

M00R
Health Regulatory Commissions
Department of Health and Mental Hygiene

Operating Budget Data

(\$ in Thousands)

	<u>FY 04</u> <u>Actual</u>	<u>FY 05</u> <u>Working</u>	<u>FY 06</u> <u>Allowance</u>	<u>FY 05-06</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
Special Fund	\$66,299	\$92,322	\$96,637	\$4,315	4.7%
Reimbursable Fund	<u>134</u>	<u>0</u>	<u>0</u>	<u>0</u>	
Total Funds	\$66,433	\$92,322	\$96,637	\$4,315	4.7%
Contingent & Back of Bill Reductions			(38)	(38)	
Adjusted Total	\$66,433	\$92,322	\$96,599	\$4,277	4.6%

- Collections for the Health Services Cost Review Commission's Uncompensated Care Fund are expected to grow to \$74 million in fiscal 2006, increasing the commission's budget by \$6 million.
- The allowance includes a \$1.8 million indirect cost assessment on the Health Regulatory Commissions, contingent on budget reconciliation legislation, to reimburse the Department of Health and Mental Hygiene for costs incurred in providing shared services.

Personnel Data

	<u>FY 04</u> <u>Actual</u>	<u>FY 05</u> <u>Working</u>	<u>FY 06</u> <u>Allowance</u>	<u>FY 05-06</u> <u>Change</u>
Regular Positions	93.60	92.60	92.60	0.00
Contractual FTEs	<u>0.00</u>	<u>2.00</u>	<u>2.00</u>	<u>0.00</u>
Total Personnel	93.60	94.60	94.60	0.00

Vacancy Data: Regular Positions

Turnover, Excluding New Positions	2.44	2.64%
Positions Vacant as of 12/31/04	4.00	4.32%

Note: Numbers may not sum to total due to rounding.

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Analysis in Brief

Major Trends

Hospital Admission Costs Continue to Meet Standard: The Health Services Cost Review Commission has maintained the growth in average Medicare hospital admission rates below the national average, allowing the commission to continue regulating hospital rates for all payors.

Issues

Maryland Trauma Physicians Services Fund Makes Slow Start: The fund, which reimburses physicians and trauma centers for the cost of providing trauma services, distributed 34% of available revenue in its first nine months of operation.

Certificate of Need Programs under Scrutiny: A July 2004 report issued by the Federal Trade Commission and the Department of Justice suggests that regulation of health care facilities through certificates of need creates barriers to competition.

Recommended Actions

	<u>Funds</u>	<u>Positions</u>
1. Delete two assistant attorney general positions.	\$ 195,309	2.0
Total Reductions	\$ 195,309	2.0

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Operating Budget Analysis

Program Description

The Maryland Health Care Commission (MHCC) and the Health Services Cost Review Commission (HSCRC), which comprise Maryland's health care regulatory system, are independent commissions that function within the Department of Health and Mental Hygiene (DHMH).

MHCC, formed by the 1999 merger of the Health Care Access and Cost Commission and the Health Resources Planning Commission, has the purpose of improving access to affordable health care, reporting information relevant to availability, cost, and quality of health care statewide, and developing sets of benefits to be offered as part of the standard benefit plan and the nongroup market. The commission's goals include:

- improving the quality of care in the health care industry;
- improving access and affordability of health insurance;
- reducing the cost of health care; and
- guiding the future development of services and facilities regulated under the certificate of need program.

HSCRC was established in 1971 to contain hospital costs, maintain fairness in hospital payment, and provide financial access to hospital care. The commission maintains responsibility for ensuring that the cost of health care is reasonable relative to the cost of service and that rates are set without discrimination. The commission's goals include:

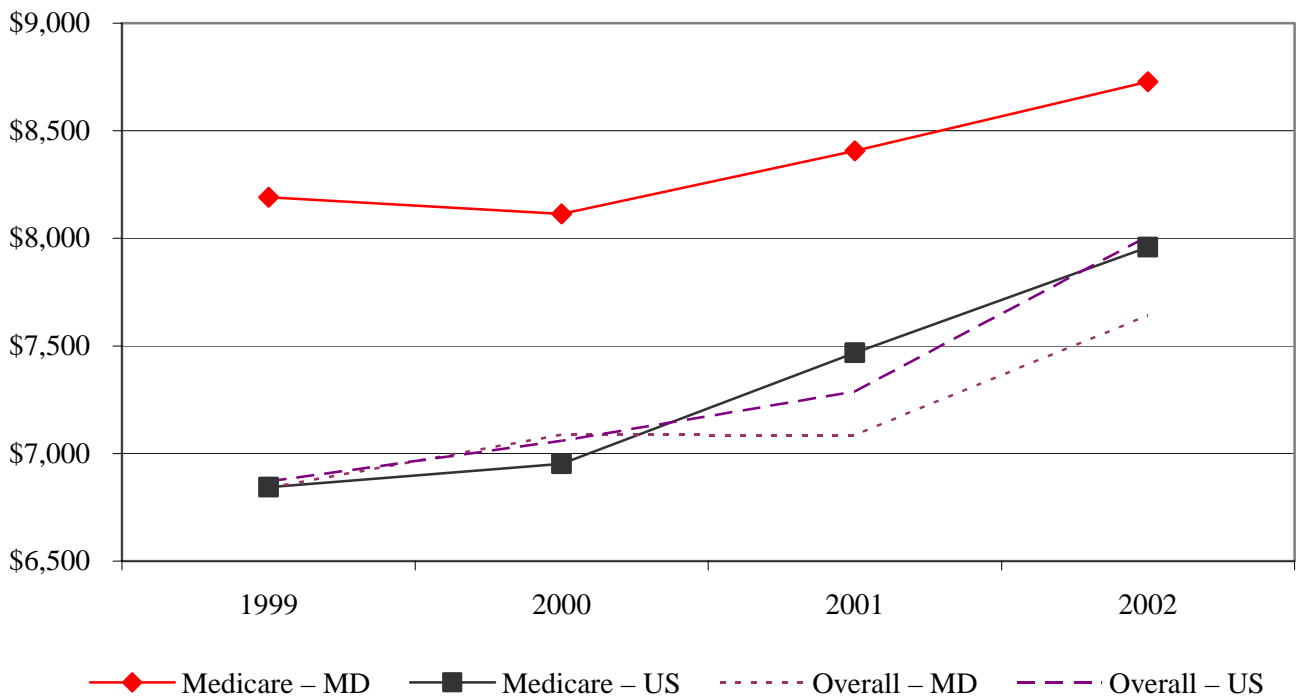
- maintaining affordable hospital care for all Maryland citizens;
- expanding the current system for financing hospital care for those without health insurance; and
- eliminating preferential charging activity through monitoring of hospital pricing and contracting activity.

Performance Analysis: Managing for Results

HSCRC sets standard rates that hospitals may charge for the purchase of care. This system encourages access to health care regardless of ability to pay and prevents shifting of costs between payors. The commission’s ability to standardize rates for all payors, including Medicare and Medicaid, was established in 1980 by federal legislation, with continued regulation contingent on the commission’s ability to contain the rate of growth of Medicare hospital admissions costs.

Exhibit 1 shows average hospital admission costs between 1999 and 2002, the last year for which complete data are available. Although absolute Medicare payments were higher in Maryland than national payments during that period, the total rate of growth since the waiver was approved in 1980 remained below the national average. The cumulative increase in Maryland rates has been 194% since 1981, compared to a national rate of growth of 247% over the same amount of time.

Exhibit 1
Average Cost Per Hospital Admission
1999 – 2002



Source: Health Services Cost Review Commission

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The growth of managed care in Medicare eroded the cushion between national and State payment rates through the 1990s. The cushion, as defined by HSCRC, is the amount Maryland Medicare payments could grow, assuming zero national growth, before the State failed to meet the requirements for continued rate regulation. Between 1999 and 2002, the system increased its cushion from 8.8 to 15.0%, allowing the commission to approve rate increases in fiscal 2004 that allowed hospitals to increase profitability and improve access to capital. The commission maintains a goal of a 10% cushion relative to federal payments.

Governor's Proposed Budget

The fiscal 2006 allowance increases funding for the commissions by \$4.2 million, an increase of 4.6%. The increase is largely attributable to an anticipated increase of \$6 million in the Uncompensated Care Fund, reflected in **Exhibit 2**. The total amount of the change in the commissions' budgets is detailed in **Exhibit 3**.

