



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

*Larry Hogan, Governor - Boyd Rutherford, Lt. Governor - Van Mitchell, Secretary*

November 19, 2015

The Honorable Larry Hogan  
Governor  
State of Maryland  
Annapolis, MD 21401-1991

The Honorable Thomas V. Mike Miller, Jr.  
President of the Senate  
H-107 State House  
Annapolis, MD 21401-1991

The Honorable Michael E. Busch  
Speaker of the House  
H-101 State House  
Annapolis, MD 21401-1991

Re: HB 1456 (Ch. 457) of the Acts of 2014  
2015 Legislative Report on the Jurisdiction of the Department of Health and Mental Hygiene's Board of Review

Dear Governor Hogan, President Miller, and Speaker Busch:

Pursuant to House Bill 1456 (2014), the Department of Health and Mental Hygiene (the Department) submits this one-time legislative report on its study of the continued role of the Department's Board of Review and its recommendations on whether the appellate jurisdiction of the Board of Review should be further limited.

If you have questions concerning this report, please contact Ms. Allison Taylor, Director, Office of Governmental Affairs, at (410) 767-6481. The Department looks forward to working with you as we continue to explore ways to improve efficiencies and reform State government.

Sincerely,



Van T. Mitchell  
Secretary

Enclosure

cc: Allison Taylor, Director, Office of Governmental Affairs  
Shannon McMahon, Deputy Secretary, Health Care Financing  
Kathleen Ellis, AAG  
Sarah Albert, MSAR # 10059



**LEGISLATIVE REPORT ON  
THE JURISDICTION OF THE DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE'S BOARD OF REVIEW**

**HB 1456/Chapter 457 of the Acts of 2014**

Larry Hogan  
Governor

Boyd Rutherford  
Lieutenant Governor

Van Mitchell  
Secretary

**JURISDICTION OF THE DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE’S BOARD OF REVIEW**  
*Evaluation Report of House Bill 1456/Chapter 457 (2014)*

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## Background

The Board of Review (the Board) of the Department of Health and Mental Hygiene (the Department) is a seven-member Board appointed by the Governor for three year terms, with the advice and consent of the Senate. No Board members are appointed by the Secretary of Health and Mental Hygiene (the Secretary), so the Board is therefore structurally independent from the Department.

Historically, the statute that created the Department's Board required litigants to appeal the decision of most contested cases by the Secretary to the Board before the case could be appealed to Maryland courts, beginning with circuit court and then the Court of Appeals. Prior to 2014, the Board was required to hear and determine appeals from any decision of the Secretary subject to judicial review under the Administrative Procedure Act or any other provision of law. The majority of these cases were Maryland Medical Assistance Program (Medicaid) appeals. Although fewer in number than appeals related to individuals' eligibility for and participation in Medicaid, the Board's jurisdiction included a wide range of additional matters arising from other Departmental decisions. These included payment and conditions-of-participation disputes between the Medicaid program and providers; disputes concerning capitation payments to MCOs and HMOs; enforcement of facility and provider regulations by the Department's Office of Health Care Quality; public health enforcement and licensure decisions; Public Information Act disputes; and disputes concerning the Maryland Special Supplemental Nutrition Program for Women, Infants, and Children, among many others. Because the Board did not hear a significant number of any of these types of cases, however, it did not develop particular expertise in resolving them. Moreover, because the Board's jurisdiction was not precisely defined in its enabling statute, there was often confusion and ambiguity about whether certain matters were subject to review by the Board.

