

2011 FINAL LEGISLATIVE REPORT
Summary of Budget, Mental Health and Related Legislation

The 428th Session of the Maryland General Assembly came to a close on midnight April 11, 2011. Balancing the budget in the face of an estimated \$1.6 billion deficit was the legislature's primary focus. Not surprisingly, preserving funding for mental health services was a chief concern for the Mental Health Association of Maryland (MHAMD). Despite an all-encompassing budget battle, MHAMD was successful in advancing its public policy goals and working in coalition with our partners to preserve and increase funding for community mental health services.

I. FY 2012 MENTAL HYGIENE ADMINISTRATION (MHA) BUDGET

A. Budget Narrative and Summary

MHAMD fought throughout the 90-day Session to preserve funding for public mental health services. Chronically underfunded already and facing a 40% increase in enrollment, the Public Mental Health System (PMHS) was targeted for millions in additional cuts. Concerted and tireless advocacy on the part of the Mental Health Coalition successfully reduced proposed budget cuts, increased community services funding and safeguarded services for vulnerable Marylanders.

Governor O'Malley introduced a FY 2012 budget that included a 2.5% community services rate and a \$0.5 million core service agency cut. The rate cut was larger than most other health care providers received because the Department of Budget and Management (DBM) believed the Mental Hygiene Administration (MHA) did not meet its budget reduction targets in 2009. The Coalition played an instrumental role in ensuring that data was provided to DBM documenting that the cuts were indeed taken. Subsequently, the Governor's supplemental budget was introduced including \$10 million (state general and federal funds) to enhance rates for community mental health providers and \$25 million for MHA as a deficiency appropriation to cover the FY 2010 carryover deficit caused by an explosion in enrollment.

Mental health advocates fought an uphill battle in the legislature as well. The House of Delegates and the State Senate voted originally to cut mental health services by \$6.7 million and \$4.2 million respectively, in state general and federal funds. The bulk of these cuts were aimed at residential treatment services for youth (\$6 million in the House, \$4 million in the Senate) but also impacted veterans' services, inpatient care and chaplains at state psychiatric hospitals. A strong and sustained grassroots lobbying effort in response to these cuts flooded legislative offices with calls and emails from consumers, family members, providers and advocates urging the cuts be restored. In the end, the budget conference committee reduced public mental health funding by just \$100,000.

In sum, the budget success achieved through the concerted advocacy of the Coalition resulted in the following:

- \$10 million in state general and federal funds for community mental health provider rates, which is expected to result in no reduction in provider rates, due to the 1.13 cost of living adjustment built into the FY 2012 budget.

- \$25 million in state general and federal funds to address the Mental Hygiene Administration's \$20 million rolling deficit which, without budgetary relief, was projected to rise to \$50 million by June 30, 2011.
- Reduction of \$6.7 million in proposed legislative cuts to state general and federal funds to \$100,000 as follows:
 - Proposed \$6 million cut for residential treatment reallocated to community services (\$3 million in state funds)
 - Reduction of \$300,000 cut to the Veterans' Mental Health Initiative to \$100,000
 - Elimination of \$180,000 cut to chaplains at state psychiatric hospitals

Note: Reallocation of \$200,000 in inpatient service funds to finance a study of state psychiatric hospital needs remains unchanged

B. MHA Budget Language

- A withhold of \$100,000 intended to support the provision of community mental health services may not be expended until MHA submits to the budget committees:
 - A report detailing the cost containment actions implemented by the administration in the FY 2012 budget (due by July 1, 2011); and
 - A report detailing the impact of cost containment actions on access to care for persons with serious mental illness and on the financial condition of providers (due by December 1, 2011).
- As noted above, \$200,000 in funding throughout the State-run psychiatric hospitals is to be used for a report on the future demand for State-run psychiatric hospital capacity. The reallocation of funding from the hospitals to the independent study is as follows: \$78,000 from Spring Grove Hospital Center; \$49,000 from Springfield Hospital Center; \$43,000 from Clifton T. Perkins Hospital Center; \$16,000 from Thomas B. Finan Hospital Center; and \$14,000 from Eastern Shore Hospital Center.

