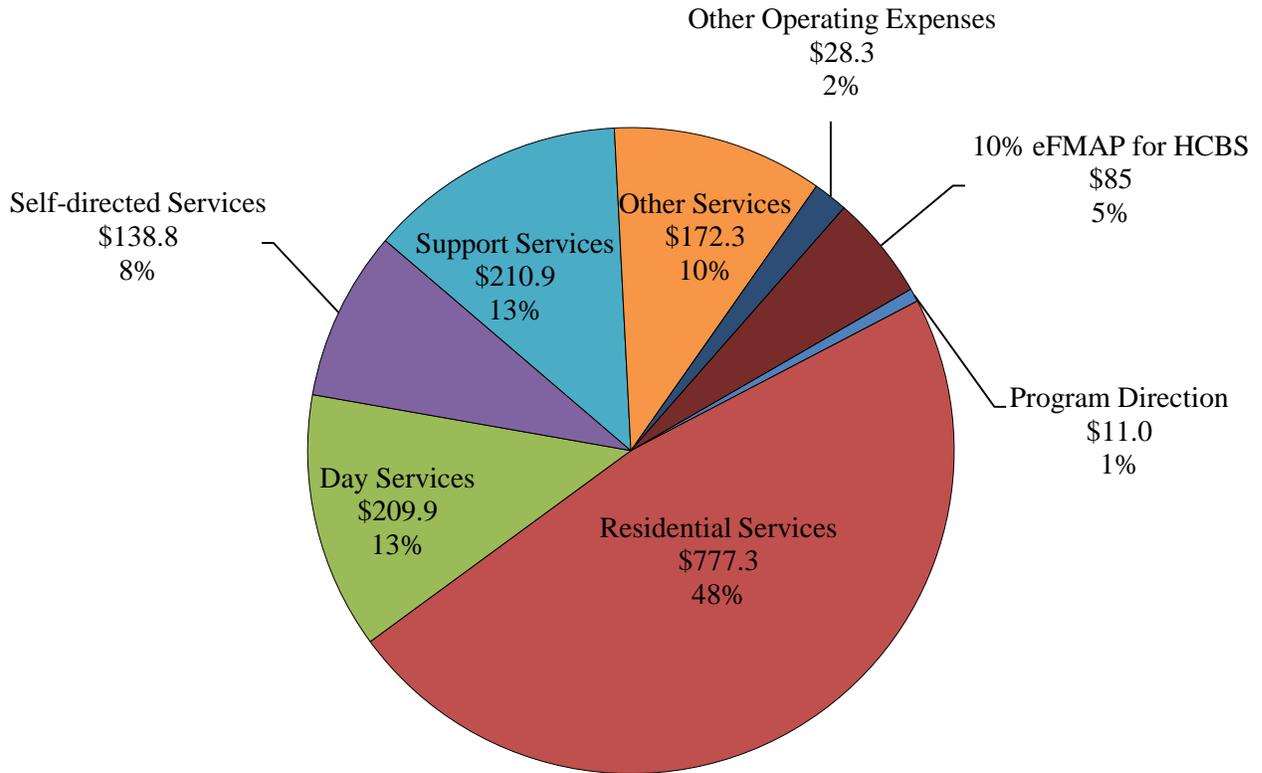
As reported by MDH, in response to this language, for DDA, the 75% required to be used for a temporary rate increase translated to a 5.5% increase, which was retroactive to April 1, 2021, and will continue through March 2024. MDH reported a total cost of the rate increase over multiple years of \$221 million. MDH reported that it planned to use another \$60 million for grants to providers and \$14 million for administrative purposes during this same period.

MDH should update the committees on the planned expenditures by fiscal year for rate increases and other enhancements.

Fiscal 2023 Overview of Agency Spending

The fiscal 2023 allowance of DDA totals \$1.63 billion. **Exhibit 5** identifies the fiscal 2023 allowance by use. The majority of DDA's budget is dedicated to provider payments within the Community Services programs at 99%, with the remaining 1% being used for program direction. Within the 99%, residential services make up the largest portion of the fiscal 2023 spending, \$777.4 million (48%). DDA estimates the average annual cost per residential services client at \$135,480 in fiscal 2022, a slight decrease from the most recent actual in 2021 of \$135,971. For comparison, Day Programs serve more clients annually (7,760 in fiscal 2021) as compared to residential services (6,367), but the average annual cost per individual is much lower at \$18,670. Other Operating Expenses cover the regional offices, which oversee the services provided, with funding allocated at \$28.3 million in fiscal 2023. The spending overview also includes the \$85 million in federal funds from the 10% enhanced match that were provided in the Supplemental Budget No. 1 of fiscal 2023.

