Maryland Department of Health
Fiscal 2024 Budget Overview

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

February 2023

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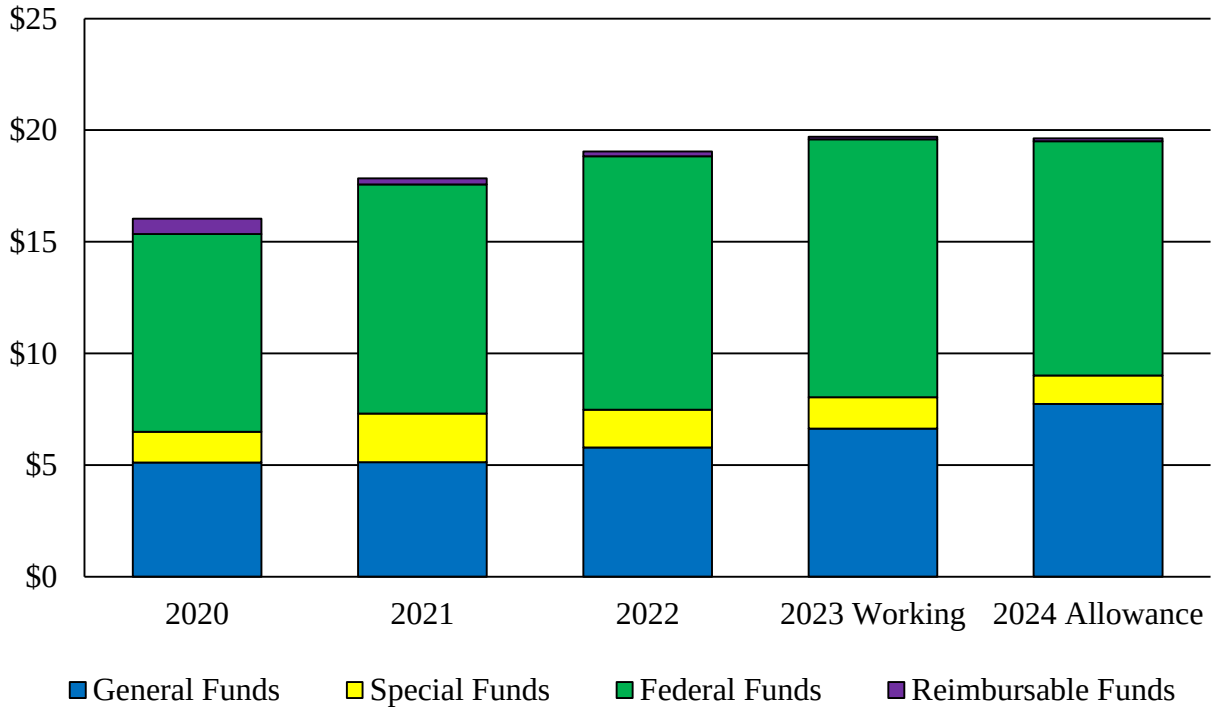
Maryland Department of Health
Fiscal 2024 Budget Overview

Five-year Funding Trends
Fiscal 2020-2024
($ in Billions)

Fiscal 2024 Budget Decreases by $65 Million, or 0.33%, to $19.6 Billion



Note: The fiscal 2023 working appropriation includes deficiency appropriations including this agency's share of a deficiency appropriation budgeted in the Statewide Account within the Department of Budget and Management (DBM). Fiscal 2024 salary enhancements are budgeted in the Statewide Account within DBM. The fiscal 2024 allowance includes contingent reductions.

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

Key Observations

- ***Home- and Community-based Services (HCBS) Waiver Programs Maintain Large Registries:*** The Maryland Department of Health (MDH) implements Medicaid HCBS waivers that allow people to receive long-term care services to help them live at home, in a community setting, or in an assisted living facility, rather than in a nursing facility or State health facility. MDH reports persistent HCBS waiver registries, despite some waiver programs not filling all authorized slot capacity. Multiple pieces of 2022 legislation aim to improve registry outreach and eligibility determination processes for HCBS waivers.

- ***American Rescue Plan Act (ARPA) of 2021 Provides Significant Federal Support for HCBS:*** Maryland is expected to receive an estimated $644.2 million in federal funds through an ARPA provision authorizing a temporary 10% enhanced federal match on HCBS spending. Savings from the enhanced match must be reinvested to expand and strengthen HCBS by March 31, 2024. The General Assembly further specified that most of these funds must support one-time rate increases. MDH has surpassed this requirement and plans to spend 94% of overall ARPA support on HCBS rate increases. The fiscal 2024 allowance includes additional State funds to support some of the HCBS rate increases beyond the date that ARPA reinvestment ends.

Updates

- ***Cigarette Restitution Fund (CRF):*** As a result of Maryland winning the sales year 2004 multistate arbitration with tobacco manufacturers, and in accordance with Chapters 41 and 42 of 2021, $16.0 million in settlement proceeds are budgeted in fiscal 2023 as CRF support for payments to Historically Black Colleges and Universities (HBCU). Maryland's hearing for the next round of arbitration determining settlements for sales year 2005 to 2007 is set to begin in March 2023, though any financial impact on fiscal 2024 is uncertain.

Operating Budget Summary

Fiscal 2023

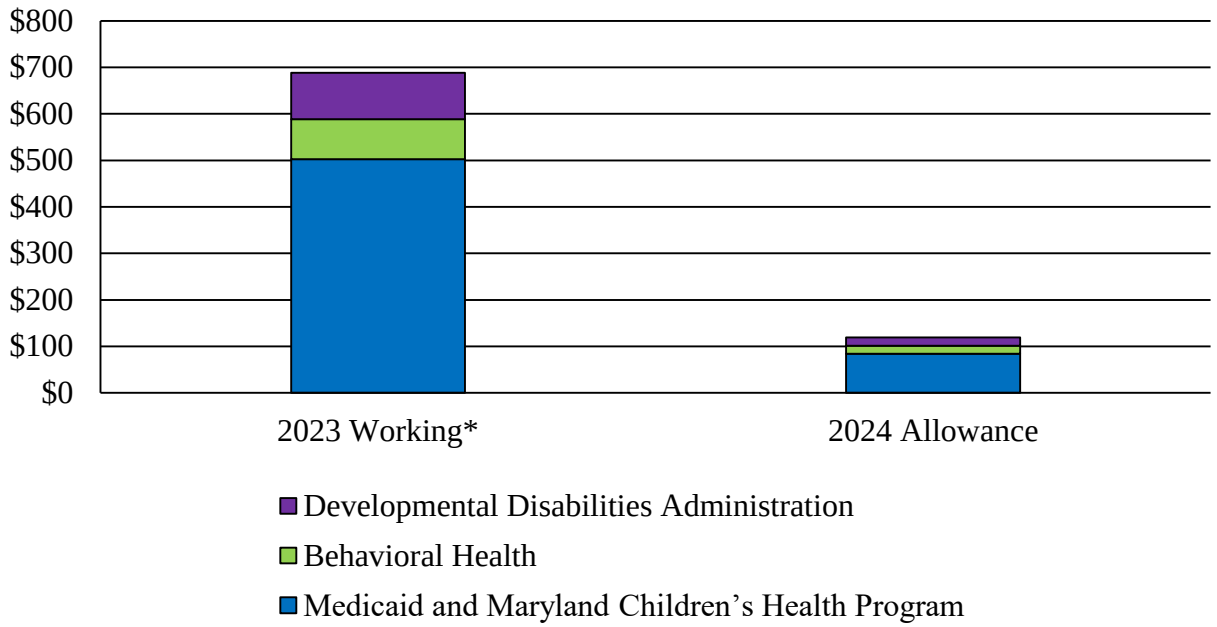
- ***Planned Reversions:*** At the end of each fiscal year, Medicaid accrues unspent funds to pay for Medicaid bills received in the following fiscal year but are charged back to the prior year because claims can be submitted up to a year after the service has been delivered. The fiscal 2024 budget plan assumes two reversions in fiscal 2023 totaling $79.5 million in general funds ($69.8 million under the Behavioral Health Administration (BHA) for Medicaid-covered behavioral health services and $9.7 million under Medicaid) to account for accrued funds that will not be needed to cover fiscal 2022 claims.

- ***Proposed Deficiencies:*** The Governor's allowance includes deficiency appropriations totaling a net increase of $1.1 billion to the fiscal 2023 appropriation, including -$225.7 million in general, -$7.1 million in special, $1.3 billion in federal, and $2.6 million in reimbursable funds. Approximately $976 million of this funding covers provider reimbursements for Medicaid services, including those relating to behavioral health and the Maryland Children's Health Program (MCHP).

  In addition, there is a proposed net deficiency of $55.9 million for BHA, which includes $67.5 million for behavioral health services and $8 million for behavioral health infrastructure investments partially offset by $20.3 million in anticipated savings due to changes in the availability of federal funds for services at Institutions for Mental Disease. The Developmental Disabilities Administration (DDA) has a proposed net deficiency of $70 million to cover a one-time quarterly rate increase for Community Services providers as well as an additional $5 million for competitive grants to assist providers who are transitioning to the Long Term Services and Supports system with their information technology (IT) and software costs. The Public Health Administration has a proposed deficiency of $315,000 which supports the funding for a new Workforce Development Data System and funding to the Income Tax Preceptor programs for Physicians, Registered Nurses, and Licensed Practical Nurses. **Appendix 1** includes an itemized list of the deficiencies.

- ***COVID-19 Enhanced Federal Match on Medicaid Spending:*** The Families First Coronavirus Response Act of 2020 authorized a 6.2% enhanced federal match on qualifying Medicaid expenses (4.34% for MCHP) during the national COVID-19 public health emergency. As shown in **Exhibit 1**, deficiency appropriations across programs add a total of $688.4 million in federal funds and remove equivalent general fund savings to account for the enhanced federal match. The Consolidated Appropriations Act of 2023 established a phase-out schedule that reduces the 6.2% enhanced match each quarter, beginning April 1, 2023, until the match fully expires on December 31, 2023.

Exhibit 1
COVID-19 Enhanced Federal Matching Funds on Departmentwide Medicaid Expenses
Fiscal 2023-2024
($ in Millions)

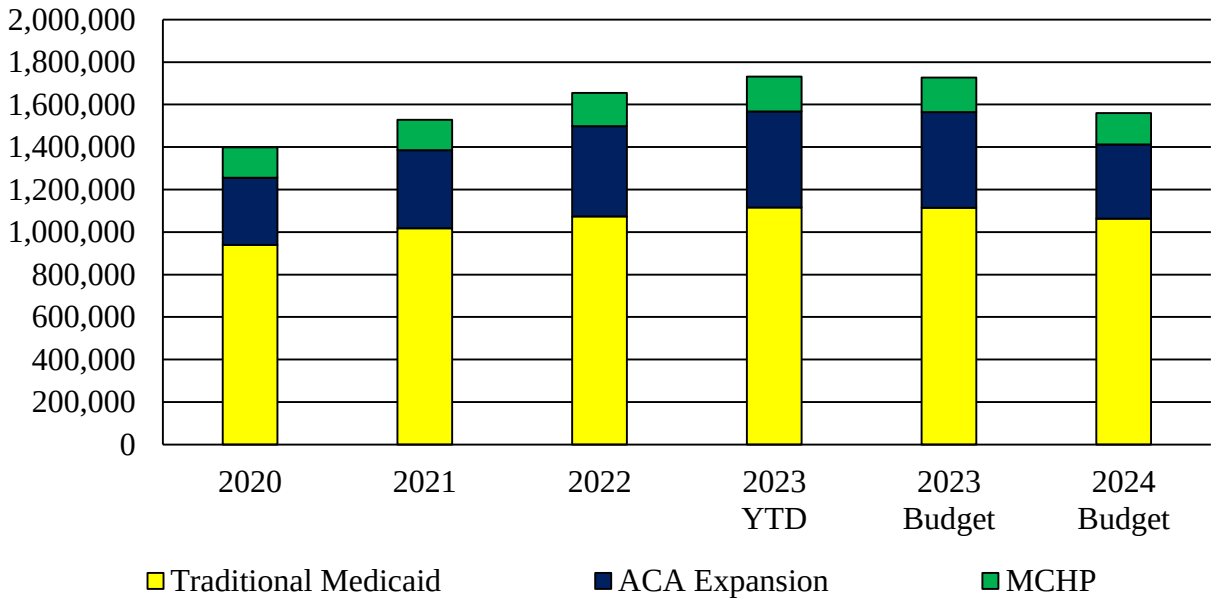


*All COVID-19 enhanced federal matching funds across the Maryland Department of Health's fiscal 2023 working appropriation are added through deficiency appropriations.

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

- ***Medicaid Continuous Enrollment Requirement and Unwinding Process:*** As a condition of receiving the COVID-19 enhanced federal match, Maryland has been required to freeze Medicaid disenrollment (with limited exceptions) during the national COVID-19 public health emergency. This led enrollment to grow by approximately 24% from fiscal 2020 to 2023 year to date, as shown in **Exhibit 2**. The Consolidated Appropriations Act ends the continuous enrollment requirement on March 31, 2023. As a result, the fiscal 2024 allowance anticipates average monthly enrollment will decline by just under 10%.