The Department of Health and Mental Hygiene (DHMH) report is due by December 1, 2011 and must include:

- An analysis of short- and long-term population and placement trends to determine the potential demand for State-run psychiatric hospital capacity including the maximum appropriate use of community-based alternatives;
- Best practices for facility operations, including building size and configuration;
- Appropriate site locations based on future demand; and
- Any other information DHMH considers important in determining the future need for State-run psychiatric hospital capacity.
- Additional language restricts \$50,000 in the administrative function of MHA to be used for a contract with the Maryland Economic Development Corporation (MEDCO) to develop a Redevelopment Plan for Spring Grove Hospital Center.

II. OLDER ADULT BUDGET SUMMARY AND RELATED BUDGET LANGUAGE

The Maryland Coalition on Mental Health and Aging was instrumental in protecting programs and services supporting vulnerable adults funded through the Maryland Department of Aging (MDoA) and the Department of Human Resources (DHR). These include Adult Protective Services, Social Services

to Adults, In-Home Aid Services, and Respite Care. In the case of the Respite Care Program, proposed cuts were reversed as a direct result of senior advocacy efforts.

A. Department of Human Resources (DHR)

Adult Services

- *Hospitalized Adult Disabled Persons – Appointment of Temporary Limited Guardian:* The committees request that the Department of Human Resources (DHR) convene a workgroup to develop a uniform statewide policy relating to the appointment of temporary limited guardians for hospitalized adult disabled persons and to make recommendations for improving the guardianship process generally. Due October 1, 2011, the report should include:
 - The recommended uniform statewide policy relating to the appointment of temporary limited guardians for hospitalized adult disabled persons;
 - Any other recommendations of the workgroup relating to the guardianship process;
 - Cost estimates for each recommendation; and
 - Detail of any statutory changes needed to implement the recommendations.

III. OTHER FY 2012 BUDGETS OF INTEREST

A. Department of Health and Mental Hygiene (DHMH)

Office of the Secretary

- Budget language withholds \$100,000 in the Office of the Secretary pending the receipt of a report examining the financing and cost drivers of the Medicaid program and ways to reduce expenditures and growth. The report is due by December 15, 2011 and shall:
 - Examine the sustainability of special fund revenues supporting the Medicaid program;
 - Examine the significant drivers of costs in the Medicaid program; and
 - Make recommendations to reduce expenditures and expenditure growth in the Medicaid program through restructuring or any other means.

Medical Care Programs (Medicare/Medicaid)

- There is concern among legislators regarding the timeliness of long-term care eligibility determinations. Current regulation specifies that an eligibility determination be made within 30 days. However, eligibility determinations for long-term care services under Medicare are taking three months or longer from the date of the application. As such, \$100,000 in general funds to both DHMH and the Department of Human Resources (DHR) is contingent on a report detailing how the two departments are streamlining the eligibility determination process. The report is due by September 15, 2011.

Additional DHMH Budget Language

- *Integrating Care for Individuals with Co-occurring Serious Mental Illness and Substance Abuse Issues:* Maryland currently provides mental health services to the seriously mentally ill primarily through a fee-for-service system that is carved out from managed care and provides substance abuse services through a mixture of managed care and grants. The systems have different fee structures, different eligibility requirements, and also different workforce requirements. Often these differences between the systems of care result in inefficient delivery

of services. As such, language was included in the budget requesting that DHMH convene a workgroup of interested parties to develop a system of integrated care for individuals with co-occurring issues. A report with recommendations for developing such a system is due by December 15, 2011.

- *Addiction Treatment Spending:* The legislature is concerned that an increasing amount of funds are being transferred from the Alcohol and Drug Abuse Administration to Medicaid to provide substance abuse treatment services for individuals in the Primary Adult Care (PAC) program without showing the extent of substance abuse treatment services being provided through PAC. DHMH is requested to provide data on the number of PAC enrollees provided with substance abuse treatment services, the number of denials of service, and the amount of money spent on substance abuse treatment services in the PAC program. The same data is also requested about substance abuse treatment services being provided through HealthChoice. The report is due by September 1, 2011.