Exhibit 2
Distribution of Funding by Commission
Fiscal 2004 – 2006
(\$ in Thousands)

	<u>FY 04</u> <u>Actual</u>	<u>FY 05</u> <u>Working</u> <u>Approp.</u>	<u>FY 06</u> <u>Allowance</u>	<u>FY 05 - 06</u> <u>Change</u>
Maryland Health Care Commission				
Administration	\$7,724	\$10,124	\$8,935	-11.7%
Maryland Trauma Physician Services Fund	4,182	10,000	10,000	0.0%
Subtotal	\$11,907	\$20,124	\$18,935	-5.9%
Health Services Cost Review Commission				
Administration	\$3,012	\$4,198	\$3,702	-11.8%
Uncompensated Care Fund	51,514	68,000	74,000	8.8%
Subtotal	\$54,526	\$72,198	\$77,702	7.6%
Contingent Reductions			-\$38	
Total	\$66,433	\$92,322	\$96,599	4.6%

Source: Maryland Operating Budget Fiscal Year 2006

Exhibit 3
Governor's Proposed Budget
Health Regulatory Commissions
(\$ in Thousands)

How Much It Grows:	<u>Special</u> <u>Fund</u>	<u>Total</u>
2005 Working Appropriation	\$92,322	\$92,322
2006 Governor's Allowance	96,637	96,637
Contingent & Back of Bill Reductions	<u>-38</u>	<u>-38</u>
Adjusted Allowance	\$96,599	\$96,599
Amount Change	\$4,277	\$4,277
Percent Change	4.6%	4.6%

Where It Goes:

Personnel Expenses

Increments and other compensation.....	\$125
Position reclassification, per Chapter 702, Acts of 1999.....	86
Contributions to employee retirement system.....	59
Reduction in turnover expectancy.....	34
Other adjustments to salary.....	26
Employee and retiree health insurance.....	-71

Other Changes

Increase in Uncompensated Care Fund.....	6,000
Contract services for evaluation of health care data.....	46
Increase in salary for contractual health policy analyst	25
Additional Internet server and firewall.....	25
Consultant services for audit of health care data.....	-160
Elimination of indirect cost assessment.....	-1,905
Other adjustments.....	-12

Total	\$4,277
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Note: Numbers may not sum to total due to rounding.

Personnel Expenses

The inclusion of increments in the Governor's proposed budget increases the commissions' budget by approximately \$125,000, with an additional \$26,000 for other adjustments to salary, including hiring above base. Contributions to the employee retirement system increase \$59,460, offset by a reduction of \$70,755 in health insurance expenses based on previous years' expenditures. An expected reduction in turnover in fiscal 2006 adds another \$33,691 to the commissions' budgets.

The allowance also includes \$0.2 million, an increase of \$85,931, for reclassification of existing positions pursuant to the commissions' independent salary setting authority. Chapter 702, Acts of 1999 classified commission staff hired after September 30, 1999, as members of the executive service, management service, or special appointments in the State Personnel Management System. It further allowed the commissions, in consultation with the Secretary of DHMH, to determine appropriate job classifications and grades for each of these positions. MHCC has reclassified 34 of 65 positions since fiscal 2003 with an additional 10 reclassifications budgeted for fiscal 2006; HSCRC has reclassified 9 of 28 positions with an additional 8 reclassifications budgeted for fiscal 2006.

Operating Expenses

Operating expenses increase \$4 million in the fiscal 2006 allowance. The increase is primarily the result of growth in the Uncompensated Care Fund, an assessment on all acute care hospitals in the State. Funds collected are redistributed by the commission to those hospitals that treat a higher proportion of the State's uninsured population. Collections are anticipated to increase from \$68 million to \$74 million in fiscal 2006.

Other changes result from modifications to contracts for special projects. The commissions contract with independent consultants for production of evaluations related to standards of care and rate setting. In fiscal 2006, the MHCC budget includes a net increase of \$45,518 for these services, resulting mainly from ongoing development of a nursing home performance evaluation guide. The HSCRC budget includes a \$160,000 net decrease for consultant services, with reductions to audits of casemix and inpatient hospital data. Smaller changes include an increase in salary and benefits for a contractual MHCC health policy analyst and purchase of an additional Internet server and firewall.

Indirect Cost Assessment

The Governor's proposed budget assumes an indirect cost assessment of \$1.8 million, similar to a fiscal 2005 assessment, on the Health Regulatory Commissions; however, Exhibit 3 shows a \$1.9 million net decrease as continuing the assessment has not yet been authorized. Proposed budget reconciliation legislation would assess the commissions at a rate consistent with the indirect cost charge to federal grants: 32% of base salary levels. These revenues would be transferred to the department to defray the cost of shared services, including personnel services and access to the department's attorneys general and budget management office.