Exhibit 2
Medicaid and MCHP Average Monthly Enrollment
Fiscal 2020-2024 Budget

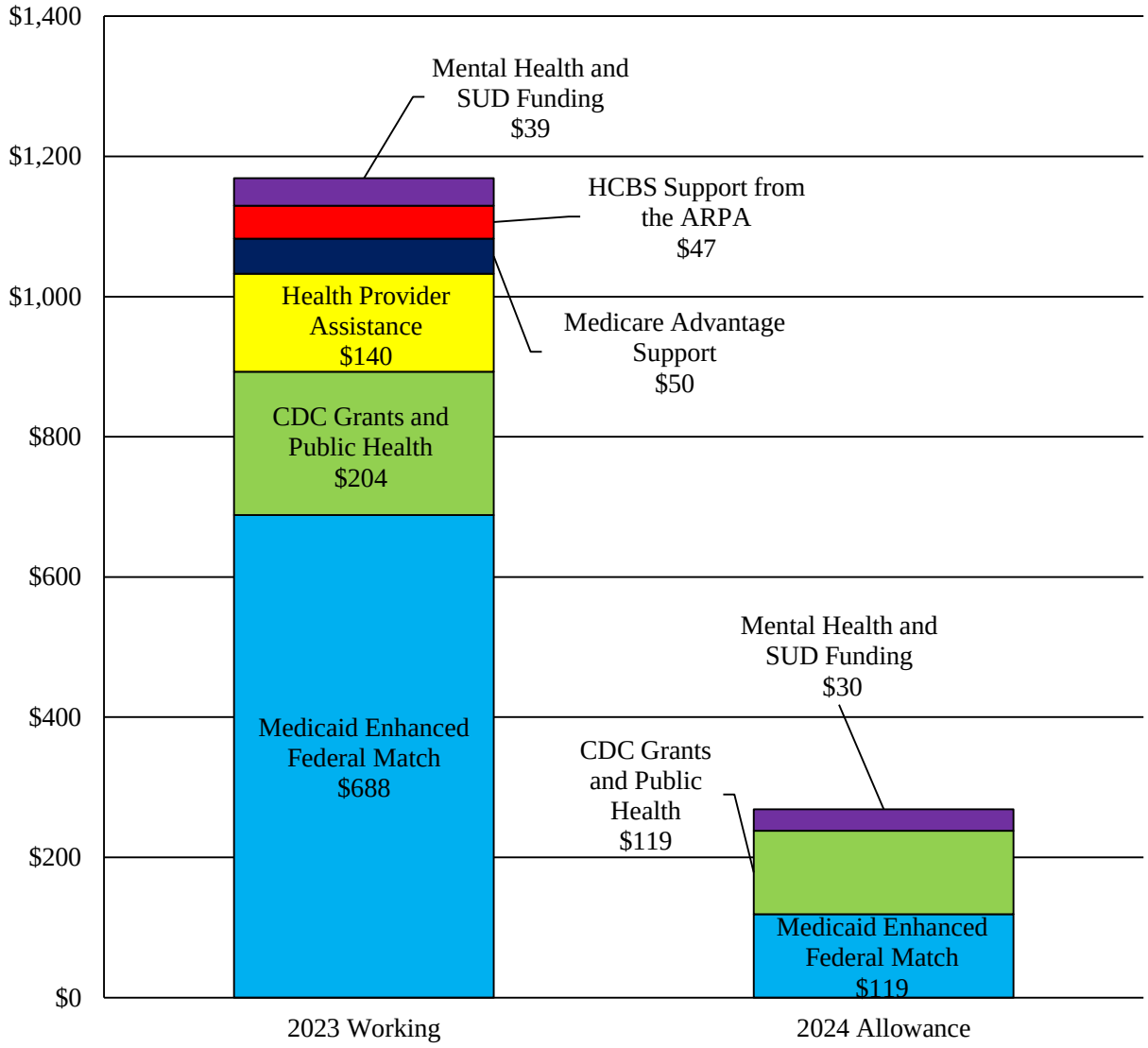


ACA: Affordable Care Act
MCHP: Maryland Children's Health Program
YTD: year to date

Source: Maryland Department of Health

- ***Approximately $1.17 Billion in COVID-19-related Funding Budgeted in Fiscal 2023:*** As shown in **Exhibit 3**, MDH's fiscal 2023 working appropriation includes significant support from federal stimulus funding and special funds from the Dedicated Purpose Account for COVID-19 response activities. Aside from the enhanced federal match on Medicaid expenses, public health grants and assistance for healthcare providers (hospitals, nursing homes, and assisted living facilities) make up the largest shares of COVID-19 spending under MDH. As the State's pandemic response transitions to ongoing activities, fiscal 2024 COVID-19-related funding decreases substantially compared to fiscal 2023. However, there are remaining unallocated federal funds, such as an estimated $53.2 million for vaccine preparedness activities and $20 million for mental health and substance use disorder prevention. **MDH should comment on when it plans to allocate the remaining COVID-19-related federal stimulus funds particularly for Vaccine Preparedness (approximately $53 million) and Mental Health and Substance Abuse Block Grants (approximately $10 million each) and discuss how the funds will be spent.**

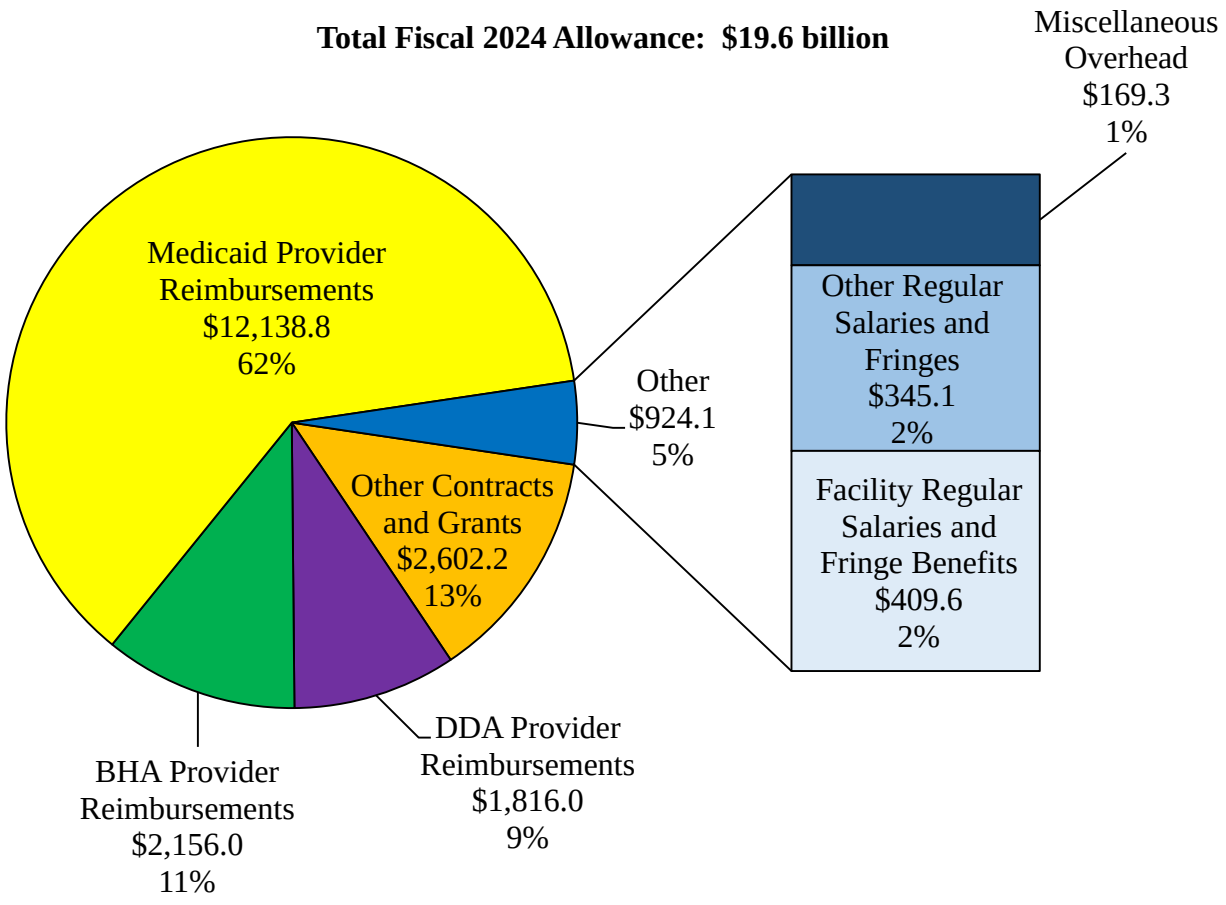
Exhibit 3
Federal Stimulus and Dedicated Purpose Account Funding Under MDH to Respond to COVID-19 Impacts
Fiscal 2023-2024
($ in Millions)



ARPA: American Rescue Plan Act of 2021
CDC: U.S. Centers for Disease Control and Prevention
HCBS: home- and community-based services
MDH: Maryland Department of Health
SUD: substance use disorder

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

Functional Breakdown of Agency Spending
Fiscal 2024 Allowance
($ in Millions)



BHA: Behavioral Health Administration
DDA: Developmental Disabilities Administration

Note: The fiscal 2024 allowance does not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which include cost-of-living adjustments, increments, and annual salary review adjustments.

Source: Governor's Fiscal 2024 Budget Books; Department of Legislative Services

Proposed Budget
Maryland Department of Health
($ in Thousands)

How Much It Grows:	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2022 Actual	$5,783,901	$1,704,301	$11,346,256	$206,403	$19,040,861
Fiscal 2023 Working Appropriation	6,638,778	1,399,357	11,553,737	110,461	19,702,332
Fiscal 2024 Allowance	7,741,266	1,268,829	10,501,265	125,639	19,636,999
Fiscal 2023-2024 Amount Change	$1,120,488	-$130,528	-$1,052,472	$15,178	-$65,334
Fiscal 2023-2024 Percent Change	16.6%	-9.3%	-9.1%	13.7%	-0.33%

Where It Goes:		Change
Regular Personnel Expenses	**$13,798**	
Employee and retiree health insurance		$15,585
Annualization of 4.5% COLA fiscal 2023 deficiency		7,774
Overtime expenses		5,163
New position adjustment across MDH		4,063
Retirement contribution, law enforcement pension		1,406
Workers' compensation premium assessment		1,363
Other fringe benefit adjustments		-235
Turnover adjustments		-2,225
Miscellaneous adjustments		-19,096
Major Programmatic Changes (Excluding Medicaid)	**$371,221**	
Departmentwide Annualization of 4.5% COLA Fiscal 2023 Deficiency for Contractual Employees	**$528**	
MDH Administration	**$314,164**	
Accelerate mandated provider rate increases for certain providers contingent on legislation to accelerate minimum wage increases		413,417
Redevelopment funds in the Office of Capital Planning		11,178
Opioid restitution funds from Purdue Pharma settlement		4,766
Department of Information Technology services allocation		2,100
Facility-related energy costs		1,195
Facility-related increase in medical costs		1,098
Spring Grove energy conservation loan repayment		-1,086
One-time grant for Children's National Hospital		-1,500
Change in fund source for MITDP – now funded under MITDPF		-2,003
One-time grants to nursing homes and living facilities		-40,000
One-time funding assistance and workforce support for hospitals		-75,000

Where It Goes:		**Change**
Behavioral Health Administration	**-$14,850**	
$8 million deficiency for fiscal 2023 and $70 million for fiscal 2024 for behavioral health infrastructure investments that may include crisis system expansion, State hospital waitlist, and adolescent hospital overstay		62,000
Provider rate increases across behavioral health providers		47,579
State Opioid Response Grants		29,157
Substance abuse treatment services, excluding provider reimbursements		14,974
Funding to backfill stimulus funds for fiscal 2023 mobile crisis teams and Mid-Shore care traffic control platform		6,195
Substance Abuse Treatment Outcomes Partnership Fund		3,135
Buprenorphine Initiative		2,024
Problem Gambling Fund		1,607
The Maryland Behavioral Health in Pediatric Primary Care Program		1,438
Sheppard Pratt Care Coordination Center		1,437
Post-traumatic Stress Disorder and Traumatic Brain Injury Alternative Therapies Fund		1,000
Funding for continued operation and development of the 988 crisis hotline		500
One-time grants for the Kennedy Krieger Institute Center for Neuroscience of Social Injustice and the Greater Baltimore Regional Integrated Crisis System		-4,250
COVID-19 stimulus grants for mental health crisis prevention and treatment		-3,898
Provider reimbursement changes based on forecasted enrollment and utilization rates		-177,750
Developmental Disabilities Administration	**$98,011**	
Payments to community service providers		97,761
Maryland inclusive housing grant		250
Regulatory Commissions	**$36,203**	
Maryland Consortium on Coordinated Community Supports (Blueprint for Maryland's Future Funds)		35,000
Maternal and child health initiative		10,000
Contract for inpatient and outpatient data reviews		816
Maryland Trauma Physician Services Fund grants		600
CRISP (general funds)		-10,214
Professional Boards and Commissions	**$3,722**	
Public Health Education Campaign – Chapter 26 of 2022, among other changes		2,076
Study of adult use cannabis impact		1,250

Where It Goes:		**Change**
Contractual personnel earnings and Social Security, at least partially due to an increase of 6.6 contractual full-time equivalents		855
Increase in legal services		732
Lower cost for Seed-to-Sale Tracking System at MMCC		-1,190
Public Health Administration	**-$13,904**	
Local health department funding		14,455
CRISP		3,888
Electricity (Laboratory Administration)		1,235
Increase of federal funds for the administration of the Health Resources and Service Administration State Loan Repayment Program		640
Laboratory supplies (Laboratory Administration)		556
One-time grant to Vision for Baltimore		-1,000
Innovative Data to Action Projects		-2,563
One-time fiscal 2023 Dedicated Purpose Account funding for Medical Loan Assistance Repayment Program for Physicians		-3,000
Expiration of fiscal 2023 Substance Abuse Block Grant COVID-19 supplemental grant		-3,194
Public health preparedness workforce outbreak preparedness capacity building for local health departments		-5,903
Federal funds for COVID-19 response in fiscal 2023 partially offset by other local preparedness and response activities		-19,018
Prevention and Health Promotion Administration	**-$52,652**	
Abortion clinical care training program, in accordance with Chapter 56 of 2022 (50% general funds paid into the special fund and 50% special fund expenditures)		7,000
Immigrant health and refugee health promotion (reimbursable funds from the DHS Family Investment Administration)		4,620
Spending on medications and other supplies for SUD treatment (reimbursable funds from the MDH Office of the Secretary)		3,750
Special Supplemental Nutrition program for Women, Infants, and Children (federal funds)		2,734
Net reduction in federal Immunization Cooperative grants supporting COVID-19 vaccine preparedness		-1,197
Supplemental State Opioid Response grant (federal funds)		-1,749
Maryland AIDS Drug Assistance Program spending and other healthcare and supportive services for individuals with HIV/AIDS		-2,938
Enhanced Alzheimer's service and research		-3,500
Net reduction in federal COVID-19 epidemiology and lab capacity funding		-61,373

Where It Goes:		**Change**
Medicaid/Medical Care Programs Administration	**-$449,523**	
Provider rate increases		214,657
Estimated reduction in prescription drug rebates, causing higher pharmacy costs		100,159
Annualization of adult dental coverage expansion, which took effect January 1, 2023, in accordance with Chapters 302 and 303 of 2022		76,300
MITDPs (federal funds)		75,520
Population Health Improvement Program		36,000
Community First Choice Program		18,786
Health information exchange (CRISP) support		18,120
Federally Qualified Health Center supplemental payments		17,616
Medicare Part D clawback		15,708
Money Follows the Person program		13,914
Administrative contracts, including utilization review, nursing home audit, eligibility determination, and dental administrator services		9,286
Health home payments		5,929
Emergency Service Transporter Supplemental Payment Program		-18,000
One-time ARPA assistance for nursing homes		-25,000
Managed care organization supplemental payments		-34,464
One-time ARPA assistance distributed to Medicare Advantage plans in fiscal 2023 (federal funds)		-50,000
Enrollment and utilization		-924,053
Other Expenses	**-$830**	
Total	**-$65,334**	

ARPA: American Rescue Plan Act of 2021
COLA: cost-of-living adjustment
CRISP: Chesapeake Regional Information System for Our Patients
DHS: Department of Human Services
MDH: Maryland Department of Health
MITDP: Major Information Technology Development Project
MITDPF: Major Information Technology Development Project Fund
MMCC: Maryland Medical Cannabis Commission
SUD: substance use disorder

Note: The fiscal 2023 working appropriation includes deficiency appropriations including this agency's share of a deficiency appropriation budgeted in the Statewide Account within the Department of Budget and Management (DBM). Fiscal 2024 salary enhancements are budgeted in the Statewide Account within DBM. Appendix 2 of this document provides selected caseload measures that partially explain some of the enrollment and utilization changes in the budgets for the Developmental Disabilities Administration and Medicaid.