B. Department of Public Safety and Correctional Services (DPSCS)

Division of Correction (DOC)

- *Plan for Reducing the State's Inmate Population:* Given the fiscal condition of the State, it may not be feasible to maintain the \$700 million in general funds needed annually to support DOC operations. Furthermore, increasing the department's staffing complement to the necessary level for what it has identified as its minimal staffing requirement is unrealistic. In order to identify significant savings, the agency's operations must be reduced, which requires facility closure and a reduction in the inmate population. Budget language directs DPSCS to explore at least three options and provide an implementation plan and cost savings estimate for reducing the inmate population to the point where closing correctional facilities is a viable option. The report is due by October 1, 2011.

C. Maryland State Department of Education (MSDE)

- The legislature is concerned about the high school dropout rate in the State and encourages the Governor and MSDE to work with local school systems on implementing innovative approaches to reducing the dropout rate and chronic absenteeism. This is particularly important in light of the State's goal to reach 55% of the adult population holding a higher education degree by 2025. A report detailing the actions taken by local school systems to decrease the dropout rate and chronic absenteeism is due by September 1, 2011.

D. Miscellaneous

- *Substance Abuse Treatment Options for Court-Involved Youth:* Underutilization of juvenile drug court slots is an ongoing concern, and it is important the legislature understand the demand for services, as well as the various types of substance abuse treatment options available to youth in need. As such, budget language withholds \$100,000 each to the Department of Juvenile Services (DJS), the Office of Problem-Solving Courts (OPSC), and the Alcohol and Drug Abuse Administration (ADAA) pending receipt of a previously requested report identifying the demand for substance abuse services for court-involved youth. The report is due by August 15, 2011.

- *Mental Health Association HVAC Replacement*: Grants equaling \$75,000 were provided to the Board of Directors of the Mental Health Association of Montgomery County for the construction, renovation, and replacement of the HVAC system at the Mental Health Association located in Rockville.

III. LEGISLATION ENACTED

A. Alcohol Tax Narrative and Summary

Disability and health care advocates realized a significant victory this year in achieving the first increase in the alcohol tax in 40 years. This historic public health measure will save numerous lives by reducing alcohol abuse and will also raise significant revenue for developmental disability services.

MHAMD worked again this year with a coalition of advocates in support of an increased alcohol tax as a way of funding disability services and public health initiatives. As introduced, the Lorraine Sheehan Health and Community Services Act of 2011 (**HB 121/SB 168**) would have raised the alcohol tax by a dime a drink, with the increased revenue going to sustain services for Medicaid expansion and mental health, addiction and developmental disabilities services. Of the estimated \$215 million in new revenue, approximately \$30 million was to be spent on mental health services. The measure was one of the most talked about all Session, but after a number of ups and downs, amendments and manifestations, the end result looked nothing like the original product. Instead, **SB 994** was introduced late and fast-tracked through the legislative process. The bill – which started as a 3% sales tax phase-in over three years with no specific revenue dedication – became intertwined with budget negotiations.

In the end, the bill was amended to implement the entire 3% sales tax immediately and dedicate \$15 million to the developmental disabilities waiting list and the remainder to education needs. Budget language contingent on the passage of **SB 994** apportioned \$8.8 million to Prince George’s County and \$12.2 million to Baltimore City for education purposes. For elected officials, budget decisions were directly linked to the realization of new revenue through the alcohol tax. Although mental health services were not funded directly by the alcohol tax, passage of the alcohol tax indirectly influenced the availability of funds for mental health that were included in the Governor’s supplemental budget. In future years, this coalition will work with the Governor and General Assembly to use alcohol tax revenue to help fund all the critical needs identified in the original Lorraine Sheehan legislation.

B. Children and Youth

HB 38/SB 489 – Nonpublic Schools Participating in State-Funded Education Programs – Bullying, Harassment, and Intimidation - Policies

Requires nonpublic schools that participate in State-funded education programs to adopt, by March 31, 2012, a policy prohibiting bullying, harassment, and intimidation. Nonpublic schools are also encouraged to develop educational bullying prevention programs for students, staff, volunteers, and parents and staff development programs to train teachers and administrators to implement the policies. These bills are logical extensions of State policy that requires the same programs in public schools.

MHAMD supported. Effective Date: July 1, 2011

Introduced by Delegate Jeff Waldstreicher, (District 18, Montgomery County) and Senator Joan Carter Conway, (District 43, Baltimore City).

