



Wes Moore, Governor · Aruna Miller, Lt. Governor · Laura Herrera Scott, M.D., M.P.H., Secretary

July 26, 2023

The Honorable Guy J. Guzzone, Chair
Senate Budget and Taxation Committee
3 West Miller Senate Office Bldg.
Annapolis, MD 21401-1991

The Honorable Ben Barnes, Chair
House Appropriations Committee
121 House Office Bldg.
Annapolis, MD 21401-1991

Re: 2022 Joint Chairmen's Report (pp. 116-117) – Report on Federal Claims and Spending Data Accounting for Enhanced Federal Matching Funds Authorized in the American Rescue Plan Act for Home- and Community-Based Services Spending

Dear Chairs Guzzone and Barnes:

In keeping with requirements of the 2022 Joint Chairmen's Report (pp. 116-117), enclosed is the Maryland Department of Health's report on federal claims and spending data accounting for enhanced federal matching funds authorized in the American Rescue Plan Act for home- and community- based services spending from April 1, 2021 to March 31, 2022.

We apologize for the delayed submission of this report and respectfully request the release of funds associated with this report.

If you have any comments or questions, please contact Megan Peters, Acting Director of Governmental Affairs, at megan.peters@maryland.gov.

Sincerely,

Laura Herrera Scott, M.D., M.P.H.
Secretary

cc: Marie Grant, Assistant Secretary for Health Policy
Ryan Moran, Deputy Secretary, Health Care Financing and Medicaid
Tricia Roddy, Deputy Director, Office of Health Care Financing
Marlana Hutchinson, Director, Office of Long-Term Supports and Services
Megan Peters, Acting Director, Office of Governmental Affairs
Sarah Albert, Department of Legislative Services (5 copies)

Executive Summary

Pursuant to the 2022 Joint Chairmen's Report (p. 116-117), the Maryland Department of Health (MDH) submits this report on home- and community-based services (HCBS) expansion under the American Rescue Plan Act (ARPA). This report requests the following information, with federal claims and spending data disaggregated by MDH administration (Behavioral Health Administration (BHA), the Developmental Disabilities Administration (DDA), and the Medical Care Programs Administration):

- The actual amount of federal funds claimed through the 10% enhanced federal match for HCBS expenditures from April 1, 2021, to March 31, 2022, including secondary federal funds claimed and any associated State funds accounted for separately;
- A timeline for spending the funds by fiscal year and the status of the Centers for Medicare and Medicaid Services (CMS) approval for the spending plan (including reasons for CMS disapproving any planned uses proposed by MDH);
- Actual spending for rate increases, provider grants, and any other uses in fiscal 2021, 2022, and 2023 year-to-date, and planned spending in fiscal 2023 and 2024; and
- Specific programmatic recommendations on ways to claim Medicare savings to apply to costs for HCBS waiver expansion.

MDH has implemented several initiatives using ARPA funds and its enhancement of home- and community-based services (HCBS). By end of State Fiscal Year (SFY) 2023 (July 1, 2022, through June 30, 2023), MDH will have:

- Increased rates for behavioral health, long-term services and supports (LTSS) and waiver programs administered by the Developmental Disabilities Administration (DDA)
- Expanded substance use disorder (SUD) services to services provided by Certified Peer Recovery Specialists (CPRSs), and
- Released \$5 million in grants to DDA providers.

MDH initially estimated \$273.8 million in reinvestment funds earmarked to enhance, expand, or strengthen Maryland's HCBS. With the assistance of the Hilltop Institute at the University of Maryland, Baltimore County (Hilltop), MDH calculated that the actual amount of funds to reinvest is \$287.2 million, approximately \$13.4 million more than originally estimated. As of June 30, 2022, MDH has reinvested approximately \$43.5 million. Despite the recently extended timeline provided by CMS, which permits states to expend funds through March 31, 2025, MDH expects to exhaust all reinvestment funds by the original deadline of March 31, 2024. MDH continues to collaborate with the Health Services Cost Review Commission (HSCRC) on exploring avenues to claim Medicare savings to apply to costs for any HCBS waiver expansions.

Background

On March 11, 2021, President Biden signed into law the American Rescue Plan Act (ARPA). A portion of ARPA (Section 9817) provides additional support for Medicaid HCBS by providing a 10% enhanced federal medical assistance percentage (eFMAP) for a one-year period from April 1, 2021 to March 31, 2022. HCBS are person-centered services delivered either in the home or in the community to support participants who need assistance with everyday activities; finding and maintaining competitive, integrated employment; and community integration.

