COMMONWEALTH of VIRGINIA

NELSON SMITH
COMMISSIONER

DEPARTMENT OF
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September 1, 2022

The Honorable Janet D. Howell, Chair, Senate Finance Committee
The Honorable Barry D. Knight, Chair, House Appropriations Committee
14th Floor, Pocahontas Building
900 East Main Street
Richmond, VA 23219

Dear Senator Howell and Delegate Knight:

Item 310 #1c Chapter 2 of the 2023 *Appropriations Act* directs the Department of Behavioral Health and Developmental Services (DBHDS) requires all unspent funds to be reported to the Department of Planning and Budget and the Chairs of the House Appropriations and Senate Finance and Appropriations Committees by September 1 after the close of each fiscal year. The language states:

> *D.1. Any funds appropriated in this act for the purpose of complying with the settlement agreement with the United States Department of Justice pursuant to civil action no: 3:12cv059-JAG that remain unspent at the end of each fiscal year shall be reported by the Department of Behavioral Health and Developmental Services to the Department of Planning and Budget and the Chairs of the House Appropriations and Senate Finance and Appropriations Committees by September 1 after the close of each fiscal year. The department shall include in its report each item and the amount of funding for such item that remains unspent, with an explanation for the remaining balance at year end.*

In accordance with this item, please find enclosed the combined report for Item 310 #1c Chapter 2 for the close of the fiscal year 2022 (July 1, 2021-June 30, 2022). Staff are available should you wish to discuss this report.

Sincerely,

Nelson Smith
Commissioner

c: The Honorable John Littel
Leah Mills
James Williams
Susan Massart
Mike Tweedy

Virginia Department of Behavioral Health & Developmental Services

Report on Item 310 #1c

Report on Remaining DOJ General Fund Balances

To the Chairs of House Appropriations and Senate Finance and Appropriations Committees

September 1, 2022

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Preface

Item 310#1c Chapter 2 the 2023 Appropriations Act requires a report to be submitted at the close of the fiscal year addressing each item relating to DOJ that has an unspent balance and to provide an explanation for this unspent balance. The language states:

> *"D.1. Any funds appropriated in this act for the purpose of complying with the settlement agreement with the United States Department of Justice pursuant to civil action no: 3:12cv059-JAG that remain unspent at the end of each fiscal year shall be reported by the Department of Behavioral Health and Developmental Services to the Department of Planning and Budget and the Chairs of the House Appropriations and Senate Finance and Appropriations Committees by September 1 after the close of each fiscal year. The department shall include in its report each item and the amount of funding for such item that remains unspent, with an explanation for the remaining balance at year end.*
>
> *2. The Department of Behavioral Health and Developmental Services shall report on the status of compliance with the provisions of the settlement agreement with the United States Department of Justice pursuant to civil action no: 3:12cv059-JAG and shall: (i) list each non-compliant provision; (ii) the status of meeting the provision; (iii) the department's planned actions to achieve compliance; and (iv) the date the department expects to achieve compliance with the provision. The department shall report such information to the Director, Department of Planning and Budget and the Chairs of the House Appropriations and Senate Finance and Appropriations Committees quarterly, with each report due 30 days after the end of each quarter."*

Introduction

In 2011, the Department of Justice (DOJ), found that Virginia provided insufficient community-based treatments for persons with mental disabilities and was in violation of ADA and its interpretation in the Olmstead case. This resulted in a settlement agreement between the federal government and Virginia. In response, Virginia closed its training centers and has worked to move individuals into local community settings while expanding community resources. This settlement agreement continues to evolve, and requirements continue to need one-time funding.

Status of the DOJ Settlement Agreement

1. The Commonwealth continues to make progress related to the Department of Justice Settlement Agreement. It is important to note that at the initiation of the Settlement Agreement there were 121 provisions the Commonwealth needed to come into compliance. The Commonwealth was relieved of Section IV and VI.D on March 11, 2021, which was comprised of four provisions. As of Independent Reviewer's **20th Report to the Court**, dated **June 13, 2022**, ECF No. 424, the Independent Reviewer has determined the Commonwealth to be in Sustained Compliance with an additional **45** provisions, (35 provisions in Section III and 10 in Section V.) Additionally, in January 2020, The Commonwealth agreed to **317** compliance indicators. As of the Independent Reviewer's 20th report to the court, the Commonwealth has met a total of **183 of the 317** total compliance indicators, which includes **28*** pending data validity and reliability determinations for fully met status, sustained met status for two consecutive review periods for **100** indicators, and **134** unmet compliance indicators. On, **May 23, 2022**, the judge extended the anticipated end date to the agreement to **December 31, 2023.**

Table 1: DOJ Remaining Balances Explanation, Agency 720

The following table on the next page details each remaining balance in Agency 720 along with an explanation for the balance. The items of CAP/APD and Administrative were created to consolidate numerous smaller balances into two buckets.