HB 145 – Environment – Cadmium in Children’s Jewelry – Prohibition

Prohibits a person from manufacturing, selling, offering for sale, or distributing any children’s jewelry containing cadmium at more than 0.0075% by weight, due to the neurological harm it can cause.

MHAMD supported. Effective Date: July 1, 2011

Introduced by Delegate James W. Hubbard (District 23, Prince George’s County).

HB 387/SB 344 – Residential Child and Youth Care Practitioners – Certification – Implementation Plan

Requires the Governor’s Office for Children (GOC) to establish a workgroup comprising of specified representatives to determine whether it is feasible to implement the certification of residential child and youth care practitioners in 2015 and develop an implementation plan. By September 1, 2011, GOC must submit the implementation plan to the Governor and specified committees of the General Assembly.

MHAMD supported. Effective Date: June 1, 2011

Introduced by Delegate Shirley Nathan-Pulliam (District 10, Baltimore County) and Senator Thomas McClain (Mac) Middleton (District 28, Charles County).

HB 840 – Children, Youth, and Families – Services to Children with Special Needs

Alters State policy relating to children and families by adding a provision specifying that access to necessary services and supports in the least restrictive, most appropriate, and most effective environment possible must be provided and clarifies the intent that interagency policy be family-driven, child-guided, home and community-based, and culturally competent. Additionally, it modifies the duties of the State Coordinating Council for Children and changes its composition to include youth and family members. Finally, Local Coordinating Councils are eliminated and established in their place are local care teams, which include child and family member representation and are charged with providing a forum for interagency discussion and problem solving of individual and systemic needs.

MHAMD Monitored. Effective Date: July 1, 2011

Introduced by the Chair of the Ways and Means Committee by request of the Governor’s Office for Children.

C. Criminal Justice

HB 507/SB 652 – Public Safety – Use of Electronic Control Devices – Reports

Requires law enforcement agencies to annually report on the use of an electronic control device (ECD), which is defined as a portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current. These reporting requirements are critical because of the rising number of deaths of people with mental illness who allegedly died as a result of the use of electronic weapons.

MHAMD supported. Termination Date: September 30, 2016

Introduced by Delegate Talmadge Branch (District 45, Baltimore City) and Senator Victor R. Ramirez (District 47, Prince George’s County).

HB 749/SB 362 – Correctional Services – Division of Parole and Probation – Supervision Fee

Requires the Department of Public Safety and Correctional Services (DPSCS) and the appropriate local detention center, on the release of an individual supervised by the Division of Parole and Probation (DPP), to provide the individual with an oral and a written notice relating to the criteria and application process for an exemption from the required monthly supervision fee.

MHAMD supported. Effective Date: October 1, 2011

Introduced by Delegate Jeff Waldstreicher, (District 18, Montgomery County) and Senators Jamie Raskin (District 20, Montgomery County) and Victor R. Ramirez (District 47, Prince George’s County)

D. Mental Health and Disability

HB 58/SB 202 – Community Services Reimbursement Rate Commission – Termination Date – Extension

Extends the termination date for the Community Services Reimbursement Rate Commission (CSRRC) by five years to September 30, 2016.

MHAMD supported. Effective Date: July 1, 2011

Introduced by Delegate Robert A. Costa (District 33, Anne Arundel County) and Senator Thomas McClain (Mac) Middleton (District 28, Charles County).

HB 87/SB 132 – Job Applicant Fairness Act

Prohibits an employer from using an individual’s credit report or credit history as a basis to deny employment to an applicant for hire, discharge an employee, or determine compensation or the terms of employment. It is not uncommon for people with mental illness, and the family members who help them, to experience problems with debt related to medical bills and other disease-related problems.

MHAMD supported. Effective Date: October 1, 2011

Introduced by Delegate Kirill Reznik (District 39, Montgomery County) and Senator Catherine E. Pugh (District 40, Baltimore City).

HB 217 – Department of Health and Mental Hygiene – Mental Hygiene Administration – Transfers Between Facilities

Restricts the authority of the Director of the Mental Hygiene Administration (MHA) to transfer an individual from a public facility to the Clifton T. Perkins Hospital Center (“Perkins Hospital”) to cases in which the director has found that (1) Perkins Hospital can provide more beneficial care or treatment to the individual; or (2) a transfer would further the safety or welfare of others. Specifically, the director is required to provide the individual with notice and an opportunity for hearing before the Office of Administrative Hearings (OAH) unless an emergency necessitates immediate transfer.