To address these concerns, in 2014 the Maryland General Assembly passed House Bill 1456, Chapter 457 of the Acts of 2014, a Departmental bill that limited the jurisdiction of the Department's Board to appeals from decisions of the Secretary in contested cases concerning an individual's eligibility for, or participation in, the Maryland Medical Assistance Program (Medicaid), including home and community-based waiver services programs and other demonstration waiver programs. (See HB 1456/[Chapter 457](#) (2014), *Department of Health and Mental Hygiene – Board of Review – Jurisdiction*.) However, the bill excluded from the Board's administrative review those contested cases involving Medicaid eligibility determinations that the Secretary delegates to the Maryland Health Benefit Exchange (the Exchange). The exclusion ensures conformity with new processes and finality requirements established under the Affordable Care Act for resolving appeals from Medicaid eligibility determinations. In order to coordinate and streamline federal and State processes, these regulations changed the way in which Medicaid eligibility is determined and restricted the scope of administrative review for certain eligibility categories. In Maryland, the Secretary delegated eligibility determinations and appeals for modified-adjusted-gross income (MAGI) populations, a subset of the entire Medicaid-eligible population, to the Exchange. As a result, the Board is no longer permitted under federal regulation to review the factual conclusions of the Exchange for this subset of cases, and this legislative change in HB 1456 (2014) was necessary to comply with the regulation.

The Secretary's current delegation to the Exchange only applies to eligibility for MAGI coverage groups and does not include decisions about coverage of specific medical services or other appeals related to an individual's participation in, as opposed to eligibility for, Medicaid. Under HB 1456 (2014), all Medicaid participants, including those in MAGI-based coverage groups, would still be permitted to seek review by the Board of any Medicaid program decisions unrelated to eligibility.

In sum, HB 1456 (2014) addressed the Department's concerns by clarifying the scope of the Board's jurisdiction. It also removed a number of cases from the Board's jurisdiction, resulting in a more manageable caseload. (See Appendix A – Board of Review 2013 Calendar Year Report and Appendix B – Board of Review 2014 Calendar Year Report.) The types of cases no longer subject to Board review principally involve matters in which the Board does not develop particular expertise. As discussed above, the matters removed from the Board's jurisdiction would be resolved according to the same set of processes that all other State agencies now follow: specifically, review by OAH or other delegated decision-maker, resulting in either a proposed or final decision; a final decision by the Secretary or the Secretary's designee in cases where the initial decision was a proposed decision; followed by judicial review.

HB 1456 (2014) also provided that, in the Medicaid cases that would remain subject to the Board's jurisdiction, if the Board does not issue a decision in 180 days after the notice of appeal is filed, the decision of the Secretary is affirmed. Finally, HB 1456 (2014) authorizes a person who receives an adverse decision at OAH in a matter subject to review by the Board to forgo that review and instead directly petition for judicial review in the circuit court.

## **Discussion**

The Board was established in 1969 (Ch. 77, Acts of 1969) and predated the creation in 1990 of the Office of Administrative Hearings (OAH), which modernized administrative appeals practice in Maryland. The establishment of OAH in 1990, while retaining the jurisdiction of the Board, resulted in an often cumbersome, two- and three-tier administrative review process in most Departmental contested cases. In one recent Court of Appeals case, it took six years from the Department's initial decision for the appellant to reach circuit court. *BMA Healthcare Services v. DHMH*, Court of Special Appeals No. 02026, September Term, 2012.

Even with limiting the Board's jurisdiction to certain Medicaid decisions and eliminating the option for three rounds of administrative review after the enactment of HB 1456 (2014), the current two-tier administrative appeals process for those Medicaid cases still under the Board's jurisdiction provides for an unnecessary additional layer of administrative review. Not taking a direct judicial appeal to the circuit court until the resolution of two administrative appeals, by the OAH and then the Board, results in a protracted administrative appeals process.

The Department has not observed any negative impact to the Medicaid program nor to litigants after the enactment of HB 1456 (2014), which was fully supported by Board members, the assistant attorney general assigned to provide counsel to the Board, and each of the assistant attorneys general who litigate cases before the Board on behalf of the State. Stakeholders

representing vulnerable individuals in contested administrative appeals supported the proposal because it streamlined the appeals process, thereby expediting the administration of justice. The Department believes it is likely that advocates would support the repeal of the Board to achieve even more timely administrative decisions in Departmental contested cases.