Exhibit 5
Overview of Agency Spending
Fiscal 2023 Allowance
(\$ in Millions)



eFMAP: Enhanced Federal Medical Assistance Percentage
HCBS: home- and community-based services

Note: The fiscal 2023 allowance does not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which include cost-of-living adjustments, increments, bonuses, and may include annual salary review adjustments. Other Services includes targeted case management, behavioral support services, and Education Discovery and Customization.

Source: Governor’s Fiscal 2023 Budget Books; Department of Legislative Services

Proposed Budget Change

Exhibit 6 outlines DDA’s fiscal 2023 allowance, which increases by \$107.8 million between the fiscal 2022 working appropriation and the fiscal 2023 allowance after accounting for proposed deficiency appropriations and supplemental appropriation included in Supplemental Budget. No. 1 to the fiscal 2023 budget. Most of this change is within the Community Services program and includes an increase of \$20 million resulting from the targeted reversion in fiscal 2022 from the 6.2% eFMAP. Excluding the reversion, the remaining change would be \$87.8 million to cover the expansion of waiver services, new placements, and the mandated 4% provider rate increase (\$57.4 million). However, this change may be overstated because the fiscal 2022 budget does not appear to account for three quarters of the federal funds for the 6.2% eFMAP, while the general fund savings have been specifically accounted for in all four quarters. Conversely, the fiscal 20022 budget may already include all the federal funds available to the State including the enhanced Medicaid match.

Exhibit 6
Proposed Budget
MDH – Developmental Disabilities Administration
(\$ in Thousands)

How Much It Grows:	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Fund</u>	<u>Federal</u> <u>Fund</u>	<u>Total</u>
Fiscal 2021 Actual	\$667,178	\$6,741	\$803,376	\$1,477,295
Fiscal 2022 Working Appropriation	705,823	6,298	813,565	1,525,686
Fiscal 2023 Allowance	<u>845,466</u>	<u>6,450</u>	<u>781,588</u>	<u>1,633,504</u>
Fiscal 2022-2023 Amount Change	\$139,643	\$152	-\$31,977	\$107,818
Fiscal 2022-2023 Percent Change	19.8%	2.4%	-3.9%	7.1%
Where It Goes:				<u>Change</u>
Personnel Expenses				
Turnover adjustments due to the decline in turnover rate from 10.65% to 8.08%				\$388
Accrued leave				86
Miscellaneous adjustments				75
Additional assistance				72
Overtime				41
Workers’ compensation premium assessment				36
Other fringe benefit adjustments				23
Regular earnings primarily due to a reduction of 2.5 regular positions transferred to other areas of the department				-127

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Where It Goes:	<u>Change</u>
Community Services	
Mandated 4% provider rate increase	57,380
Expansion of waiver services and additional funding for new placements	30,241
Targeted reversion due to an additional quarter of general fund savings related to the 6.2% eFMAP.....	20,000
Special payments payroll due to a net decline of 11.17 full-time equivalents	-461
Other Changes	
Changes in post-secondary education MOU with Coppin State University and Harford Community College.....	250
Special Olympics grant.....	250
Equipment replacement partially offset by decline in office supplies due to remote work....	39
Printing services decline due to COVID-19 closures and expanded remote working.....	-40
Systems software acquisition due to software not expiring until next year as they run on two-year cycles	-77
Summer grants program, budgeted based on estimated actuals	-113
Other	-245
Total	\$107,818

eFMAP: enhanced Federal Medical Assistance Percentage
MDH: Maryland Department of Health
MOU: memorandum of understanding

Note: Numbers may not sum to total due to rounding. The fiscal 2022 working appropriation includes targeted reversions and proposed deficiency appropriations. The fiscal 2023 allowance includes supplemental funding provided in Supplemental Budget No. 1. The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which include cost-of-living adjustments, increments, bonuses, and may include annual salary review adjustments.

Personnel Data

	<u>FY 21</u>	<u>FY 22</u>	<u>FY 23</u>	<u>FY 22-23</u>
	<u>Actual</u>	<u>Working</u>	<u>Allowance</u>	<u>Change</u>
Regular Positions	174.50	176.50	174.00	-2.50
Contractual FTEs	<u>17.94</u>	<u>33.29</u>	<u>22.12</u>	<u>-11.17</u>
Total Personnel	192.44	209.79	196.12	-13.67

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	14.06	8.08%
Positions and Percentage Vacant as of 12/31/21	20.50	11.61%
Vacancies Above (Below) Turnover	6.44	

