



# 2022 Legislative Session

Final Report | April 14, 2022

This report offers members a comprehensive look at the bills that CBH took a position on during the 2022 legislative session, as well as monitored bills that ultimately passed.

This year was a challenging session, with the extension and modification of COVID-related restrictions impacting witness testimony and legislative processes. CBH achieved historic success in funding and laid the groundwork for key systemic reforms. CBH's efforts to secure emergency legislation to address critical Optum concerns were unsuccessful. Beyond these headlines, CBH maintained its successful track record in Annapolis, ensuring that legislation addressed the needs of the behavioral health community across a wide array of issues.

*By the numbers*

- 2,500 bills introduced
- 24 hearings with CBH testimony
- 50% of members engaged in outreach to state legislators

## Summary

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4. Other bills impacting behavioral health providers and programs

## 1. Stabilize Maryland's public behavioral health system.

### A. Address behavioral health funding needs

**Rate increases.** There was some very good news for community-based behavioral health providers in this year's budget. Governor Hogan proposed – and the General Assembly adopted – historic rate increases to go into effect on July 1, 2022 for the FY2023 fiscal year. This includes:

- Increasing Medicaid E&M codes to 100% of Medicare reimbursement;
- A 7.25% increase for community-based behavioral health rates, based on of the 3.25% mandate included in the minimum wage legislation, as well as an additional 4.0% proposed in the Governor's supplemental budget.

*Rates in the public behavioral health system increased more in the nine-month period from November 2021 to July 2022 than they did in the system's first 20 years.*

Governor Hogan's supplemental budget also included an additional \$35 million to implement 23-hour stabilization centers in outpatient mental health centers (OMHCs).

**Rate-setting report.** Language in the Medicaid budget also helped secure CBH's goals related to behavioral health funding. On October 1, a report is due from the Behavioral Health Administration (BHA) on rate-setting for the public behavioral health system. The report must address:

1. Timeline for when current rate structure and rates were determined;
2. Whether a rate setting study was used to determine rates (and if not, why not) – and how actual provider expenditures were taken into account in the rate setting process;
3. A summary of rate increases and enhancements;
4. The status of any rate-setting studies and plans to conduct such studies;
5. A description of any federal requirements regarding rate setting (e.g., actuarial soundness, must cover certain costs, or cannot differ across certain service types, geographic locations, or provider types).

**Enhanced FMAP and eligibility reports.** Two additional reports from Medicaid are relevant to Maryland's behavioral health providers. On November 1, a report is due from MDH on the enhanced 10% FMAP for home and community-based services. This report must detail how much money Maryland received, what it was used for, and any other plans for spending in FY2023 and FY2024. Finally, quarterly reports on Medicaid redeterminations (should the federal public health emergency end) are due on November 1, 2022. and thereafter.

### B. Secure protections and transparency in Optum recoupment process

CBH sought to secure legislative strategies to address member concerns with the recoupment process during the 2022 legislative session. Legislative analysts estimated that the \$223 million to be recouped by Optum falls into three broad categories:

- **\$81 million** is associated with claims with dates of services during the estimated payment period that have been submitted by remain in a denied status;
- **\$71 million** is associated with recoupment of duplicate payments associated with negative balances, including both state and Medicaid negative balances.
- **\$60 million** reflects the remaining differential between what was paid to providers in estimated payments and the claims in Optum’s system. This total reflects any COVID-related dip in revenue, as well as any submitted claims that remain outstanding with no payer response for the estimated payment period.

CBH secured Optum-related reporting requirements in budget language adopted this year. This includes a \$1 million withhold from the Maryland Department of Health until it submits a recoupment report to the budget committees by August 1, 2022. The Senate Budget & Tax Committee and the House Appropriations Committee will have 45 days to review and comment on the report. The report must include:

1. Actual amount of overpayments outstanding;
2. Recoupment of overpayments;
3. Forgiveness of overpayments for those owing less than \$25,000 and use of the \$13 million general fund deficiency provided to MDH for that purpose by legislators;
4. Equity considerations around the forgiveness and recoupment options;
5. Steps taken to ensure that overpayments forgiven do not have associated claims that could be adjudicated, lowering the amount needed for debt forgiveness and drawing down federal financial participation.

In addition to the reporting requirements, CBH sought the passage of emergency legislation to increase due process protections during the recoupment process. HB 715/ SB 549 (Administrative Services Organization – Requirements for Retraction, Repayment, or Mitigation of Claims) had strong hearings in both the House and Senate committees. It was amended to resolve concerns raised by the Attorney General’s office about the bill’s constitutionality. Despite these changes, the bill did not pass out of committee in advance of the crossover deadline. Although it was ultimately voted favorably out of the House Health & Government Operations Committee’s Public Health subcommittee, the bill was not voted out by the full committee. The bill failed to get out of committee in either chamber.