Source: Governor's Fiscal 2024 Budget Books; Maryland Department of Legislative Services

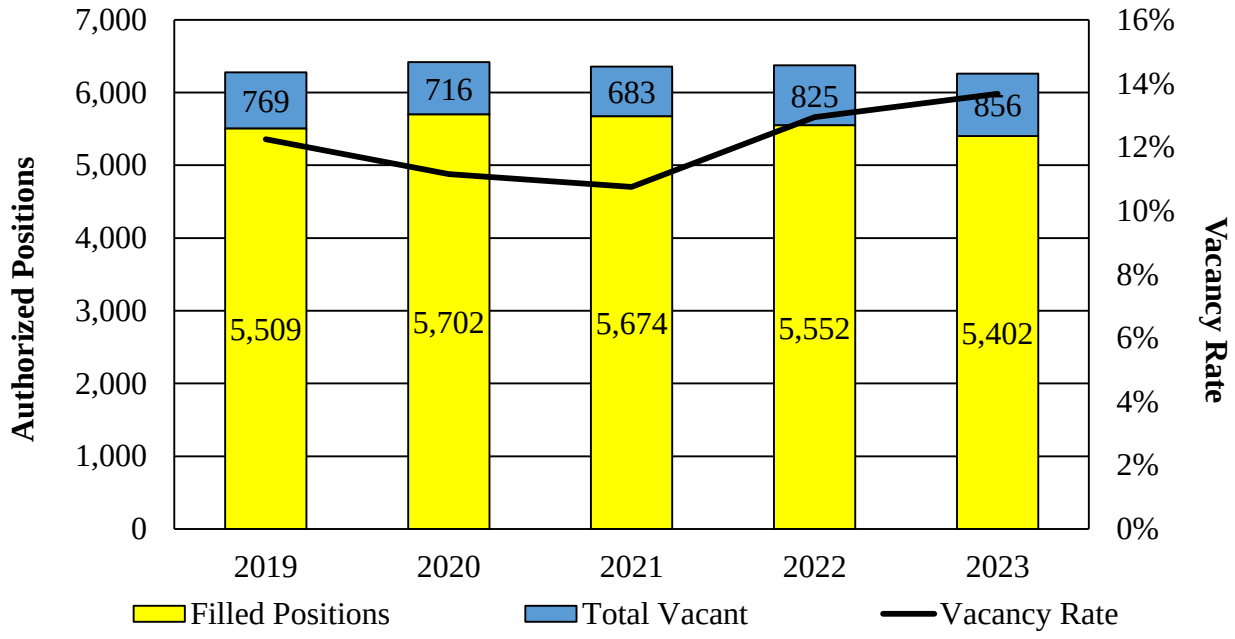
Fiscal 2024 Contingent Action Related to the Medicaid Deficit Assessment

The fiscal 2024 allowance assumes that $50 million in general funds will backfill an equivalent reduction in special funds from the Medicaid Deficit Assessment, contingent on the passage of HB 202/SB 182 of 2023 (the Budget Reconciliation and Financing Act (BRFA)). The BRFA would reduce the Medicaid Deficit Assessment imposed on Maryland hospitals to support the Medicaid program by $50 million in fiscal 2024 only.

Personnel Data

The staff across MDH consists of some of the State's frontline for care, treatment, and service delivery for Marylanders. MDH staff includes the direct care workforce at State hospitals and health facilities, individuals inspecting and regulating health care providers in Maryland, and public health workers at the State and local health departments (LHD). Like other agencies across the State, in fiscal 2023, MDH is experiencing high rates of turnover. As of January 2023, the number of vacant positions across the department totaled 856. **Exhibit 4** provides information on number of positions filled or vacant over the last five fiscal years. In fiscal 2023, MDH saw the lowest total workforce and highest number of vacancies in recent years.

Exhibit 4
Maryland Department of Health
Filled Positions and Vacancy Rate
Fiscal 2019-2023



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

As shown in **Exhibit 5** as of January 2023, each area of the department has more than 80% of authorized positions that are filled, however, there is variation among activities. Notably, the Public Health Administration (PHA) has the highest vacancy rate among the MDH units at 18.5% whereas BHA and DDA have the lowest vacancy rates at 6.78% and 10.34%, respectively.

Exhibit 5
Maryland Department of Health
Filled Positions
Fiscal 2023

	Filled Positions	Total Positions	% Filled
Administration	3,395.80	3,925.80	86%
Administration Only	*373.00*	*443.00*	*84%*
Facilities	*3,022.80*	*3,482.80*	*87%*
Medical Care Programs Administration	527.00	608.00	87%
Prevention and Health Promotion Administration	396.40	456.40	87%
Public Health Administration	372.30	435.75	82%
Health Professional Boards and Commissions	240.50	285.50	84%
Office of Health Care Quality	208.00	240.00	87%
Developmental Disabilities Administration	156.00	174.00	90%
Behavioral Health Administration	123.80	132.80	93%

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

While the State hospitals experienced an unusually high vacancy rate throughout the COVID-19 pandemic, as of January 2023, 87% of these positions are filled. However, several of the MDH hospitals are seeing a slower recovery than other areas of MDH, with Western Maryland Hospital Center (WMHC) and the Secure Evaluation and Therapeutic Treatment Program (SETT Unit) seeing the highest overall vacancy rates in MDH at 19.75% and 22.95%, respectively. This suggests that largely, MDH is seeing a return to prepandemic norms, which may be a result of efforts to enhance salaries and incentivize retention of the health workforce, but that additional assistance may be needed. **MDH should comment on current efforts to reduce the number of vacancies across the department and specifically at WMHC and the SETT Unit.**

Additionally, as of January 2023, MDH has higher vacancy rate than the expected turnover assumed in the fiscal 2023 budget. The average budgeted turnover rate across MDH is 8.0%, whereas the average vacancy rate is 13.6%. Because MDH has more unfilled positions than budgeted for, MDH is saving about $33 million that would otherwise be used for employee salaries

and fringe benefits. **MDH should comment on their planned use of savings from their higher-than-budgeted turnover.**

The fiscal 2023 and 2024 budgets have provided salary enhancements for certain State employees to assist in recruitment and retention, including specific increases for registered nurses, many of whom are health department employees. As shown in **Exhibit 6**, in fiscal 2024, registered nurses received a 6% annual salary review (ASR) adjustment that impacts over 1,600 employees. These ASRs, which are budgeted within the Department of Budget and Management's Personnel, target positions that face high vacancy rates and turnover. Additional ASR adjustments are provided to other classifications within MDH as also shown in Exhibit 6. The Department of Legislative Services (DLS) will continue to monitor the impact that salary enhancements may have on the recruitment and retention of the State's health workforce.

Exhibit 6
MDH Annual Salary Review Adjustments
Fiscal 2024

Class Title	Vacancy Rate	Request	Total Positions	Total Cost
Dental Hygienist	100%	Three-grade Increase	9	$114,334
Mental Health Graduate and Professional Counselor	46%	One-grade (6%) and Two-grade(12%)	92	465,465
Health Occupations Investigator	41%	Two-grade Increase	17	138,211
Peer Recovery Spec	39%	One-grade Increase	86	240,715
Developmental Disability Associate	36%	One-grade Increase	8	28,809
Coordinator of Special Program	28%	6%	484	1,872,500
Art Therapist	25%	One-grade Increase	8	43,848
Registered Nurses	24%	6%	1,658	10,508,735
Health Policy Analyst	21%	6%	103	517,695
Physical Therapist	20%	Two-grade Increase	10	110,631
Public Health Lab Scientist/Public Health Lab Tech	18%	Two-grade Increase	165	1,829,916
Psychologist I, II, Intern	18%	Two-grade Increase	88	1,218,810
Medical Care Program Specialist	12%	6%	119	571,103
Toxicologist	9%	One-grade Increase	10	128,307

MDH: Maryland Department of Health

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

Multiple offices within PHA, including the Office of the Chief Medical Examiner (OCME), Laboratory Services, the Office of Preparedness and Response, and the Office of the Deputy Secretary of Public Health (ODSPH), have more than 15% of their positions vacant as of January 2023. As of January 2023, Laboratory Services had 34 vacancies, 17% of its total employee allotment. ODSPH, which oversees various public health activities and IT projects, had 18 vacancies, or 20% of its total employee allotment. OCME has faced ongoing staffing challenges over the last several fiscal years, including retaining a permanent chief medical examiner. As of this writing, OCME had 22.5 vacant positions (22% of its allotted positions), 7 of which have been vacant for one year or more. Vacant forensic pathologist positions in this office contribute to the backlog of autopsy cases in the State, and OCME is taking several steps to improve recruitment and retention of forensic pathologists. Further discussion of the PHA vacancies and the OCME case backlog can be found in the PHA analysis.

Additional information on regular position changes by program and contractual personnel by program from fiscal 2022 to 2024 are shown in **Appendix 3** and **Appendix 4**.

Issues

1. HCBS Waiver Programs Continue to Report Large Wait Lists

The Medicaid program covers HCBS through the Community First Choice program and Community Personal Assistance Services program, among other programs. In partnership with the Centers for Medicare and Medicaid Services (CMS), MDH also implements HCBS waivers that allow older adults, people with disabilities, and children with chronic illnesses who would not otherwise qualify for Medicaid to access HCBS. Waiver participants must meet financial eligibility based on income and asset levels and medical eligibility requiring a need for institutional or facility levels of care. HCBS programs fund a variety of service types, such as case management, residential services, nursing, and personal care, that help individuals live at home, in a community setting, or in an assisted living facility, rather than in a nursing facility or State health facility.

Medicaid administers the following HCBS waiver programs:

- the Home- and Community-based Options Waiver (Community Options Waiver);
- the Medical Day Care Services Waiver; and
- the Model Waiver for Medically Fragile Children.

DDA implements the following three HCBS waiver programs:

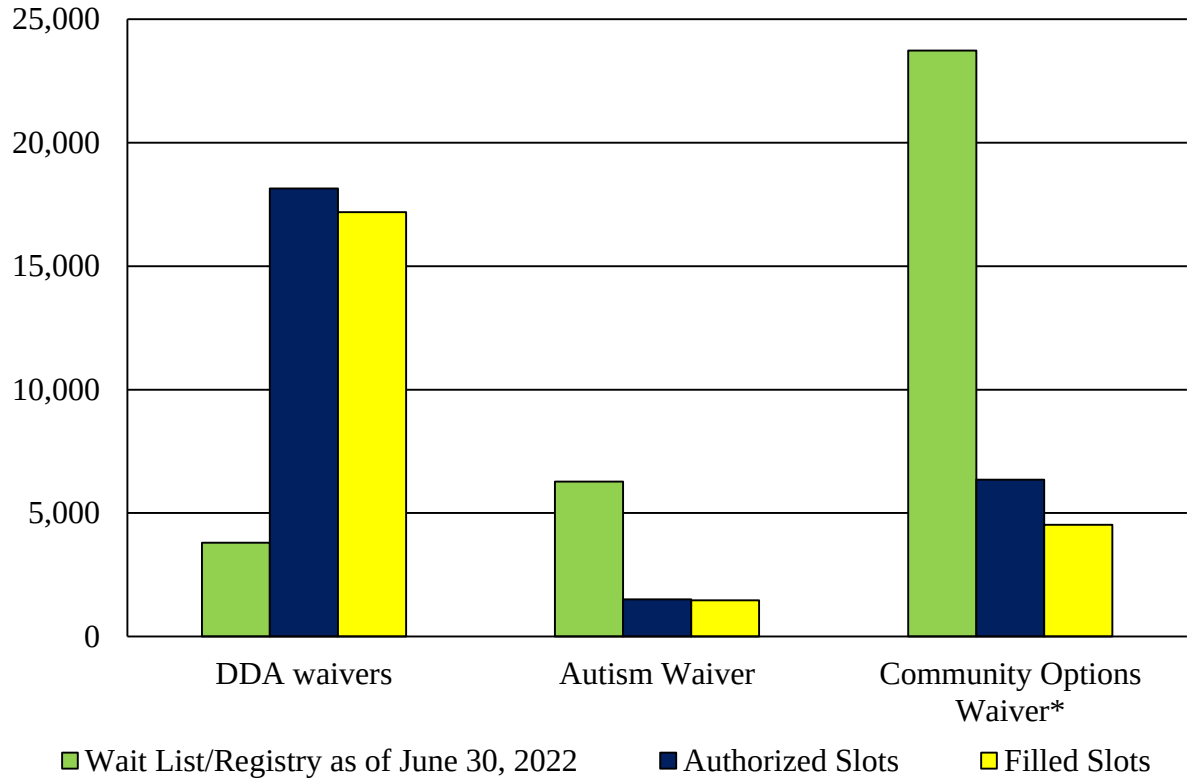
- the Community Pathways Waiver;
- the Community Supports Waiver; and
- the Family Supports Waiver.