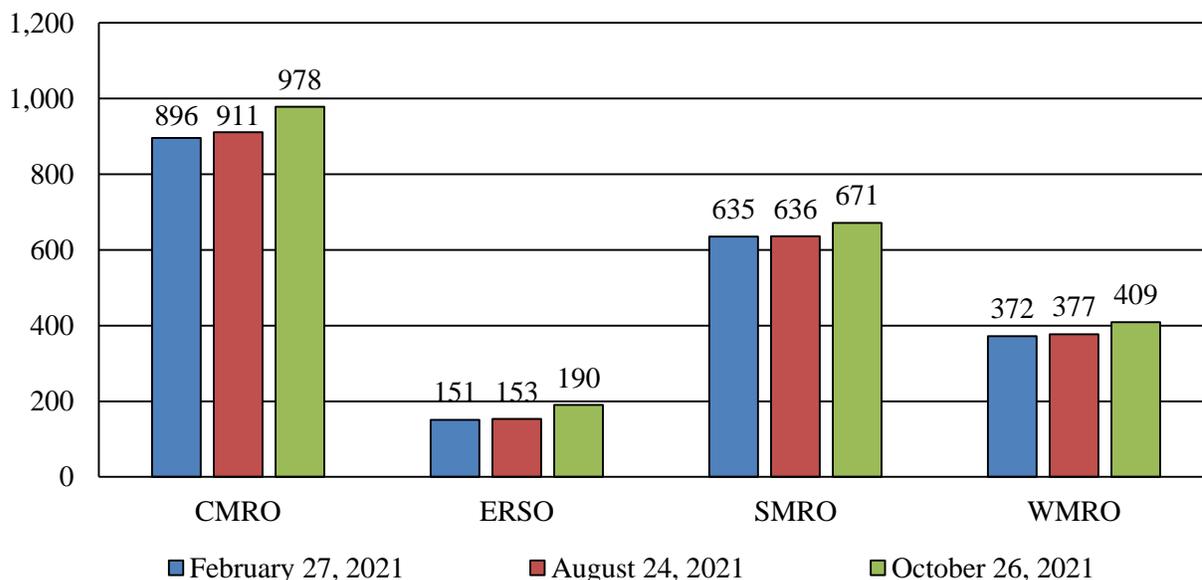
- DDA’s regular positions decrease by 2.5 between the fiscal 2022 working appropriation and the fiscal 2023 allowance. Two of these regular positions are transferred to the Office of the Chief Medical Examiner. The remaining part-time regulation position is transferred to the Board of Nursing.
- The fiscal 2023 allowance includes a net decline of 11.17 contractual full-time equivalents (FTE) compared to the fiscal 2022 working appropriation. This decrease occurs due to adjustments between Community Residential and Day services to align more closely with prior year actual FTE counts.
- Of the 20.5 vacancies as of December 31, 2021, 14.5 were within the Community Services program’s regional service offices. These positions include service officers, administrators, and secretaries. The other 6.0 positions are within Program Direction and are primarily for administrative positions.

Issues

1. Vaccination Efforts Continue to Improve

The Deputy Secretary of DDA provides monthly webinars with information on COVID-19-related updates, which include semi-regular updates on vaccination rates among DDA participants. As of the October 29, 2021 webinar provided by the deputy secretary, the number of DDA participants receiving services who were COVID-19 positive had increased slightly across the four service regions. As shown in **Exhibit 7**, of the 17,764 DD community members receiving services, 2,362 individuals had tested positive for COVID-19. As of that webinar, the community had experienced a total of 114 deaths. It is important to note that these figures predate the Omicron variant surge and may be lower than current actuals.

Exhibit 7
COVID-19 Positive Across DDA Service Regions
Calendar 2021



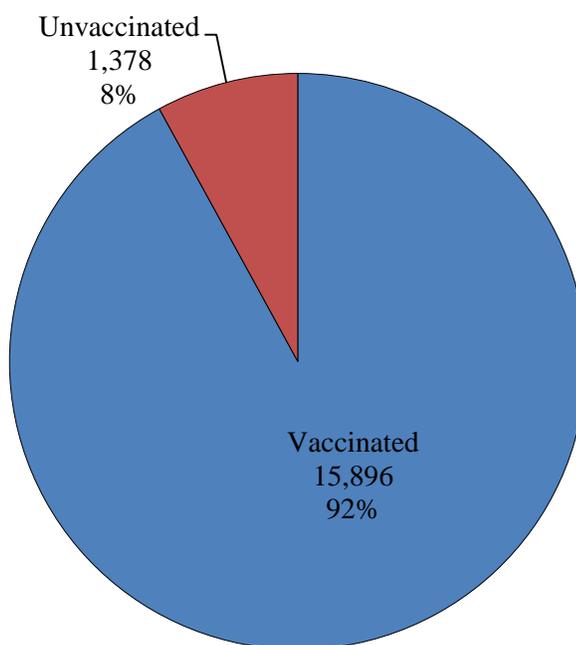
CMRO: Central Maryland Regional Office
 DDA: Developmental Disabilities Administration
 ERSO: Eastern Shore Regional Office
 SMRO: Southern Maryland Regional Office
 WMRO: Western Maryland Regional Office

Note: The numbers for October 26, 2021 do not sum because 114 COVID-19-related deaths have been subtracted.

