



The 444<sup>th</sup> legislative session of the Maryland General Assembly ended on April 11. This year marked the final session of Governor Larry Hogan's second term in office and the last session for several longtime legislative leaders who are not seeking re-election. Over the course of 90 days, MHAMD and our coalition partners called for action in the face of increasing demand for mental health and substance use services. The effort secured additional investments in community behavioral health services and Maryland's crisis response system, systematic reforms to address the unique needs of children and young adults, new policies to improve supports for Maryland's older adult community, and financial relief for those unable to access care through their insurance carrier's network of behavioral health providers.

## Maryland's Behavioral Health Challenges

The COVID pandemic has exacerbated an already rising demand for mental health and substance use services. Over the past twelve months, nearly 40% of Marylanders reported symptoms of anxiety or depression yet nearly a third were unable to get needed counseling or therapy. Nearly 3,000 Marylanders died from a drug overdose last year and another 650 lost their lives to suicide. Sixteen entire counties have been federally designated as mental health professional shortage areas and hospitals across the state continue to see hundreds of thousands of Marylanders who are experiencing behavioral health crises.

Given this profound unmet need, MHAMD and its coalition partners coordinated efforts this session in support of numerous initiatives designed to expand access to quality mental health and substance use services.

# Table of Contents

<u>Behavioral Health System Modernization Act</u> .....	3
<u>Maryland 9-8-8</u> .....	3
<u>Children, Youth, and Young Adults</u> .....	4
<u>Streamlining Residential Treatment for Youth</u> .....	5
<u>Supports for LGBTQ Youth and Young Adults</u> .....	5
<u>ACEs and Trauma</u> .....	6
<u>Juvenile Justice</u> .....	6
<u>Youth-Centered Prevention and Early Intervention Programs</u> .....	7
<u>Older Marylanders</u> .....	7
<u>Maryland PASRR</u> .....	7
<u>Supported Decision Making</u> .....	8
<u>Harm Reduction</u> .....	8
<u>Optum Maryland</u> .....	9
<u>Parity and Network Adequacy</u> .....	10
<u>Fiscal Year 2023 Budget</u> .....	11
<u>Community Behavioral Health Funding Increases</u> .....	11
<u>Reporting Requirements</u> .....	11
<u>Other Important Behavioral Health Legislation</u> .....	12
<u>Suicide Prevention</u> .....	12
<u>Overdose Prevention</u> .....	12
<u>Psychedelic-Assisted Therapy</u> .....	12
<u>Mental Health Advance Directives</u> .....	13

# Behavioral Health System Modernization Act

The top priority this year for MHAMD and the Maryland Behavioral Health Coalition was the **Behavioral Health System Modernization Act** ([SB 637](#) | [HB 935](#) (failed)). The bill as introduced would have enacted a comprehensive set of reforms and system enhancements to meet the increasing demand for services. Specifically, the legislation was intended to:

- **Expand comprehensive community-based treatment** by expanding Maryland's network of Certified Community Behavioral Health Clinics (CCBHCs)
- **Improve health outcomes and treatment quality** by expanding the delivery of individualized, data-driven, measurement-based care in behavioral health settings; and by enhancing care coordination in primary care settings
- **Strengthen the behavioral health workforce** by expanding funding and reimbursement for peer support networks and certified peer recovery specialists
- **Improve care for children and youth** by increasing the availability of comprehensive home- and community-based wraparound services
- **Reduce reliance on law enforcement and emergency departments** by ensuring stable reimbursement for Maryland's network of crisis call centers, mobile crisis teams, and crisis stabilization facilities

Unfortunately, the bill struggled due to its complexity and large price tag. After multiple rounds of negotiation and numerous concessions, the Senate passed a heavily amended version requiring simply that (1) the Maryland Department of Health (MDH) consider and submit recommendations for expanding wraparound services for children and youth, and (2) the Maryland Insurance Administration (MIA) consider and submit recommendations for how to address operational barriers related to commercial carrier reimbursement of clinical peer specialists and crisis response services. The House took no action on the amended bill.

## Maryland 9-8-8

Maryland residents often call police or go to hospital emergency rooms when experiencing a mental health or substance use emergency. Although a more appropriate behavioral health crisis response service may be readily available, many

Marylanders are unaware of the state's crisis response network and even fewer know how to access it.

But beginning in July 2022, 9-8-8 will be the new easy-to-remember national phone number for suicide prevention and behavioral health crisis response. Calls to 9-8-8 will go to counselors at local crisis call centers who will provide free, confidential advice and emotional support to Marylanders in distress. The line will also help connect people to community mental health and substance use services.