Other HCBS waivers include the Waiver for Children with Autism Spectrum Disorder (Autism Waiver) administered by the Maryland State Department of Education (MSDE) in partnership with Medicaid and the Waiver for Individuals with Brain Injury administered by BHA.

Current Status of HCBS Waiver Wait Lists and Registries

Growing demand for certain HCBS waivers has led MDH to maintain significant wait lists and registries of individuals who have requested HCBS but have not completed the eligibility determination or application process. As shown in **Exhibit 7**, MDH and MSDE reported wait lists or registries ranging from 3,805 to 23,730 individuals as of June 30, 2022, across DDA's waivers, the Autism Waiver, and the Community Options Waiver.

Exhibit 7
Slot Capacity and Wait List Counts for Home- and Community-based Services Waivers
Fiscal 2022



DDA: Developmental Disabilities Administration

*Fiscal 2022 filled Community Options Waiver slots reflect unique users from July 2021 to March 2022 only and do not capture complete enrollment.

Note: DDA tracks individuals requesting home-and community-based services through all three of its waivers on one waiting list.

Source: Maryland Department of Health; Hilltop Institute; Maryland State Department of Education; Department of Legislative Services

Fiscal 2022 participation in the Autism Waiver came close to using the State's full slot capacity as MSDE filled 1,471 of 1,500 total approved slots (98.1%). CMS initially authorized only 1,300 Autism Waiver slots in fiscal 2022 but approved 200 additional slots to serve transitioning youth remaining in the program past their age-out date during the COVID-19 public health emergency.

Despite keeping wait lists and registries, MDH reported that 17,237 of 18,150 authorized DDA waiver slots (94.7%) were filled at the end of fiscal 2022 and that 4,522 of 6,348 authorized Community Options Waiver slots (71.2%) were filled as of March 2022. To the extent that MDH was able to enroll more individuals in the Community Options Waiver in the last quarter of fiscal 2022, the number of filled slots is understated. However, MDH indicated in a response to the 2022 *Joint Chairmen's Report* (JCR) submitted on September 15, 2022, that only 77.5% of authorized Community Options slots were filled in fiscal 2021 and that the availability of slots is not a limiting factor for waiver enrollment.

MDH and the Hilltop Institute at the University of Maryland Baltimore County have previously offered multiple reasons for Maryland not utilizing its maximum approved Community Options slots. In a 2020 JCR response submitted May 13, 2021, the Hilltop Institute suggested that unused waiver capacity was likely a consequence of the significant administrative complexity of the eligibility screening process. The department has also provided the following reasons for not filling all authorized slots:

- by keeping the approved maximum capacity higher than recent slot occupancy experience, MDH has greater flexibility to make new placements and to avoid having to submit an application to CMS when more slots are needed;

- limited capacity of the provider network that serves entitlement and waiver populations (personal assistance agency providers, case management, etc.), with available capacity used by the entitlement programs; and

- outdated and ineffective methods for pulling people off the waiver registry, which used a first-come, first-served approach prior to calendar 2019 but transitioned to prioritizing individuals based on risk of institutionalization.

In budget hearing testimony provided during the 2022 session, DDA discussed the practice of reserving waiver capacity as a reason for not filling all authorized slots. Annually, DDA sets aside 1,281 slots across its three waivers for individuals admitted to the waiver on a State-specified priority basis. These priority groups include, but are not limited to, individuals who need an emergency placement, are court-involved, have aged out of Department of Human Services or MSDE programs, or were discharged from a psychiatric hospital.

Efforts Related to Registry Outreach and Eligibility Determination

Community Options Waiver

MDH described the Community Options Waiver registry triage process, which is outlined in **Exhibit 8,** in its September 15, 2022 response to the 2022 JCR request. Under this current procedure, individuals receive a Level One screening to determine their risk of institutionalization but are not screened for financial or medical eligibility before being added to the registry. The Hilltop Institute estimated that only 7,918 of 19,804 individuals on the registry as of

September 30, 2020, (40%) would have met the nursing facility-level of care needed to qualify for the Community Options Waiver. Furthermore, Hilltop projected that only 3,088 individuals (16%) would have enrolled in the waiver program based on the historical enrollment rate. As part of registry operations, the MDH Division of Participant Enrollment and Service Review periodically reviews the registry to remove individuals who are deceased, no longer interested in waiver services, or are receiving services in a nursing facility.

Exhibit 8

Community Options Waiver Registry Triage and Application Process

1. **An individual calls Maryland Access Point (the Aging and Disability Resource Center administered by the Maryland Department of Aging to connect individuals with home- and community-based services and other long-term care information) and completes a Level One screening to determine priority group.** Beginning in calendar 2019, individuals placed on the Community Options Waiver registry were prioritized into six groups based on risk of institutionalization.

2. **On a monthly basis, 300 individuals from the Community Options registry are invited to apply for the waiver.** Of those invited to apply, 80% are chosen based on risk of institutionalization, and 20% are chosen based on time spent on the registry (first-come, first-served).

3. **Over the span of 63 days, the Division of Participant Enrollment and Service Review under the Maryland Department of Health (MDH) Office of Long Term Services and Supports provides phone and mail outreach to individuals who have received applications.** Staff attempt to ensure receipt of the application and determine whether individual is interested in applying before removing them from the registry.

4. **Medical and financial eligibility are determined when an individual submits a waiver application for consideration.** Upon receipt of a waiver application, local health departments determine medical eligibility for an individual who was invited to apply. The Maryland Department of Health determines financial eligibility.

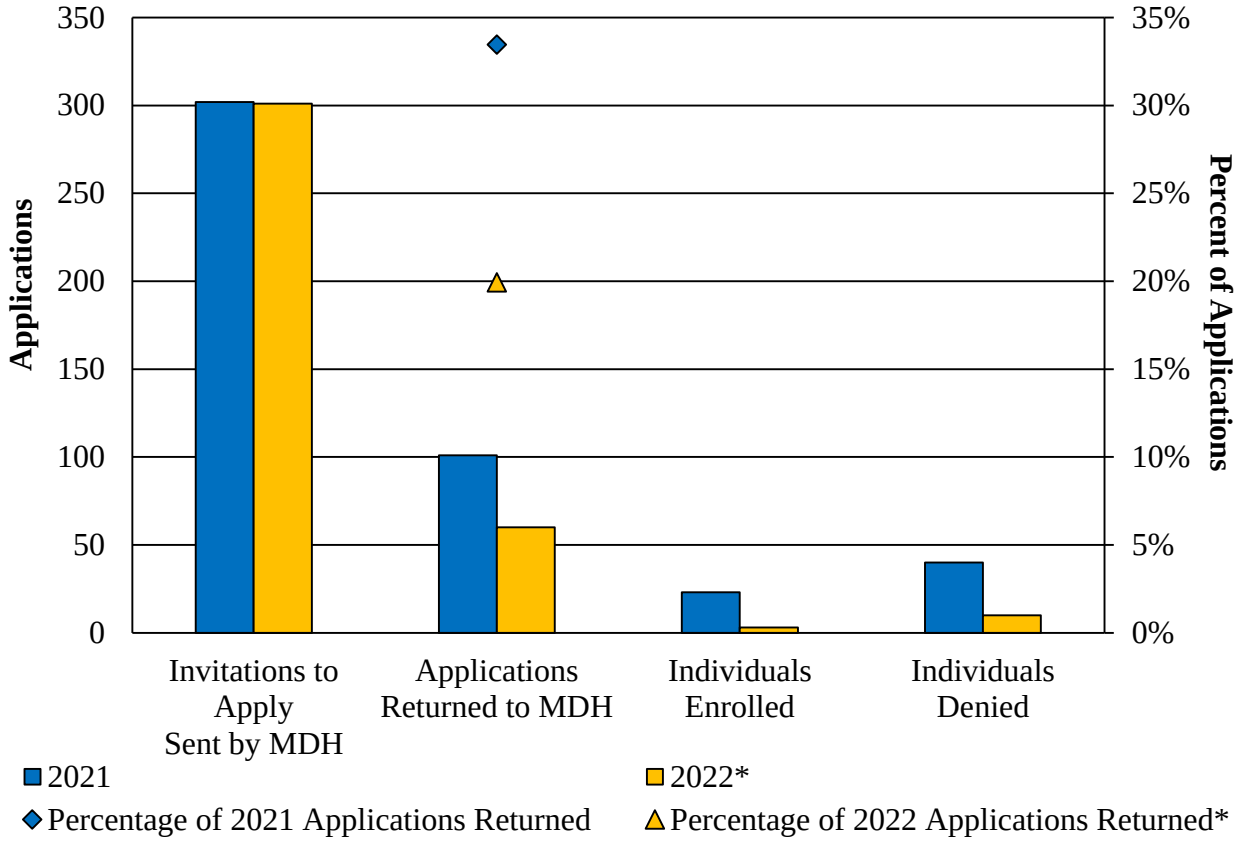
5. **A supports planning provider meets with the applicant deemed medically and financially eligible and develops a person-centered plan of service to address the applicant's needs.**

6. **Upon receipt of the person-centered plan, MDH reviews the requested services and renders a decision based on program requirements, including medical necessity and necessity to prevent institutionalization.**

Source: Maryland Department of Health; Department of Legislative Services

As shown in **Exhibit 9**, MDH provided registry outreach by sending about 300 waiver applications each month in fiscal 2021 and in the first six months of fiscal 2022; however, only an average of 33% of applications were returned per month in fiscal 2021. The average monthly application return rate in the first half of fiscal 2022 fell to 20%. MDH offered various reasons for individuals not returning Community Option Waiver applications, including relocation to another state, the individual no longer having an interest in or need for waiver services, or MDH not being able to reach the individual. Despite the low return rate, the registry grew from 19,804 to 23,730 individuals over a similar period (September 30, 2020 to June 30, 2022).

Exhibit 9
Average Monthly Community Options Waiver Registry Outreach Results
Calendar 2021-2022*



MDH: Maryland Department of Health

*Calendar 2022 reflects average monthly data from January 1, 2022, to July 13, 2022.

Source: Maryland Department of Health; Department of Legislative Services

In fiscal 2022, MDH was allocated 6 new positions specifically to aid the Community Options Waiver in filling spots effectively. Even with this staffing support and low application return rates, MDH did not determine eligibility for all applications received monthly as the department enrolled or denied an average of 13 individuals out of 60 applications submitted per month in the first six months of fiscal 2022. Chapter 738 of 2022 doubled registry outreach efforts by requiring MDH to send waiver applications to 600 individuals on the registry per month, beginning October 1, 2022. Based on MDH's average monthly application return rates reported in fiscal 2021 and the first half of 2022, this additional outreach could increase the number of applications returned each month by 60 to 97 applications. This is concerning as MDH was not able to process all applications it received each month on average when only 300 applications were sent.

MDH should provide an update on how it is implementing the Community Options Waiver registry outreach required by Chapter 738. Additionally, the department should explain why it does not currently complete the eligibility determination process for all applications received each month on average. The department should also discuss any recent efforts to improve waiver application processing and streamline eligibility determination, including current staffing levels and future staffing needs to contact individuals on the registry and process applicants' technical and financial eligibility.

Autism Waiver

MSDE and MDH contract with a vendor to maintain a registry of individuals interested in receiving Autism Waiver services that totaled 6,274 children as of June 30, 2022. The Autism Waiver registry differs from the Community Options Waiver registry in that it solely offers applications to individuals on a first-come, first-served basis. In a 2022 JCR report submitted on September 1, 2022, MSDE noted that according to the Medicaid and Children's Health Improvement Program Payment and Access Commission, there are no nationally standardized practices to manage HCBS waitlists. The report indicated that a first-come, first-served approach incentivizes families to add their child's name and information to the registry before the child is eligible for the waiver program due to the expectation that there will be a long wait before a slot becomes available. MSDE data appears to confirm this concern as the agency reported that 296 individuals on the Autism Waiver registry as of September 30, 2021, had entered the registry approximately eight years prior to when their screening and eligibility determination began.

Chapter 464 of 2022 (the End the Wait Act) makes substantial changes to the Autism Waiver registry by requiring MDH to develop a plan to reduce the registry that includes conducting eligibility determinations of individuals on the registry and providing services to at least 50% of individuals determined eligible beginning in fiscal 2024. MSDE's 2022 JCR response described this change as turning the Autism Waiver registry into a wait list and provided an update on its efforts to determine waiver eligibility for individuals on the registry. This process involved multiple attempts at data matching names on the registry with other information systems that could provide details related to the child's technical eligibility status, such as age and current diagnosis of autism spectrum disorder.

Following initial eligibility determination attempts, MSDE requested that the special education directors in each local education agency (LEA) complete a technical eligibility data match spreadsheet for all children on the registry. Although not all LEAs had provided this data at the time the JCR response was submitted, preliminary results for 1,778 children on the registry found that up to 52% could meet technical eligibility requirements though additional review would be needed to make an eligibility determination. For children who did not meet technical eligibility requirements in this screening process, MSDE planned to collaborate with MDH to provide guidance to the vendor to request additional information from these families. Outreach would include email, phone, and text communication to children on the registry requesting that they confirm their interest in waiver services and submit proof of eligibility.

As of September 1, 2022, MSDE anticipated that it would complete its technical eligibility determination process of all children on the Autism Waiver registry by March 1, 2023, and would send invitations to all families determined waiver-eligible so that they could apply beginning July 1, 2023.

