



DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

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Delegate Joseline A. Pena-Melnyk, Chair, Health and Government Operations Committee  
Delegate Bonnie Cullison, Vice Chair, House and Government Operations Committee  
Members of Health and Government Operations Committee  
Annapolis, Maryland

Ladies and Gentlemen:

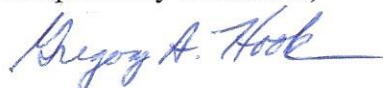
Although the Office of Legislative Audits (OLA) takes no position on legislation; OLA begs the Health and Government Operations Committee's indulgence to provide some audit perspective on the issue of liquidated damages, which is the subject of Senate Bill 773 - State Procurement – Liquidated Damages – Policies and Requirements. OLA has historically reported audit findings of State agencies failing to pursue liquidated damages for unsatisfactory contractor performance. In the past, OLA had recommended that the applicable agency simply assess and collect the permissible liquidated damages. The October 2022 audit report on the Maryland Department of Health's (MDH) Behavioral Health Administration (BHA), marked a change in OLA's past approach to liquidated damages.

Specifically, Finding 8 in the BHA report was that MDH had not assessed up to \$20.5 million in permissible liquidated damages and had not developed a formal policy on assessing of such damages. The element of the finding noting the lack of a formal policy represented an evolution of OLA's approach to the issue of liquidated damages. Basically, it documents OLA's acknowledgment that there may be compelling reasons why it might not be in the State's best interest to pursue liquidated damages and, because of that, places the onus on the agency to justify and document the rationale. Accordingly, OLA recommended that the development of such a policy include the criteria for the conditions warranting liquidated damages and the determination of the dollar amount to be assessed.

Inherent in this recommendation was establishing formal accountability for the decision-making process – in other words, how were the decisions reached and who signed off on the decision. It is worth noting that presently MDH continues to disagree with that recommendation; a recommendation which OLA believes is both reasonable and practical. Consequently, I have referred the matter to the Joint Audit and Evaluation Committee (JAEC) for future consideration.

Attendees at many past JAEC meetings will be familiar with one delegate's frequent questioning about accountability; specifically, what happened to the specific agency employee or employees responsible for an egregious audit finding. In other words, how were the employees whose actions or inactions were responsible for the audit findings held accountable? Often it is difficult for OLA to assess responsibility and OLA always defer an answer to the agency, which in turn usually provides some non-descript or evasive response. This revised OLA audit and reporting approach is an attempt to introduce the concepts of accountability and clarity into the decision not to pursue liquated damages; a similarity shared with the intent of SB 773.

Respectfully submitted,



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Legislative Auditor