[SB 241](#) | [HB 293](#) (passed) creates a fund to cover costs associated with establishing and maintaining the **9-8-8 infrastructure**. The bill requires an initial allocation of \$5.5 million, which Governor Hogan supplemented with an additional \$5 million at the request of the General Assembly. As awareness of the new number grows, this fund will ensure call centers have the resources they need to respond effectively to a projected increase in call volume.

Additionally, given concerns about Maryland's ability to meet the expected increase in demand for services resulting from the implementation of 9-8-8, the legislature adopted budget language requiring an **independent analysis of the behavioral health crisis response system**. The analysis must identify shortcomings in the state's system, anticipated capacity needs and challenges, and associated costs and cost savings. The final report is due June 30, 2023, with an interim report due Dec. 1, 2022.

## Children, Youth, and Young Adults

Young people have been especially hard hit by the COVID pandemic. Marylanders under 17 account for the largest percentage of emergency department visits for suicide attempts, and the number of individuals aged 18-25 who completed suicide increased by 80% from the first half of 2020 to the same period in 2021.

Unfortunately, children and youth with mental health and substance use needs have fewer treatment options than adults. Over 45% of Maryland youth aged 12-17 with depressive symptoms did not receive any mental health care last year, and reports of young people with mental health needs stuck in hospital emergency departments for a lack of available community treatment options are increasing by the day.

Accordingly, MHAMD and its partners on the Children's Behavioral Health Coalition (CBHC) supported a variety of efforts this session to better serve younger Marylanders with behavioral health needs.

## *Streamlining Residential Treatment for Youth*

When youth are referred to a residential treatment center (RTC) for a behavioral health need, there is a corresponding education cost that families are often unable to cover. In these instances, families must enter into a voluntary placement agreement (VPA) and give up legal custody of their child so the Maryland Department of Human Services may cover the **RTC educational costs**. This delays treatment, often leaving youth waiting in hospitals while families navigate the cumbersome and invasive VPA process. [HB 766](#) (passed) streamlines this process and reduces the need for a VPA by authorizing local behavioral health authorities to approve the educational funding for youth in RTCs.

## *Supports for LGBTQ Youth and Young Adults*

A vast majority of LGBTQ students report experiencing harassment or assault based on personal characteristics, including sexual orientation and gender expression. These students report lower levels of self-esteem and higher levels of depression than their peers, and more than half of all transgender and nonbinary youth have reported seriously considering suicide at some point in their lives. MHAMD and CBHC advocated this year for policies that reduce discrimination and increase access to care for LGBTQ youth and young adults.

Many LGBTQ youth cite the role of gender affirming support systems and access to gender affirming care as directly linked with improved mental health. Youth who have sought out and received hormone therapy are nearly 40% less likely to report recent depression and a past-year suicide attempt than those who wanted hormone treatment but could not receive it. The **Trans Health Equity Act** ([SB 682](#) | [HB 746](#) (failed)) would have increased mental wellbeing and saved lives by requiring Medicaid to cover medically necessary gender-affirming treatment in a nondiscriminatory manner. Unfortunately, though the bill passed the Senate and passed out of committee in the House, it was never brought to the House floor for a vote.

The legislature did, however, pass positive legislation **prohibiting discrimination by schools and local boards of education**. [HB 850](#) (passed) prohibits discrimination against a student or their parent/guardian – including in policies related to enrollment and discipline – on the basis of race, ethnicity, sexual orientation, gender, or disability.

## *ACEs and Trauma*

Adverse childhood experiences (ACEs) are potentially traumatic events that occur in a child's life such as physical or emotional abuse, neglect, extreme poverty, and experiencing or witnessing violence. These traumas impact normative development and lifelong health, and they are significant risk factors for mental health and substance use disorders. Accordingly, MHAMD and its coalition partners supported a variety of efforts this year to prevent and address childhood trauma.

Family-friendly work policies and policies that strengthen household financial security can prevent ACEs by increasing economic stability and reducing parental stress. The legislature moved this session to increase economic support for families through passage of the **Time to Care Act** ([SB 275](#) (passed)). The bill creates a program to provide up to 12 weeks of paid family leave to workers who need time to care for ailing relatives and related family circumstances.

Additional legislation establishes the **Infant and Early Childhood Mental Health Program** at the Maryland State Department of Education to promote positive mental and behavioral health practices for young children ([HB 513](#) (passed)).