## 2. Strengthen Maryland's public behavioral health system.

In partnership with the Maryland Behavioral Health Coalition, CBH ensured that three of its priorities were included in omnibus legislation to reform Maryland’s behavioral health system. In 2022, the Coalition worked to introduce SB 637/ HB 935 (Health and Health Insurance – Behavioral Health Services – Expansion (Behavioral Health System Modernization Act)). The bill included three distinct CBH priorities: adoption of Certified Community Behavioral Health Clinics (CCBHCs) statewide, adoption of measurement-based care across payers, and reforms to strengthen the children’s continuum of care.

The Senate ultimately stripped the bill and amended it to include only study language – including a requirement for MDH to consider options for providing wraparound services for children and youth with primary substance use disorder services and for the MIA to conduct a study on operational issues for commercial insurance coverage of peers and crisis services. The amended bill passed out of the Senate Finance Committee but did not make it to the House for consideration.

#### A. Adopt Certified Community Behavioral Health Clinics (CCBHCs) statewide

MDH attached a high fiscal note to the bill, including \$727 million annually for CCBHC portion of the bill alone. The bill was amended to strip it of all but the collaborative care and CCBHC provisions but the fiscal note was still high. CBH and the Behavioral Health Coalition amended the CCBHC provision to pertain only to the five organizations that have received federal grants to implement CCBHCs.

MDH still estimated a \$151 million fiscal note for that limited provision, or \$31 million per CCBHC. It is worth noting that CCBHC payments vary widely and past estimates have over-costed the model. According to one study:

CCBHC payment rates ... ranged from \$151 to \$667, and monthly rates ranged from \$558 to \$902. Rates were driven by population density, client volume, and staffing mix. In seven of the eight states, the per-day or per-month cost of CCBHC services during the first year was, on average, 8% to 32% lower than the cost estimated by the state prior to the demonstration; costs were lower than anticipated for 80% of CCBHCs but higher than anticipated for 20%. Differences between estimated and actual costs were due in part to uncertainty about the volume of CCBHC services and the cost of new services. States and CCBHCs used quality measures to inform changes in their service delivery. All but one state used quality measures to award bonus payments but states established very different bonus performance thresholds.<sup>1</sup>

CBH and its members should continue educational outreach to state legislators and the Administration before the 2023 session to increase understanding of the value of the CCBHC model.

#### B. Implement measurement-based care.

Measurement-based care (MBC) is the use of validated, standardized assessments to measure a client's response to treatment and adjust clinical decision making. Seventeen CBH members are engaged in a coordinated implementation of MBC, with 885 practitioners delivering MBC to over 21,000 clients in the Maryland Medicaid program. Although MBC is a best practice and is increasingly required by accreditation bodies, Maryland Medicaid only reimburses somatic providers – not behavioral health providers – for MBC.

In hearings on the bill, commercial carriers raised questions about the MBC provisions, indicating that they wished to work with bill proponents to address operational issues and clarifications about the application of MBC. Without a work group convening stakeholders, these concerns were unable to be aired and resolved. Work in the interim will continue to secure buy-in from these parties.

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<sup>1</sup> [Health Serv Res.](#) 2020 Aug; 55(Suppl 1): 100–101.

### C. Address improvements in the children's continuum of care.

The bill included several provisions to reform the continuum of behavioral health services available to Maryland children. It sought to expand wraparound services, address the reimbursement of wraparound or care management services, and expand the range of Medicaid-covered evidence-based practices. Although these provisions of the bill were addressed in written and oral testimony they were not further negotiated, being largely sidelined by challenges with other parts of the bill.

## 3. CBH advocacy on other issues

### A. CBH goals fully achieved

**Expansion of naloxone access.** The Hogan Administration introduced HB 408/SB 394 (Statewide Targeted Overdose Prevention (STOP) Act of 2022), which required certain programs, including addiction-related intensive outpatient programs (IOPs), to develop protocols and provide opioid overdose reversal drugs (such as naloxone) free-of-charge to clients at risk of overdose. CBH worked with the Administration to add language clarifying that these programs only have to do so if the state provides the overdose reversal drugs free-of-charge to the programs. The bill goes into effect by June 30, 2024.

