



Testimony on SB 773
State Procurement – Liquidated Damages – Policies and Requirements

House Health & Government Operations Committee

March 29, 2023

POSITION: SUPPORT AS AMENDED

The Community Behavioral Health Association of Maryland (CBH) is the leading voice for community-based providers serving the mental health and addiction needs of vulnerable Marylanders. Our 110 members serve the majority of those accessing care through the public behavioral health system. CBH members provide outpatient and residential treatment for mental health and addiction-related disorders, day programs, case management, Assertive Community Treatment (ACT), employment supports, and crisis intervention.

The last three-plus years have been extremely hard on behavioral health providers due to the dysfunction of the vendor chosen to manage the public behavioral health system, Optum Maryland. When Optum went live on January 1, 2020, its authorization and claims payment systems immediately failed, requiring the Maryland Department of Health (MDH) to make advances – or estimated payments – to providers to keep them whole. These payments were based on 2019 claims history but the onset of the pandemic in 2020 disrupted normal service delivery patterns. Providers continued to bill Optum for services rendered but were reimbursed through estimated payments from Jan. 1, 2020 through early August of that year, since Optum’s system could neither process authorizations nor pay claims.

Providers are now repaying the money Optum says they owe from that period, even though millions of dollars of claims recoupment are in dispute. Optum is unable to provide the information needed for providers to verify that they owe money back on any particular claim due to Optum’s processing errors that resulted in claims being reprocessed multiple times. There is also no way to ensure that providers are not repaying the same claims multiple times. Those providers who have not yet been able to fully pay off their balances are having their claims clipped (a percentage of current billing for services rendered being withheld) and face a balloon payment at the end of the 12-month recoupment period. Those providers who cannot then pay in full will be turned over to Central Collections.

Optum failed to meet its contract deliverables in other ways as well. There have been security breaches, demonstrated failure to comply with HIPAA’s electronic transmission requirements, and failure to meet 11 of 12 Service Level Agreements (SLAs). The system’s shortcomings were thoroughly documented in an Office of Legislative Audits (OLA) report that came out on October 25 of last year. The Maryland Department of Health agreed with every issue raised and



recommendation made by the OLA with one exception; they disagreed that liquidated damages – up to \$20.5 million - should have been imposed on Optum for their failure to meet contract deliverables.

Providers are bearing the financial impact of Optum’s shortcomings while Optum continues to operate with impunity. It would be hard to overstate the damage Optum has created and the toll it has taken on providers and those with behavioral health conditions they serve. At a time when behavioral health demand is at an all-time high, providers are being forced to divert their attention to chasing authorizations and claims payment for services. The result has been service line closures and staff reductions; we expect more damage to surface as the balloon payments draw near.

SB 773 would codify the OLA recommendations by requiring the Board of Public Works to publish a model policy by Jan. 1, 2024 on the inclusion of liquidated damages in vendor contracts and the circumstances prompting the imposition of liquidated damages. As amended, the bill gives the BPW latitude in delegating the drafting of the model policy to the Procurement Improvement Council. It also requires documentation on the reason why liquidated damages were not pursued when a breach associated with a liquidated damages provision has occurred. Given the heavy weighting of low bid in the awarding of human service vendor contracts, such as the one awarded to Optum, it is critical that there be sufficient penalties and accountability for vendors that are unable or unwilling to meet contract deliverables.

We urge a favorable report on SB 773.