Source: Maryland Department of Health

Due to DD individuals experiencing higher rates of death from COVID-19 as compared to the statewide data, DDA continues to urge their DD population and staff to get vaccinated and boosted. The State’s vaccine priority groups placed most DD individuals and staff in Phase 1, providing these groups with precedence as compared to the general population. In the same October 29, 2021 webinar, DDA reported that 15,896 DDA participants had gotten their vaccine, or 92%, as shown in **Exhibit 8**. Further, as of January 28, 2022, the agency reported 4,301 participants had received a booster shot.

Exhibit 8
Vaccination Rates Across DDA Participants
Fiscal 2023



DDA: Developmental Disabilities Administration

Source: Maryland Department of Health

MDH should provide an update on the vaccination rates within the DD population and staff, plans to encourage the DD community to receive boosters, and impacts of the recent Omicron surge on the number of individuals that tested positive and total deaths among DDA participants.

2. Report on Community Services Utilization Data Collection and Spending Forecasts

Language in the fiscal 2022 Budget Bill (Chapter 357 of 2021) withheld \$1.0 million of general funds of administrative funding in DDA pending submission of a report on the DDA Community Services system utilization data collection and spending forecasts by November 1, 2021. The report was received on January 13, 2022. This report was required to include:

- a plan and timeline for providing data to the Department of Legislative Services (DLS) on utilization by service type on a monthly basis as billed through LTSS;
- a plan and timeline for forecasting general fund spending in the Community Services program in fiscal 2023 and beyond by using actual utilization and reimbursements;
- the number of individuals receiving DDA-funded services and providers that transitioned to the LTSS system before the start of fiscal 2022 as well as the number who have transitioned to LTSS in fiscal 2022 year-to-date;
- a cost analysis of the rates paid to providers that were transitioned to the LTSS system as part of the initial pilot program; and
- a description of the utilization and spending data available through the LTSS system.

Status of Transition

DDA is moving from a prospective payment model to a FFS reimbursement model. This transition includes moving service authorization and billing functionalities from the legacy Provider Consumer Information System 2 (PCIS 2) to the State’s existing LTSS information technology system utilized by other Medicaid programs. During this change, DDA will also be implementing new community services and provider rates.

Exhibit 9 provides a summary of the number of individuals and providers billing through LTSS during prior to fiscal 2022 and year to date in fiscal 2022. The providers in the pilot group selected a small group of individuals for pilot billing across all services in the LTSS *Maryland*-DDA module system, whereas the providers in the Early Adopter Group Pilot transitioned all individuals to the module.

Exhibit 9
Individuals Receiving DDA-funded Services and Providers Billing
Fiscal 2021-2022

<u>Group</u>	<u>Individuals</u>		<u>Providers</u>		<u>Information</u>
	<u>2021</u>	<u>2022</u>	<u>2021</u>	<u>2022</u>	
DDA Pilot	31		10		This group of providers started billing through LTSS on December 1, 2019. These providers selected a small group of individuals to pilot billing across all services in the Long Term Support Services (LTSS) module system.
Personal Supports	3,196		150		Personal Supports services billing transitioned to LTSS in December 2020 after the implementation of Electronic Visit Verification (EVV).
Supported Living	250		38		Supported Living services billing transitioned to LTSS in December 2020 after the implementation of EVV.
Early Adopter Group Pilot		1,066		5	Five providers transitioned all individuals to LTSS in fiscal 2022 (July 1 and October 1).

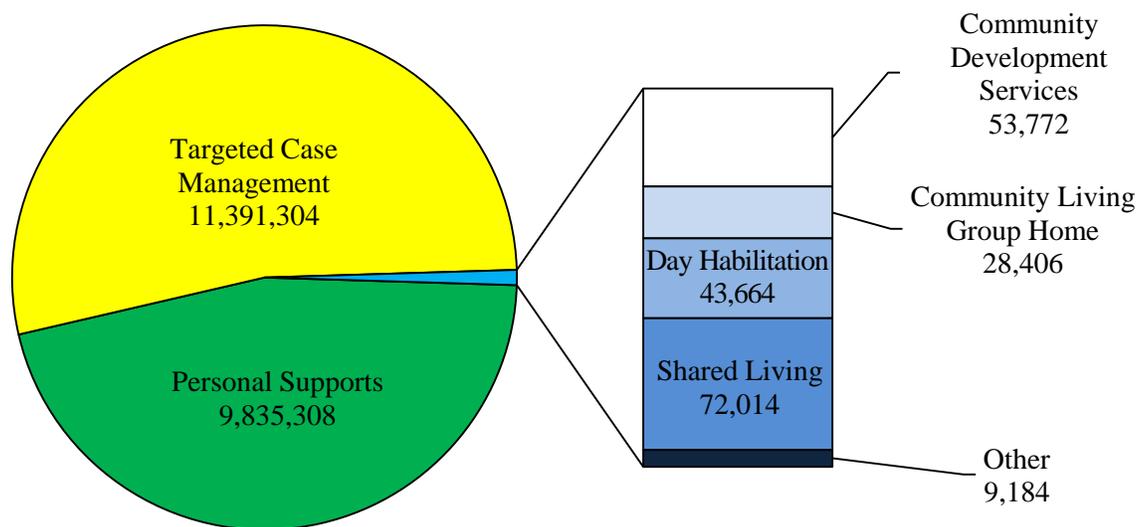
DDA: Developmental Disabilities Administration