Originally, the Centers for Medicare and Medicaid (CMS) proposed that states must use the federal funds attributable to the one-year eFMAP by March 31, 2024; however, CMS later extended that timeframe to March 31, 2025. In addition, states must use state funds equivalent to the amount of federal funds attributable to the 10% eFMAP to implement or supplement the implementation of one or more activities to enhance, expand, or strengthen HCBS under the Medicaid program.

In alignment with ARPA, states had to agree to certain provisions. States cannot use the funds to supplant or replace existing HCBS funding. Additionally, states may not impose stricter eligibility standards, methodologies, or procedures for HCBS programs and services than those that were in place on April 1, 2021. States must also preserve covered HCBS, including the actual services and the amount, duration, and scope of those services that were in effect as of April 1, 2021.

Summary of Rate Increases, Other Initiatives, and Spending

Sustained Rate Increases

As required by this report, MDH disaggregated information into three different silos: home- and community-based services administered by the Office of Long-Term Services and Supports (HCBS - LTSS), behavioral health (BH), and DDA-Administered Programs (DDA). Using an analysis conducted by Hilltop, MDH estimated that, for HCBS - LTSS and BH services, a 5.2% rate increase and a 5.4% rate increase, respectively, would cover approximately 75% of the enhanced funding. DDA conducted its own analysis and determined that a 5.5% rate increase would account for approximately 75% of the estimated funding. HCBS-LTSS and BH rate increases began November 1, 2021 (in the middle of SFY 2022 Quarter 2), and DDA rate increases were retroactive to April 1, 2021. See Figure 1 for more information.

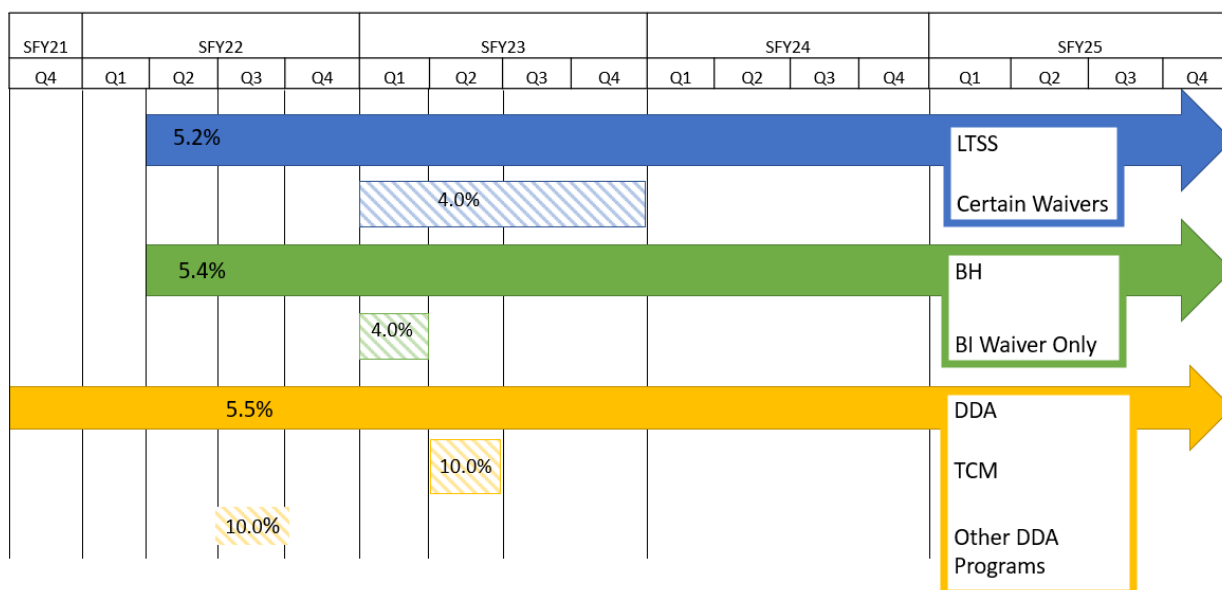
Temporary Rate Increases

Additionally, HCBS-LTSS implemented a one-time, temporary, emergency 4.0% rate increase during FY 2023 for all providers who render waiver services to participants of the Waiver for Children with Autism Spectrum Disorder (Autism Waiver), Home and Community-Based Options Waiver (Community Options Waiver), Medical Day Care Services Waiver (Medical Day Care Waiver), and Home Care for Disabled Children Under a Model Waiver (Model Waiver), effective for the four quarters of FY 2023. The Brain Injury Waiver Program (BI Waiver), which is actually a BH waiver program, was erroneously included in the initial rate increase for

HCBS-LTSS. As a result, the BI Waiver received a one-quarter-only rate increase from July 2022 through September 2022.