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The Governor's proposal makes permanent the fiscal 2005 indirect cost assessment that raised \$1.9 million in revenue for the department. The user fee limit was temporarily increased for each of the commissions to allow them to pass on the administrative costs to their payors. MHCC used a portion of its fund balance to cover the cost of assessment, reducing a planned return of funds to its payors, but avoiding an increase in fees. **Exhibit 4** details the proposed changes for fiscal 2006.

Exhibit 4
Proposed Indirect Cost Assessment
(\$ in Millions)

	<u>MHCC</u>	<u>HSCRC</u>
Fiscal 2006 allowance	\$8.94	\$3.70
Proposed indirect cost assessment	\$1.23	0.60
Total	\$10.17	\$4.30
Current user fee limit	10.00	4.00
Proposed User Fee Limit	\$11.20	\$4.50

Source: Maryland Operating Budget Fiscal Year 2006

The budget bill includes language making a \$1.833 million reduction to general funds for the department's Deputy Secretary for Operations contingent upon authorization of the indirect cost assessment in budget reconciliation legislation.

Impact of Cost Containment

The fiscal 2006 allowance reflects the elimination of \$37,892, the appropriation for matching employee deferred compensation contributions up to \$600, contingent upon enactment of a provision in budget reconciliation legislation.

Issues

1. Maryland Trauma Physicians Services Fund Makes Slow Start

Chapter 385, Acts of 2003 established the Maryland Trauma Physicians Services Fund with the intent of stabilizing the delivery of trauma services in the State. The fund, financed with a \$2.50 annual surcharge on all Maryland vehicle registrations, provides funding to subsidize the cost to physicians and hospitals of providing trauma care. The fund specifically addresses three costs of providing trauma services:

- ***Uncompensated Care:*** Trauma physicians, including surgeons, anesthesiologists, orthopedists, and neurosurgeons, are eligible for reimbursement from the fund at 100% of the Medicare rate. Applicants must document that the patient treated is without health insurance and not eligible for medical assistance in applying for reimbursement.
- ***Undercompensated Care:*** Trauma physicians are also eligible for reimbursement equal to the difference between Medicaid and Medicare rates when treating an enrollee of the State Medicaid program.
- ***On-call Services:*** The cost of maintaining on-call physicians to respond within 30 minutes to a trauma event has contributed to losses at many trauma centers. The centers are eligible for payment of costs not otherwise reimbursed for minimum on-call physician staffing according to standards established by the Maryland Institute for Emergency Medical Services Systems.