## *Juvenile Justice*

MHAMD supported efforts this year to reform Maryland's juvenile justice system and divert youth – particularly those with behavioral health needs – away from justice involvement.

[SB 691](#) (passed) implements reforms based on recommendations from the **Maryland Juvenile Justice Reform Council (JJRC)**. The bill prohibits children younger than 13 from being charged with a crime (unless it is a crime of violence) and prohibits any child from being committed to the Department of Juvenile Services (DJS) for out-of-home placement for misdemeanor offenses (unless the offense involves a firearm).

The bill also establishes the **Commission on Juvenile Justice Reform and Emerging and Best Practices** which, among other things, must research culturally competent, evidence-based, child mental health, prevention and intervention services; and it requires DJS to report on multiple items, including access to mental health services for all youth under their jurisdiction.

## *Youth-Centered Prevention and Early Intervention Programs*

DJS listening sessions in 2020 identified a lack of behavioral health resources as a contributing factor in the disparate criminalization of Black and brown youth, and data from the Behavioral Health Administration shows that Black youth disproportionately enter the behavioral health system with a higher level of need. These findings indicate a disparity in access to community-based early intervention and prevention programs that can reduce youth justice involvement.

At the request of MHAMD and partners, the legislature adopted budget language requiring a report on **behavioral health prevention and early intervention programs that are youth-led and youth co-designed**. These programs were highlighted at a CBHC forum last fall and are gaining recognition nationally as an innovative approach to eliminating stigma and other barriers that discourage and prevent youth from accessing mental health and substance use services. The report is due Nov. 1, 2022.

## Older Marylanders

The number of Marylanders over 60 years old is expected to reach 1.7 million by 2030 – an increase of 40% in just 15 years. This is the state’s fastest growing population, and one with a unique set of mental health and substance use needs. Unfortunately, appropriate community care and behavioral health supports are inconsistent across the state. This results in an overreliance on institutional levels of care and other restrictive practices that limit choice for older Marylanders with behavioral health disorders. MHAMD and our partners on the Mental Health and Aging Coalition (MHAC) took several steps this session to address these concerns.

### *Maryland PASRR*

Maryland’s federally mandated Pre-Admission Screening and Resident Review (PASRR) program screens individuals referred for placement in nursing facilities to ensure the appropriateness of those referrals. The program is intended to prevent unnecessary institutionalization of older adults whose needs can be adequately met in the community with appropriate services and supports.

Maryland’s PASRR program, however, is woefully antiquated. PASRR specialists must rely on a lengthy and burdensome paper process despite the availability of multiple federally approved automated processes. Maryland’s process can take upwards of

two weeks to complete, all while an individual is waiting unnecessarily in a hospital or institutional setting.

At the request of MHAMD and MHAC, the legislature adopted budget language requiring a **review of the Maryland PASRR program**, including recommendations for improving program efficiency. The report is due Nov. 1, 2022.

### *Supported Decision Making*

Individuals with behavioral health disorders represent a disproportionate number of those subject to public guardianship, and they tend to be in the program for many years. While unavoidable and necessary in certain situations, public guardianship is a serious restriction of individual liberty, and it must be viewed as a last resort.

On the other hand, supported decision-making prioritizes an individual's ability to make decisions with appropriate supports if and as needed. It is recognized as an effective alternative to public guardianship where an individual retains the legal capacity to make decisions for themselves. [SB 559](#) (passed) **authorizes the use of supported decision-making agreements** with a goal of preventing the need for guardianship.

### Harm Reduction

Maryland has battled a persistent overdose crisis since well before COVID-19, but pandemic-related stress, grief and despair have exacerbated these concerns. After reaching a new high in 2020, Maryland's rate of unintentional intoxication fatalities involving drugs and alcohol increased again over the first six months of 2021, with nearly 90% of these deaths involving opioids. Given these grim statistics, MHAMD and our coalition partners worked this session to enact policies that would reduce the harm associated with substance use and ensure a thoughtful and equitable allocation of funding dedicated to addressing the opioid crisis.

[HB 794](#) (passed) establishes the **Opioid Restitution Fund (ORF) Advisory Council** to increase transparency and accountability in the distribution of ORF funding. To date, the ORF has received \$12 million from judgments against opioid manufacturers, which must be used for substance use disorder prevention, treatment, recovery, or harm reduction efforts. The new ORF Advisory Council is tasked with ensuring that distribution of this funding is data-driven and equity focused.