DDA, after consulting with CMS and stakeholders, also elected to implement temporary rate increases. DDA implemented a one-time, temporary, emergency 10% rate increase for DDA providers, effective for the third quarter of SFY 2022 (January 1, 2022, through March 31, 2022). This increase excluded targeted case management (TCM) providers, who instead received a one-time, 10% emergency-rate increase for the second quarter of SFY 2023 (October 1, 2022 - December 31, 2022).

Figure 1. ARPA Rate Increases Timeline*



*Solid arrows are sustained rate increases and striped boxes are temporary increases

Other Initiatives

DDA will be offering competitive grants for the development and implementation of new HCBS business models, such as expanded use of technology, customized employment, independent-housing-support models, community-hub development, environmental modifications, transportation alternatives and services, consulting and subject matter expert services, and/or strategic-planning and business-model development to provide new or additional Medicaid HCBS. These grants will not fund “room and board” costs and are not eligible for a federal match. DDA expects the grant opportunity to be open for applications by early 2023.

Nonprofit organizations contracted by DDA to provide indirect services that enhance HCBS participants’ independence and inclusive opportunities are also eligible to apply for the competitive grants. Examples of such nonprofits include the Special Olympics and local colleges for the development of programs that support higher learning for people with intellectual and/or developmental disabilities.

Estimated Fiscal Impact and Current Spending

To complete the initial estimates that funded the programmatic changes listed above, MDH worked with its data warehouse at Hilltop to estimate the impact of the additional federal funding that will be re-invested into HCBS due to the 10% FMAP increase from ARPA for HCBS-LTSS and BH. DDA conducted its own analysis.

MDH estimated that it would be able to draw down \$273.8 million attributable funds for the three programs: \$62.7 million for HCBS LTSS, \$70.7 million for BH programs, and \$140.3 million for DDA programs (see Table 2 below).

Table 2. Actual Expenditure Information, Funds attributable to the HCBS eFMAP, April 1, 2021, through December 31, 2021

	Original Estimated Funds Attributable, April 2021 - March 2022	Total Actual Funds Attributable, April 2021 - March 2022	Difference between Original Estimated and Total Actual Funds Attributable
HCBS LTSS	\$62,656,799.00	\$78,405,838.40	\$15,749,039.40
BH	\$70,768,589.00	\$78,539,550.94	\$7,770,961.94
DDA	\$140,332,724.00	\$130,259,367.54	-\$10,073,356.46
TOTAL	\$273,758,112.00	\$287,204,756.88	\$13,446,644.88

Overall, MDH's actual expenditures closely align with its original estimates, with \$287.2 million actual attributable funds. MDH will be able to draw down more funds than anticipated for HCBS LTSS and BH services (\$15.7 million and \$7.8 million more, respectively). MDH will be able to draw down approximately \$10 million less in funds than anticipated for DDA programs.

CMS Approved Plan for HCBS Reinvestment Spending

MDH began reinvesting ARPA funds on July 1, 2021. As of the end of June 2022, MDH has reinvested \$43.5 million.

Table 3. ARPA Reinvestment as of June 30, 2022

	Total Available Funding to be Reinvested	Amount Reinvested as of June 30, 2022	Amount of Funds Remaining for Reinvestment
<i>HCBS LTSS</i>			
State Funds	\$78,405,838.40	\$8,650,381.36	\$69,755,457.04
Federal Funds		\$16,614,881.81	
Total Funds		\$25,265,263.17	
<i>BH</i>			
State Funds	\$78,539,550.94	\$9,664,855.54	\$68,874,695.40
Federal Funds		\$25,513,573.30	
Total Funds		\$35,178,428.84	
<i>DDA</i>			
State Funds	\$130,259,367.54	\$25,152,463.38	\$105,106,904.16
Federal Funds		\$43,745,867.70	
Total Funds		\$68,898,331.08	
TOTAL	\$287,204,756.88	\$43,467,700.28	\$243,737,056.60

Options to Claim Medicare Savings to Apply to Costs for HCBS Waiver Expansion

MDH continues to collaborate with HSCRC on exploring avenues to claim Medicare savings to apply to costs for any HCBS waiver expansions. Any shared-savings framework would require signoff by relevant State and federal agencies. For more information, see the 2021 Joint Chairmen's Report (p. 113) on HCBS expansion:

https://dlslibrary.state.md.us/publications/JCR/2021/2021_113b.pdf.