There is no comparable administrative appeals process applicable to the determinations of any other State agency. While a number of other agencies were previously overseen by boards of review, those other boards have all been abolished in the years since the establishment of OAH. The two other boards of review that most recently existed were associated with the Maryland Department of Agriculture (MDA) and the Maryland Department of Transportation (MDOT), respectively. However, these boards were abolished by SB 53 (2013) (repeal of MDA's board of review) and HB 1514 (2008) (repeal of MDOT's board of review). Both of these bills passed unanimously. The Department of Human Resources (DHR), the State agency whose workload of contested cases most closely resembles that of the Department, does not have a Board of Review. Appeals in Supplemental Nutrition Assistance Program and Temporary Cash Assistance cases, for example, are rendered by OAH, and DHR's final decisions in those cases are subject to immediate judicial review.

## **Recommendation**

The Department's Board was established 46 years ago before administrative appeals from Departmental decisions could be made through the OAH which was established in 1990. The establishment of the OAH provides comparable administrative appeal functions that make the Department's Board duplicative. It is notable that no other State agency has a board of review for its administrative appeals. The appeals of other agencies are exclusively handled through the OAH and the circuit courts.

The Department recommends that its Board of Review be abolished. This would require legislation to repeal the Board's enabling legislation and would also require the Department to repeal the Board's related regulations at [COMAR 10.01.05](#). (See Appendix C – Board statute: Health-General Article, §§ 2-201 through 2-207, *Board of Review of Department*.) To that end, the Department recommends that during the 2016 session of the Maryland General Assembly, legislation be introduced to repeal the Board. The Department recommends that the legislation direct the Board to stop accepting Board cases in June 2016 and terminate Board operations entirely in December 2016. As previously stated, under current law, litigants in Medicaid appeals under the Board's jurisdiction can bypass the Board and appeal directly to the circuit court after receiving an adverse decision by the OAH. If a case filed with the Board is not heard within 180 days, the decision of the Secretary is affirmed. Therefore, if legislation abolishing the Board is enacted during the 2016 legislative session, once the Board is abolished, litigants who wish to pursue an appeal would need to appeal directly to circuit court following an adverse decision by OAH.

In addition to facilitating a litigant's opportunity for a fair and timely hearing and prompt judicial review of Departmental decisions, repealing the Board would reduce associated operational costs to the Department and the Office of the Attorney General. The Board currently meets approximately once per month except for during the 90-day legislative session. The budgeted

costs of operating the Board in FY16 are \$18,327 to cover Board per diems, court reporters, postage, in-State travel, language interpreters, duplicating services, in-house network printing, freight and expressing, litigation expenses, and office supplies. (See Appendix D – Board’s FY13-16 budget.) The Board’s administrative oversight is currently supported by an employee of the Department’s Office of Governmental Affairs (OGA) who also has numerous other job duties within OGA. The Office of the Attorney General for the Department is responsible for handling the cases appealed to the Board by Medical Assistance Program beneficiaries. One Assistant Attorney General spends an average of three days a month on that responsibility. In addition, another Assistant Attorney General represents the Board; that responsibility takes approximately one day a month.

With the repeal of the Board, the resources previously used by the Board would be better directed to other needed Departmental operations. As you are aware, the Department experienced 2% general fund budget reductions in FY16, and the Department’s positions have been reduced from 7,754 in FY05 to 6,427.6 in FY16, a reduction of 1,326.4 positions or 17%. In this climate of fiscal restraint, it is important that the Department find new ways to achieve its goals while operating more efficiently.

The Department appreciates your consideration of its recommendation to repeal its Board as a way to streamline government by eliminating an obsolete and duplicative appellate function.

# BOARD OF REVIEW

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DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
**2013 CALENDAR YEAR REPORT**

OFFICE OF  
GOVERNMENTAL AFFAIRS

# Board of Review

Department of Health & Mental Hygiene

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## INTRODUCTION

This report highlights the activities of the Board of Review (“Board”) during Calendar Year 2013 for the Department of Health and Mental Hygiene (“Department”) in conformance with all applicable laws, regulations, and internal guidelines.

The Board shall report at least annually to the Secretary. Its report shall include a summary by categories of appeals heard and determinations made. *Maryland Annotated Code Health-General §2-206(d)*.