Possession and distribution of ancillary drug supplies, including hypodermic needles, is currently punishable by up to four years in prison. This penalty is harsher in most instances than possession of the drugs themselves. This makes drug users reluctant to participate in health programs like needle exchanges and more vulnerable to overdose deaths. The General Assembly passed legislation last year **decriminalizing drug paraphernalia**, however, Governor Hogan vetoed the bill and the Senate opted not to override his veto. The legislation ([SB 509](#) | [HB 481](#) (failed)) was introduced again this session, and though it passed the House by a wide margin, the bill did not receive a vote in the Senate.

In another effort to stem the tide of overdose deaths, MHAMD and partners supported an effort to expand legal protections afforded under Maryland's **Good Samaritan statute**. Current law encourages people who witness an overdose to call 911 by providing immunity from arrest, charge, or prosecution for several minor drug and alcohol offenses if the related evidence was obtained solely as a result of the person's seeking medical assistance. However, the person experiencing the overdose may still be arrested, charged and prosecuted, which discourages some bystanders from seeking medical assistance. [HB 190](#) (failed) would have extended Good Samaritan immunity to protect against such detention or prosecution, but the legislation stalled given opposition from state's attorneys.

## Optum Maryland

Over two years have passed since Optum took over as manager of the state's public behavioral health system, and Maryland behavioral health providers are still struggling to navigate the company's faulty claims payment system. The Maryland General Assembly passed legislation and enacted budget language in 2021 to increase accountability and oversight of Optum, but the challenges persist.

Now mental health and substance use providers face the prospect of paying back unverifiable actual versus estimated payments that were made for several months to keep the system afloat when Optum's claims payment system crashed immediately upon launching in January 2020. These recoupment plans are moving forward despite the lack of reliable data to reconcile historical payments and services.

Efforts this year to afford some relief to providers and hold Optum to greater account saw mixed results. The legislature did adopt **budget language withholding \$1 million from MDH** pending a report on the actual amount of overpayments outstanding, recoupment and forgiveness of overpayments, the total number and total amount of claims still in dispute, and more.

Unfortunately, this language alone does not offer adequate protection for providers. It still allows for Optum to begin recouping estimated payment balances, even in the face of disputed service denials; it does not ensure an accessible and equitable appeals process for providers; and it does not guarantee sufficient time for repayment of balances following the dispute resolution process. MHAMD and our coalition partners urged passage of **emergency legislation** ([SB 549](#) | [HB 715](#) (failed)) that would have taken these important steps, but the bill stalled on heavy opposition from Optum and MDH.

## Parity and Network Adequacy

Under federal and state parity laws, Marylanders are entitled to receive mental health and substance use disorder benefits at the same coverage level as other medical benefits. But many Marylanders still face barriers in access to behavioral health services that are not imposed for medical and surgical benefits. MHAMD and partners supported several efforts this session to address these barriers.

An independent national report published in late 2019 showed that commercially-insured Marylanders are 10 times more likely to go out-of-network for behavioral health care than for primary care – a rate that is fourth worst in the nation. And though Maryland law requires insurance carriers to approve the delivery of behavioral health services through a non-network provider if there is no available in-network provider, patients often find themselves on the hook for any charges not reimbursed by their plan. This limits access to care and results in higher out-of-pocket costs that can make treatment unaffordable, even for those with insurance. [SB 707](#) | [HB 912](#) (passed) should provide some relief. It **prevents 'balance billing'** by requiring insurers to cover out-of-network care at "no greater cost" than for services received in-network, if an in-network provider is not available.

[SB 460](#) | [HB 517](#) (failed) would have established the **Consumer Health Access Program (CHAP)**, a one-stop shop to assist Marylanders in navigating insurance-related barriers to behavioral health care. CHAP would have helped Marylanders enroll in insurance, understand their coverage for mental health and substance use care, find providers who take their insurance, and represent people in challenging insurance denials. The bill passed the Senate but stalled in the House on heavy opposition from insurance carriers.

## Fiscal Year 2023 Budget

The legislature gave bipartisan approval to the nearly \$60 billion state budget in late March. The budget funds Maryland's public behavioral health system – which is currently serving about 285,000 children and adults with mental health and substance use disorders – at around \$2.56 billion.

