

M00B0103
Office of Health Care Quality
Department of Health and Mental Hygiene

Operating Budget Data

(\$ in Thousands)

	<u>FY 09</u> <u>Actual</u>	<u>FY 10</u> <u>Working</u>	<u>FY 11</u> <u>Allowance</u>	<u>FY 10-11</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$10,861	\$9,567	\$10,113	\$546	5.7%
Contingent & Back of Bill Reductions	0	0	-276	-276	
Adjusted General Fund	\$10,861	\$9,567	\$9,837	\$269	2.8%
Special Fund	362	892	363	-529	-59.3%
Contingent & Back of Bill Reductions	0	0	-1	-1	
Adjusted Special Fund	\$362	\$892	\$361	-\$531	-59.5%
Federal Fund	5,015	5,811	6,745	934	16.1%
Contingent & Back of Bill Reductions	0	0	-156	-156	
Adjusted Federal Fund	\$5,015	\$5,811	\$6,589	\$778	13.4%
Adjusted Grand Total	\$16,239	\$16,270	\$16,787	\$517	3.2%

Note: For purposes of illustration, the Department of Legislative Services has estimated the distribution of selected across-the-board budget. The actual allocations are to be developed by the Administration.

- The Governor's fiscal 2011 allowance increases \$0.5 million, or 3.2%, over the fiscal 2010 working appropriation. Back of the Bill reductions to the Office of Health Care Quality (OHCQ) reduce funding for personnel expenses by \$0.4 million due to the inclusion of employee furloughs and reductions to health insurance expenses.
- General funds increase by \$0.3 million, or 2.8%, in the fiscal 2011 allowance. The increase in general funds is due primarily for the need to replace special funds no longer available for operational expenses in the Nursing Home and Assisted Living units.
- Special funds, derived from the Civil Money Penalty (CMP) Fund, decrease by \$0.5 million, or 59.5%, in the fiscal 2011 allowance. The fiscal 2010 budget included a one-time increase of \$500,000 from the CMP Fund that the agency used for grants as well as operating expenses in the Nursing Home and Assisted Living units. Absent that one-time increase, the special fund income from the CMP Fund reverts back to fiscal 2009 level and general funds are used to supplant the loss of special funds in fiscal 2011 budget, as mentioned above.

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

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- Federal funds increase by \$0.8 million, or 13.4%, primarily due to survey requirements for the Ambulatory Surgical Centers unit to promote better infection control practices. Federal funding is available through the American Recovery and Reinvestment Act of 2009 (ARRA) to offset the cost of these surveys.

Personnel Data

	<u>FY 09 Actual</u>	<u>FY 10 Working</u>	<u>FY 11 Allowance</u>	<u>FY 10-11 Change</u>
Regular Positions	194.20	186.20	187.70	1.50
Contractual FTEs	<u>4.61</u>	<u>5.40</u>	<u>5.40</u>	<u>0.00</u>
Total Personnel	198.81	191.60	193.10	1.50

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	7.51	4.00%
Positions and Percentage Vacant as of 12/31/09	9.80	5.26%

- Cost containment actions approved by the Board of Public Works (BPW) in 2009 deleted 8.0 regular positions within OHCQ. The Administration unit lost 3.0 positions; the Developmental Disabilities unit lost 3.0 positions; and the Adult Medical Day Care unit and Hospitals' Health Maintenance Organizations and Patient Safety unit each lost 1.0 position.
- The fiscal 2011 budget adds 1.5 full-time equivalent regular positions (FTE) to the Laboratory Licensing and Certification unit to accommodate the new requirement to survey forensic labs in the State beginning in fiscal 2011. Surveying will begin after the regulations for the inspections are promulgated and the newly hired staff is trained.
- As of December 31, 2009, there were 9.8 FTE vacant positions, representing 5.26% of the OHCQ workforce. Of the vacant positions, 8.8 are positions that perform survey and inspection activities in the following units: nursing home, assisted living, developmental disabilities, mental health, and ambulatory surgical centers.

Analysis in Brief

Major Trends

Staffing Deficits and Increased Workload Limit the Agency's Efficacy: OHCQ has faced chronic staffing shortages over the past few years due to the combination of an increased workload, a structural deficiency in positions allotted for survey and inspection activities, and chronic vacancies among surveyor positions. In some cases, the agency has been able to develop strategies to overcome this shortfall by partnering with other agencies, using staff more efficiently, and grouping survey and complaint investigation activities. However, in other areas, the agency still struggles to complete all of the activities for which the agency is responsible.

Issues

Staffing Concerns Persist: OHCQ still faces a staffing shortfall required to perform all of the surveys for which OHCQ is responsible. Budgetary constraints, the loss of positions through BPW actions, chronic vacancies, and an increase in responsibilities for the office create a structurally deficient workforce. Moreover, an influx of new providers in community-based programs, such as residential service agencies, assisted living providers, and homes for individuals with developmental disabilities, add to the overall workload of the agency.

OHCQ Will Be Required to License and Inspect Forensic Labs Beginning in Fiscal 2012: Chapter 147 of 2007 requires OHCQ to license, set standards and requirements for, and inspect forensic laboratories in Maryland. Licensure is required after December 31, 2011, in order for a forensic laboratory to offer or perform forensic analysis. The fiscal 2011 allowance includes the addition of 1.5 FTE positions for a supervisor and a laboratory surveyor to begin inspections prior to the required licensure date. This requirement only adds to the workload that OHCQ faces.

Recommended Actions

1. Adopt narrative requiring a written report from the agency on the number and type of survey activities that were not completed due to an inadequate staffing level and chronic vacancies.

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Operating Budget Analysis

Program Description

The Office of Health Care Quality (OHCQ) is the agency within the Department of Health and Mental Hygiene (DHMH) mandated by State and federal law to determine compliance with the quality of care and life standards for a variety of health care services and programs. Facilities and services are reviewed on a regular basis for compliance with the *Code of Maryland Regulations* as well as for compliance with federal regulations in those facilities participating in Medicare and Medicaid. The types of facilities licensed and regulated by OHCQ include nursing homes, hospitals, ambulatory surgical centers, endoscopic centers, birthing centers, home health agencies, health maintenance organizations, hospice care, physical therapy centers, developmental disability homes and facilities, mental health facilities, and substance abuse treatment facilities.