Efforts to Reduce HCBS Wait Lists and Registries

In addition to requiring MDH to develop a plan to reduce the Autism Waiver registry, Chapter 464 also requires MDH to develop plans to reduce registries and wait lists for all other HCBS waiver programs by 50%. These plans were due January 1, 2023, and were not submitted as of January 23, 2023. **MDH should comment on when it expects to submit these plans to reduce the wait lists and registries for all HCBS waivers that it administers. Additionally, the department should discuss whether it plans to pursue changes under any other HCBS waiver programs that would allow eligibility determination while individuals remain on the registry or wait list.**

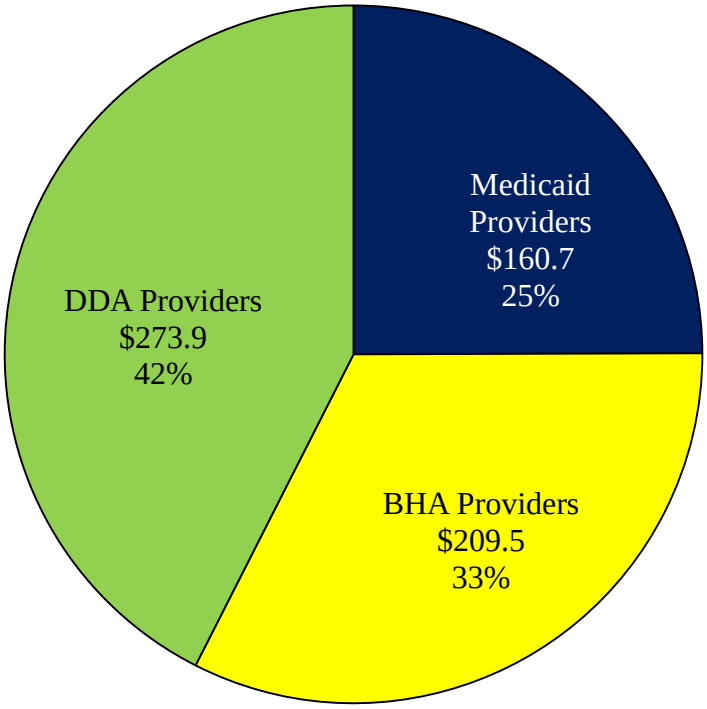
2. HCBS Providers Receive Temporary Rate Increases with ARPA Funds

A provision in the ARPA provided significant federal funding for HCBS expansion efforts by authorizing a 10% enhanced federal match on qualifying HCBS expenses from April 1, 2021, through March 31, 2022. CMS issued guidance in May 2021, requiring that State fund savings resulting from the enhanced federal match be reinvested to enhance, expand, or strengthen HCBS under the Medicaid program by March 31, 2024. All funds reinvested into HCBS also receive the typical federal matching rate, providing additional federal funds through a secondary matching process.

As shown in **Exhibit 10**, actual primary federal matching funds and estimated secondary federal matching funds on HCBS spending total $644.2 million. DDA, BHA, and Medicaid are each expected to receive more than $150 million in ARPA funding, with DDA accounting for the highest share of total ARPA support at 42%. The legislature added language in the fiscal 2022 Budget Bill (Chapter 357 of 2021) specifying that ARPA funds attained for HCBS spending under each respective administration must be retained by that administration (*i.e.*, the estimated

$273.9 million in enhanced federal matching funds that DDA is expected to claim can only support DDA uses and cannot be transferred).

Exhibit 10
ARPA Support for Home- and Community-based Services
Fiscal 2021-2024
($ in Millions)



Total Estimated ARPA Reinvestment, Including Secondary Federal Match: $644.2 million

ARPA: American Rescue Plan Act of 2021
BHA: Behavioral Health Administration
DDA: Developmental Disabilities Administration

Note: ARPA reinvestment funds account for actual enhanced federal matching funds earned on home- and community-based spending between April 1, 2021, and March 31, 2022, as reported by the Maryland Department of Health (MDH) in its quarterly spending plan dated October 18, 2022. The Department of Legislative Services has estimated secondary federal matching funds to reflect MDH receiving more enhanced federal matching funds than initially anticipated.

Source: Maryland Department of Health; Department of Legislative Services

One-time HCBS Provider Rate Increases

Particularly for DDA and Medicaid, the fiscal 2022 budget language further specified the use of ARPA funding for HCBS by requiring that at least 75% of the enhanced federal matching funds be used on a one-time provider rate increase. Although not required by budget language, MDH is also reinvesting over 75% of enhanced Federal Medical Assistance Percentage funding generated by BHA for a one-time provider rate increase. MDH received federal approval for this use of funding and outlined the following rate increases that are funded with ARPA reinvestment funding through March 31, 2024, to ensure a minimum of 75% of funds support rate increases for eligible HCBS providers:

- 5.5% for developmental disability providers, retroactively applied to April 1, 2021;
- 5.4% for behavioral health providers, effective November 1, 2021; and
- 5.2% for long-term services and support providers under Medicaid, effective November 1, 2021.

MDH indicated that the fiscal 2024 budget plan continues to fund these rate increases beyond March 31, 2024, when all ARPA support for HCBS must be reinvested. Therefore, the fiscal 2024 allowance includes State funds in the last quarter to backfill the ARPA support.

In subsequent quarterly spending plans required by CMS, MDH has dedicated additional ARPA funds for emergency/temporary HCBS rate increases for specified providers. **Exhibit 11** outlines all rate increases that have been approved by CMS, including the varied timeframes for each rate increase. **Appendix 5** shows these rate increases and other uses of ARPA support for HCBS as a timeline.

Exhibit 11
HCBS Provider Rate Increases Funded with ARPA Support
Fiscal 2021-2024

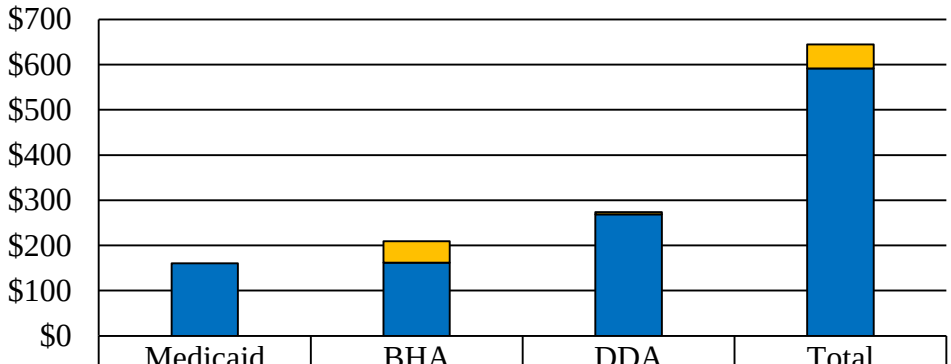
Provider Type	Rate Increases	Timeframe
Medicaid Providers		
All HCBS Providers	5.2%	Effective November 1, 2021 – Support with ARPA reinvestment for 2.5 years, then ongoing.
Autism Waiver; Community Options Waiver; Medical Day Care Waiver; and Model Waiver Providers	4.0%	One year – emergency rate increase in fiscal 2023.
BHA Providers		
All HCBS Providers	5.4%	Effective November 1, 2021 – Support with ARPA reinvestment for 2.5 years, then ongoing.
Brain Injury Waiver Providers	4.0%	One quarter – emergency rate increase in the first quarter of fiscal 2023 only.
DDA Providers		
All HCBS Providers	5.5%	Retroactive to April 1, 2021 – Supported with ARPA reinvestment for three years, then ongoing.
All HCBS Providers, Except TCM Providers	10.0%	One quarter – emergency rate increase for all DDA HCBS, except TCM in the third quarter of fiscal 2022 only.
TCM Providers	10.0%	One quarter – emergency rate increase for targeted case management providers in the second quarter of fiscal 2023 only.

ARPA: American Rescue Plan Act of 2021
BHA: Behavioral Health Administration
DDA: Developmental Disabilities Administration
HCBS: home- and community-based services
TCM: targeted case management

Source: Maryland Department of Health; Department of Legislative Services

As shown in **Exhibit 12**, overall federal support for HCBS rate increases has far surpassed the 75% minimum requirement, with 94% of ARPA funds across all MDH administrations supporting ongoing or temporary rate increases. MDH has largely budgeted fiscal 2023 and 2024 ARPA reinvestment for rate increases as State funds with the estimated federal fund participation, with exception of DDA. Under DDA, two proposed deficiencies allocate a total of $47 million in federal funds only in fiscal 2023 to account for one-time rate increases and competitive grants for providers described in further detail below.

Exhibit 12
ARPA Support for Home- and Community-based Services by Use of Funding
Fiscal 2021-2024
($ in Millions)



	Medicaid	BHA	DDA	Total
Spending on Other Uses	$0	$48.0	$5.0	$53.0
Spending on Rate Increases	$160.7	$161.5	$268.9	$591.2
Percentage Spent on Rate Increases	100%	77%	98%	92%

BHA: Behavioral Health Administration
DDA: Developmental Disabilities Administration

Note: Spending on certified peer recovery report specialists for substance use disorder is estimated as the general fund costs over two years under BHA's other uses of spending under BHA's other uses of spending.

Source: Maryland Department of Health; Department of Legislative Services

Other Uses of ARPA Support for HCBS

MDH has dedicated a portion (6%) of remaining ARPA funding for the following uses:

- Funding for the certified peer recovery support services program for substance use disorder (SUD). MDH estimates that this program would cost $24 million in total funds each year. In Exhibit 11, DLS assumes that this program will be funded for two years; and

- $5 million is allocated to DDA in fiscal 2023 through a proposed deficiency appropriation for competitive grants to assist providers with modernizing their IT platforms as they transition to the Long Term Services and Supports IT system.

The department's initial spending plan would have dedicated $10 million for competitive grants to DDA providers. In a letter dated September 28, 2021, CMS provided partial approval for MDH's initial spending plan and requested additional information about the nature of the planned competitive grants. These requests sought to clarify whether the grants would be awarded for certain unallowable uses, such as room and board. Additionally, the letter states that grants for capital investment and ongoing Internet connectivity costs would not receive the typical federal fund match on State spending. MDH later reduced the planned spending on competitive grants to $5 million in its October 18, 2022 quarterly spending plan, though it is not clear whether this is a fully allowable use for ARPA reinvestment funds. The department also acknowledges in its spending plan that this use of funding will not receive any federal fund participation. Further discussion can be found in the fiscal 2023 budget analysis for DDA – M00M.

3. Maryland Sees Downward Trend in Opioid-related Overdoses and Deaths

Background

The Heroin and Opioid Emergency Task Force and the Inter-Agency Heroin and Opioid Coordinating Council were established by executive order of Governor Lawrence J. Hogan, Jr. on February 24, 2015. Subsequent executive orders in calendar 2017 established the Opioid Operational Command Center (OOCC) and local Opioid Intervention Teams (OIT). These orders classified heroin and opioid addiction as a "threat to the public health, security, and economic well-being of the State" requiring the type of response due a natural disaster or public security risk. Oversight has been jointly managed. It is now housed under the MDH Administration.

During the 2017 session, several pieces of legislation were enacted to address issues related to opioid use including;

- limiting prescription supplies and increased penalties for illegal opioid distribution (Chapters 569 and 570 of 2017);

- easing restrictions on dispensing naloxone (Chapter 581 of 2017); and

- requiring school instruction on heroin and opioid addiction (Chapter 573 of 2017).

In addition, the Heroin and Opioid Prevention Effort (HOPE) and Treatment Act of 2017 (Chapter 571) outlined 10 priorities for MDH, including funding for expansion of drug court programs, a toll-free health crisis hotline, and new crisis treatment centers.

These State legislative efforts coincided with initiatives at the federal level, including the 21st Century Cures Act of 2016, which was intended to ease restrictions on the sharing of electronic health information and expand provider options for health care consumers. It was accompanied by new opioid prescription guidance through the Food and Drug Administration. A presidential executive order in March 2017 established a Commission on Combating Drug Addiction and the Opioid Crisis, whose work resulted in 56 recommendations pertaining to services and funding, including the need for block grant funding to reduce the administrative burden of state funding provision through different national sources. The recommendations of the commission were followed by enactment of the SUPPORT Act of 2018 to better guide and support medication-assisted treatment (MAT). Legislative adjustments continue at the state and national levels, while funding is awarded to states through federal grants and new legal settlements with opioid manufacturers and distributors.

While State general funds to MDH increased as a result of State legislation, Maryland has also received federal funds through the national response. Major federal funding block grants since 2017 have included two State Opioid Response (SOR) grants for totaling $167 million across multiple years, with some remaining funds allocated in fiscal 2024. A new, third SOR grant of approximately $38 million appears in the fiscal 2024 budget.