Source: Maryland Department of Health

Utilization and Claims

In the report, MDH indicated that monthly reports on utilization by service type would be submitted to DLS no later than the fifteenth of each month with data from the prior month. This timeline did not include a start date and, as of this writing, DLS has not received an initial report. Although these monthly reports have not yet been provided, the report detailed services billed from July 1, 2019, through October 31, 2021, through LTSS for those that have transitioned prior to and during fiscal 2022. **Exhibit 10** highlights the number of claims by service type for DDA-funded services billed through the system. Targeted case management accounts for more than half of total claims made during this time period, primarily because these services transitioned the earliest. The other category accounts for the least number of claims at 9,184 (less than 1% of all claims in this period) – this category is made up of transportation, assistive technology and services, behavioral supports, career exploration, family and peer mentoring supports, nursing supports, respite care, and employment services.

Exhibit 10
Claims by Service Type for DDA-funded Services Billed through LTSS Maryland
July 1, 2019 to October 31, 2021



DDA: Developmental Disabilities Administration
 LTSS: Long Term Services and Supports

Source: Maryland Department of Health

To compare the expenditures under LTSS to the prior reimbursement model, as requested, MDH provided the claims paid to DDA providers by service from December 2019 through December 2020 after being added to the LTSS system and compares those claims to what would have been paid in the legacy system, PCIS2. As shown in **Exhibit 11**, pilot providers received roughly 62.2% more for the claims based on the FFS rates in LTSS, which uses the actual cost of delivering one hour of service. This cost is calculated using the average Bureau of Labor Statistics’ hourly wage for Direct Support Professionals. The 62% increase may not be reflective of the actual costs of the new payment system when all providers and clients are enrolled. For illustrative purposes, a 62% increase in provider payment would require an additional \$850 million of annual expenditures by DDA including \$463.5 million of State funds. **The fiscal 2023 allowance does not provide funds to begin implementation of such a transition. The department should discuss over what time frame it intends to implement the new rates and how it will do so in a manner that is affordable to the State. The department should also discuss how it will balance phasing in the new payment system while continuing to expand the number of people served during the rollout.**

Exhibit 11
Aggregate Claims Paid to Providers
December 2019 to December 2020

<u>Service</u>	<u>LTSS</u>	<u>PCIS2</u>	<u>Percent Change</u>
Community Learning Service	\$147,267	\$96,773	52%
Day Habilitation	390,928	278,885	40%
Personal Supports	345,411	356,813	-3%
Residential	4,354,667	2,496,474	74%
Total	\$5,238,273	\$3,228,945	62.20%

LTSS: Long Term Services and Supports
 PCIS2: Provider Consumer Information System 2

Source: Maryland Department of Health

Plan and Timeline for Forecasting General Fund Spending in Fiscal 2023

Exhibit 12 below shows a summary of the rate-setting process timeline. At the time of submission MDH indicated that they are continuing to work with advocates and an actuarial firm to finalize the rates for fiscal 2023. After the finalization of the fiscal impact analysis, MDH expects to be able to forecast general fund spending.

Exhibit 12
Timeline for Rate-setting Process

August 2015	DDA entered into an agreement with Johnston, Villegas-Grubbs, and Associates LLC (JVGA) to conduct a rate-setting study and impact analysis. Over the next two years, DDA and JVGA engaged with members of the public and managers of provider organizations.
November 2017	The results of the rate-setting study were released.
July 2018	DDA engaged with Optumas to validate the rate-setting model and alleviate concerns expressed to DDA by MACS and some DDA providers.
August 2019	The final rates were provided to MACS and DDA providers.
March 2021	After over a year of piloting group billing, the rates were finalized and loaded into LTSSMaryland. MACS, through their consultant, presented an alternative rate structure and methodology to DDA to address concerns with higher geographical differential rate compared to the rest of the state (to account for higher cost of living in various jurisdictions).