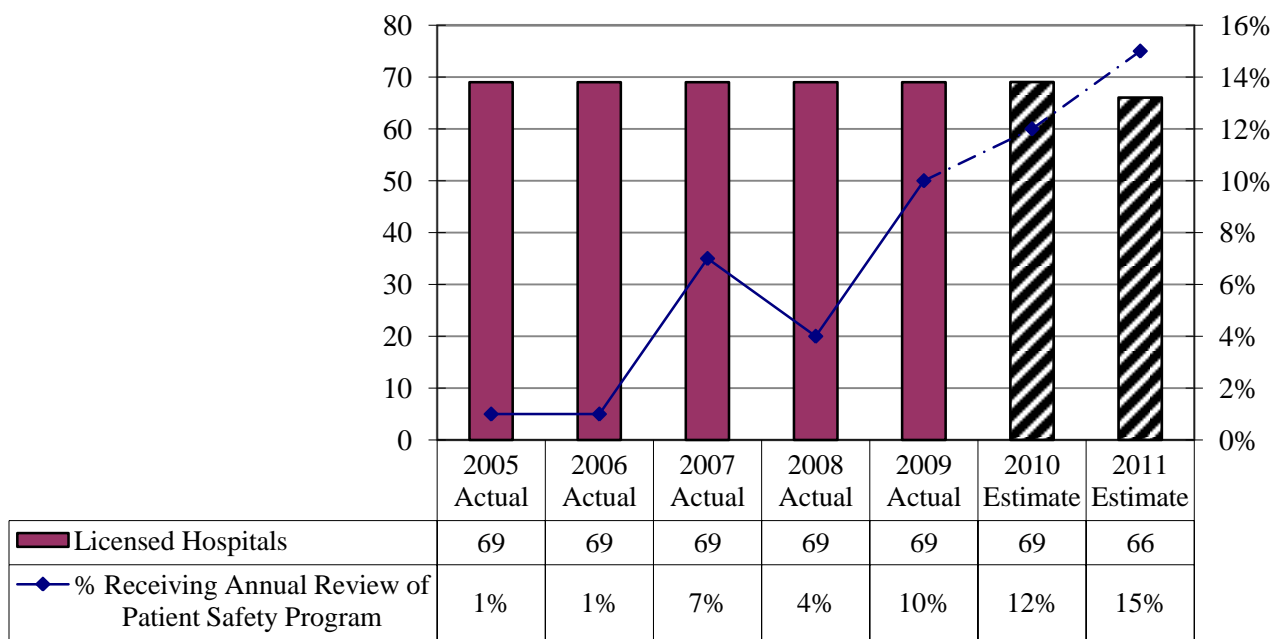
Performance Analysis: Managing for Results

OHCQ protects the safety of consumers through a survey and enforcement process of a variety of health-related entities. It also protects the public and ensures the health of Marylanders through the timely resolution of consumer complaints.

Patient Safety Programs at Hospitals

In fiscal 2004, OHCQ assumed responsibility for the implementation of the Maryland Patient Safety Program, which requires hospitals to establish an internal patient safety program that tracks adverse events and near misses. OHCQ has a Managing for Results (MFR) goal to conduct annual reviews of hospital patient safety programs in 15% of all licensed hospitals by the end of fiscal 2011. As shown in **Exhibit 1**, OHCQ was able to significantly increase the percent of hospitals receiving the review between fiscal 2008-2009, as a result of a fully staffed unit. As a result, the agency projected that it would be able to meet its goal by fiscal 2011. However, cost containment actions taken by the Board of Public Works (BPW) in November 2009 eliminated a position within the unit. The loss of the position and the increase in hospital complaints may make it difficult for OHCQ to reach its goal of reviewing 15% of hospitals by fiscal 2011.

**Exhibit 1
Licensed Hospitals and Annual Review of Patient Safety Program
Fiscal 2005-2011**



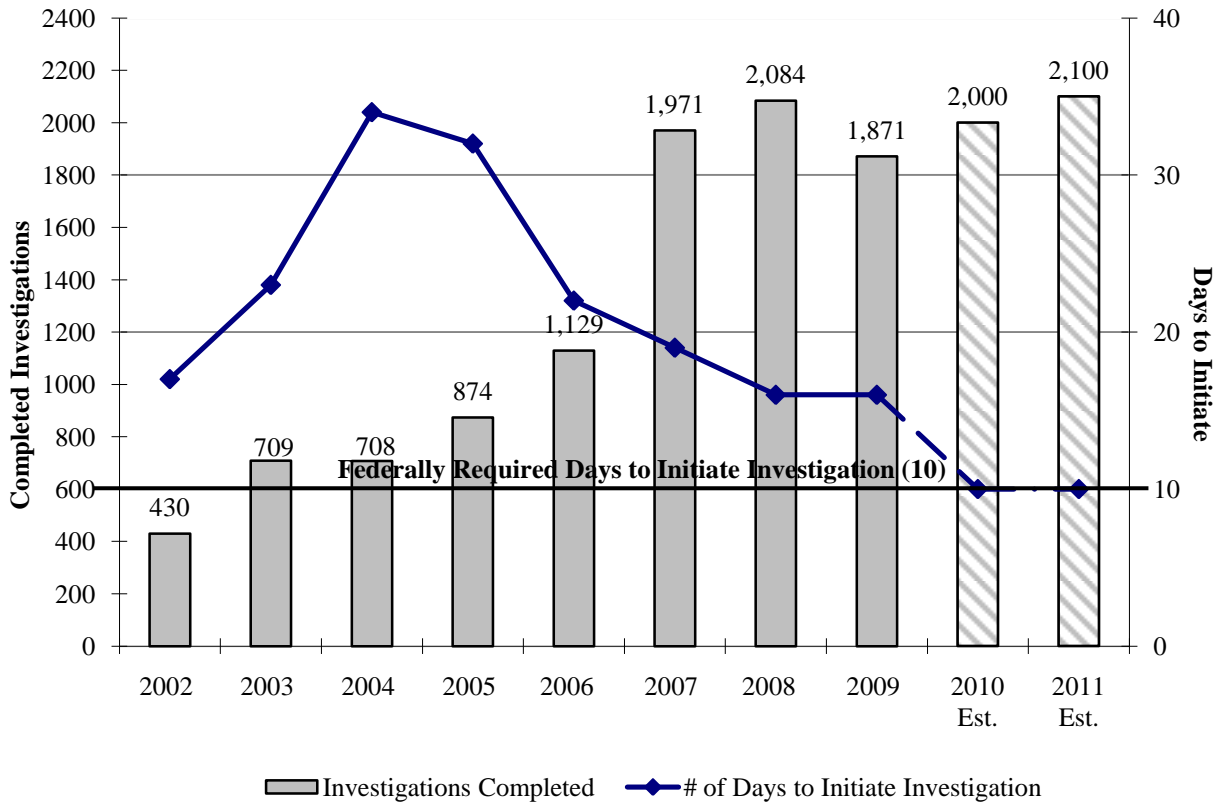
Source: Department of Health and Mental Hygiene