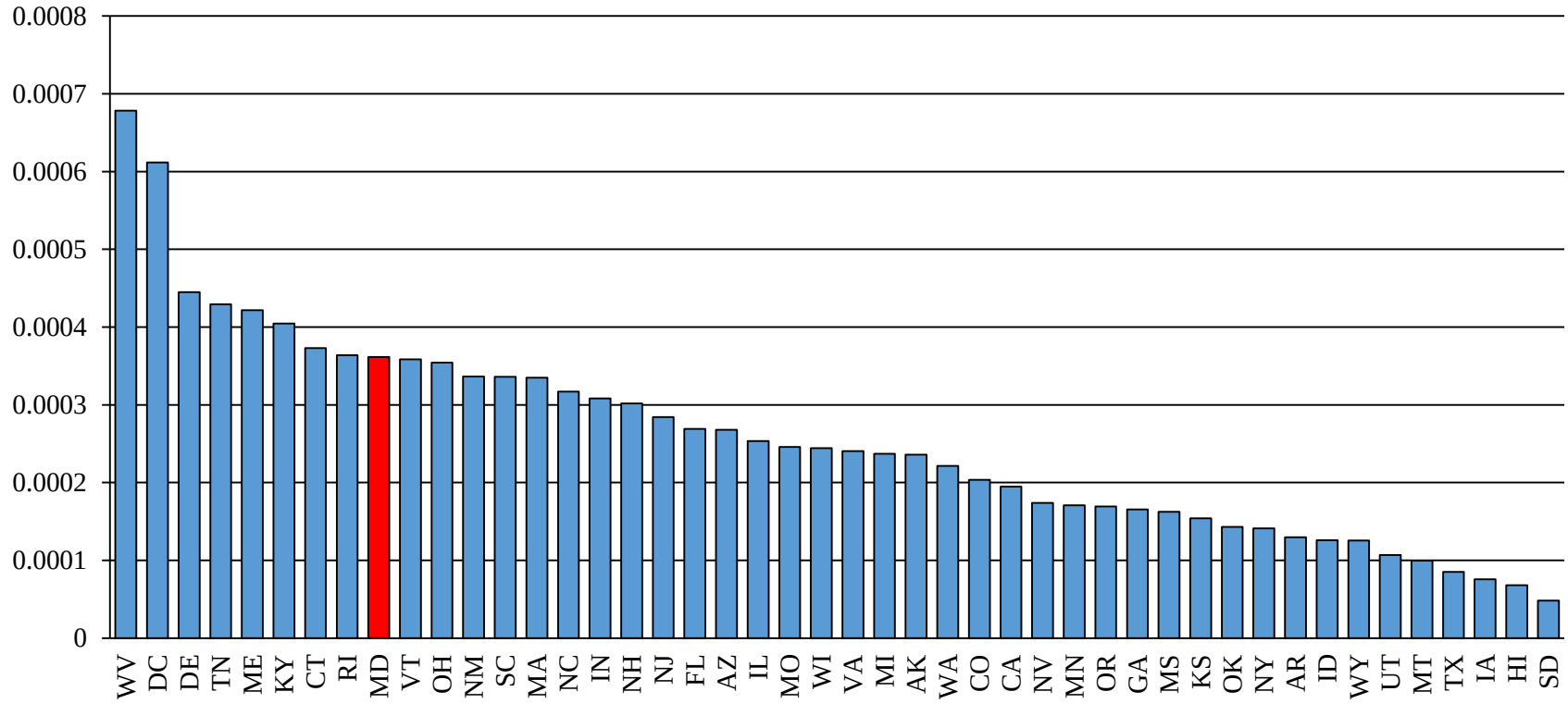
In response to the opioid epidemic a number of lawsuits have been filed against drug manufacturers and distributors. Most major lawsuits reached settlement in calendar 2021 and 2022 However, as of December 2022, some remain in the process of settlement. The Opioid Restitution Fund (ORF) was established in May 2019 as a result of Chapter 537 of 2019 to serve as a central destination for incoming settlement funds and a source of funding for a large network of public and private prevention and response programs in Maryland.

Just over 80% of the awarded funds from a McKinsey & Company settlement were deposited in July 2021 with the remainder expected over the next three fiscal years. New funding from the Purdue settlement appears in the fiscal 2024 budget. Settlements with Johnson & Johnson and distributors McKesson, AmerisourceBergen, and Cardinal Health were finalized in February 2022, Mallinckrodt in June 2022, a second McKinsey settlement in October 2022, and Teva and Allergan in December 2022. Initial payments for the February 2022 settlements were published in November 2022 and had been received by local governments as of mid-December. The fiscal 2023 working appropriation includes $24.8 million for the ORF, while the fiscal 2024 allowance includes just under $30 million.

Current Statistics

In July 2022, according to data from the Centers for Disease Control and Prevention (CDC) illustrated in **Exhibit 13**, Maryland ranked ninth in the nation in fatal opioid overdoses per 1000 residents, an improvement over previous years.

Exhibit 13
National Ranking of Fatal Opioid Overdoses Per 1,000 State Residents
July 2022

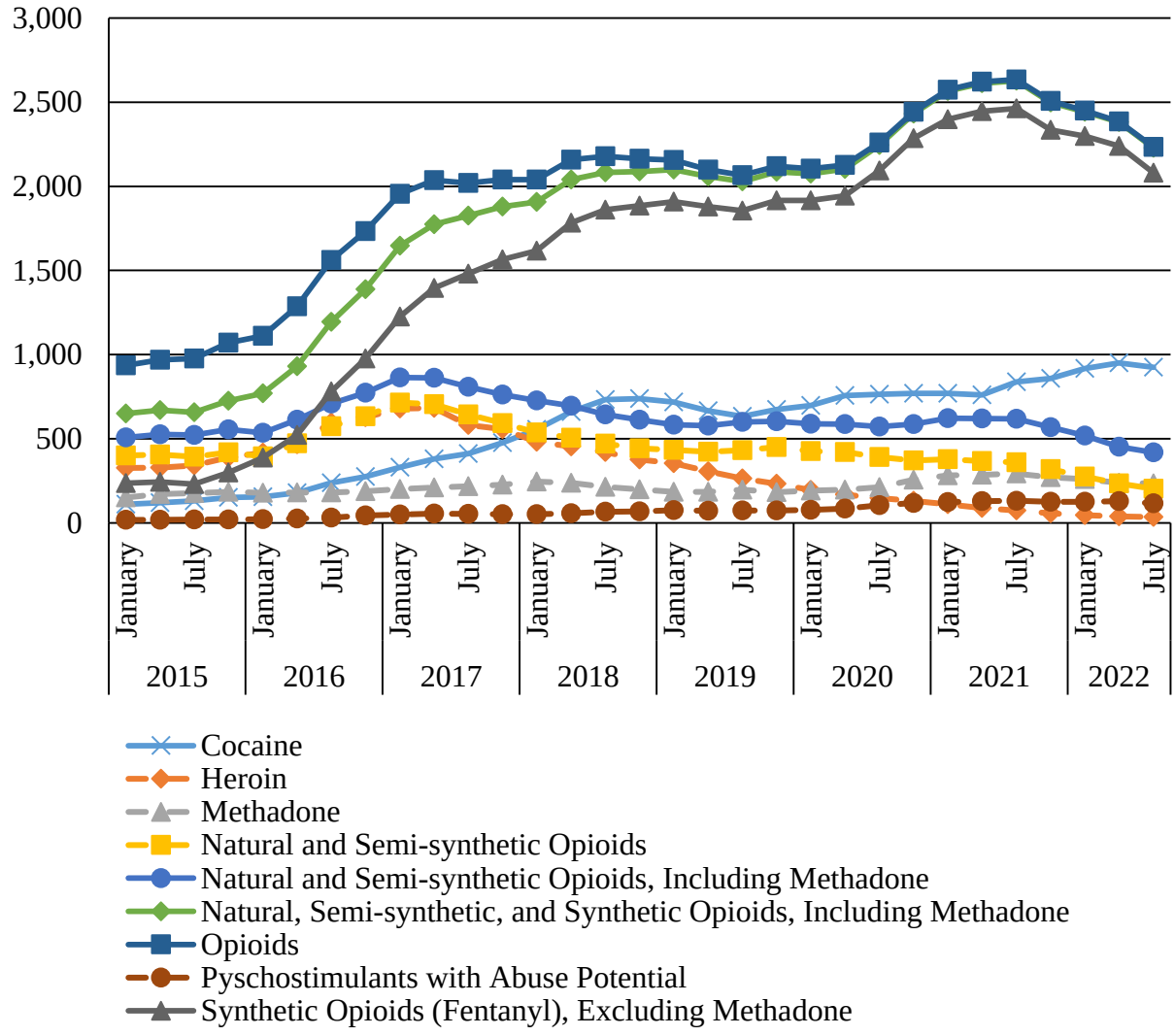


Note: Opioids includes natural; semi-synthetic; and synthetic opioids, including methadone, according to Centers for Disease Control and Prevention categorization.

Source: Centers for Disease Control and Prevention, U.S. Census Bureau

Any observation of change and potential causes requires further study; however, initial data indicates that Maryland has seen improvement in numbers of opioid-related fatalities and emergency department (ED) visits over the year ending in August 2022, consistent with a national trend. **Exhibit 14** shows a downturn in opioid fatalities with easing of pandemic restrictions. This is slightly steeper than the national trend. In addition, while deaths related to synthetic opioids have begun to decline, deaths from cocaine continued to increase and have seen only a small downturn in 2022.

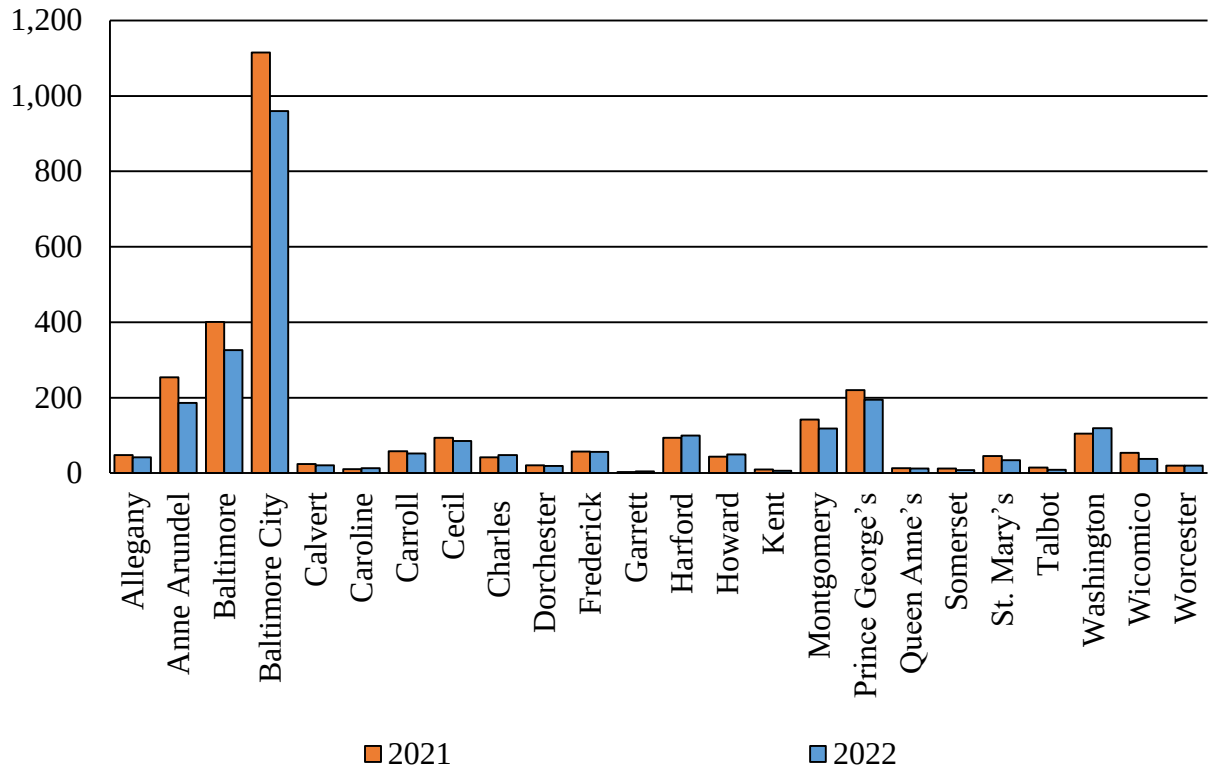
Exhibit 14
Drug Overdose Deaths in Maryland
Jan 2015 to July 2022



Source: U.S. Centers for Disease Control and Prevention

Data published by OOCC in partnership with OCME and the Vital Statistics Administration in the online Overdose Data Dashboard provides data by jurisdiction. **Exhibit 15** shows the distribution of overdose fatalities across Maryland by jurisdiction in 12-month periods ending in August 2021 and August 2022. All but seven jurisdictions exhibit decreases in fatal overdoses, the exceptions being Caroline, Charles, Garrett, Harford, Howard, Washington, and Worcester counties.

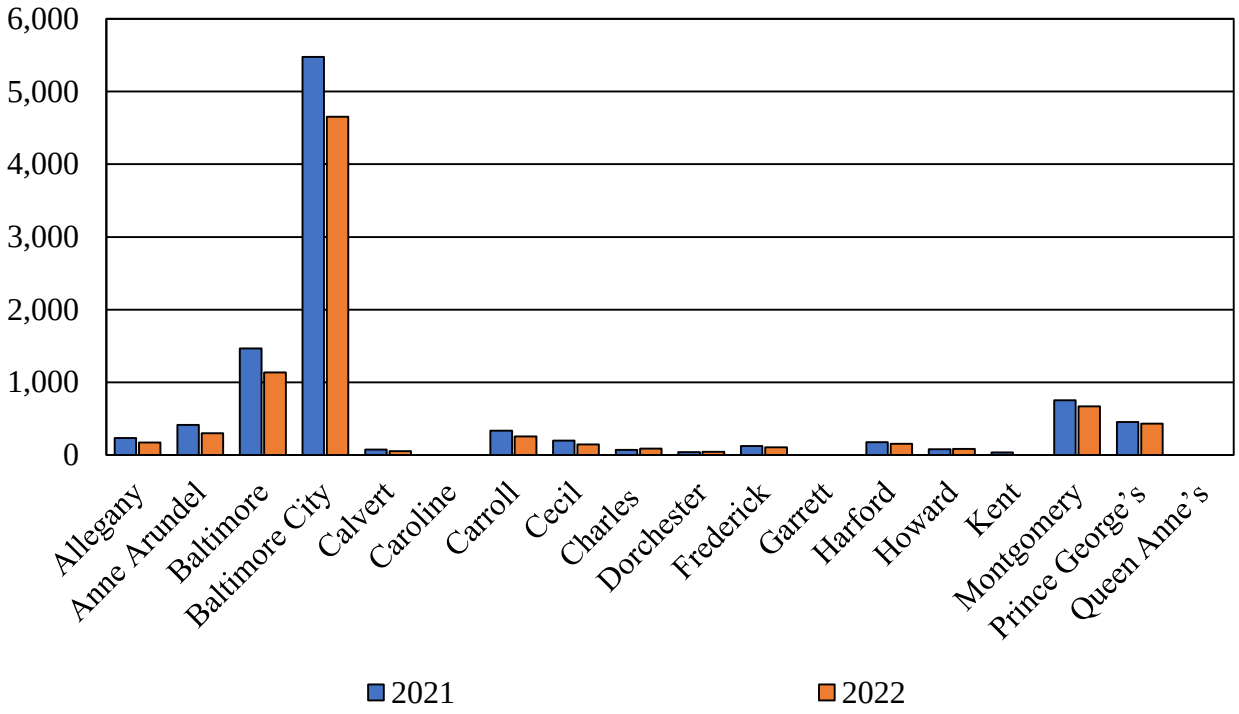
Exhibit 15
Opioid-related Deaths
2021 and 2022 Years Ending in August



Source: Opioid Operational Command Center

Exhibit 16 provides data on nonfatal, opioid-related ED visits across Maryland counties. Of the 18 counties that reported ED visit data, 15 (83%) saw reductions in opioid ED visits, ranging from a 2.5% decrease in Washington County to a 65.2% decrease in Talbot County. The three counties that saw increases in opioid-related ED visits were Howard, Dorchester, and Charles, at 2.5%, 7.5%, and 24.3%, respectively.