Except as provided otherwise, the Board hears and determines any appeal from:

- 1) A decision of the Secretary of any unit in the Department in a contested case that is subject to judicial review under State Government Article §10-222;
- 2) A decision of the Secretary or any unit in the Department that is subject to judicial review under any provision of law other than State Government Article, §10-122 and §10-225 and
- 3) An action of or inaction by any unit in the Department for which the Secretary, by rule or regulation, provides for review by the Board.

A majority of the cases heard by the Board are medical assistance appeals. The decisions of the Board are the final agency decision for purposes of judicial review under the Administrative Procedures Act or any other law that permits an appeal to the courts from decisions of the Department.

**The contents of this report have been organized by the following headings:**

- Changes in Laws, Regulations, & Internal Guidelines
- Appointed Members and Staff
- 2013 Hearing Dates and Attendance History
- Appeals to the Board
- Board Decisions Appealed to the Circuit Court
- Statistical Breakdown of Determinations Made
- Statistical Breakdown by Appeal Type

# Board of Review

Department of Health & Mental Hygiene

## CHANGES IN LAWS, REGULATIONS, & INTERNAL GUIDELINES

In Calendar Year 2013, there were no changes to COMAR 10.01.05, State Government Article §10-122, §10-222, and §10-225, or Health-General Article §2-201 through §2-207.

## APPOINTED MEMBERS & STAFF

Members	Counsel to the Board	Liaison to the Board
Anne Cullen	Carl Zacarias, Esq.	Carlita Lindsey <sup>1</sup>
Betty Coleman		
Charles Gast		
Janelle Jordan <sup>2</sup>		
Kim Hinton <sup>3</sup>		
Kimberly Thomas <sup>4</sup>		
Joy Naden <sup>5</sup>		

## 2013 HEARING DATES & ATTENDANCE HISTORY

MEMBERS	Jan 24 <sup>th</sup>	Feb 28 <sup>th</sup>	Mar 29 <sup>th</sup>	Apr 25 <sup>th</sup>	May 23 <sup>rd</sup>	June 27 <sup>th</sup>	July 25 <sup>th</sup>	Aug 22 <sup>nd</sup>	Sept 26 <sup>th</sup>	Oct 24 <sup>th</sup>	Nov 21 <sup>st</sup>	Dec 12 <sup>th</sup>	TOTAL
Anne Cullen (Chair)	P	HC	HC	HC	P	HC	HC	P	P	P	P	P	100%
Betty Coleman	P	HC	HC	HC	P	HC	HC	P	P	P	P	P	100%
Charles Gast	P	HC	HC	HC	P	HC	HC	P	P	P	P	P	100%
Janelle Jordan	NA	NA	NA	NA	NA	NA	NA	P	P	P	P	A	80%
Kim Hinton	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	P	P	100%
Joy Naden	P	HC	HC	HC	R								50%
Kimberly Thomas	R												0%

### KEY

P = Member was PRESENT	HC = Hearing Cancelled
A = Member was ABSENT	NA = Member NOT yet APPOINTED
R = Member RESIGNED	

<sup>1</sup> Liaison to the Board of Review effective August 2013.

<sup>2</sup> New member effective June 2013.

<sup>3</sup> New member effective November 2013.

<sup>4</sup> Member resigned from the Board of Review effective January 2013.

<sup>5</sup> Member resigned from the Board of Review effective May 2013.

# Board of Review

Department of Health & Mental Hygiene

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## APPEALS TO THE BOARD

The Board received and recorded 312 appeals in Calendar Year 2013. This is an increase of 116 appeals compared to a total of 196 appeals in Calendar Year 2012. The average number of appeals scheduled for each hearing date was nine (9). Provided below is a view of the number of appeals recorded in the last five (5) years:

CALENDAR YEAR	# OF APPEALS RECORDED
2009	75
2010	91
2011	96
2012	196
2013	312

During Calendar Year 2013, the Board met seven (7) times and rendered decisions on sixty-six (66) cases. The February, March, April, June and July hearings were cancelled. Of the 66 cases heard by the Board:

- 33 were from Calendar Year 2012
- 33 were from Calendar Year 2013

## BOARD DECISIONS APPEALED TO THE CIRCUIT COURT

A total of 12 Board decisions were appealed to the Circuit Court for the following jurisdictions:

- 10 cases to the Circuit Court for Baltimore City
- 01 cases to the Circuit Court for Baltimore County
- 01 cases to the Circuit Court for Howard County

# Board of Review

Department of Health & Mental Hygiene

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## STATISTICAL BREAKDOWN OF DETERMINATIONS MADE

DECISIONS	# OF CASES	PERCENTAGE
Affirmed	34	51.5%
Failed To Appear	17	25.7%
Remanded <sup>6</sup> /Reversed	11	16.7%
Withdrawn	04	06.1%
<b>TOTAL</b>	<b>66</b>	<b>100%</b>

## STATISTICAL BREAKDOWN BY APPEAL TYPE

APPEAL TYPE	# OF CASES	PERCENTAGE
Developmental Disabilities (DDA)	01	1.5%
Health Care Quality (HCQ)	01	1.5%
Board of Physicians (BOP)	02	3.0%
Medical Assistance (MA)	43	65.2%
Medical Assistance – Long Term Care (MA-LTC)	08	12.1%
Medical Care Program (MCP)	11	16.7%
<b>TOTAL</b>	<b>66</b>	<b>100%</b>

2013 Calendar Year Report  
Prepared on behalf of the Board of Review:

\_\_\_\_\_  
Carlita Lindsey, Liaison  
Board of Review

\_\_\_\_\_  
Date

\_\_\_\_\_  
<sup>6</sup> The Board remanded the case either to the Department of Health and Mental Hygiene or the Office of Administrative Hearings.

**BOARD OF REVIEW**

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DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
**2014 CALENDAR YEAR REPORT**

OFFICE OF  
GOVERNMENTAL AFFAIRS

# Board of Review

Department of Health & Mental Hygiene

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## INTRODUCTION

This report highlights the activities of the Board of Review (“Board”) during Calendar Year 2014 for the Department of Health and Mental Hygiene (“Department”) in conformance with all applicable laws, regulations, and internal guidelines.

The Board shall report at least annually to the Secretary. Its report shall include a summary by categories of appeals heard and determinations made. *Maryland Annotated Code Health-General §2-206(d)*.

Except as provided otherwise, the Board hears and determines any appeal from:

- 1) A decision of the Secretary of any unit in the Department in a contested case that is subject to judicial review under State Government Article §10-222;
- 2) A decision of the Secretary or any unit in the Department that is subject to judicial review under any provision of law other than State Government Article, §10-122 and §10-225 and
- 3) An action of or inaction by any unit in the Department for which the Secretary, by rule or regulation, provides for review by the Board.

A majority of the cases heard by the Board are medical assistance appeals. The decisions of the Board are the final agency decision for purposes of judicial review under the Administrative Procedures Act or any other law that permits an appeal to the courts from decisions of the Department.

**The contents of this report have been organized by the following headings:**

- Changes in Laws, Regulations, & Internal Guidelines
- Appointed Members and Staff
- 2014 Hearing Dates and Attendance History
- Appeals to the Board
- Board Decisions Appealed to the Circuit Court
- Statistical Breakdown of Determinations Made
- Statistical Breakdown by Appeal Type

# Board of Review

Department of Health & Mental Hygiene

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## CHANGES IN LAWS, REGULATIONS, & INTERNAL GUIDELINES

In Calendar Year 2014, there were no changes to COMAR 10.01.05, State Government Article §10-122, §10-222, and §10-225

In Calendar Year 2014, the following changes were made to Health-General Article §2-206 and §2-207.

### § 2-206. Powers and Duties

(c) Appeals to be heard and determined by Board.

(1) Except as provided in paragraph (2) of this subsection, the Board shall hear and determine any appeal from a decision of the Secretary in a contested case concerning an individual's eligibility for or participation in the Maryland Medical Assistance Program, including home- and community-based waiver services programs and other demonstration waiver programs.