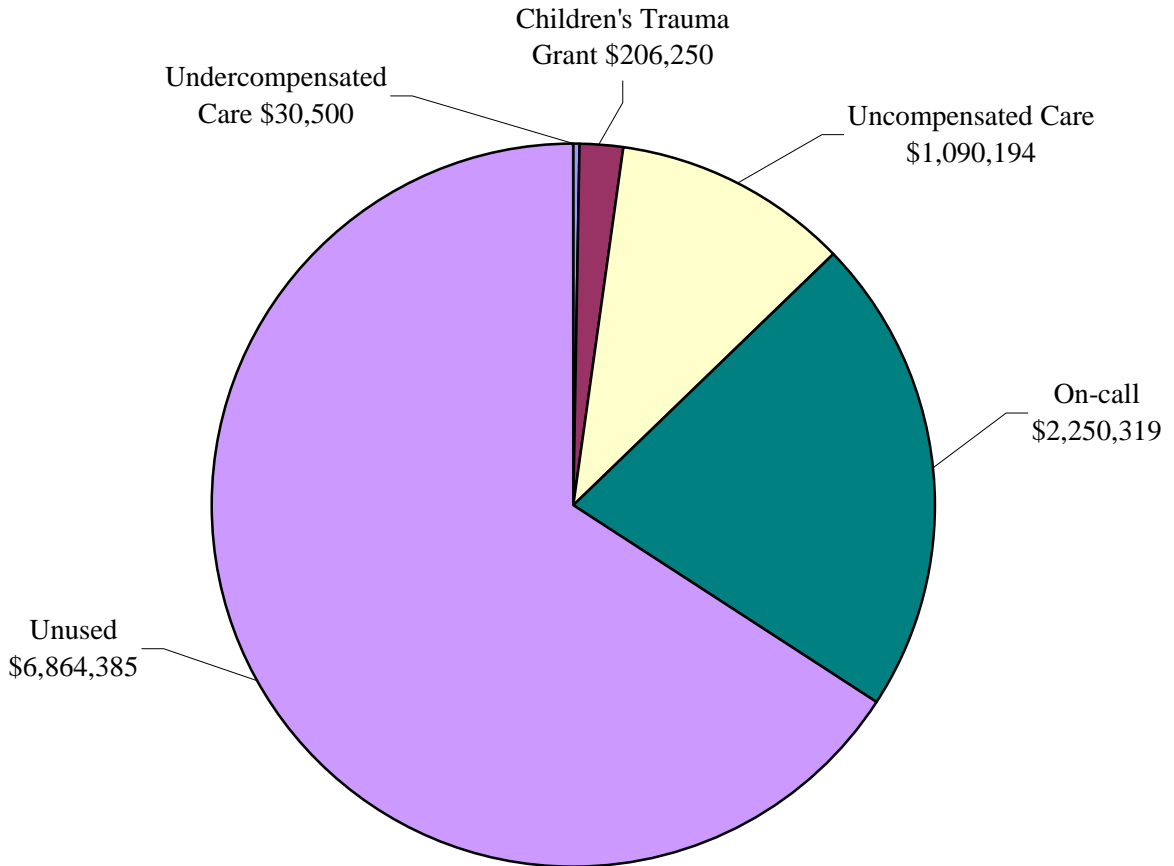
The law also provides for administrative costs and an annual grant, not to exceed \$275,000, for stand-by costs incurred by Children's National Medical Center in Washington, DC for providing pediatric trauma services to Maryland residents. In addition to these forms of reimbursement, HSCRC has adjusted hospital rates, as required by law, to include trauma-related stand-by expenses. The total amount of the rate increase is estimated at \$4.1 million in fiscal 2005.

Available Funding Exceeds Requests for Reimbursement

The Maryland Trauma Physicians Services Fund began to collect revenue on July 1, 2003, though physicians and trauma centers did not become eligible for reimbursement until October 1, 2003. Reimbursement for undercompensated care claims was available for services rendered as of December 1, 2003, coinciding with the launch of other software changes in the Medicaid program.

Exhibit 5 shows disbursements from the fund for fiscal 2004 expenses. Only 34% of the funds collected were distributed, partially due to the lag between the time the Motor Vehicle Administration began collecting the fee and the time when physicians and trauma centers became eligible for reimbursement. MHCC also cites physician awareness as a factor in the small number of fiscal 2004

Exhibit 5
Disbursements from Maryland Trauma Physicians Services Fund
Fiscal 2004



Source: Maryland Health Care Commission

requests. Undercompensated care payments from Medicaid require billing departments to specifically code services to be eligible for increased rates. MHCC is working with physicians to increase awareness of the availability of funds and required billing procedures. On-call payments have also been less than originally anticipated as many of the smaller trauma centers had not defined these costs in their physician contracts; affected trauma centers are now defining these costs to comply with requirements for reimbursement. With these changes, MHCC anticipates increased disbursements in fiscal 2005; however, the commission notes that increased Medicaid rates for

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orthopedists and neurosurgeons included in malpractice reform legislation will reduce demand for reimbursement for these specialties through the fund.

The commission will collect applications for reimbursement through the end of January for costs incurred in the first half of fiscal 2005 and again in July for costs incurred in the last half of the year. At the time of this writing, the total amount of funds requested for the first half of fiscal 2005 is unknown. The commissions will submit a report by September 1 on the amount of grants awarded in fiscal 2005. This report should allow for a more complete review of the status of the fund.

The commissions should comment on the implementation and current status of applications to the Maryland Trauma Physicians Services Fund.

2. Certificate of Need Programs under Scrutiny

MHCC operates the certificate of need program, whereby the commission regulates the placement of new health care facilities and services. The certificate of need process was designed to maximize cost effectiveness, quality, and access to health care services by eliminating redundancy and inefficiency in the provision of health care services. Certificates of need are required for all acute general hospitals, specified acute care services, and specialty hospitals intending to develop or improve capacity, services, or facilities. With aging physical plants and increasing nursing home occupancy rates at facilities across the State, the commission has recently experienced high levels of demand for certificate of need determinations and precicensure reviews.