Hospitals are required to report Level 1 adverse events to OHCQ, including events that result in death or serious disability, retained foreign bodies after a surgery, or wrong-side/wrong-person surgery. OHCQ targets hospitals that fail to report Level 1 adverse events by conducting an onsite review of the hospital’s patient safety program. In most cases, surveyors have found that the hospital has an ineffective patient safety program. The failure of OHCQ to properly review hospital patient safety programs places consumers at risk for adverse events.

Nursing Homes

OHCQ’s Long Term Care unit evaluates, monitors, licenses, and certifies all nursing homes in the State. One of the performance goals of OHCQ is to minimize delays in handling complaint investigations in nursing homes. The investigation of complaints and incidents alleging actual harm from consumers or advocates and facility-reported incidents is required by both federal and State regulations. The MFR goal is to initiate complaint investigations alleging actual harm within 10 days of receipt of the complaint, which coincides with requirements set forth in federal regulations for Medicare and Medicaid. The number of complaint investigations completed annually, and the average number of days it took OHCQ to initiate the investigation, are shown in **Exhibit 2**.

**Exhibit 2
Nursing Home Complaint Investigations
Fiscal 2002-2011**



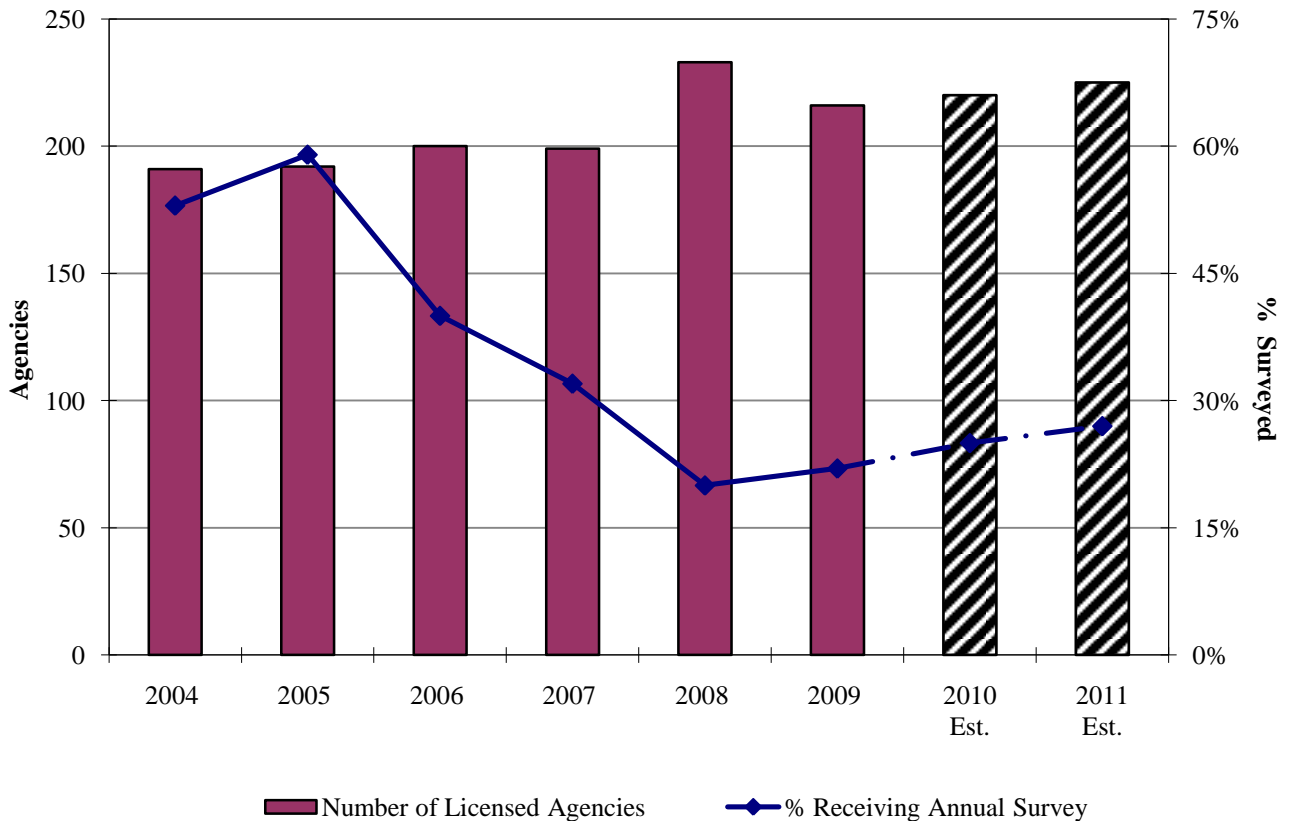
Source: Department of Health and Mental Hygiene

As Exhibit 2 demonstrates, OHCQ has made some progress toward achieving its goal of initiating onsite investigations within 10 days. OHCQ has minimized the delay in handling complaints from 34 days in fiscal 2004, to 16 days in fiscal 2009. The agency expects to continue to improve its delay in handling complaints by providing education and training to surveyors and by providing ongoing education and direction to providers as to reporting requirements. However, staffing issues may prohibit the agency from reaching its goal by 2010. The unit was the subject of cost containment action in November 2009 when BPW approved the elimination of a surveyor position. Additionally, there are 2 other surveyor positions in the Nursing Home unit that were vacant as of December 2009.

Developmental Disabilities Facilities

OHCQ’s developmental disabilities licensure unit evaluates, monitors, and recommends licensure for all community residential, day habilitation, vocational, and support services provided for individuals receiving funding through the Developmental Disabilities Administration (DDA). In fiscal 2009, there were over 200 agencies operating over 2,700 sites throughout the State. The unit’s goal is to provide timely and comprehensive relicensure surveys for agencies providing services to developmentally disabled individuals. **Exhibit 3** shows the total number of licensed agencies and the percent receiving an annual survey. All new agencies are required to have an initial survey conducted to receive licensure.