Exhibit 16
Nonfatal Emergency Department Visits
2021 and 2022 Ending in September



Source: Opioid Operational Command Center

Current Programs and Funding

MDH Administration and BHA serve the bulk of opioid response needs in Maryland. **Exhibit 17** shows the overall funding for major SUD programs and Medicaid reimbursements in fiscal year 2023 and fiscal 2024.

Exhibit 17
Substance Use Disorder Response Funding
Fiscal 2023-2024

	Working Appropriation 2023	Allowance 2024	Change 2023-2024
Prevention Programs			
Prescription Drug Monitoring Program	$1,675,326	$2,011,755	$336,429
Overdose Data to Action Project	6,990,577	1,443,901	-5,546,676
Substance Abuse Block Grants (SABG)	9,221,421	9,283,419	61,998
SABG COVID-19 Supplemental Funding	5,769,277	2,253,376	-3,515,901
Office of Controlled Substances Administration	2,083,151	2,436,943	353,792
Miscellaneous State of Maryland Prevention Programs	7,426,144	4,991,419	-2,434,725
Prevention Total	**$33,165,896**	**$22,420,813**	**-$10,745,083**
Treatment Programs			
Substance Abuse Recovery and Treatment Block Grants	$74,726,254	$93,689,876	$18,963,622
Drug Treatment Courts	2,429,457	3,009,216	579,759
Maryland Department Recovery Network	1,182,116	1,110,984	-71,132
Continuum of Care Services	8,125,304	11,260,333	3,135,029
Buprenorphine Initiative	3,415,649	4,627,830	1,212,181
SABG	14,941,538	16,043,860	1,102,322
Opioid Restitution Fund	24,233,733	29,000,000	4,766,267
Maternal Opioid Misuse Pilot Program	521,114	1,309,055	787,941
Residential Treatment	130,024,738	148,441,163	18,416,425
Ambulatory Care	50,189,528	61,406,540	11,217,012
Miscellaneous State of Maryland Response Programs	14,417,040	4,977,258	-9,439,782
Treatment Total	**$324,206,471**	**$374,876,115**	**$50,669,644**
Total	**$357,372,367**	**$397,296,928**	**$39,924,561**

Source: Governor's Fiscal 2024 Budget Books

Prevention

MDH manages the Prescription Drug Monitoring Program (PDMP), which tracks the prescribing of medications containing controlled substances (Schedules II-V) to identify and assess risks of harmful drug interactions. The fiscal 2024 allowance of approximately $2 million for PDMP is a 20% increase from fiscal 2023 and made up of mostly general funds.

MDH also receives federal funding from the Substance Abuse and Mental Health Services Administration (SAMHSA) for a wide variety of prevention and response activities across its sub-agencies, including Substance Abuse Prevention and Treatment Block Grants (SABG) issued to LHDs and service providers, and Overdose Data to Action (OD2A) grants, which support overdose data collection and management efforts. In response to the impact of COVID-19 on substance usage and opioid epidemic response efforts, supplemental funding has been provided through the ARPA and the Coronavirus Response and Relief Supplemental Appropriations Act. The fiscal 2024 allowance for MDH includes approximately $67 million in federal funds outside of Medicaid reimbursements for substance abuse prevention and response activities, over $9 million through SAMHSA, and approximately $38 million from COVID-19 stimulus funds.

Response: OOCC and Data Collection

OOCC managed under the Office of the Secretary is a hub for data sharing and coordination between State and local agencies to address the opioid crisis. OOCC collects, analyzes, and facilitates data sharing relevant to the epidemic from State and local sources; develops a memorandum of understanding among State and local agencies that provides for the sharing and collection of health and public safety information and data relating to the heroin and opioid epidemic; assists and supports local OITs; and coordinates training and the allocation of resources for State and local agencies addressing the threat to the public health, security, and economic well-being of the State. The fiscal 2024 allowance for OOCC is level funded compared to the fiscal 2023 appropriation, with $5 million proposed in administrative expenses and $10 million in grant funding. Of the total grant expenditures, a block grant of $4 million provides funding to 24 local OITs to meet community-specific heroin and opioid prevention, enforcement, and treatment needs, and the remaining $6 million is awarded through competitive grants to government agencies or community-based organizations.

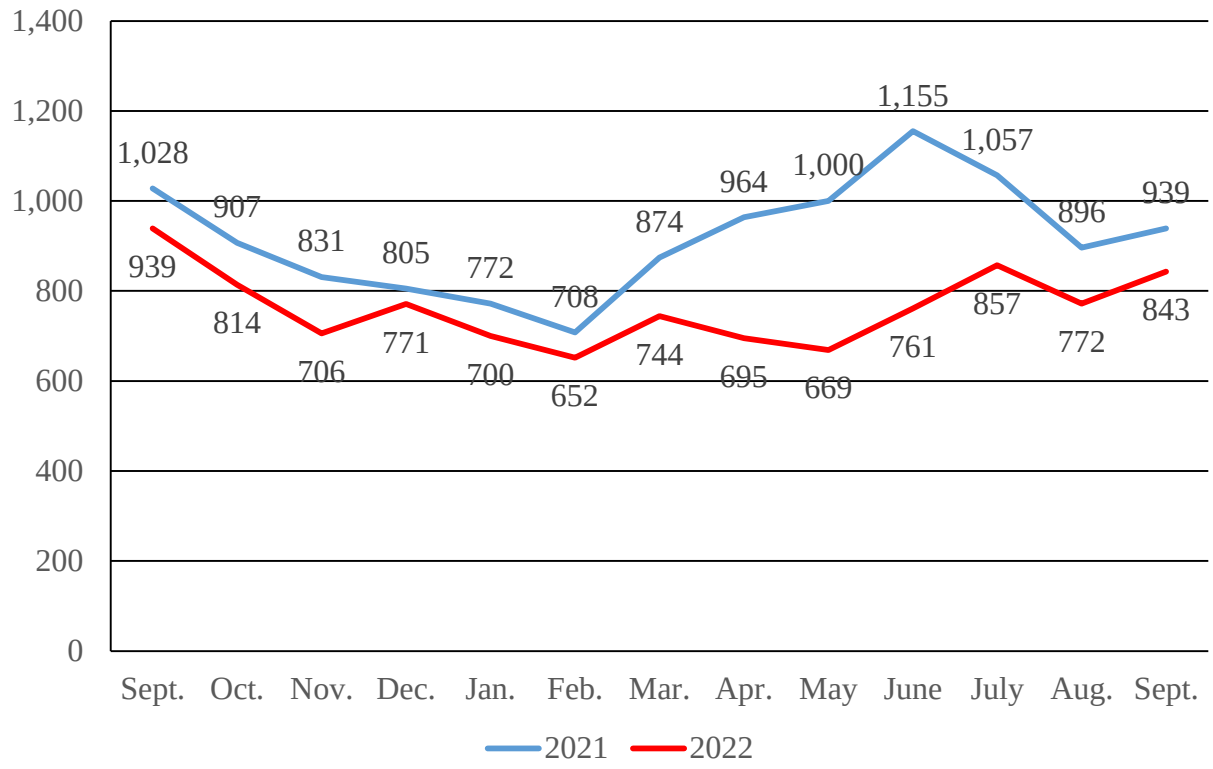
CDC has provided federal funding grants through its OD2A program to support overdose data collection efforts that inform prevention and response strategies. The fiscal 2024 allowance includes $1.5 million in OD2A funding, a near 80% decrease from the fiscal 2023 working appropriation, due to the discontinuation of the OD2A grant that has funded the program since fiscal 2020.

Response: Harm Reduction

MDH has also embraced multiple harm reduction initiatives to alleviate the most adverse effects of opioid usage. Recent legislation (Chapter 532 of 2019) requires State prison systems to conduct screenings for opioid use disorder and deploy MAT to individuals as needed to prevent

severe withdrawal symptoms and aid in recovery. Naloxone distribution has also been a key part of the State's response to the opioid crisis. When administered shortly after a drug overdose, naloxone can save lives. MDH launched Maryland's Overdose Response Program (ORP) in 2014 to train and certify individuals most able to assist someone at risk of dying from an opioid overdose when emergency medical services are not immediately available. Naloxone is available to individuals through a doctor's prescription, directly from a pharmacist, or from a local ORP. As shown in **Exhibit 18**, Naloxone was distributed less often by Emergency Medical Services (EMS) in 2022 compared to 2021. This decrease does not mean, however, that naloxone utilization across the State has decreased. PDMP data on naloxone providers outside of EMS, OPR, or Medicaid-funded is privileged and confidential.

Exhibit 18
Naloxone Administrations by EMS Personnel
2021 and 2022 Years Ending in August



EMS: emergency and medical services

Source: Opioid Operational Command Center

Additional harm reduction activities include a syringe services program, which is funded through State-generated rebates from an HIV prevention program, and a maternal opioid misuse grant program, which receives federal funding from the Center for Medicare and Medicaid Innovation The grant program provides enhanced case management and care coordination services to pregnant individuals with opioid use disorder and their children. Grant activities include direct intervention from Medicaid managed care organizations and provider capacity-building in treating individuals with opioid dependency. Each of these two programs are budgeted at approximately $1 million in the fiscal 2024 allowance.

Response: Treatment

In addition to SABG funding expended at the local level on opioid use response activities, the State funds various programs and initiatives to support individuals with recovery from opioid addiction. In total, the fiscal 2024 allowance for MDH is targeted toward recovery programs and initiatives, with over $250 million specifically slated for treatment programs including residential treatment and programs supported by federal block grants. Nearly 80% of the grant funding is to support nonviolent drug offenders, the Maryland Department Recovery Net, the Buprenorphine Initiative, and the Substance Abuse Treatment Outcomes Partnership Fund. The residential treatment program through BHA provides similar services for pregnant women and women with dependent children, individuals in the criminal justice system, and individuals in the Public Behavioral Health System needing State-funded residential care.

Updates

1. CRF – State to Receive $16 Million Payment in Fiscal 2023 from Sales Year 2004 Multistate Litigation

The CRF, established by Chapters 172 and 173 of 1999, is supported by payments made by tobacco manufacturers under the Master Settlement Agreement (MSA). Through the MSA, the settling manufacturers pay the litigating parties substantial annual payments in perpetuity and conform to restrictions on marketing to youth and the general public. Litigating parties include 46 states (Florida, Minnesota, Mississippi, and Texas had previously settled litigation), 5 territories, and the District of Columbia. The distribution of MSA funds among the States is determined by formula, with Maryland receiving 2.26% of MSA payments, which are adjusted upward for inflation and downward for volume and prior settlements.

The Nonparticipating Manufacturer Adjustment

One of the conditions of the MSA was that the states take steps toward creating a more "level-playing field" between participating manufacturers to the MSA (and thus subject to annual payments and other restrictions) and nonparticipating manufacturers to the agreement. This condition is enforced through an additional adjustment to the states' annual payments, the nonparticipating manufacturer adjustment. The participating manufacturers have long contended that the nonparticipating manufacturers have avoided or exploited loopholes in state laws that give them a competitive advantage in the pricing of their products. If certain conditions are met, the MSA provides a downward adjustment to participating manufacturers' contribution.

Under the MSA, participating manufacturers may pursue the nonparticipating manufacturer adjustment on an annual basis. To prevail and reduce their MSA payments, participating manufacturers must show that they experienced a demonstrable market share loss of over approximately 2%, that the MSA was a significant factor in that loss, and that a state was not diligently enforcing its qualifying statute (Chapter 169 of 1999 with subsequent revisions in the 2001 and 2004 sessions).

Sales Year 2003 and 2004 Arbitration Findings and Budgetary Impact

Litigation regarding the nonparticipating manufacturer adjustment started in 2005, beginning with the nonparticipating manufacturer adjustment for sales year 2003. Arbitration regarding the "diligent enforcement" issue for sales year 2003 commenced in July 2010. Maryland was 1 of 15 states that did not settle with participating manufacturers and was 1 of 6 states that were found to not have diligently enforced their qualifying statute. The arbitration panel found that Maryland lacked dedicated and trained personnel to conduct enforcement efforts and that the Comptroller's Office in particular failed to meaningfully participate in enforcement efforts.

Based on the arbitration ruling, Maryland not only forfeited approximately $16 million that the participating manufacturers placed in escrow for the 2003 sales year but, under the MSA

arbitration framework, also saw its fiscal 2014 payment reduced by $67 million based on the panel's assessment that those states that settled before arbitration could not be found as nondiligent. Subsequent litigation reduced Maryland's fiscal 2014 payment loss to $13 million. States that settled with the participating manufacturers realized a one-time cash windfall with the release of funds from disputed payment escrow accounts for sales year 2003 through 2012. However, under the terms of the settlement, participating manufacturers were given credit for future payments from those states (*i.e.* reducing the payments to those states). Those states also had to enact new legislation and are now held to an enhanced standard in the nonparticipating manufacturer adjustment disputes.

The participating manufacturers sought a multistate arbitration related to sales year 2004 for Maryland and the other states that did not settle the sales year 2003 litigation. Arbitration on sales year 2004 began in fall 2018 with eight states involved, and New Mexico later joined as a ninth state in the arbitration. On September 1, 2021, the Office of the Attorney General announced that a panel of three arbitrators decided in favor of Maryland that it diligently enforced the qualifying statute. As a result, the State budget reflects $16 million in principle released from escrow as CRF revenue in fiscal 2023. Chapters 41 and 42 require payments received by the State as a result of litigation related to the State's enforcement of State law regarding the MSA to go into a separate account that may only be used to supplant the general fund appropriation for settlement payments to HBCUs. Therefore, $16 million from the separate CRF account is budgeted in fiscal 2023 for the HBCU settlement.