720 General Fund DOJ Remaining Balances

Item	Remaining Balance	Explanation
Cost Allocation Plan (CAP)/Advanced Planning Document (APD)	**$1,998,383**	**CAP/APD Billing Impacts Cash Flow in 3 primary ways:** **1. Billing Lag:** In FY22, DBHDS was 3 quarters behind billing, with an additional 2-3 quarters later until DMAS reimbursed. Additionally, large contracts like Quality Service Review (QSR), Supports Intensity Scale® (SIS®), and Waiver Management System (WaMS) with large expenditures towards the end of the fiscal year impact cash flow between fiscal years. In Fiscal Year 2022, DBHDS, received lagging payments from previous fiscal years, resulting in general fund balances. **2. Cost Code (CC) Change:** Reimbursements return to the CC the expense was incurred, even if in the current year the CC for a project are expensed from a different CC. This results in potential balances and over expenditures. **3. Scope of Project Changes:** Contracts and projects may change and reduce the needed funds, budgets are set with the assumption of CAP revenue for 4 quarters worth of expenditures; a reduction of overall spending means excess CAP revenue leftover since most CAP revenue comes from the prior year. When a project scope changes between fiscal years and there is a lag in billing, balances occur.
Administrative	**$843,432**	Many cost codes observe balances due to unfilled positions creating vacancy savings.
Event Tracking System (EVT)	**$1,782,729**	Delay in RFP approval, CMS did not approve until May 2022.
DOJ Data Warehouse IT	**$777,266**	The project scope changed with a realization that there needs to be a shift to an entire new system, since then the new system has been approved and is active for FY 23. This is the remaining balance unused from this effort. With the new system being approved, DBHDS has obligated this funding for FY 23.
IFSP IT Project	**$426,930**	With continual website failures, DBHDS alternated course to make the IFSP application available through the WaMS Waitlist Portal instead of it's own website. Reduction of the cost was also observed when new data was no longer needed but instead existing data could be used, thus resulting in a new efficient and effective solution at 1/3 of the original cost. For this project in FY 22, $268,904 of this was one time carry forward, which ended up not needing to be utilized.
LICENSING IT	**$47,771**	This project was originally under funded, an OTA for the estimated amount to fully fund and complete the project was authorized, since the OTA was an estimate there are some dollars left over.
Risk Management Resource Development (RMRD) - Partnership IMU Look Behind	**$257,567**	The MOA was not signed off on by both parties til March 25th 2022, payment is based on deliverables, nothing was completed prior to the end of FY 22, now progress is beginning to be made. Without this project, DBHDS would be out of compliance with the SA.
Funding for Individuals from Training Center's without Medicaid	**$465,586**	During the last year, most individuals did not use their day and community involvement services which was half if not more of their budgets. Decreased utilization is impacted by the pandemic and not being able to access the community in the same manner. These services will be needed in FY 23.
Support Intensity Scales (SIS)	**$1,628,042**	There was a shift from a 3 -year cycle to 4 -year cycle, meaning those that were due last year will not be due til this next year, resulting in balances relating to the SIS contract. Additionally SIS assessments have large variations due to additional waiver slots being added and as existing slots transfer to individuals. Higher expenditures are expected in FY 23 with a total of 5,215 assessments to be completed compared ro the 1,363 in FY 22.

Table 2: DOJ Remaining Balances Explanation, Agency 790

The following table details each remaining balance in Agency 790 along with an explanation for the balance.

790 General Fund DOJ Remaining Balances		
Item	Remaining Balance	Explanation
DV Rental	$986,266	OCH, CC 922 executed 6 new contracts mid- year and they received pro-rated amounts for the FY with all funds obligated by the end of this FY 22.
DV Crisis	$500,000	This is operation and maintenance of the Crisis Call Center Platform. This platform is still in development and Operations and Maintence budgets were not needed/used.
IFSP	$736,467	The system needs to be rebuilt as the current funding system experienced 3 breaches and the time needed to complete this unanticipated need could not be met before the close of the fiscal year.. The program also experienced 75% turnover of staff last year which resulted in long vacancies in terms of finding the right staff for the program and filling the positions. Additionally there were funds reserved for families and individuals who were seeking credit protection services and not all families availed themselves of this service which left remaining balances.