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May 2021	DDA engaged with Optumas to conduct an actuarial review of the new rates and the proposal received from the MACS consultant.
July and October 2021	Five initial members of the Early Adopter Group of DDA providers began piloting billing through LTSSMaryland.

DDA: Developmental Disabilities Administration
LTSS: Long Term Services and Supports
MACS: Maryland Association of Community Services

Source: Maryland Department of Health

MDH should comment on the status of the finalized rates as well as when the general fund spending forecast using these finalized rates will be available.

In addition to the information outlined above, MDH provided a description of the utilization and spending data that is available through the LTSS system and outlined the ways in which LTSS provides the electronic exchange of data for DDA users. It is unclear if providers can utilize this ability to exchange data currently or if these abilities are built but not distributed.

MDH should comment on whether providers can utilize the data exchange features currently and if not, when these features will be available for use. DLS recommends language restricting funds pending submission of a report on the continuing transition to the LTSS system. In addition, DLS recommends committee narrative requesting submission of monthly utilization data.

Further, DLS recommends the release of the \$1.0 million in general funds restricted pending the submission of this report and will process a letter to this effect if no objections are raised by the subcommittees.

Operating Budget Recommended Actions

1. Add the following language to the general fund appropriation:

, provided that \$1,000,000 of this appropriation made for the purpose of administration may not be expended until the Maryland Department of Health (MDH) submits a report each quarter to the budget committees regarding the ongoing transition to a fee-for-service (FFS) reimbursement system and spending forecasts for the Developmental Disabilities Administration (DDA) Community Services program transitions. The report should include:

- (1) a timeline for forecasting general fund spending in the Community Services program based on actual utilization and reimbursement billed through the Long Term Services and Supports (LTSS) system following the transition to a FFS model, including a discussion of how the spending will be forecast during the transition period.
- (2) if available, MDH spending forecasts by year;
- (3) a timeline for finalizing rates and the fiscal impact analysis of the new rates;
- (4) upon finalization, the finalized rates and the fiscal impact analysis of the new rates;
- (5) the number of individuals receiving DDA-funded services and providers transitioned to the LTSS system, including the timing of the transition including those transitioned in fiscal 2023 to date;
- (4) a cost analysis of the rates paid to providers that were transitioned to the LTSS system as part of the LTSS pilot program and how DDA’s reimbursements compare to estimated payments that would have been made under the prospective payment model; and
- (5) an updated timeline for transition of individuals and providers to the LTSS system.

The reports shall be submitted quarterly, and \$250,000 may be available to be release following the submission of each report, and the budget committees shall have 45 days from receipt of each report to review and comment. Funds restricted pending receipt of these reports may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the report is not submitted to the budget committees.

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Explanation: DDA is overhauling its Community Services system by implementing new service definitions, establishing new rates based on an FFS reimbursement model, and transitioning to Medicaid’s existing LTSS system for billing and service authorization. These changes should improve DDA’s data collection and spending forecast abilities compared to the current prospective payment model. This language restricts funding budgeted for administration until MDH submits quarterly reports to the budget committees on the transition to the system and spending forecasts following the transition to a new rate structure.

Information Request	Author	Due Date
Report on Community Services utilization data collection and spending forecasts.	MDH	July 1, 2022 October 1, 2022 January 1, 2023 April 1, 2023

2. Add the following language:

All appropriations provided for program M00M01.02 Community Services are to be used only for the purposes herein appropriated, and there shall be no budgetary transfer to any other program or purpose.

Explanation: The Maryland Department of Health has previously reported increasing net general fund transfers out of the Developmental Disabilities Administration Community Services program, mainly to cover shortfalls elsewhere in the department. This annual language restricts funds appropriated for the Community Services program to that use only and prevents budgetary transfers.

3. Adopt the following narrative:

Community Services Utilization Data: The Maryland Department of Health (MDH) indicated in a response to language in the fiscal 2022 Budget Bill that the department would be able to provide community services utilization data from the Long Term Services and Supports (LTSS) system on the fifteenth of each month. The committees request that MDH begin providing this monthly data with quarterly reports beginning on July 1, 2022. Each report should include utilization by service type, including the number of claims and claims spending in LTSS, as well as the number and share of individuals served through LTSS.