Notably, the number of individuals served by the public behavioral health system has declined over the past two fiscal years after increasing by more than 5% annually from FY 2016 to FY 2019. Budget analysts have pointed to several main causes for this decline, including the COVID-19 pandemic and the ASO dysfunction outlined above, suggesting the downturn in utilization is more closely related to access challenges than a decrease in need. The most significant decline is among those dually diagnosed, suggesting that individuals with co-occurring mental health and substance use disorders are facing the greatest loss in access to care.

### *Community Behavioral Health Funding Increases*

Hard fought battles in prior legislative sessions secured a series of multi-year funding increases for community behavioral health services, including a 3.25% increase that will take effect on July 1, 2022. This increase totals \$47 million in total funding (state and federal). This comes on top of recently announced pandemic relief from the American Rescue Plan that will boost community behavioral health support by \$65 million in FY23. Lastly, at the request of the legislature, Governor Hogan supplemented his FY23 budget with an additional 4% increase in funding for community behavioral health services, adding another \$58 million in total funding (state and federal). Taken together, these actions will increase funding for community mental health and substance use services by **over \$170 million** in the next fiscal year.

### *Reporting Requirements*

In addition to budget language highlighted in other sections of this report, the budget also includes the following notable reporting requirements:

- Behavioral Health Administration report on prevalence and barriers to accessing **medication-assisted treatment (MAT)** for individuals with substance use disorders (*due 10/1/2022*)
- Department of Human Services report on **hospital stays by youth in out-of-home placements** (*due 12/1/2022*)

- Report from the Governor's Office of Crime Prevention, Youth, and Victim Services detailing **annual expenditures on programs to improve child well-being** and address priorities established by the Children's Cabinet (*due 9/1/2022*)
- Department of Public Safety and Correctional Services report on **mental health and substance use treatment for incarcerated individuals** (*due 8/20/2022*)

## Other Important Behavioral Health Legislation

### *Suicide Prevention*

In January 2021, the U.S. Surgeon General issued a Call to Action and encouraged states to implement a series of suicide prevention strategies. One of these strategies focuses on improving the quality, timeliness and use of suicide-related data. [SB 94](#) | [HB 48](#) (passed) will further this effort by establishing a **Suicide Fatality Review Committee** to review and identify factors contributing to suicide deaths and develop strategies for suicide prevention.

### *Overdose Prevention*

As indicated above, the public health and safety threat from drug- and alcohol-related intoxication continues to grow. Americans are now more likely to die from opioid overdoses than car crashes. [SB 394](#) (passed) provides additional tools to assist in combating Maryland's overdose crisis. The bill authorizes EMS workers to offer overdose reversal drugs to individuals who received treatment for a nonfatal drug overdose or were evaluated by a crisis evaluation team. It also requires certain community services programs, health care providers, local health departments, hospitals, and more to offer overdose reversal drugs free of charge to individuals who have an opioid use disorder or are at risk of experiencing a drug overdose.

### *Psychedelic-Assisted Therapy*

In 2015 MHAMD launched [BrainFutures](#), a national nonprofit dedicated to improving human outcomes by assessing and advancing practical applications of new scientific understanding of the brain. Last year BrainFutures launched a psychedelic-assisted therapy initiative to raise awareness about the clinical applications and benefits of psychedelic substances, resulting in a [new issue brief](#) reviewing relevant research

and making a series of recommendations for how to responsibly advance these innovative alternative therapies.

[SB 709](#) (passed) establishes a new fund to support MDH in studying the effectiveness of and improving access to alternative therapies – including psychedelic-assisted therapy – for veterans living with depression and PTSD. Given the work BrainFutures has done in this field, the bill passed with an amendment adding BrainFutures to the list of organizations that must be consulted by MDH as it implements the fund and works to expand access to these treatments.

### *Mental Health Advance Directives*

A mental health advance directive (MHAD) is a legal document that allows a person with a mental illness to state their wishes and preferences in advance of a mental health crisis. These documents provide for more patient-centered care and can help resolve crises more quickly, appropriately, and without coercion. They allow individuals to clarify treatment preferences and crisis planning and often include and involve family members and social support networks.

Despite the benefits of MHADs, widespread support for their use, and a variety of studies recommending that clinicians facilitate the completion of these documents, the rate of usage remains frustratingly low. [SB 994](#) | [HB 1467](#) (failed) would have required MDH to develop and implement a public awareness campaign to encourage the use of MHADs. It would have also required the establishment of a readily accessible centralized database of MHADs to assist providers in responding to individuals experiencing a behavioral health crisis. Unfortunately, the bill was introduced too late to make it successfully through the legislative process.