Exhibit 3
Survey of Development Disabilities Agencies
Fiscal 2004-2011



Source: Department of Health and Mental Hygiene

The agency's Developmental Disabilities Licensure unit has struggled to meet its MFR goal of providing 27% of required annual relicensure surveys. There was a sharp decline in the percent receiving annual surveys between fiscal 2005 and 2009, as Exhibit 3 shows. In fiscal 2005, OHCQ conducted as many as 59% of relicensure surveys for all agencies, whereas in fiscal 2009, only 22% were conducted. The growing number of individuals receiving DDA-funded support, and the corresponding increase in the total number of agencies serving these individuals, places a greater burden on OHCQ. Also, DHMH recently closed one of its State residential centers and placed the vast majority of those individuals in community placements, which also contributes to the increase in agencies assisting individuals.

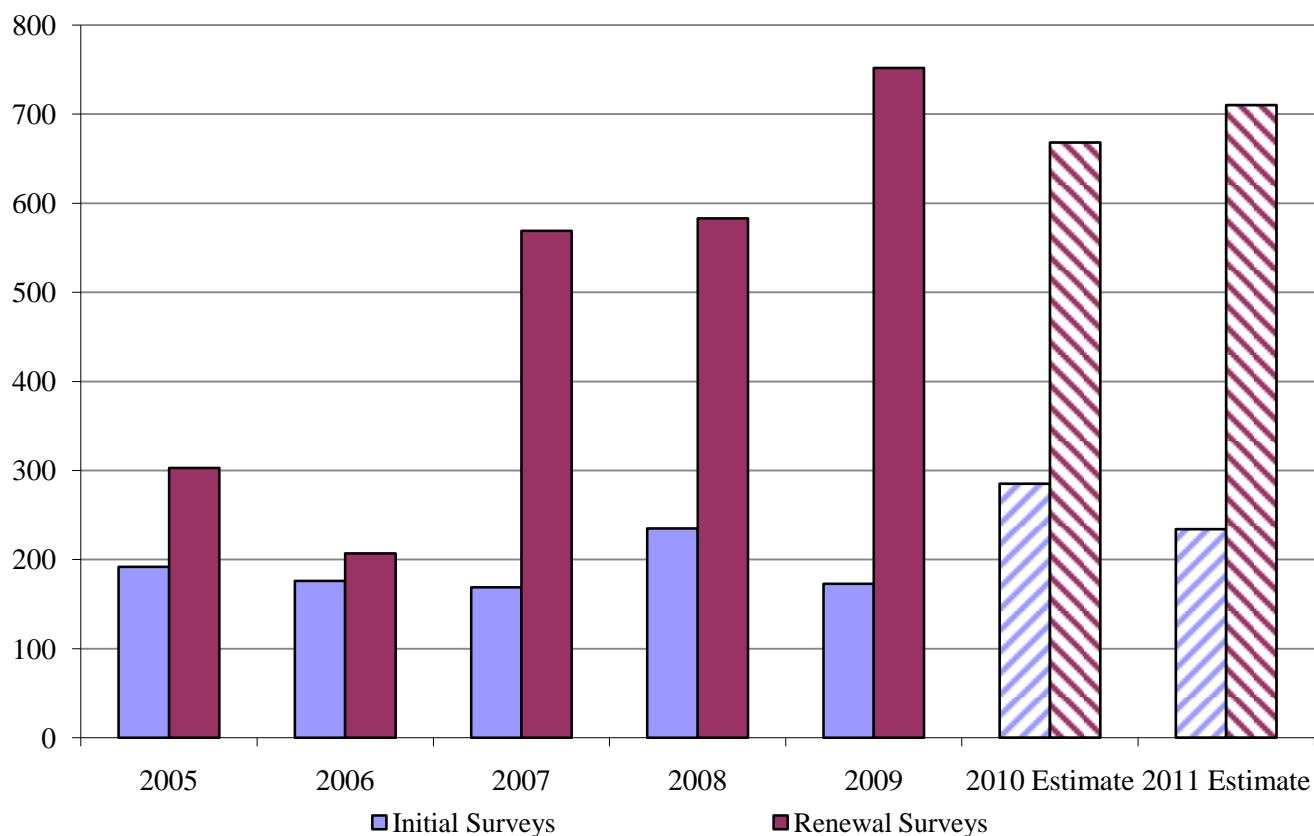
In fiscal 2009, OHCQ received funding for 5 new full-time equivalent positions for the unit and have employed a new management strategy to create a more efficient system for conducting relicensure surveys. These factors contribute to the agency's slight increase in annual surveys for fiscal 2009. However, subsequent cuts to personnel have eliminated positions in this unit which may have an adverse effect on its progress.

Assisted Living Facilities

OHCQ's assisted living unit surveys all assisted living providers in the State. The goal is to provide timely and comprehensive initial and renewal surveys of assisted living sites for the protection of individuals receiving services from assisted living providers. **Exhibit 4** shows the number of licensed sites in the State receiving initial and renewal surveys.

Between fiscal 2006 and 2007, there was a significant jump in the number of sites receiving renewal surveys, from 207 to 569. In fiscal 2007, the licensure and complaint division increased its survey staff by hiring additional surveyors for residential and community programs, which has contributed to the increase in sites that are able to be surveyed each year. OHCQ also employed a new management model to improve staff and survey efficiency. This model included appointing a program manager to coordinate the surveys; partnering with local entities to coordinate resources; and offering provider education activities. Exhibit 4 shows that the model continued to have success, as the number of sites receiving renewal surveys jumped from 583 to 752 between fiscal 2008 and 2009. The agency anticipates a slight decrease in sites receiving renewal surveys in fiscal 2010, due to staff vacancies and the elimination of an administrative position in November 2009.

Exhibit 4
Licensed Assisted Living Sites Surveyed
Fiscal 2005-2011



Source: Department of Health and Mental Hygiene

Fiscal 2010 Actions

Impact of Cost Containment

Cost containment actions approved by BPW in July, August, and November, 2009, have lowered the fiscal 2010 working appropriation by \$1.2 million total funds, (\$1.1 million of general funds, \$6,330 in special funds, and \$1.0 in federal funds), primarily for reductions to personnel expenses within the agency.

