

2023 Legislative Session Report

April 13, 2023



The 2023 session proved to be a stellar year for behavioral health. All of CBH's legislative priorities passed successfully and now await Governor Moore's signature. A huge thanks to the legislators who sponsored and/or supported our bills and to the CBH members who provided such great advocacy to ensure passage.

Following is the final report on legislative action taken on our priority bills and others CBH weighed in on.

Membership Grassroots Advocacy

Member outreach to state representatives is critical to CBH's success in the General Assembly every year. As CBH expands its membership, new members have strengthened our collective advocacy voice in Annapolis. A big thank you to members who leaned into advocacy for the first time this year, including:

- **Maryland Family Resource** for their outreach to the Prince George's County delegation about school mental health concerns
- **Synergy Family Services** for outreach to their representative with a new seat on the critical Health & Government Operations Committee
- **M.A.T. Clinic** for their op-ed and first-time oral testimony in support of legislation to introduce a value-based purchasing pilot program for Medicaid-funded behavioral health services.
- **Volunteers of America** for their advocacy on the children's care coordination bill and first-time oral testimony in support of the CCBHC legislation.

As always, much of our advocacy is built off of the strong relationships that our members have with their state legislators, and member willingness to jump on time-sensitive outreach. A big thank-you to those members who prioritized outreach this year, including: **Arrow Child & Family Ministries, Catholic Charities, Channel Marker, Cornerstone Montgomery, Families First Counseling & Psychiatry, KeyPoint Health Services, Leading by Example, Lower Shore Clinic, Partnership Development Group, Prologue, Sheppard Pratt, and Upper Bay Counseling & Support Services.**

Not long ago, CBH had only a small handful of members who regularly engaged in state legislative advocacy. Our unprecedented success in the 2023 legislative session is the direct result of having more members concretely engaged in advocacy. We are grateful for all the work that our members take every year during the legislative session to support CBH's success. Thank you!

The FY 24 Budget

Community behavioral health providers are scheduled to receive a 3% rate increase beginning on July 1, 2023. This rate increase was tied to the Fight for Fifteen minimum wage legislation that passed in 2019. In addition to the 3%, community providers will also receive an additional 8% rate increase on January 1, 2024, tied to the successful passage of SB 555, Governor Moore's Fair Wage Act, which accelerates implementation of the \$15 minimum wage to January 1, 2024.

The additional 8% is the sum of the FY 25 (4%) and FY 26 (4%) rate increases that were contained in the Fight for Fifteen legislation. The Governor's action to accelerate those two rate increases to January 1, 2024, zeroes out the remaining mandated rate increases in future years.

In addition, there was budget language/narrative requiring reports on various behavioral health topics, including:

- CBH-requested language requiring a report of the data required in statute on behavioral health services for kids (due 7/1/23). Although this requirement has been in statute for years, the reports have not been forthcoming.
- A comparison of Maryland Department of Health (MDH) direct care staff to other private and nonprofit health care settings (due 12/15/23).
- The time from referral to placement for court-ordered involved patients and efforts to improve the timeliness to align with statutory timeframes (due 7/1/23).
- The impact of the cyber hack on Health Professional Boards and Commissions, including the number of licenses, renewals, and investigations that were delayed as a result (due 9/1/23).
- Optum recoupment and forgiveness of overpayments to providers (due 1/14/24).
- The use of telehealth in the Public Behavioral Health System (PBHS) – to be submitted with the Managing for Results data for FY 25.
- Access to Medication Assisted Treatment (MAT), including the prevalence of providers and barriers to access (due 9/1/23).
- BHA's use of the \$50 million allocated for one-time only expenditures (due 7/1/23).
- Medicaid redeterminations, including – among other data – the number of enrollments and disenrollments (quarterly, beginning 7/15/23).
- Report – joint with Medicaid, BHA & DDA – on provider rates, rate enhancements, and rate-setting studies (due 10/1/23).

CBH Priority Legislation

SB 362 (Certified Community Behavioral Health Clinics – Planning Grant Funds and Demonstration Application) passed both chambers and is headed to the Governor's desk for signature. Following many conversations with MDH, CBH, our legislative sponsors, and committee staff, SB 362 was amended to require MDH to apply for the CCBHC planning grant funds for FY 25 and the demonstration program for FY 26. (The cross file of SB 362 - HB 1249 - was a late file and got stuck in House Rules. It finally made it successfully out of the House but ran out of time and ultimately did not pass).

SB 581 (Behavioral Health Care Coordination Value-Based Purchasing Pilot Program) passed both chambers and is headed to the Governor's desk for signature. This legislation creates a 3-year pilot involving at least 500 adults who are at high risk of emergency department or inpatient utilization due to behavioral health issues. It requires a per member per month Care Management fee and establishes outcome measures that are tied to provider payment. (This bill had no cross file.)

SB 534 (Preserve Telehealth Act of 2023) passed both chambers and awaits the Governor’s signature. It extends for two years the telehealth flexibilities created in statute by SB 3 (Preserve Telehealth Act of 2021), including Medicaid and commercial insurance coverage of audio-only telehealth and rate parity with in-person services. The bill was amended to include a study by the Health Care Commission (due 12/1/24) on various telehealth issues, including “the adequacy of reimbursement for behavioral health services delivered in-person and by telehealth.” (This bill had no cross file.)

