



Department of Health
2021-23 Second Supplemental Budget Session
Policy Level - HC - Behavioral Health Agency Regulation

Agency Recommendation Summary

The Department of Health requests general fund state to address the increase in licensure and regulatory activities for the behavioral health agency program (BHA) and help cover the gap between the fee revenue and the costs to adequately run the program. This request will sustain program needs and support the growth of these critical services.

Fiscal Summary

Fiscal Summary <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2022	2023	2021-23	2024	2025	2023-25
Staffing						
FTEs	0.0	0.8	0.4	0.0	0.0	0.0
Operating Expenditures						
Fund 001 - 7	\$0	\$16	\$16	\$0	\$0	\$0
Fund 02G - 1	\$0	\$316	\$316	\$0	\$0	\$0
Total Expenditures	\$0	\$332	\$332	\$0	\$0	\$0
Revenue						
001 - 0597	\$0	\$16	\$16	\$0	\$0	\$0
Total Revenue	\$0	\$16	\$16	\$0	\$0	\$0

Decision Package Description

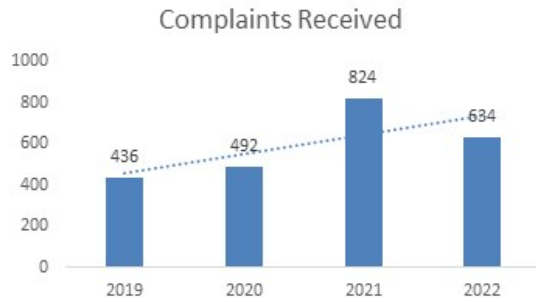
The problem

The department regulates inpatient and outpatient BHAs to provide mental health, substance use disorder (SUD), and gambling disorder treatment services under [Chapter 71.24 RCW](#). A BHA credential is required if an agency intends to seek Medicaid reimbursement or provide court-ordered mental health or SUD services.

Until 2018, BHAs were licensed by the Department of Social and Health Services (DSHS). The regulatory program was supported at the time through a combination of licensure fees and other funds. When the BHA regulatory program was moved to the department in July 2018, the legislature appropriated general fund-state (GF-S) to cover the gap between fee revenue and regulatory program expenditures.

Over the last four years, the department discovered the initial funding structure is insufficient to recover the costs of regulating BHAs due to several factors:

1. **The complaint and investigation workload was underestimated in 2018:** DSHS originally estimated the complaint investigations to be around 10 per year, which they considered would be fiscally negligible. DSHS also reported that they had never pursued a formal enforcement action. However, between July 1, 2018 and June 30, 2022, the department received and assessed 2,386 complaints. Over five hundred (508) of the complaints were authorized for investigations and eight (8) resulted in formal enforcement actions, which incur significant legal costs. Compared to the original projection of 10 investigations per year, 127 investigations per year average is an increase of 1,170%. The department has no reason to believe this trend will abate.



Total: 2,386



Total: 508

Data Source: DOH Integrated Licensing Regulatory System

- The number of BHAs is expanding rapidly:** The opioid epidemic, the COVID-19 pandemic, the housing crisis, and other factors have dramatically increased the need for behavioral health services. In recent years, the legislature made significant investments to foster growth of BHAs to meet the rising need for services. The Department of Commerce has funded 189 new or expanded BHAs since the 2013-2015 biennium. Growth in the number of licensed agencies translates into increased licensing and regulatory compliance activity. Because fees have already proven to be insufficient for cost recovery, an increase in the GF-S subsidy is needed to keep pace with the growth in licensees. The average inspection takes 40 hours, and the department currently averages 330 inspections per year. If funding is not provided, the program will have to reduce productivity by 18 BHA investigations, representing a 14% reduction in investigations. It may also mean stopping other BHA-related work that was shifted from DSHS to the department and is currently funded through the same GF-S dollars, notably the accreditation of opioid treatment programs (OTPs).

Proposal:

To address the immediate funding gap, the department requests additional GF-S to support the required oversight activity and maintain timely

inspections, complaint investigations, enforcement actions, and specialized services for BHAs (e.g., OTP accreditation), and posting of inspection and investigation reports to comply with SHB 2426 that passed during the 2020 legislative session.

The department also requests an increase in private local spending authority for the additional fee revenue earned through the increase in licensed BHAs. The additional GF-S appropriation and private local spending authority will support the additional 0.8 FTE required to maintain BHA regulatory work. Implementing this proposal will provide the department with the necessary funding to fully administer the program, the ability to keep up with the continued expansion of BHAs, and ultimately support community access to licensed and certified behavioral health services.

The department also plans to initiate a review of current BHA and related fees to identify needed adjustments. Due to the complexity of the current fee structures paid by facilities that provide behavioral health services (e.g., BHAs, residential treatment facilities, psychiatric hospitals), adjusting fees will require a dedicated workgroup to analyze the best strategy and proposed structure. The department anticipates initiating the fee analysis process in spring 2023, with fee changes taking effect in spring 2024.

Alternatives explored:

The department considered the following alternatives:

- Reduce expenditures by reducing FTEs committed to BHA oversight and policy support. This would result in delays in routine inspections and investigations as well as formal enforcement actions leading to decreased compliance, and potentially reducing access to care due to delays in licensure.
- Raise licensing fees of BHAs to generate the additional revenue to reduce reliance on GF-S and cover the entire cost of the program. Although this is an option the department plans to explore in the future, quickly raising BHA fees is likely to hinder growth of these important services during the behavioral health crisis.