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- In July 2009, the budget was reduced by \$0.3 million in general funds and \$66,143 federal funds to increase the turnover rate at the agency from 3.0 to 3.7% and to recognize the availability of federal funds to cover some personnel costs previously covered by general funds.
- In August 2009, the budget was reduced by \$0.5 million in general funds and \$6,330 in special funds, due to employee furloughs, and the availability of federal funds from the American Recovery and Reinvestment Act of 2009 (ARRA) to supplant general funds for employee expenses in the Ambulatory Care Programs unit.
- In November 2009, the budget was reduced by \$0.3 million in general funds and \$66,408 federal funds. The majority of that reduction was to personnel expenses as 3.0 regular positions were eliminated, personnel functions were consolidated and general funds were cut to recognize a change in federal funding percentage for non-surveyor professional positions in the administration unit.

Proposed Budget

As shown in **Exhibit 5**, the Governor's proposed allowance for fiscal 2011 increases by \$0.5 million, or 3.2% over the fiscal 2010 working appropriation. As the chart demonstrates, the general fund support increases by \$0.3 million, or 2.8%; special fund support decreases by \$0.5 million, or 59.5%; and federal fund support increases by \$0.8 million, or 13.4%.

Personnel Expenses

The majority of the increase to the fiscal 2011 allowance occurs for personnel expenses borne by the agency, which increase the budget by \$0.6 million over the fiscal 2010 working appropriation. The fiscal 2011 budget reflects several across-the-board actions to be allocated by the Administration. This includes a combination of employee furloughs and government shut-down days similar to the plan adopted in fiscal 2010; a reduction in overtime based on accident leave management; streamlining of State operations; hiring freeze and attrition savings; a change in the injured workers' settlement policy and administrative costs; and a savings in health insurance to reflect a balance in that account. For purposes of illustration, the Department of Legislative Services has estimated the distribution of selected actions relating to employee furloughs and health insurance.

Salary expenses increase by \$0.8 million, offset in part by proposed employee furloughs in fiscal 2011, which decrease the budget by \$0.4 million. The net increase to salary expenses, including furloughs, is \$0.4 million in fiscal 2011. This number is artificially high due to cost containment actions taken in July 2009, which cut general funds for personnel expenses to hold positions vacant and to account for the availability of federal funds for certain personnel expenses. Funding for these reductions is restored in the fiscal 2011 budget.

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Other increases include contributions to the employees' retirement system (\$0.2 million), the addition of 1.5 new positions to carry out a new responsibility to survey forensic labs (\$77,000), and other fringe benefits (\$38,000).

Besides the reduction for employee furloughs, other decreases to the personnel budget include reductions to health insurance payments (\$76,000) and a higher turnover rate in fiscal 2011 (\$67,000). Cost containment actions in July increased the turnover rate from 3.0 to 3.7% in fiscal 2010. The proposed fiscal 2011 budget increases that rate to 4.0%.

Operating Expenses

Operating expenses decrease slightly in the fiscal 2011 allowance compared to the fiscal 2010 working appropriation. Decreases in the proposed budget include the elimination of funds to purchase new vehicles (\$84,000); a reduction in the amount of Civil Money Penalty (CMP) fund grants to be awarded in fiscal 2011 (\$70,000); elimination of funds for out-of-state conferences (\$40,000); and lower expenses for supplies and materials (\$13,000).

The only area of OHCQ's operating budget that receives an increase is for expenses related to a new initiative to improve quality assurance of ambulatory surgical centers by implementing a survey process to promote better infection control practices (\$106,000). The Ambulatory Surgical Centers – Health Care Associated Infections (ASC-HAI) initiative aims to expand the awareness of proper infection control practices among ambulatory surgical centers, increase the extent to which infection control deficiencies are both identified and remedied, and prevent future serious infections. OHCQ will receive funding through the ARRA to offset the costs associated with this initiative.

Exhibit 5
Proposed Budget
DHMH – Office of Health Care Quality
(\$ in Thousands)

How Much It Grows:	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Fund</u>	<u>Federal</u> <u>Fund</u>	<u>Total</u>
2010 Working Appropriation	\$9,567	\$892	\$5,811	\$16,270
2011 Allowance	<u>10,113</u>	<u>363</u>	<u>6,745</u>	<u>17,221</u>
Amount Change	\$546	-\$529	\$934	\$950
Percent Change	5.7%	-59.3%	16.1%	5.8%
 Contingent Reductions	 -\$277	 -\$1	 -\$156	 -\$434
Adjusted Change	\$269	-\$531	\$778	\$517
Adjusted Percent Change	2.8%	-59.5%	13.4%	3.2%
 Where It Goes:				
Personnel Expenses				\$595
Increased salary expenses.....				\$790
Employees’ retirement system contributions				213
1.5 full-time equivalent new positions in Lab, Licensing, and Certification Unit				77
Other fringe benefits.....				38
Employee furloughs.....				-380
Reduction to health insurance payments				-76
Increased turnover rate				-67
Operating Expenses				-\$78
Expenses related to Ambulatory Surgical Centers – Health Care Associated Infections.....				106
Other operating increases				23
Elimination of expenses for motor vehicle purchases				-84
Relative reduction in amount of Civil Monetary Penalty grants awarded compared to fiscal 2010				-70
Elimination of budget for out-of-state conferences				-40
Decrease in office supplies and materials.....				-13
Total				\$517

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

Federal Stimulus Fund

The fiscal 2011 allowance includes higher levels of federal fund support due to the availability of the ARRA funding for the newly established ASC-HAI program, mentioned above. OHCQ expects to receive \$0.9 million in the ARRA funding for personnel and operational expenses related to the initiative. Of that amount, \$0.8 million will cover 7.8 positions transferred from other units within OHCQ that will now be dedicated to implementing the new survey process for approximately one-third of all ambulatory surgical centers in the State. The aim of this initiative is to promote better infection control practices and prevent future serious infections.

Issues

1. Staffing Concerns Persist

OHCQ continues to operate with surveyor shortfalls that prevent the agency from fulfilling its State and federally required inspection and survey requirements. Budgetary constraints, the loss of positions through BPW actions, and an increase in responsibilities for the office create a structurally deficient workforce. Moreover, an influx of new providers in community-based programs, such as residential service agencies, assisted living providers, and homes for individuals with developmental disabilities, add to the overall workload of the agency.