**Expansion of adult dental benefit.** CBH support passage of HB6/SB150 (Maryland Medical Assistance Program – Dental Coverage for Adults). The bill expands the Medicaid benefit for adults to include dental coverage – including diagnostic, preventive, restorative & periodontal services - for adults at or below 133% the federal poverty level. The bill passed and takes effect on January 1, 2023.

**Promoting options for risk-based arrangements in behavioral health.** CBH supported HB 1148/SB 884 (Health Insurance - Two-Sided Incentive Arrangements and Capitated Payments – Authorization). CBH worked with CareFirst and sponsors to amend the bill to clarify that it allows a network of licensed behavioral health programs to participate. The bill authorizes the use of voluntary, risk-based arrangements among Maryland payers. There were other provider protections in the bill as originally drafted or added through amendments. It passed both chambers and awaits the governor's signature.

**Limits on client out-of-pocket spending.** CBH participates in Maryland's Parity Coalition, and HB 912/SB 707 (Health Insurance – Provider Panels – Coverage for Nonparticipation) was a priority for the coalition. The bill disallows carriers from requiring more out-of-pocket spending by consumers when they have to go out-of-network for care. It adds licensed behavioral health programs to the list of covered providers. As introduced, the bill tasked the Maryland Health Care Commission with determining a non-par fee, but that provision was struck. The bill passed. It takes effect on July 1, 2022 and sunsets on June 30, 2025.

**Removed limits on authorization requirements.** CBH supported HB 684/SB 659 (Maryland Medical Assistance Program - Psychiatric Inpatient Care – Admissions Restrictions (Psychiatric Hospital Admissions Equity Act)). This bill prohibits the restriction of inpatient admissions to specialty psychiatric hospitals unless the restrictions are based on medical necessity and spelled out in regulations. The bill requires a study on or before July 1, 2024 and each year thereafter on things like average length-of-stay for IMD services (including mental health and addiction-related) and impact on length-of-stay in Maryland emergency departments. The bill passed.

**Halted effort to single out behavioral health facilities for greater planning requirements.** SB 3/ HB 297 (Facilities – Disabilities, Juveniles, Behavioral Health, and Health Care – Plans). CBH’s close monitoring of bills impacting behavioral health providers helped identify a concern about the uneven expansion of safety requirements. This bill expanded existing safety plan requirements to include facilities in juvenile care and developmental disabilities. Amendments were tacked onto the Senate bill that singled out behavioral health facilities to meet a higher level of planning. The amendments added “include in the safety plan a statement certifying compliance with The National Fire Protection Association 101: Life Safety Code and The National Fire Protection Association 99: Health Facilities Code.” There was no written or oral testimony on those amendments nor any discussion at the voting session. CBH opposed the amendments and worked with the House sponsor to strip those amendments in work sessions on the bill. The bill passed without the amendments and awaits the governor’s signature.

**No wage mandates without adjusting rate increases.** CBH opposed HB 698/ SB 721 (Labor and Employment – State Minimum Wage Rate – Acceleration). This bill would have accelerated implementation of the \$15/hour minimum wage from January 1, 2025, to July 1, 2022. The bill did not pass either chamber.

**No interstate practice for behavioral health without protections afforded other health care professions.** CBH opposed HB 421/ SB 398 (Out-of-State Health Care Practitioners – Provision of Behavioral Health Services via Telehealth – Authorization). This bill was introduced on behalf of the Hogan Administration and would have allowed behavioral practitioners who are not licensed in Maryland to provide services in Maryland via telehealth. The bill applied only to behavioral health, while other health occupations must be licensed or participate in an appropriate interstate compact before conducting telehealth in the state. CBH opposed. The bill did not pass either chamber.

**Coverage of educational costs for children in RTCs.** CBH supported HB 766 / SB 656 (Children – Residential Treatment Centers – Education Funding). This bill authorizes a core service agency, local addictions authority, or local behavioral health authority, subject to the availability of funding, to approve funding for a youth’s educational costs during a residential treatment center admission. This authorization applies if (1) a youth is screened for voluntary or involuntary admission to determine whether a less restrictive alternative can be provided and (2) the educational costs for the youth are not otherwise covered under the State and local cost sharing formula for nonpublic placements for students with disabilities. The bill takes effect July 1, 2023. The bill passed and awaits the governor’s signature.

## B. CBH goals not fully achieved

**Science-based suicide prevention.** CBH supported HB 659 /SB 676 (Firearm Safety - Storage Requirements and Youth Suicide Prevention (Jaelynn's Law)). Suicide is growing among Maryland youth. Over 80% of youth firearm suicides use a family member’s gun and, where storage status is known, more than two-thirds of the firearms were not securely stored. This bill required the Deputy Secretary for Public Health Services to develop a youth suicide prevention and firearm safe storage guide, and it altered the statutory prohibition on access to a firearm by an unsupervised child and applicable penalties. CBH supported the bill, but it did not pass out of committee.