SB 582 / HB 1148 (Behavioral Health Care – Treatment and Access – Behavioral Health Model for Maryland) contains the 3 bills above in exactly the same versions (CCBHCs, VBP, and Telehealth) but also creates a 4-year commission to study behavioral health needs and make recommendations by January 1 of each year – beginning on Jan. 1, 2024 – to the Governor and the General Assembly on providing appropriate, accessible, and comprehensive behavioral health services. CBH has a dedicated seat on this Commission. This bill passed both chambers and awaits the Governor’s signature.

HB 1272 (Maryland Insurance Commissioner Enforcement – Specialty Mental Health Services and Payment of Claims – Sunset Extension). This bill was put in as a result of a briefing CBH made to the House Health & Government Operations (HGO) committee in which legislators were apprised that payment delays by Optum were still a problem. This bill extends for an additional two years the provisions giving the Maryland Insurance Administration (MIA) jurisdiction over Optum in enforcing compliance with Maryland’s prompt payment statute. HB 1272 passed but chambers. It is an emergency bill, so it takes effect upon being signed by the Governor.

SB 773 (State Procurement – Liquidated Damages – Policies and Requirements) passed both chambers and awaits the Governor’s signature. It is another Optum-related bill that addresses concerns raised by the Office of Legislative Audits (OLA) in their report on Optum’s shortcomings. In their report, OLA cited MDH for failing to impose up to \$20.5 million in liquidate damages on Optum. SB 773 was amended to require the Board of Public Works (BPW) to establish a model policy on liquidated damages by January 1, 2024. It also requires a state unit to receive the approval from the head of that unit if liquidated damages are not applied in circumstances allowing them to be and to maintain documentation as to why the decision was made not to apply liquidated damages.

SB 283 / HB 418 (Mental Health – Workforce Development – Fund Established) passed both chambers and awaits the Governor’s signature. It requires the Health Care Commission, in consultation with the Department of Labor and interested stakeholders, to do a needs assessment of behavioral health professional and paraprofessional capacity and to make recommendations by October 15, 2024 to the General Assembly Senate and House budget and policy committees. It also creates a fund for use in educating, training, recruiting, and placing behavioral health professionals and paraprofessionals.

SB 255/HB 322 (Public Health—Home and Community-Based Services for Children and Youth) passed both chambers and awaits the Governor’s signature. It requires MDH to fund high-fidelity wraparound & intensive in-home services at rates commensurate with industry standards, expand eligibility criteria for the 1915i and address other barriers to accessing this service, and fund at least one value-based purchasing contract for targeted case management services.

Other Legislation

SB 328 / HB 498 (Board of Public Works Public Comment Act) passed both chambers and awaits Governor Moore's signature. It requires – beginning on October 1, 2024 – the BPW to allow members of the public to electronically submit public comments on agenda items, and for those comments to be included in the packets distributed to BPW members. CBH testified in support of this bill.

SB 387 / HB 274 (Task Force on Reducing Emergency Department Wait Times). CBH testified in favor with amendments on this bill, which would have created a task force to examine the fact that Maryland has the longest ED wait times in the nation. CBH's amendments would have added a seat for behavioral health on the task force. Our amendments were adopted in both chambers, but the bill failed to pass both chambers in the same posture, so it ultimately failed.

SB 515 / HB 785 (Health Insurance – Step Therapy or Fail-First Protocol – Revisions) passed both chambers and awaits the Governor's signature but was heavily amended. CBH testified in support of the original bill language that would have prohibited the use of fail-first protocols for drugs used to treat a mental disorder that results in functional impairment. Commercial carriers pushed back hard on the bill and that language was struck. However, the bill does establish some parameters around the use of step therapy and protections for consumers.

SB 828 / HB 988 (Family and Medical Leave Insurance Program – Modifications) passed both chambers and awaits the Governor's signature. The bill makes changes to the Time to Care Act, which passed last session and established an employer/employee funded paid leave program. SB 828 made certain changes to the original bill, such as delaying implementation of the contributions to the fund from October of 2023 to October of 2024. It also set the contribution ratio at 50% from the employer and 50% from the employee. CBH testified in support with amendments. The first amendment – which was adopted – requires the state to pay the percentage of the employer contribution for community behavioral health providers that is equal to the percentage of revenue attributable to federal and state Medicaid funding and other state funding.

The second amendment – which was not adopted – attempted to address a significant change SB 828 made to the original bill. The original legislation allowed employers to require employees to exhaust any employer-provided leave before taking leave created by this new program. SB 828 changed that language to prohibit employers from requiring employees to exhaust employer-provided leave first. Given the concern that this new language would exacerbate already-critical workforce shortages, our amendments would have restored the original language. Unfortunately, the bill passed without adoption of this amendment language.

SB201/HB82 (Maryland Medical Assistance and Children's Health Insurance Programs - School-Based Behavioral Health Services – Reimbursement) did not make it out of either of its respective committees. It required MDH to submit SPA to qualify certain unlicensed school BH professionals to be reimbursed by Medicaid and to expand reimbursement for mental health services delivered to all Medicaid-eligible children; not just those with IEPs. CBH was opposed to this legislation due to the high likelihood of its negative impact on community providers' workforce and school mental health service delivery. It did not pass.