While the workload of the agency has increased, the number of staff members assigned to complete the work has decreased. **Exhibit 6** shows the net change in staff between fiscal 2009 and the fiscal 2011 allowance, by licensure unit. As the exhibit demonstrates, the agency has had a net loss of 6.7 full-time equivalent positions since fiscal 2009.

The agency has also shuffled staff members between units to cover new initiatives and survey requirements. For instance, in fiscal 2011, 7.8 full-time equivalent positions will be transferred from the Ambulatory Care Programs unit (5.0 full-time equivalent), the Developmental Disabilities unit (1.0 full-time equivalent), the Assisted Living unit (1.0 full-time equivalent), and the Substance Abuse unit (0.8 full-time equivalent) to the newly created ASC-HAI unit.

Chronic vacancies within OHCQ further hamper its ability to conduct all of the required activities in each unit. As of December 31, 2009, there were a total of 9.8 vacant positions, 8.8 of which are responsible for survey and inspection activities. The vacancies occur in the following units: Nursing Home (2 surveyor positions); Developmental Disabilities (2 survey coordinator positions); Assisted Living (1 administrative and 1 survey position); Mental Health (1 surveyor position); and Ambulatory Surgical Center (2.8 full-time equivalent surveyor positions).

Exhibit 6
Position Change Report, by Licensure Unit
Fiscal 2009 – 2011

Unit	2009	2010 Working	2011 Allowance	Net change 2009-2011
Long-term Care	-3.0	---	---	-3.0
Assisted Living	---	-2.0	-1.0	-3.0
Developmental Disabilities	5.0	-3.0	-1.0	1.0
Hospitals and Patient Safety	---	-1.0	---	-1.0
Lab, Licensing, and Certification	---	---	1.5	1.5
Ambulatory Care Programs	---	---	-5.0	-5.0
Ambulatory Surgical Centers Infection Prevention*	n/a	n/a	7.8	7.8
Mental Health	---	1.0	---	1.0
Substance Abuse	---	1.0	-0.8	0.2
Adult Medical Day Care	-1.0	-1.0	---	-2.0
Other/Administration	-1.2	-3.0	---	-4.2
Net Gain/Loss	-0.2	-8.0	1.5	-6.7

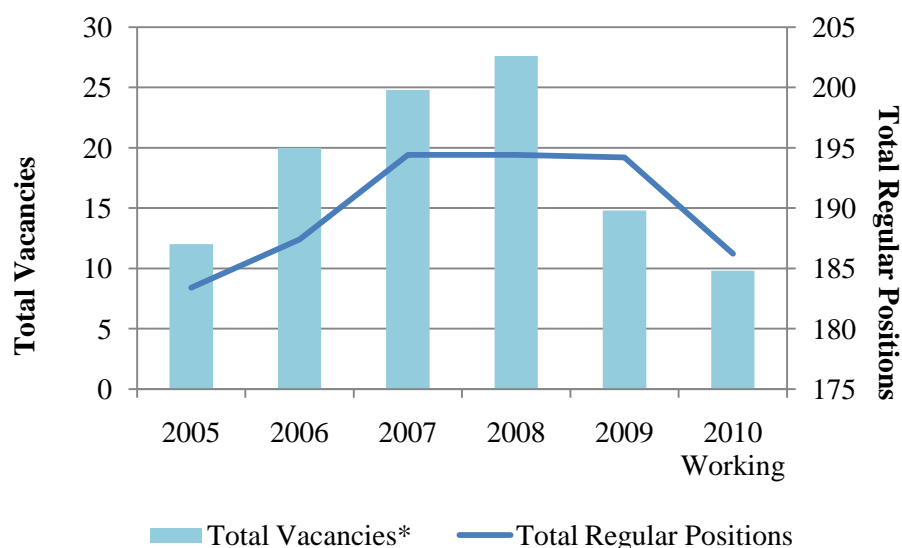
*New program in Fiscal 2011

Source: Department of Legislative Services

Exhibit 7 shows the total number of regular positions, including both surveyors and administrative positions, and the total vacancies for each year from fiscal 2005 through 2010. The number of vacancies generally correlates to the number of regular positions within the agency. That is, vacancies increased as the total number of positions increased and has decreased as positions have been eliminated from OHCQ's budget. While the vacancy level significantly dropped between fiscal 2008-2010, there were also a number of positions that were eliminated in fiscal 2009-2010 that had previously been vacant.

As of publication date for this report, the *Annual Report and Staffing Analysis* produced by OHCQ each year, had not been finalized. The report provides a staffing analysis to identify which licensure units are understaffed within the agency. **The agency should comment on the status of this report and provide the committees with the preliminary findings of staff deficiencies or overages in each survey unit. The agency should also comment on the ways in which they plan to overcome the staffing deficiency in each unit.**

**Exhibit 7
Total Staffing and Vacancy Levels for OHCQ
Fiscal 2005-2010**



* Vacancy as of December 31 of that particular fiscal year.

Source: Department of Legislative Services

Money Follows the Person Program

One of the factors contributing to the growing workload for OHCQ is the trend toward home- and community-based health care programs, especially for residential service agencies, assisted living providers, and homes for individuals with developmental disabilities. To encourage the use of home- and community based programs, the Centers for Medicare and Medicaid Services (CMS) instituted a grant program called Money Follows the Person which gives states an enhanced federal fund match for services provided to individuals that have been moved out of institutional settings and into a community-based setting. Maryland was approved for participation in the program in March 2008 and has since moved 450 individuals into a community-based health care settings including:

- 326 individuals that have transitioned from nursing facilities;
- 117 individuals that have moved from State residential centers; and
- 7 individuals that have moved from chronic hospitals to community-based health care settings.

Federally Required Activities Take Priority over State-required Activities

OHCQ regulates over 9,900 health care and community residential sites in Maryland. The scope of the agency's responsibilities has grown over the years from licensing and certifying nursing homes, hospitals, home health, hospice, and other federally regulated programs, to licensing and certifying programs regulated by Maryland. Because the agency has had to deal with a historical shortfall of surveyors, some activities mandated by the State only have been deferred. Instead, the agency is prioritizing survey activities to accomplish those that fulfill federal requirements. The highest priority for compliance with the Centers for Medicare and Medicaid Services (CMS) are inspection of nursing homes, home health agencies, kidney dialysis, and intermediate care facilities for the mentally retarded.

Conversely, the agency will defer some state only activities, such as surveying residential care providers; a second nursing home survey (not required by CMS); and staffing for the Mortality Review Committee, for facilities treating individuals with developmental disabilities or mental health ailments.