Discontinue providing accreditation services to OTPs and redirect the GF-S to other BHA regulatory work or charge for OTP accreditation services. DSHS provided accreditation services to OTPs to enable them to meet the federal Substance Abuse and Mental Health Services Administration requirement without having to pay private accreditation organizations. The department has maintained this service for OTPs. Although discontinuing this service or charging a fee for it are options the department may explore in the future, stopping it abruptly could create barriers to sustaining and expanding OTPs.

Assumptions and Calculations

Expansion, Reduction, Elimination or Alteration of a current program or service:

To maintain BHA regulatory program activities, the department requires the additional staffing:

- 0.4 FTE Health Services Consultant 4 to support rulemaking and policy analysis for the program,
- 0.3 FTE Management Analyst 4 to support licensing coordination and technical assistance to facilities, and
- 0.1 FTE Forms Record Analyst 2 to support posting inspection and investigation documents

Increased Attorney General Services will also be needed as formal enforcement actions continue to increase. The increased cost is estimated at \$208,000 per fiscal year.

Detailed Assumptions and Calculations:

See 2021-23 BHA DP Backup FY23 Supplemental attachment

Workforce Assumptions:

The following are the assumptions of the costs and FTE needed to fully administer the program, keep up with the continued expansion of BHAs, and support community access to licensed and certified behavioral health services.

Workforce Assumptions FY23 Projections Only					
FTE	Job Classification	Salary	Benefits	Startup Costs	FTE Related Costs
0.3	Management Analyst 4	\$25,000.00	\$9,000.00	\$1,000.00	\$2,000.00
0.5	Health Services Consultant 4	\$38,000.00	\$13,000.00	\$2,000.00	\$3,000.00
0.1	FORMS & RECORDS ANALYST 2	\$4,000.00	\$2,000.00	\$0.00	\$1,000.00
0.8		\$67,000.00	\$24,000.00	\$3,000.00	\$6,000.00

Strategic and Performance Outcomes

Strategic Framework:

Results Washington

This package supports the Results Washington goal area of healthy and safe communities by providing the department with the necessary funding to fully administer the program, ultimately supporting community access to safe care in licensed and certified behavioral health agencies.

Department of Health Transformational Plan

This proposal supports the department’s Transformational Plan priority I: Health and Wellness – all Washingtonians have the opportunity to attain their full potential of physical, mental and social health and well-being. This proposal also supports Health and Wellness by aiming to ensure equitable and safe access to behavioral health services in the state by funding the full spectrum of our regulatory responsibilities.

Performance Outcomes:

Inadequate staffing has forced the program to shift personnel from routine investigations to cases that are of a higher priority, greater complexity or are otherwise challenging. If additional funding is provided, we should be better equipped to address our entire complaint caseload in a timelier manner without reducing work in other areas, such as OTP accreditation.

Equity Impacts**Community outreach and engagement:**

The department has begun engaging with HCA and the Department of Commerce on this proposal as they work directly with BHAs by providing payments for services and managing funding to stand up new services. The department will continue working with these agencies and directly with BHAs to keep them informed of changes in funding that may impact fees directly or cause us to reduce regulatory work. This would include identifying communities and target populations that may be disproportionality impacted if there was risk of BHAs going out of business or reducing services.

Disproportional Impact Considerations:

Ensuring the department can fulfill its patient safety functions by providing necessary oversight in licensed or certified behavioral health agencies will have a positive impact on access to health care services and public safety, which are both social determinants of health.

Target Populations or Communities:

Ensuring access to safe behavioral health services by providing comprehensive regulatory oversight of facilities will directly benefit people needing behavioral health care.

People struggling with behavioral health issues often have co-occurring morbidities and difficulties accessing care. They are more likely to be unhoused and in poverty. Black, indigenous, and people of color are disproportionately impacted by behavioral health conditions.

Other Collateral Connections

Puget Sound Recovery:

N/A

State Workforce Impacts:

N/A

Intergovernmental:

The Department of Commerce provides grant funding to create new BHAs and will want to assure the department is able to provide timely inspections to get BHAs licensed. The Health Care Authority (HCA) will also want to ensure that BHAs are licensed and regulated as they require licensure to get reimbursed for Medicaid. In addition, the Department of Corrections and DSHS hold BHA licenses and will be interested in ensuring their budgets are able to cover licensure costs. The department is in the process meeting with these agencies to share the proposal.

Stakeholder Response:

BHAs are likely to be strongly supportive of this proposal since the alternative is to immediately raise fees to maintain the regulatory program. The department is meeting with their association, the Washington Council for Behavioral Health.

OTPs (including tribal OTP programs) are also likely to be strongly supportive as they will want the department to maintain the accreditation service currently provided, which could be impacted if funding is not provided.

The department does not expect any stakeholder opposition to this proposal.

State Facilities Impacts:

N/A

Changes from Current Law:

N/A

Legal or Administrative Mandates:

N/A

Reference Documents

[2021-23 BHA DP Backup FY23 Supplemental.xlsx](#)

[FinancialCalculator_FY23 BHA Supplemental.xlsm](#)

IT Addendum

Does this Decision Package include funding for any IT-related costs, including hardware, software, (including cloud-based services), contracts or IT staff?

No

Objects of Expenditure

Objects of Expenditure <i>Dollars in Thousands</i>	Fiscal Years		Biennial	Fiscal Years		Biennial
	2022	2023	2021-23	2024	2025	2023-25
Obj. A	\$0	\$106	\$106	\$0	\$0	\$0
Obj. B	\$0	\$39	\$39	\$0	\$0	\$0
Obj. E	\$0	\$181	\$181	\$0	\$0	\$0
Obj. T	\$0	\$6	\$6	\$0	\$0	\$0

Agency Contact Information

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