Information Request	Author	Due Date
Quarterly Community Services utilization data by month	MDH	July 1, 2022 October 1, 2022 January 1, 2023 April 1, 2023

Updates

1. Continuation of Appendix K Provisions

Appendix K for DDA’s Medicaid waiver programs has allowed for flexibility with service requirements as well as financial support to providers during the COVID-19 pandemic. Appendix K: Emergency Preparedness and Response was a standalone appendix created by CMS to allow flexibility for HCBS authority at the state level during emergencies, such as providing services via telehealth, adjustments in the maximum shift hours for providers, and the locations in which services could be provided. Effective January 27, 2021, CMS established guidance that allowed for the extension of Appendix K provisions to six months after the nationally declared public health emergency. As of January 2022, the national public health emergency has been extended to April 15, 2022, which would allow the provisions to extend to October 2022 without any additional extensions of the public health emergency. In addition, Chapters 70 and 71 of 2021, which was effective July 1, 2021, allows some modifications currently allowed under Appendix K provisions to extend indefinitely, such as provisions involving virtual or remote provided services. **Exhibit 13** outlines Appendix K provisions that are expected to expire six months after the end of the national public health emergency and those expected to be retained indefinitely or those without an expiration date.

Exhibit 13 Appendix K Provisions Fiscal 2022

Appendix K Provision

Date of Termination

Telephonic/Remote Supports and Services: including behavioral support services, case management, and nursing services.

Six months after the end of the national public health emergency – subject to change but currently set to expire October 2022

Staff Hiring, Onboarding, and Training: including exceeding maximum staffing ratios, abbreviated criminal background checks, waive all but essential training, sharing staff among providers, waiver of high school or GED requirement, waiver of preauthorization for certain services.

Settings: including family homes, hotels, and other community settings. Day habilitation services may be provided over the phone, or by Skype, Zoom, FaceTime, *etc.*, to allow services to continue to be provided remotely in the home and community settings.

Service Changes: personal care assistance may comprise the entirety of the service, as appropriate.

Appendix K Provision

Date of Termination

Telephonic/Remote Supports and Services: including community development, day habilitation, employment services, personal supports, supported employment, and behavioral support services. No termination or retained permanently

Services Can Be Requested Via Emergency Revised PCP Process: behavioral support services, nursing services, and respite services.

Exceed Maximum Budgeted Hours: 82 hours per week within the authorized budget for personal supports with preauthorization from DDA.

Staffing Changes: hire relatives and other legally responsible individuals for select services and/or in situations of extraordinary care.

Retainer Payments: residential services only.

DDA: Developmental Disabilities Administration

PCP: Person-centered Plan

Source: Maryland Department of Health

2. Status of the Federal Disallowance

In an audit report released in June 2015, the Office of the Inspector General (OIG) at HHS documented an overbilling of federal funds, resulting in a recommendation that the State refund \$34.2 million to the federal government. This \$34.2 million represents the federal share of services provided over a three-year period from July 1, 2010, to June 30, 2013, to individuals with developmental disabilities who were provided additional services beyond residential habilitation services, also known as add-on services, due to their high degree of need. During this same time period, the department claimed \$329.0 million (\$178.7 million federal share) for all add-on waiver services.

After a review by OIG, it was determined that almost every claim represented in that federal share was not consistent with waiver criteria. The audit found that DDA claimed add-on services for beneficiaries who did not meet the waiver’s level-of-need requirement under the Community Pathways waiver program. It also noted that DDA did not consider the level-of-need of the beneficiary when approving the add-on services. DDA has subsequently amended its Community Pathways waiver to eliminate the requirement that individuals receive a level-of-need score of five on the Individual Indicator Rating Scale to claim add-on services.

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MDH did not concur with the OIG recommendations in a September 2015 response and disagreed with the interpretation that the Community Pathways waiver required individuals receiving services to meet three separate requirements. In the past, the department operated its program such that an individual who meets any of the three conditions is eligible for add-on services. OIG responded that the agency's interpretation of its waiver would have been unallowable because it would not have required evidence that there was a need for add-on services or that additional payment was necessary to cover the cost of those services.

MDH received a formal disallowance letter from HHS on June 26, 2018, which required the refund of \$34.2 million. On August 23, 2018, MDH issued a request for reconsideration (RFR) letter to HHS to begin the appeals process. During the appeals process, MDH was given the choice to return the funds or retain them and pay any interest that accrues in that time. MDH chose to retain the funds and may be liable for the federal refund and accrued interest if the appeal is rejected. According to the Office of Legislative Audits' *Statewide Review of Budget Closeout Transactions for Fiscal Year 2021*, there has not been additional action or correspondence regarding HHS's final determination as it relates to the August 2018 RFR.

Appendix 1
2021 Joint Chairmen’s Report Responses from Agency

The 2021 *Joint Chairmen’s Report* (JCR) requested that DDA prepare three reports. Electronic copies of the full JCR responses can be found on the DLS Library website.