New Inspection Activities in Fiscal 2011

Further exacerbating the staffing shortage within OHCQ is the addition of new survey requirements. Beginning December 31, 2011, Maryland will require forensic labs to be certified by OHCQ or by an accrediting agency. Although the fiscal 2011 budget includes funding for 1.5 new full-time equivalent positions for this survey activity, other staff members from the Lab, Licensing, and Certification unit will be needed to process the surveys produced by the two new lab surveyors. This will decrease the amount of time that the staff members will have to dedicate to the remaining responsibilities of the unit. A more in-depth discussion of this new survey requirement is included in the second Issue.

Also, beginning in fiscal 2010, OHCQ will participate in a project to improve quality assurance of ambulatory surgical centers by implementing a new survey process to promote better infection control practices. The new program, ASC-HAI, aims to expand the awareness of proper infection control practices among ambulatory surgical centers and State agencies, increase the extent to which infection control deficiencies are identified and remedied, and prevent future serious infections.

Department of Legislative Services (DLS) recommends that committee narrative be adopted requiring the agency to submit a written report to the budget committees on the prioritization of survey and licensure activities in light of the fact that an increased workload and decreased staffing level has created a structurally deficient workforce. The report should address three categories of survey and inspection activities: those that are required by State and/or federal laws; those that are mandated by the *Code of Maryland Regulations*; and those activities that are not technically mandatory, but which the agency assumes as part of its regulatory and oversight duties. For each category, the agency should include a list of the required survey activities, and the status of the agency's compliance for each. The report

should also include a list of activities that may need to be forfeited due to the increased workload and decreased staffing level.

2. OHCQ Will Be Required to License and Inspect Forensic Labs Beginning in Fiscal 2012

Beginning on December 31, 2011, OHCQ will be required to license, set standards and requirements for, and inspect forensic laboratories in Maryland, per Chapter 147 of 2007. As of that date, licensure will be required for a forensic laboratory to offer or perform forensic analysis in Maryland. The fiscal 2011 allowance includes funding for a supervisor and a laboratory surveyor to accommodate the new survey requirement, although deficiencies in the Laboratory, Licensing, and Certification unit may hamper the agency's ability to conduct all required surveys.

Background

A forensic laboratory is a facility, entity, or site, that offers or performs forensic analysis. This includes a laboratory owned or operated by the State, a county, or municipal corporation in the State, or another governmental entity. A forensic laboratory does not include a forensic laboratory operated by the federal government or a laboratory licensed or certified by the Department of Agriculture. DHMH advises that 12 forensic laboratories, operated by governmental entities in Maryland, meet the definition set forth in the law including: the Office of the Chief Medical Examiner within DHMH; three laboratories within Department of State Police; and eight laboratories in the larger jurisdictions in Maryland.

According to the law, regulations for licensing standards and requirements must be promulgated by DHMH by December 31, 2010, to assure that forensic laboratories provide safe, reliable, and accurate services. The regulations must:

- require the laboratory director to establish and administer an ongoing quality assurance program using standards acceptable to the Secretary;
- require the laboratory director to retain all case files for at least 10 years;
- establish qualifications for forensic laboratory personnel;
- establish procedures for verifying the background and education of forensic laboratory personnel;
- require the Secretary of Health and Mental Hygiene to charge fees that may not exceed the actual direct and indirect costs to DHMH to carry out the statute; and

- establish any additional standards the Secretary considers necessary to assure that the laboratories provide accurate and reliable services.

Cost of the Survey Requirement

There are two cost components to consider for the implementation of the inspections of forensic labs. First, the direct costs of the program include the additional 1.5 full-time positions for a supervisor and a laboratory surveyor. In addition to the direct costs are the indirect costs associated with staff time dedicated to forensic labs, that would have otherwise been engaged in survey and inspection requirements for the rest of the Lab, Licensing, and Certification unit. In fiscal 2009, the unit was deficient 4.72 surveyors needed to perform its duties. The unit is responsible for State licensure of all laboratories that perform tests on specimens obtained from Maryland citizens and for federal certification of all laboratories located in Maryland. The unit also serves as the agent for federal certification in the Clinical Laboratory Improvement Amendments of 1988 Program, which is required for all clinical laboratory testing sites including those seeking Medicare reimbursement.

Status Update

In fiscal 2009, a workgroup began the development of regulations for the forensic laboratories in advance of the December 31, 2010 deadline. Although the requirement to survey forensic labs will be incorporated into the Laboratory, Licensing, and Certification unit, current staff members do not possess the skills or have knowledge of forensic laboratories. Consequently, new staff members will be hired that possess the specific skills required to complete these surveys. This requirement only adds to the workload that OHCQ faces. **The agency should provide the committees with an idea of how OHCQ will handle the additional inspection requirement and the steps that it has taken to meet the December 31, 2011 deadline.**

Recommended Actions

1. Adopt the following narrative:

Report of Survey Activities In Light of Reduced Staffing Levels: The combination of increased workload, a structural deficiency in positions allotted for survey and inspection activities, and chronic vacancies among surveyor positions, prevent Office of Health Care Quality (OHCQ) from conducting all of the survey activities for which the agency is responsible. The committees request that OHCQ submit a written report on the activities that the agency has had to eliminate, or not fully complete, due to insufficient staffing levels in fiscal 2010. The report should address survey and inspection requirements for each unit, including which activities were prioritized and which were foregone.

Information Request	Author	Due Date
Incomplete Survey and Inspection Activities	OHCQ	October 1, 2010

Current and Prior Year Budgets

Current and Prior Year Budgets Office of Health Care Quality (\$ in Thousands)

	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Fund</u>	<u>Federal</u> <u>Fund</u>	<u>Reimb.</u> <u>Fund</u>	<u>Total</u>
Fiscal 2009					
Legislative Appropriation	\$10,754	\$435	\$6,167	\$0	\$17,355
Deficiency Appropriation	0	100	0	0	100
Budget Amendments	913	-45	0	0	867
Cost Containment	-805	-5	-34	0	-844
Reversions and Cancellations	0	-122	-1,118	0	-1,240
Actual Expenditures	\$10,861	\$362	\$5,015	\$0	\$16,239
Fiscal 2010					
Legislative Appropriation	\$10,632	\$898	\$5,943	\$0	\$17,474
Cost Containment	-1,065	-6	-133	0	-1,203
Budget Amendments	0	0	0	0	0
Working Appropriation	\$9,567	\$892	\$5,811	\$0	\$16,270

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

Fiscal 2009

In fiscal 2009, the budget for the Office of Health Care Quality closed at \$16.2 million, a decrease of \$1.1 million below the original legislative appropriation. While the general fund appropriation increased by \$0.1 million, the majority of the change in the budget came from reductions in the special fund and federal fund appropriation, which decreased by \$0.1 million and \$1.2 million, respectively.