Sales Year 2005 through 2007 Ongoing Litigation

The next round of arbitration has begun for Maryland and nine other states, with Maryland's hearing set to begin in March 2023. This arbitration will determine settlements for sales year 2005 through 2007 at once. If Maryland is found to have diligently enforced the qualifying statute, the State will receive approximately $25 million released from escrow. Although a decision could be made in calendar 2023, any financial impact on fiscal 2024 is uncertain.

For each disputed year since 2004, with some exceptions, an amount of Maryland's payments has been withheld and deposited into a disputed payments account. As of January 2023, there was approximately $260 million attributed to principal held on behalf of Maryland in this account. If the State were found to have diligently enforced the statute beginning in sales year 2005 and in the following years, at least this amount could be realized in revenue. Alternatively, Maryland could forfeit these funds and see its payment adjusted downward in certain fiscal years if the State were found to be nondiligent, as was seen for sales year 2003.

Fiscal 2022 to 2024 CRF Programmatic Support

Exhibit 19 provides CRF revenue and expenditure detail for fiscal 2022 to 2024. Despite the downward volume adjustment (-$13.4 million) being slightly greater than the upward inflation adjustment ($12.3 million), settlement payments increase by 2.6% over the period shown. This primarily results from increases in estimated MSA payments in fiscal 2023 and 2024.

Exhibit 19
Cigarette Restitution Fund Budget
Fiscal 2022-2024
($ in Millions)

	2022 Actual	2023 Working	2024 Allowance
Beginning Fund Balance	$3.4	$30.6	$7.4
Settlement Payments	165.1	166.9	169.4
NPM and other shortfalls in payments[1]	-24.9	-24.9	-24.9
Awards from disputed account	0.0	0.0	0.0
Other Adjustments	5.3	5.3	5.3
Tobacco Laws Enforcement Arbitration	0.0	16.0	0.0
Subtotal	***$148.9***	***$193.9***	***$157.2***
Prior Year Recoveries	$0.1	$2.5	$2.5
Total Available Revenue	**$149.0**	**$196.4**	**$159.7**
Health			
Tobacco enforcement, prevention and cessation	$10.0	$11.2	$11.3
Cancer	27.1	27.1	27.1
Substance Abuse	14.9	26.0	26.0
Breast and Cervical Cancer	13.2	13.2	13.2
Medicaid[2]	36.0	75.0	46.0
Subtotal	***$101.2***	***$152.5***	***$123.7***
Other			
Aid to Nonpublic Schools	$15.5	$18.0	$14.3
Historically Black Colleges and Universities Settlement Payment	0.0	16.0	0.0
Crop Conversion	0.9	0.9	0.9
Attorney General	0.8	1.6	1.6
Subtotal	***$17.2***	***$36.4***	***$16.8***
Total Expenses	**$118.4**	**$188.9**	**$140.5**
Ending Fund Balance	**$30.6**	**$7.4**	**$19.2**

NPM: nonparticipating manufacturer

[1] The NPM adjustment represents the bulk of this total adjustment.
[2] Medicaid funding in fiscal 2023 includes a $7 million deficiency appropriation.

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

Source: Governor's Fiscal 2024 Budget Books; Department of Legislative Services

CRF uses are restricted by statute. For example, at least 30% of the annual appropriation must be used for Medicaid. Historically, this requirement is often surpassed, and any shortfalls in anticipated revenue are accounted for in the Medicaid budget. A fiscal 2023 deficiency appropriation provides $7 million in available CRF revenue for Medicaid, increasing total fiscal 2023 CRF support for Medicaid to $75.0 million (39.7% of total uses). This requirement is also met in the fiscal 2024 allowance with $46.0 million budgeted for Medicaid (32.7% of total uses). However, this level of CRF spending under Medicaid is $29 million lower than the fiscal 2023 working appropriation, despite an anticipated ending fiscal 2024 fund balance of $19.2 million. DLS notes that this is a significant increase in the estimated ending CRF balance compared to previous prior year budget plans. From fiscal 2019 to 2023, as introduced, the budget anticipated an average ending CRF balance of $2.8 million.

Other activities funded with the CRF in fiscal 2024 include:

- the Tobacco Use Prevention and Cessation Program;
- the Cancer Prevention, Education, Screening, and Treatment Program;
- the Breast and Cervical Cancer Program;
- alcohol and substance abuse treatment and prevention programs;
- tobacco production alternatives; and
- nonpublic school support, including $8 million budgeted in fiscal 2024 for the Broadening Options and Opportunities for Students Today Program (a decrease of $2.5 million compared to the fiscal 2023 working appropriation).

Appendix 1
Proposed Fiscal 2023 Deficiencies
($ in Millions)

Program	General Funds	Special Funds	Federal Funds	Reimb. Funds	Total Funds
Behavioral Health Administration					
Funding for the Maryland SSI/SSDI Outreach, Access, and Recovery initiative	$0.1				$0.1
Funding for the Sheppard Pratt inpatient psychiatric care coordination center	0.5				0.5
Additional funding for behavioral health services	63.0		$4.5		67.5
Funding for the Mid-Shore Care Traffic Control Platform	0.1				0.1
Investments for BH system	8.0				8.0
Anticipated savings due to change in institutions for mental disease	-20.3				-20.3
Developmental Disabilities Administration					
Savings from a full year of enhanced federal match for community services	-99.8		99.8		0.0
Funding for post-secondary education grants	0.2				0.2
Federal ARPA funds for a one-time quarterly rate increase for DDA CS providers			42.0		42.0
Federal ARPA funds for competitive grants to assist providers in transitioning to LTSS and their software costs			5.0		5.0
Funding for the shortfall in the CS program	22.8				22.8

Program	General Funds	Special Funds	Federal Funds	Reimb. Funds	Total Funds
Public Health Administration					
Funding for a new Workforce Development Data System	0.2				0.2
Funding to the income tax preceptor programs for Physicians, RNs, and LPNs	0.1				0.1
Medicaid					
Funds to adjust enrollment, utilization, and rate projection assumptions for the traditional Medicaid and ACA Expansion populations	247.4	-$2.7	438.1	$2.6	685.5
Savings from a full year of enhanced federal match for Medicaid services	-588.5		588.5		0.0
Funds to adjust enrollment, utilization, and rate projection assumptions for the Maryland Children's Health Program enrollees, and to account for decreased special fund revenue due to the continued freeze on premium collections	20.5	-4.4	18.9		35.0
To fund behavioral health services for the Medicaid population	120.0		135.9		256.0
Fiscal 2023 Deficiencies Total	**-$225.70**	**-$7.15**	**$1,332.83**	**$2.61**	**$1,102.59**
Fiscal 2023 Targeted Reversions	**-$79.5**				**-$79.5**

ACA: Affordable Care Act
ARPA: American Rescue Plan of 2021
BH: Behavioral Health
CS: Community Services
DDA: Developmental Disabilities Administration
LPN: Licensed Practical Nurse
LTSS: Long Term Services and Supports
RN: Registered Nurse
SSI: Supplemental Security Income
SSDI: Social Security Disability Insurance

Source: Governor's Fiscal 2024 Budget Books

Appendix 2
Selected Caseload Estimates Used in Fiscal 2023 Budget Plan
Fiscal 2019-2024 Estimated

	2019	2020	2021	2022	Est. 2023	Est. 2024	Amt. Change 2023-2024	% Change 2023-2024
Medical Care Programs/Medicaid								
Medicaid Enrollees	908,819	939,251	1,017,671	1,074,294	1,114,689	1,062,775	-51,914	-4.7%
Maryland Children's Healthcare Program	154,321	143,031	143,387	156,248	162,568	146,877	-15,691	-9.7%
Affordable Care Act Medicaid Expansion	309,330	316,313	367,288	423,935	449,957	350,371	-99,586	-22.1%
Total	**1,372,470**	**1,398,595**	**1,528,346**	**1,654,478**	**1,727,214**	**1,560,023**	**-167,191**	**-9.7%**
Developmental Disabilities Administration[1]								
Residential Services	6,330	6,381	6,367	6,759	6,962	7,171	209	3.0%
Day Services	8,380	8,129	7,760	8,201	8,447	8,700	253	3.0%
Support Services	4,787	4,697	6,343	8,313	8,266	7,129	-1,137	-13.8%
Self-directed Services	983	1,121	1,574	1,540	1,586	1,634	48	3.0%
Total Services	**20,480**	**20,328**	**22,044**	**24,813**	**25,261**	**24,634**	**-627**	**-2.5%**
Targeted Case Management	23,012	23,445	25,294	25,477	26,210	26,210	0	0.0%
Unduplicated Count of Individuals Receiving Community-based Services	16,868	17,296	17,112	19,506	20,091	20,694	603	3.0%

[1] The service components show a duplicated count as individuals can be counted in multiple service types. Targeted case management is provided to individuals on the waiting list as well as individuals receiving community services. Residential services include individual family care. Day services include supported employment and summer programs. Support services include individual, family, and personal support services.

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

Appendix 3
Regular Personnel – Authorized Positions by Program
Fiscal 2022-2024

	Actual 2022	Working 2023	Allowance 2024	Amt. Change 2023-2024	% Change 2023-2024
MDH Administration	**3,937.3**	**3,925.8**	**3,928.3**	**2.5**	**0.06%**
State Psychiatric Hospitals	2,619.2	2,611.1	2,619.6	8.5	0.3%
Chronic Disease Hospitals	413.1	409.2	396.7	-12.5	-3.1%
Developmental Disabilities Administration Facilities	464.0	462.5	453.0	-9.5	-2.1%
Office of the Inspector General for Health	0.0	43.0	43.0	0.0	0.0%
Administration	441.0	400.0	416.0	16.0	4.0%
Office of Health Care Quality	**230.0**	**240.0**	**250.0**	**10.0**	**4.2%**
Health Occupations Boards	**282.5**	**285.5**	**287.5**	**2.0**	**0.7%**
Public Health Administration	**417.8**	**435.8**	**452.75**	**17.0**	**3.9%**
Prevention and Health Promotion Administration	**460.4**	**456.4**	**460.0**	**3.6**	**0.8%**
Behavioral Health Administration	**134.8**	**132.8**	**145.3**	**12.5**	**9.4%**
DDA	**176.5**	**174.0**	**179.0**	**5.0**	**2.9%**
Medical Care Programs Administration	**618.0**	**608.0**	**619.0**	**11.0**	**1.8%**
Health Regulatory Commissions	**112.9**	**116.9**	**117.9**	**1.0**	**0.9%**
Total Regular Positions	**6,370.2**	**6,375.2**	**6,439.8**	**64.6**	**1.0%**

DDA: Developmental Disabilities Administration
MDH: Maryland Department of Health

Note: Health Regulatory Commission figures include the Prescription Drug Affordability Board.

Source: Governor's Fiscal 2024 Budget Books

Appendix 4
Contractual Personnel – Authorized FTE Positions by Program
Fiscal 2022-2024

	Actual 2022	Appropriation 2023	Allowance 2024	Amt. Change 2023-2024	% Change 2023-2024
MDH Administration	**320.2**	**238.1**	**344.4**	**106.3**	**44.7%**
State Psychiatric Hospitals	263.1	167.6	249.4	81.8	48.8%
Chronic Disease Hospitals	19.6	22.7	23.3	0.6	2.6%
Developmental Disabilities Administration Facilities	12.4	12.4	13.7	1.3	10.2%
Office of the Inspector General for Health	0.0	4.6	5.1	0.5	10.9%
Administration	25.0	30.8	52.9	22.2	72.0%
Office of Health Care Quality	**6.4**	**13.5**	**14.0**	**0.5**	**3.7%**
Health Occupations Boards	**63.6**	**94.9**	**101.56**	**6.7**	**7.0%**
Public Health Administration	**83.9**	**82.2**	**50.4**	**-31.8**	**-38.7%**
Prevention and Health Promotion Administration	**111.0**	**96.5**	**120.0**	**23.5**	**24.4%**
Behavioral Health Administration	**58.8**	**58.6**	**51.8**	**-6.8**	**-11.5%**
Developmental Disabilities Administration	**33.3**	**22.1**	**36.2**	**14.1**	**63.7%**
Medical Care Programs Administration	**83.1**	**114.8**	**170.8**	**56.0**	**48.7%**
Health Regulatory Commissions	**8.4**	**11.3**	**11.7**	**0.4**	**3.4%**
Total Contractual Positions	**768.5**	**732.0**	**900.8**	**168.8**	**23.1%**

FTE: full-time equivalent

Source: Governor's Fiscal 2024 Budget Books

Appendix 5

Timeline for Spending American Rescue Plan Support for HCBS

Fiscal 2021-2024

($ in Millions)

	2021	2022				2023				2024			
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	**Total Cost Estimate ($ in Millions)**
	April 2021	July 2021	Oct. 2021	Jan. 2022	April 2022	July 2022	Oct. 2022	Jan. 2023	April 2023	July 2023	Oct. 2023	Jan. 2024	
Medicaid			5.2% rate increase takes effect November 1, 2021										$120.5
						Emergency 4% rate increase for the Autism Waiver; Community Options Waiver; Medical Day Care Waiver; and Model Waiver.							$40.2
BHA			5.4% rate increase takes effect November 1, 2021										$157.1
					On May 2, 2022, CMS approved MDH's quarterly spending plan including certified peer recovery specialists								$48.0*
						Emergency 4% rate increase for Brain Injury waiver							$4.4

75% required for rate increases	**25% other funds**

	2021	2022				2023				2024			
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	**Total cost estimate**
	April 2021	July 2021	Oct. 2021	Jan. 2022	April 2022	July 2022	Oct. 2022	Jan. 2023	April 2023	July 2023	Oct. 2023	Jan. 2024	**($ in Millions)**
DDA	5.5% rate increase retroactively takes effect April 1, 2021												$205.4
				Emergency 10% rate increase for all DDA HCBS, except TCM									$63.5
							Emergency 10% rate increase for TCM						
							On October 17, 2022, CMS approved MDH's quarterly spending plan including $5 million for DDA provider grants						$5.0
									Total Planned ARPA Enhanced Match Spending				**$644.2**

75% required for rate increases	**25% other funds**

TCM: Targeted Case Management

*Estimated as $24 million in total funds per year for two years.

Note: Starting dates for certified peer recovery supports and DDA providers grants are shown for the date that the Centers for Medicare and Medicaid Services approved that use of funds.

Source: Department of Legislative Services; Maryland Department of Health