MHAMD supported. Effective Date: October 1, 2011

Introduced by the Chair of the Health and Government Operations Committee by request of the Department of Health and Mental Hygiene.

HB 346/SB 348 – Health – State Facilities and Residential Centers – Definition of Abuse

Clarifies the definition of “abuse” for purposes of certain reporting requirements related to State facilities and residential centers. The bill specifies that “abuse” does not, for those purposes, include an action taken by an employee that complies with applicable State and federal and DHMH policies on the use of physical intervention.

MHAMD opposed as introduced/took no position as amended. Effective Date: July 1, 2011

Introduced by Delegate John P. Donoghue (District 2, Washington County) and Senator James (Jim) N. Mathias, Jr. (District 38, Somerset, Wicomico and Worcester Counties).

HB 793/SB 682 – Behavioral Health – Veterans – Coordination and Provision of Services

Reenacts provisions of law to require the continuance of the coordination of certain behavioral health services for certain veterans.

MHAMD supported. Effective Date: June 1, 2011

Introduced by Delegate Geraldine Valentino-Smith (District 23, Prince George’s County) and Senator Douglas J.J. Peters (District 23, Prince George’s County).

HB 1150/SB 556 – Mental Hygiene Administration – Facilities – Trauma-Informed Care

Requires the Mental Hygiene Administration (MHA) to develop and implement a plan (that maximizes the use of available resources and infrastructure) to secure the sleeping quarters of male and female patients at all State mental health facilities. The bill also establishes training and reporting requirements related to sexual abuse and sexual harassment and requires MHA to design and implement a three-year pilot program for a voluntary single gender unit at a State facility, with a priority toward a voluntary all-female unit. MHA must report to the Governor and the General Assembly on the implementation of the bill by June 1, 2012.

MHAMD supported. Effective Date: October 1, 2011

Introduced by Delegate James W. Hubbard (District 23, Prince George’s County) and Senator Catherine E. Pugh (District 40, Baltimore City).

SB 830 – Tax Credits for Qualifying Employees with Disabilities – Sunset Extension

Extends the tax credit for employers who hire people with disabilities.

MHAMD supported. Effective Date: June 1, 2011

Introduced by Senator Ulysses Currie (District 25, Prince George’s County).

E. Healthcare and Insurance

HB 166/SB 182 – Maryland Health Benefit Exchange Act of 2011

Establishes the governance, structure, and funding of the Maryland Health Benefit Exchange, a public corporation and independent unit of government created to (1) reduce the number of uninsured; (2) facilitate the purchase and sale of qualified health plans (QHPs) in the individual market; (3) assist qualified employers facilitating the enrollment of their employees in QHPs in the small group market and in accessing small business tax credits; (4) assist individuals in accessing public programs, premium tax credits, and cost-sharing reductions; and (5) supplement the individual and small group

insurance markets outside of the exchange. The exchange must study and report on specified functions and is prohibited from implementing those functions until the Governor and General Assembly enact additional legislation.

MHAMD monitored. Effective Date: June 1, 2011

Introduced by the Speaker of the House of Delegates and the President of the Senate by request of the Administration.

HB 170/SB 183 – Health Insurance – Conformity with Federal Law

Alters State insurance law to conform to federal requirements under the “Affordable Care Act” and allows the Maryland Insurance Commissioner to enforce such requirements.

MHAMD monitored. Effective Date: July 1, 2011

Introduced by the Speaker of the House of Delegates and the President of the Senate by request of the Administration.

HB 450/SB 514 – Maryland Community Health Resources Commission – Health Care Reform – Implementation

Authorizes the Maryland Community Health Resources Commission (MCHRC) to assist community health resources, including community mental health providers, in preparing to implement federal health care reform. MCHRC must examine specified issues and potential challenges for community health resources and develop a business plan for the State to provide ongoing assistance to community health resources in sustaining and enhancing their service delivery.

MHAMD supported. Effective Date: July 1, 2011

Introduced by Delegates James W. Hubbard (District 23, Prince George’s County) and Peter A. Hammen (District 46, Baltimore City) and Senators Thomas McClain (Mac) Middleton (District 28, Charles County) and Edward J. Kasemeyer (District 12, Baltimore and Howard Counties).