(2) Maryland Medical Assistance Program eligibility decisions made under delegation by the Secretary to the Maryland Health Benefit Exchange are not subject to review by the Board.

### § 2-207. Appeals to Board; judicial review

(a) Right of appeal. -- If any person is aggrieved by a decision of the Secretary that is subject to review by the Board under § 2-206(c)(1) of this subtitle, that person is entitled to appeal as provided in this section.

(b) Time for filing. -- Any appeal authorized by this subtitle must be filed with the Board within 30 days after the date of the decision from which the appeal is being taken.

(c) Review procedures; Board decision is final agency decision.

(3) A party aggrieved by a decision of the Secretary need not exhaust the administrative remedy before the Board as provided in this section and may petition for judicial review of the Secretary's decision as a final agency decision under the Administrative Procedure Act.

(4) If the Board does not issue a decision within 180 days after submission of the notice of appeal, the decision of the Secretary shall be considered affirmed.

(e) Judicial review. --

(1) Any party may seek an appeal from a decision of the Board.

(2) Appeals from a decision of the Board shall be governed by the Administrative Procedure Act.

# Board of Review

Department of Health & Mental Hygiene

## APPOINTED MEMBERS & STAFF

Members	Counsel to the Board	Liaison to the Board
Anne Cullen	Carl Zacarias, Esq.	Carlita Lindsey
Betty Coleman		
Charles Gast		
Janelle Jordan		
Kim Hinton		
Judith Arnold		

## 2014 HEARING DATES & ATTENDANCE HISTORY

MEMBERS	Jan 23 <sup>rd</sup>	Feb 27 <sup>th</sup>	Mar 27 <sup>th</sup>	Apr 24 <sup>th</sup>	May 22 <sup>nd</sup>	June 26 <sup>th</sup>	July 24 <sup>th</sup>	Aug 28 <sup>th</sup>	Sept 25 <sup>th</sup>	Oct 23 <sup>rd</sup>	Nov 20 <sup>th</sup>	Dec 11 <sup>th</sup>	TOTAL
Anne Cullen (Chair)	P	HC	HC	P	P	P	P	P	HC	P	P	P	100%
Betty Coleman	P	HC	HC	P	P	P	P	P	HC	P	P	P	100%
Charles Gast	P	HC	HC	P	P	A	P	P	P	P	P	P	89%
Janelle Jordan	P	HC	HC	P	A	A	A	P	HC	A	A	P	44%
Kim Hinton	A	HC	HC	P	A	P	A	P	HC	A	P	P	56%
Judith Arnold	NA	NA	NA	A	A	A	P	P	P	P	P	P	63%

### KEY

P = Member was PRESENT	HC = Hearing Cancelled
A = Member was ABSENT	NA = Member NOT yet APPOINTED
R = Member RESIGNED	

*Janelle Jordan did not meet the 50% attendance requirement due to her participation in the 2014 Class of Leadership Maryland sessions. Mr. Jordan requested and was granted a waiver by Governor Martin O'Malley to remain on the Board of Review.*

# Board of Review

Department of Health & Mental Hygiene

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## APPEALS TO THE BOARD

The Board received and recorded 169 appeals in Calendar Year 2014. This is a decrease of 143 appeals compared to a total of 312 appeals in Calendar Year 2013. The average number of appeals scheduled for each hearing date was nine (9). Provided below is a view of the number of appeals recorded in the last five (5) years:

CALENDAR YEAR	# OF APPEALS RECORDED
2010	91
2011	96
2012	196
2013	312
2014	169

During Calendar Year 2014 the Board met nine (9) times and rendered decisions on one hundred twenty-seven (127) cases. The February, March, and September hearings were cancelled. Of the 127 cases heard by the Board:

- 01 was from Calendar Year 2008
- 23 were from Calendar Year 2012
- 73 were from Calendar Year 2013
- 30 were from Calendar Year 2014