Budget amendments increased the budget by a total of \$0.9 million in fiscal 2009, primarily increasing the general fund appropriation. The changes to the budget from amendments are as follows:

- \$659,499 increase in general funds to cover additional salary expenses due to the inability to charge salaries to federal funds as planned;
- \$113,664 increase in general funds to meet turnover;
- \$159,754 increase in general funds and \$4,600 in special funds for cost-of-living adjustments;
- \$25,028 increase in general funds for annual salary review adjustments for laboratory scientist surveyors and a public health laboratory scientist supervisor;
- \$50,000 decrease in special funds for expenses associated with the Organ Tissue Donation Awareness campaign; and
- \$45,086 decrease in general funds due to the availability of funds for health insurance expenses.

BPW met three times during the interim to reduce the funding for State agencies in fiscal 2009. First, actions taken in June 2008, reduced the general fund appropriation by \$73,197; the special fund appropriation by \$1,316; and the federal fund appropriation by \$33,846 for fiscal 2009 personnel expenses.

In October 2008, actions taken by BPW reduced the budget by an additional \$0.4 million in general funds that eliminated 0.2 full-time equivalent positions; reduced Other Post Employee Benefits funding and health insurance costs; and reduced funding for motor vehicle operations.

In March 2009, actions taken by BPW reduced the budget by \$0.4 million in general funds and \$3,402 in special funds due to furloughs for all State employees (\$236,715 general funds and \$3,402 special funds); a fund swap using special funds in place of general funds for certain contractual services (\$100,000 general funds); and reduction to equipment costs (\$31,442 general funds).

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A special fund deficiency appropriation was provided in fiscal 2009 to cover the contractual services now paid by special funds instead of general funds as a result of the March BPW action.

At the end of the year, \$0.1 million in special fund appropriation was cancelled because grant awards in the nursing home unit were not expended. Additionally, \$1.1 million in federal funds were cancelled due to the inability to claim federal funds for certain expenses.

Fiscal 2010

The fiscal 2010 working appropriation decreases by \$1.2 million total funds due to cost containment actions approved by BPW in July, August, and November 2009. The reductions were primarily attributed to personnel expenses and include the following:

- \$0.3 million in general funds and \$66,143 in federal funds to increase the turnover rate at the agency from 3.0 to 3.7%, and to recognize the availability of federal funds to cover personnel expenses previously covered by general funds;
- \$0.5 million in general funds and \$6,330 in special funds due to the implementation of employee furloughs and the use of federal funds from the ARRA to supplant general funds for employee expenses in the Ambulatory Care Programs unit; and
- \$0.3 million in general funds and \$66,408 in federal funds that eliminated three positions, consolidated personnel functions; recognized a change in federal funding percentage for nonsurveyor professional positions in the Administration unit; and reduced funding for travel and vehicle expenses.

**Object/Fund Difference Report
DHMH – Office of Health Care Quality**

<u>Object/Fund</u>	<u>FY 09 Actual</u>	<u>FY 10 Working Appropriation</u>	<u>FY 11 Allowance</u>	<u>FY 10-FY 11 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	194.20	186.20	187.70	1.50	0.8%
02 Contractual	4.61	5.40	5.40	0	0%
Total Positions	198.81	191.60	193.10	1.50	0.8%
Objects					
01 Salaries and Wages	\$ 14,010,866	\$ 13,785,669	\$ 14,862,605	\$ 1,076,936	7.8%
02 Technical and Spec. Fees	155,702	172,822	190,898	18,076	10.5%
03 Communication	70,394	78,903	69,185	-9,718	-12.3%
04 Travel	342,939	356,106	324,394	-31,712	-8.9%
07 Motor Vehicles	190,590	212,151	112,916	-99,235	-46.8%
08 Contractual Services	948,202	1,040,181	1,107,631	67,450	6.5%
09 Supplies and Materials	52,225	83,437	74,765	-8,672	-10.4%
10 Equipment – Replacement	8,758	15,345	16,003	658	4.3%
11 Equipment – Additional	51,872	9,314	10,726	1,412	15.2%
12 Grants, Subsidies, and Contributions	16,800	150,000	80,000	-70,000	-46.7%
13 Fixed Charges	390,605	366,429	371,653	5,224	1.4%
Total Objects	\$ 16,238,953	\$ 16,270,357	\$ 17,220,776	\$ 950,419	5.8%
Funds					
01 General Fund	\$ 10,861,476	\$ 9,567,469	\$ 10,113,127	\$ 545,658	5.7%
03 Special Fund	362,254	892,057	362,680	-529,377	-59.3%
05 Federal Fund	5,015,223	5,810,831	6,744,969	934,138	16.1%
Total Funds	\$ 16,238,953	\$ 16,270,357	\$ 17,220,776	\$ 950,419	5.8%

Note: The fiscal 2010 appropriation does not include deficiencies.

Fiscal Summary
DHMH – Office of Health Care Quality

<u>Program/Unit</u>	<u>FY 09 Actual</u>	<u>FY 10 Wrk Approp</u>	<u>FY 11 Allowance</u>	<u>Change</u>	<u>FY 10-FY 11 % Change</u>
03 Office of Health Care Quality	\$ 16,238,953	\$ 16,270,357	\$ 17,220,776	\$ 950,419	5.8%
Total Expenditures	\$ 16,238,953	\$ 16,270,357	\$ 17,220,776	\$ 950,419	5.8%
General Fund	\$ 10,861,476	\$ 9,567,469	\$ 10,113,127	\$ 545,658	5.7%
Special Fund	362,254	892,057	362,680	-529,377	-59.3%
Federal Fund	5,015,223	5,810,831	6,744,969	934,138	16.1%
Total Appropriations	\$ 16,238,953	\$ 16,270,357	\$ 17,220,776	\$ 950,419	5.8%

Note: The fiscal 2010 appropriation does not include deficiencies.