**Expedited practitioner licensing.** HB 407/ SB 407 (Health Occupations – Health Care Staffing Shortage Emergency – Duration and Licensing and Practice Requirements (Health Care Heroes Act of 2022)). This was an Administration bill that would have allowed – under a declared health care staffing shortage –

certain practitioners to qualify for a license on an expedited basis – including an applicant for initial licensure, a retired health care practitioner, and a practitioner with inactive licensee. It would have applied to many health care programs and facilities, including behavioral health. CBH supported the bill. It did not pass either chamber.

**Family and medical leave.** SB 275/HB 8 (Labor and Employment – Family and Medical Leave Insurance Program – Establishment (Time to Care Act of 2022)) establishes a paid leave insurance program funded by employers and employees, and managed by the state Department of Labor. The bill passed the General Assembly, was vetoed by the governor, and the legislature overrode the veto. The bill’s final form creates a state-administered leave fund and expands eligibility and qualifications beyond current FMLA. Employees become eligible for leave after 680 hours, not FMLA’s 1,250 hour threshold. Qualifying members include grandparents, grandchildren, and siblings, and qualifying conditions include circumstances related to deployment and broader conditions than FMLA. Covered leave lasts up to 12 weeks and, in some circumstances, may qualify for an additional 12 weeks. CBH was able to amend the bill to include language that it is the intent of the General Assembly that the employer costs for community behavioral health providers will be covered by the State.

The bill expands existing FMLA by lowering the threshold for eligibility, extending the duration of paid leave to 12 weeks and up to 24 weeks in some cases, expanding covered family members to include grandparents, grandchildren and siblings, and expanding qualifying conditions for leave. Key timelines with the bill include:

1. By October 1, 2022, complete an actuarial analysis of the bill’s cost to behavioral health and other community providers;
2. By June 1, 2023, Maryland Secretary of Labor will determine rates and percentages split between employees and employers;
3. By October 1, 2023, *all* employees and employers of 15 or more start paying into the fund on October 1, 2023;
4. On January 1, 2025, employees will apply to Maryland Department of Labor to access leave through the fund;
5. There will be a cost analysis every two years to ensure solvency of the fund;

#### 4. Other bills with behavioral health impact that passed

CBH monitored but did not take positions on a variety of bills impacting behavioral health providers. This year, only crisis-related measures passed the General Assembly. Among those that providers may wish to be aware of:

- HB 293 / SB 241 (Behavioral Health Crisis Response Services – 9-8-8 Trust Fund). This bill establishes a trust fund for costs associated with maintaining 9-8-8 as the telephone number for a suicide prevention and mental health crisis hotline and a statewide initiative for the coordination and delivery of behavioral health crisis response services. MDH must (1) designate 9-8-8 as the State’s behavioral health crisis hotline by July 16, 2022; (2) administer the trust

fund; (3) promote consistent public messaging of 9-8-8 services; and (4) submit a report by December 1 each year. In fiscal 2024, the Governor must include \$5.5 million in the annual budget bill for the trust fund. The bill takes effect July 1, 2022.

- SB 2 / HB 32 (Mental Health Law – Petitions for Emergency Evaluation – Electronic Record). This bill authorizes a petition for emergency evaluation to be provided as an “electronic record” and transmitted electronically. A peace officer may use an emergency petition in the form of an electronic record, and an emergency facility must accept an evaluatee if the petition is properly executed.
- HB 129 / SB 12 (Behavioral Health Crisis Response Services and Public Safety Answering Points – Modifications). This bill requires MDH, in awarding grants from the Behavioral Health Crisis Response Grant Program, to require that proposals include response standards that prioritize mobile crisis units over law enforcement. Each public safety answering point must develop a written policy. The policies must be available to the public by December 1, 2022, and submitted to the General Assembly by January 1, 2023. The bill also alters the definition of “mobile crisis team” (MCT) to specify that an MCT prioritizes limiting the interaction of law enforcement with individuals in crisis.
- HB625 / SB 440 (Commission To Study The Health Care Workforce Crisis in Maryland). This bill requires a variety of state agencies to convene and study the workforce in a variety of health care settings. The bill was amended to include behavioral health settings and unlicensed, direct service professionals within its scope. The commission must submit a report of its findings and recommendations to specified committees of the General Assembly by December 31, 2022, and annually thereafter.