## BOARD DECISIONS APPEALED TO THE CIRCUIT COURT

A total of 13 Board decisions were appealed to the Circuit Court for the following jurisdictions:

- 09 cases to the Circuit Court for Baltimore City
- 02 cases to the Circuit Court for Baltimore County
- 01 cases to the Circuit Court for Cecil County
- 01 Cases to the Circuit Court for Frederick County

# Board of Review

Department of Health & Mental Hygiene

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## STATISTICAL BREAKDOWN OF DETERMINATIONS MADE

DECISIONS	# OF CASES	PERCENTAGE
Affirmed	36	36.0%
Delayed	02	02.0%
Dismissed as Moot	01	01.0%
Failed To Appear	35	35.0%
Postponed	12	12.0%
Remanded <sup>1</sup> /Reversed	10	10.0%
Withdrawn	04	04.0%
<b>TOTAL</b>	<b>100</b>	<b>100%</b>

## STATISTICAL BREAKDOWN BY APPEAL TYPE

APPEAL TYPE	# OF CASES	PERCENTAGE
License and Certification Program	01	01.0%
Medical Assistance (MA)	90	90.0%
Medical Assistance – Long Term Care (MA-LTC)	06	06.0%
Medical Care Program (MCP)	03	03.0%
<b>TOTAL</b>	<b>100</b>	<b>100%</b>

2014 Calendar Year Report  
Prepared on behalf of the Board of Review:

\_\_\_\_\_  
Carlita Lindsey, Liaison  
Board of Review

\_\_\_\_\_  
Date

<sup>1</sup> The Board remanded the case either to the Department of Health and Mental Hygiene or the Office of Administrative Hearings.

**Health – General Article, Title 2, Subtitle 2  
Board of Review**

2–201.

In this subtitle, “Board” means the Board of Review of the Department.

2–202.

There is a Board of Review of the Department.

2–203.

(a) (1) The Board consists of 7 members appointed by the Governor with the advice and consent of the Senate.

(2) Of the 7 members:

(i) At least 4 shall be from the general public; and

(ii) Each of the others shall have knowledge and experience in at least one of the fields under the jurisdiction of the Department.

(b) (1) The term of a member is 3 years.

(2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1982. The terms of those members end as follows:

(i) 2 in 1983;

(ii) 3 in 1984; and

(iii) 2 in 1985.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(c) On recommendation of the Secretary or a majority of the Board, the Governor may remove a member of the Board for any of the following reasons:

(1) Conviction of any crime that involves moral turpitude.

(2) Conviction of any criminal offense the effect of which is to prevent or interfere with the performance of any duty of the Board.

(3) Failure regularly to attend meetings of the Board.

(4) Failure to carry out duties assigned by the Board or its chairman.

(5) Acceptance of any position or the conduct of any business that conflicts or tends to conflict with the performance of any duty of the Board.

2-204.

From among the Board members from the general public, the Governor shall designate a chairman.

2-205.

(a) The Board shall determine the times and places of its meetings.

(b) Each member of the Board is entitled to:

(1) Compensation in accordance with the State budget; and

(2) Reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Board may employ a staff in accordance with the State budget.

2-206.

(a) The Board shall make recommendations to the Secretary on the operation and administration of the Department as the Board considers necessary or desirable.

(b) If an advisory board for the Department is not created, the Board shall advise the Secretary on all matters affecting the Department that the Secretary submits to the Board for its consideration.

(c) (1) Except as provided in paragraph (2) of this subsection, the Board shall hear and determine any appeal from a decision of the Secretary in a contested case concerning an individual's eligibility for or participation in the Maryland Medical Assistance Program, including home- and community-based waiver services programs and other demonstration waiver programs.

(2) Maryland Medical Assistance Program eligibility decisions made under delegation by the Secretary to the Maryland Health Benefit Exchange are not subject to review by the Board.

(d) The Board shall report at least annually to the Secretary. Its report shall include a summary by categories of appeals heard and determinations made.

(e) A Board member may not vote or otherwise participate in the Board's consideration of any matter in which the member has a direct or indirect private interest.

2-207.