- ***Report on Community Services Utilization Data Collection and Spending Forecasts:*** The report details utilization by service type for DDA-funded services, along with suggesting final budgeted rates for fiscal 2023 and subsequent forecasted general fund spending are forthcoming. A cost analysis highlighting the differences between billing in LTSS and PCIS2 was included, showing that pilot providers have received approximately 62.2% higher claims based on the FFS rates. Additional discussion on this report can be found in Issue 2 of this analysis.
- ***Performance Measures Related to State Facility Staff and Resident Safety:*** These facilities are now included in the MDH Administration – M00A01 analysis. Discussion of resident and staff safety can be found in the MDH Administration – M00A01 analysis.
- ***Report on Enhanced Federal Match on HCBS:*** MDH was directed to spend at least 75% of federal funds obtained from any eFMAP for HCBS authorized by the ARPA on a one-time rate increase paid to Medicaid HCBS providers. As of October 1, 2021, DDA had an estimated \$168 million ARPA funds available for provider rate increases. The report also outlines the expiration or continuation of Appendix K provisions and the proposed spending plan of the department.

Appendix 2
Object/Fund Difference Report
MDH – Developmental Disabilities Administration

<u>Object/Fund</u>	<u>FY 21</u> <u>Actual</u>	<u>FY 22</u> <u>Working</u> <u>Appropriation</u>	<u>FY 23</u> <u>Allowance</u>	<u>FY 22 - FY 23</u> <u>Amount Change</u>	<u>Percent</u> <u>Change</u>
Positions					
01 Regular	174.50	176.50	174.00	-2.50	-1.4%
02 Contractual	17.94	33.29	22.12	-11.17	-33.6%
Total Positions	192.44	209.79	196.12	-13.67	-6.5%
Objects					
01 Salaries and Wages	\$ 16,213,851	\$ 16,276,603	\$ 16,869,413	\$ 592,810	3.6%
02 Technical and Special Fees	867,540	1,373,684	912,360	-461,324	-33.6%
03 Communication	229,284	152,965	210,157	57,192	37.4%
04 Travel	1,584	61,405	47,393	-14,012	-22.8%
06 Fuel and Utilities	25,926	44,604	40,921	-3,683	-8.3%
07 Motor Vehicles	1,391	2,155	1,773	-382	-17.7%
08 Contractual Services	1,457,788,405	1,525,463,444	1,527,810,690	2,347,246	0.2%
09 Supplies and Materials	24,316	158,934	122,110	-36,824	-23.2%
10 Equipment – Replacement	9,429	0	75,000	75,000	N/A
11 Equipment – Additional	26,225	0	0	0	0.0%
12 Grants, Subsidies, and Contributions	1,451,879	1,475,000	1,725,000	250,000	16.9%
13 Fixed Charges	654,912	677,585	689,466	11,881	1.8%
Total Objects	\$ 1,477,294,742	\$ 1,545,686,379	\$ 1,548,504,283	\$ 2,817,904	0.2%
Funds					
01 General Fund	\$ 667,177,830	\$ 747,322,706	\$ 845,465,869	\$ 98,143,163	13.1%
03 Special Fund	6,741,121	6,298,272	6,450,203	151,931	2.4%
05 Federal Fund	803,375,791	792,065,401	696,588,211	-95,477,190	-12.1%
Total Funds	\$ 1,477,294,742	\$ 1,545,686,379	\$ 1,548,504,283	\$ 2,817,904	0.2%

Note: The fiscal 2022 appropriation does not include proposed deficiency appropriations or targeted reversions. The fiscal 2023 allowance does not include supplemental funding. The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which include cost-of-living adjustments, increments, bonuses, and may include annual salary review adjustments.

Appendix 3
Fiscal Summary
MDH – Developmental Disabilities Administration

<u>Program/Unit</u>	<u>FY 21 Actual</u>	<u>FY 22 Wrk Approp</u>	<u>FY 23 Allowance</u>	<u>Change</u>	<u>FY 22 - FY 23 % Change</u>
01 Developmental Disabilities Administration	\$ 1,477,294,742	\$ 1,545,686,379	\$ 1,548,504,283	\$ 2,817,904	0.2%
Total Expenditures	\$ 1,477,294,742	\$ 1,545,686,379	\$ 1,548,504,283	\$ 2,817,904	0.2%
General Fund	\$ 667,177,830	\$ 747,322,706	\$ 845,465,869	\$ 98,143,163	13.1%
Special Fund	6,741,121	6,298,272	6,450,203	151,931	2.4%
Federal Fund	803,375,791	792,065,401	696,588,211	-95,477,190	-12.1%
Total Appropriations	\$ 1,477,294,742	\$ 1,545,686,379	\$ 1,548,504,283	\$ 2,817,904	0.2%

Note: The fiscal 2022 appropriation does not include proposed deficiency appropriations or targeted reversions. The fiscal 2023 allowance does not include supplemental funding. The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which include cost-of-living adjustments, increments, bonuses, and may include annual salary review adjustments.