Conclusion

MDH will continue to implement its ARPA-funded projects, as well as to collaborate with HSCRC regarding possible frameworks for using Medicare savings to expand the waiver programs. MDH will continue to submit its quarterly updates to CMS and will post them online on the MDH's public notice page.¹

¹ <https://health.maryland.gov/mmcp/Pages/Public-Notices.aspx>

Appendix A: HCBS in Maryland

HCBS are operated under various federal authorities including the 1115 waiver, state plan, as well as 1915(c), 1915(j), and 1915(k). Maryland's HCBS 1915(c) waivers are operated by two different state agencies: MDH's Office of Long Term Services and Supports (OLTSS), Office of Medical Benefits Management (MBM), Behavioral Health Administration (BHA), and Developmental Disabilities Administration (DDA), and the Maryland State Department of Education (MSDE). Please see the table below for an overview of HCBS waiver programs in Maryland.

HCBS Programs in Maryland

Program	Authority	Operating State Agency	Program Description
Model Waiver for Medically Fragile Children	1915(c)	OLTSS	The Model Waiver allows medically fragile individuals who would otherwise be hospitalized and are certified as needing either hospital or nursing facility level of care to receive medically necessary and appropriate services in the community.
Community Pathways Waiver	1915(c)	DDA	The Community Pathways Waiver provides comprehensive supports and services to help participants to live more independently in their homes and communities. The program provides a variety of Residential, Meaningful Day, and Support Services that promote community living, including a self-directed service model and traditional, agency-based service model.
Family Supports Waiver	1915(c)	DDA	The Family Supports Waiver helps participants to live more independently in their homes and communities. The program provides a variety of Support Services that promote community living, including a self-directed service model and traditional, agency-based service model.
Community Supports Waiver	1915(c)	DDA	The Community Supports Waiver helps participants to live more independently in their homes and communities. The program provides a variety of Meaningful Day and Support Services that promote community living, including a self-directed service model and traditional, agency-based service model.

Program	Authorit y	Operating State Agency	Program Description
Waiver for Children with Autism Spectrum Disorder	1915(c)	MSDE	<p>Maryland's HCBS Waiver for Children with Autism Spectrum Disorder allows eligible children with Autism Spectrum Disorder to receive specific services to support them in their homes and communities.</p> <p>Participants must be children with autism ages 2 through 21 who need an intermediate care facility for the intellectually disabled level of care.</p>
Brain Injury Waiver	1915(c)	BHA	Maryland's Home and Community-Based Services Waiver for Individuals with Brain Injury provides specialized community-based services to adults with brain injuries.
Medical Day Care Services Waiver	1915(c)	OLTSS	Under this waiver, approved medical day care agencies provide health, social, and related support services in an organized setting to individuals aged 16 years and older who reside in the community and who are assessed to need a nursing facility level of care.
Home and Community-Based Options Waiver	1915(c)	OLTSS	<p>This program provides community-based services and supports that enable older adults and those with physical disabilities to continue living in their own homes or in assisted living facilities.</p> <p>Participants must be 18 years or age or older and meet a nursing facility level of care.</p>
Community First Choice	1915(k)	OLTSS	Community First Choice provides HCBS to older adults and individuals with disabilities who meet an institutional level of care and qualify financially to receive Medicaid in the community.
Community Personal Assistance Services	1915(j)	OLTSS	<p>This state plan program provides in-home personal assistance to older adults and individuals with disabilities.</p> <p>To qualify, an individual must meet the financial criteria to receive Medicaid in the community and require assistance to perform activities of daily living.</p>

Program	Authorit y	Operating State Agency	Program Description
Increased Community Services (ICS)	1115	OLTSS	Through the ICS Program, MDH continues providing Medicaid State Plan benefits and HCBS to residents ages 18 and over, enabling qualifying individuals to live at home with appropriate supports, as opposed to residing in a nursing facility.
Rare and Expensive Case Management (REM)	1115	MBM	The REM Program is a case-managed fee for service alternative to HealthChoice Managed Care Organization (MCO) participation for recipients with specified rare and expensive conditions.
Program of All-Inclusive Care for the Elderly (PACE)	State Plan	OLTSS	<p>The Program of All-Inclusive Care for the Elderly (PACE) provides comprehensive medical and social services to eligible individuals who live in the community.</p> <p>To participate in PACE, individuals must meet the following criteria: be at least 55 years old; be certified to need a nursing facility level of care; agree to receive all health and long-term care services from the PACE provider; and have income of no more than 300% of the Supplemental Security Income (SSI) benefit level for a household of one person and assets no more than \$2,000.</p>

In collaboration with BHA, MDH also delivers behavioral health services to enrolled participants. This includes services provided under the 1915(i) authority. Based on the State Medicaid Director Letter (SMDL) issued on May 13, 2021, behavioral health services are eligible for the eFMAP.