(a) If any person is aggrieved by a decision of the Secretary that is subject to review by the Board under § 2-206(c)(1) of this subtitle, that person is entitled to appeal as provided in this section.

(b) Any appeal authorized by this subtitle must be filed with the Board within 30 days after the date of the decision from which the appeal is being taken.

(c) (1) The Board shall adopt procedural rules and regulations as provided in the Administrative Procedure Act and in all respects shall be governed by that Act. At least 3 members shall sit at each hearing of the Board when it sits as a board of appeal. Decisions shall be by a majority of the members sitting, shall be in writing, and shall state the Board's reasons. The Board shall keep minutes of its proceedings.

(2) A decision of the Board is a final agency decision for purposes of judicial review under the Administrative Procedure Act.

(3) A party aggrieved by a decision of the Secretary need not exhaust the administrative remedy before the Board as provided in this section and may petition for judicial review of the Secretary's decision as a final agency decision under the Administrative Procedure Act.

(4) If the Board does not issue a decision within 180 days after submission of the notice of appeal, the decision of the Secretary shall be considered affirmed.

(d) (1) As to any issue for which the taking of evidence is authorized, the chairman or the acting chairman may administer oaths and issue subpoenas and orders for the attendance of witnesses and the production of evidence.

(2) If a person fails to comply with a lawful order or subpoena issued under this subsection, on the petition of the chairman or acting chairman, a court of competent jurisdiction may compel obedience to the order or subpoena or compel testimony or the production of evidence.

(e) (1) Any party may seek an appeal from a decision of the Board.

(2) Appeals from a decision of the Board shall be governed by the Administrative Procedure Act.

**APPENDIX D**

**Board of Review - FY 2013 - FY 2016 Budget Information**

<b>FY 2013 - FY 2016 Budget</b>							
<b>Proj</b>	<b>Obj</b>	<b>Item</b>	<b>Fund</b>	<b>FY13 Actual</b>	<b>FY14 Actual</b>	<b>FY15 Actual</b>	<b>FY16 Approp</b>
Project A105 - Board of Review							
A105	02	0212	Per Diems	2,345	2,585	2,345	5,050
A105	02	0215	Court Reporters	1,080	1,470	1,098	2,350
A105	03	0301	Postage	1,855	1,353	1,009	1,353
A105	04	0405	In-State Travel	1,412	1,892	1,590	1,918
A105	08	0816	Language Interpreters	223	0	96	223
A105	08	0822	Duplicating Services	6,672	910	0	910
A105	08	0826	Network Printing	1,606	3,817	1,746	3,817
A105	08	0833	Equipment Repairs & Service	13	0	0	0
A105	08	0849	Freight & Expressage	425	491	202	491
A105	08	0850	Litigation Expenses	1,383	1,400	696	1,400
A105	09	0965	Office Supplies	1,419	210	336	815
A105	11	1180	Personal Computer Eq	0	3,850	0	0
A105	13	1340	Record Retention Fees	15	26	0	0
Project A105			<b>Total</b>	<b>18,448</b>	<b>18,004</b>	<b>9,118</b>	<b>18,327</b>
Project A105			General Funds	18,448	18,004	9,118	18,327
Project A105			Special Funds	0	0	0	0
Project A105			Federal Funds	0	0	0	0
Project A105			Reimb Funds	0	0	0	0
Project A105			<b>Total Funds</b>	<b>18,448</b>	<b>18,004</b>	<b>9,118</b>	<b>18,327</b>

**Department of Health and Mental Hygiene  
Office of the Secretary**

**M00A01.01 Executive Direction**

**FISCAL YEAR 2016 BUDGET ESTIMATES**

**Project A105 – Board of Review**

**Note 15 – Project A105 – Item 0212 – Per Diems - \$5,050**

Effective July 1, 2012, the Board of Review unit is fiscally transferred from Operations (M00.A0102.A220) under Executive Direction. The FY 2016 request is based on the following:

\$4,200      \$70/day x 6 members x 10 hearings  
\$850        \$85/day x 1 director x 10 hearings