Regulation Initially Supported by Federal Law

Maryland was one of the first states in the nation to develop a certificate of need program, regulating construction of health care facilities since 1968. The National Health Planning and Resources Development Act of 1974 provided financial incentives for state certificate of need programs, citing inflationary increases in the cost of health care and need for comprehensive planning to prevent overdevelopment. By 1980 all states, with the exception of Louisiana, had enacted certificate of need programs. With the repeal of the federal act in 1986, several states discontinued their programs; however, a majority of states continue to operate some version of the program.

Federal Report Questions Continuing Use of Certificates of Need

The Department of Justice and the Federal Trade Commission issued a joint report in July 2004 titled *Improving Health Care: A Dose of Competition* that addresses a variety of issues related to the cost, quality, and accessibility of health care. The report recommends that states decrease barriers to entry in provider markets, specifically citing the role of certificate of need programs in artificially depressing supply and limiting access to services. The report notes that the certificate of need process reduces competition, with the possible effect of increasing health care costs above market levels. The report also notes that certificate of need programs discourage the introduction of technological advancements, favoring those treatments already being offered by current certificate holders. In sum,

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the report recommends that states reconsider their certificate of need programs to determine whether these programs appropriately address their citizens' health care needs.

The American Health Planning Association (AHPA) issued a response contradicting many of the conclusions in the federal report. The association asserts that health care does not respond to many traditional market forces due to the distorting influence of health care intermediaries, such as insurers, and the inability of average consumers to access certain price and quality information. The association further argues that subjecting health care to regular market forces restricts access for those with the fewest resources. The certificate of need process, according to the association, offers opportunities for planning that specifically address community concerns regarding quality, cost, and access. The report notes that the certificate of need process introduces competition where appropriate and ensures a more equitable distribution of services than would naturally occur in the absence of state regulation.

MHCC Reports Continued Benefit of Regulation

Chapter 702, Acts of 1999 created MHCC by merging two existing commissions. Language in the legislation required the newly formed commission to examine the certificate of need process in Maryland. The commission's findings, presented to the General Assembly in January 2001 and 2002, supported continued regulation of each of the health care services studied. The recommendations, developed with public input, include suggested revisions to thresholds for commission review and definitions of services subject to regulation and licensing. The reports issued by the commission include many of the arguments found in the AHPA report, specifically that continued regulation of the health care market creates a more efficient allocation of highly specialized resources that responds to specific community needs.

The commission should comment on continued regulation of health care services through the certificate of need program.

Recommended Actions

	<u>Amount Reduction</u>	<u>Position Reduction</u>
1. Delete two assistant attorney general positions. Budget reconciliation legislation proposes to make permanent an indirect cost recovery for departmental services, including access to attorneys general. This action reduces by half the number of assistant attorney general positions due to the availability of these services from the Department of Health and Mental Hygiene.	\$ 195,309 SF	2.0
Total Special Fund Reductions	\$ 195,309	2.0

Current and Prior Year Budgets

Current and Prior Year Budgets Health Regulatory Commissions (\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2004					
Legislative Appropriation	\$0	\$65,248	\$0	\$0	\$65,248
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	0	7,594	0	276	7,870
Cost Containment	0	0	0	0	0
Reversions and Cancellations	0	-6,543	0	-142	-6,685
Actual Expenditures	\$0	\$66,299	\$0	\$134	\$66,433
Fiscal 2005					
Legislative Appropriation	\$0	\$77,941	\$0	\$0	\$77,941
Budget Amendments	0	14,381	0	0	14,381
Working Appropriation	\$0	\$92,322	\$0	\$0	\$92,322

Note: Numbers may not sum to total due to rounding.

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Fiscal 2004

The MHCC special fund appropriation increased \$7.0 million to recognize revenue from an increase in vehicle registration fees for the Maryland Trauma Physician Services Fund. An additional \$0.2 million was appropriated for a health care provider reimbursement study and additional contractual personnel. Funds were cancelled due to lower-than-anticipated payments from the Maryland Trauma Physician Services Fund and reductions in personnel and contract expenses.

The MHCC reimbursable fund appropriation increased \$0.3 million as a result of a transfer from the Medical Care Programs Administration. Funds allowed for a study of the small group employer insurance market. Funds were cancelled due to savings associated with a report on the uninsured.