SB 562 – Department of Health and Mental Hygiene – Recovery Homes – Best Practices

Requires the DHMH to identify standards for best practices for recovery homes. DHMH must report its findings to the Governor and the General Assembly by December 31, 2011.

MHAMD monitored. Effective Date: July 1, 2011

Introduced by Senator Catherine E. Pugh (District 40, Baltimore City).

F. Aging

HB 354/SB 578 – State Board of Dental Examiners – Dentists and Dental Hygienists – Licenses, Temporary Volunteer Licenses, and Temporary Dental Clinic Permits

Creates a temporary volunteer dentist license, a temporary volunteer dental hygienist license, and a temporary dental clinic permit to be awarded by the State Board of Dental Examiners. This is a particularly important service for older adults who forego dental care for cost and other access reasons, putting them at greater risk for co-morbid conditions.

Supported. Effective Date: July 1, 2011

Introduced by Delegate Veronica Turner (District 26, Prince George's County) and Senator C. Anthony Muse (District 26, Prince George's County).

SB 726 – Hospitalized Adult Disabled Persons – Appointment of Temporary Limited Guardian

This bill specified procedures surrounding the appointment of temporary limited guardianship of person for hospitalized adults with disabilities.

Opposed but supported budget language tasking DHR with convening a workgroup (see page 3).

Introduced by Senator James N. Robey (District 13, Howard County).

IV. BILLS THAT FAILED

HB 654 – Clinical Review Panels – Psychiatric Medication – Correctional Facilities

Would have allowed a clinical review panel to approve the administration of psychiatric medication prescribed for the treatment of a mental disorder to an individual who refuses the medication while the individual is in the custody of a facility under the jurisdiction of the DPSCS.

MHAMD opposed.

Introduced by Delegates Samuel I. (Sandy) Rosenberg (District 41, Baltimore City) and James W. Hubbard (District 23, Prince George's County).

HB 730 – Task Force to Study Access of Individuals with Mental Illness to Regulated Firearms

As amended, would have established a Task Force to Study Access of Individuals with Mental Illness to Regulated Firearms.

MHAMD opposed as introduced/supported as amended.

Introduced by Delegates Luiz Simmons (District 17, Montgomery County) and I. (Sandy) Rosenberg (District 41, Baltimore City).

SB 533 Criminal Procedure – Sexually Violent Offender in Need of Commitment

Would have established a procedure for the civil commitment of certain sexually violent offenders.

MHAMD opposed.

Introduced by Senator Norman R. Stone, Jr. (District 6, Baltimore County).

HB 815/SB 579 – Health Insurance – Limit on Copayments

Would have prohibited insurers, nonprofit health service plans, and health maintenance organizations (HMOs) that provide covered benefits subject to a copayment from imposing a copayment that exceeds 50% of the allowed amount for the covered benefit.

MHAMD supported with amendment.

Introduced by Delegate Ariana B. Kelly (District 16, Montgomery County) and Senator James C. Rosapepe (District 21, Anne Arundel and Prince George's Counties).

HB 902/SB 643 – Human Relations – Housing Discrimination – Source of Income

Would have prohibited discriminatory practices in the sale or rental of a dwelling because of a person's source of income.

MHAMD supported. Also supported as a member of MSCAN.

Introduced by Delegate Stephen W. Lafferty (District 42, Baltimore County) and Senators Lisa A. Gladden (District 41, Baltimore City) and Jamie Raskin (District 20, Montgomery County).

HB 920/SB 448 – State Personnel – Applicants for Employment – Criminal History Records Checks

Would have prohibited State government from inquiring into the criminal record or history of an applicant for employment until the applicant was selected for an interview.

MHAMD supported.

Introduced by Delegate James E. Proctor, Jr. (District 27, Prince George's and Calvert Counties) and Senator Catherine E. Pugh (District 40, Baltimore City).

SB 587 – Protective Order Violations – Mandatory Mental Health Evaluation

Would have required a court to order a person charged with a violation of an interim protective order, a temporary protective order, or a final protective order to undergo a mental health evaluation.

MHAMD opposed.

Introduced by Senator Victor R. Ramirez (District 47, Prince George's County).