The HSCRC special fund appropriation increased \$0.4 million for consulting services to develop specialized computer programs and prepare information related to case mix data. Funds were cancelled due to the lag in collection of uncompensated care payments and processing of hospital payments.

Fiscal 2005

The special fund appropriation increased \$12.0 million as a result of increased collections for Uncompensated Care Fund administered by HSCRC. Additional increases resulted from increased assessments authorized by the Budget Reconciliation and Financing Act of 2004, with smaller amounts dedicated to consultant service and cost-of-living adjustments for employees of both of the commissions.

Audit Findings

Audit Period for Last Audit:	August 5, 1999 – March 7, 2002
Issue Date:	September 2002
Number of Findings:	2
Number of Repeat Findings:	0
% of Repeat Findings:	0%
Rating: (if applicable)	N/A

Finding 1: The Maryland Health Care Commission did not assess fiscal 2002 user fees in accordance with State law, resulting in an improper allocation of fees among regulated industries.

Finding 2: The Health Services Cost Review Commission did not properly calculate uncompensated care assessments for three of the eleven hospitals tested, resulting in under assessments of \$268,438 for a two-year period.

**Object/Fund Difference Report
DHMH – Health Regulatory Commissions**

<u>Object/Fund</u>	<u>FY04 Actual</u>	<u>FY05 Working Appropriation</u>	<u>FY06 Allowance</u>	<u>FY05 - FY06 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	93.60	92.60	92.60	0	0%
02 Contractual	0	2.00	2.00	0	0%
Total Positions	93.60	94.60	94.60	0	0%
Objects					
01 Salaries and Wages	\$ 7,128,186	\$ 7,406,498	\$ 7,702,262	\$ 295,764	4.0%
02 Technical & Spec Fees	28,034	112,858	138,229	25,371	22.5%
03 Communication	99,121	96,502	116,958	20,456	21.2%
04 Travel	74,756	116,844	103,936	-12,908	-11.0%
08 Contractual Services	58,640,664	84,148,510	88,091,624	3,943,114	4.7%
09 Supplies & Materials	62,419	74,570	72,929	-1,641	-2.2%
10 Equip - Replacement	30,868	15,532	31,000	15,468	99.6%
11 Equip - Additional	11,052	0	25,000	25,000	N/A
13 Fixed Charges	358,336	350,373	354,989	4,616	1.3%
Total Objects	\$ 66,433,436	\$ 92,321,687	\$ 96,636,927	\$ 4,315,240	4.7%
Funds					
03 Special Fund	\$ 66,298,977	\$ 92,321,687	\$ 96,636,927	\$ 4,315,240	4.7%
09 Reimbursable Fund	134,459	0	0	0	0.0%
Total Funds	\$ 66,433,436	\$ 92,321,687	\$ 96,636,927	\$ 4,315,240	4.7%

Note: The fiscal 2005 appropriation does not include deficiencies, and the fiscal 2006 allowance does not reflect contingent reductions.

Fiscal Summary
DHMH – Health Regulatory Commissions

<u>Program/Unit</u>	<u>FY04 Actual</u>	<u>FY05 Wrk Approp</u>	<u>FY06 Allowance</u>	<u>Change</u>	<u>FY05 - FY06 % Change</u>
01 Maryland Health Care Commission	\$ 11,907,080	\$ 20,124,187	\$ 18,934,896	-\$ 1,189,291	-5.9%
02 Health Services Cost Review Commission	54,526,356	72,197,500	77,702,031	5,504,531	7.6%
Total Expenditures	\$ 66,433,436	\$ 92,321,687	\$ 96,636,927	\$ 4,315,240	4.7%
Special Fund	\$ 66,298,977	\$ 92,321,687	\$ 96,636,927	\$ 4,315,240	4.7%
Total Appropriations	\$ 66,298,977	\$ 92,321,687	\$ 96,636,927	\$ 4,315,240	4.7%
Reimbursable Fund	\$ 134,459	\$ 0	\$ 0	\$ 0	0.0%
Total Funds	\$ 66,433,436	\$ 92,321,687	\$ 96,636,927	\$ 4,315,240	4.7%

Note: The fiscal 2005 appropriation does not include deficiencies, and the fiscal 2006 allowance does not reflect contingent reductions.