



COMMONWEALTH of VIRGINIA

DEPARTMENT OF
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NELSON SMITH
COMMISSIONER

September 1, 2023

To: The Honorable Janet D. Howell, Co-Chair, Senate Finance & Appropriations Committee
The Honorable George L. Barker, Co-Chair, Senate Finance & Appropriations Committee
The Honorable Barry D. Knight, Chair, House Appropriations Committee

From: Nelson Smith, Commissioner, Department of Behavioral Health and Developmental Services

RE: Item 310.D.1 Chapter 2, 2022 Appropriations Act

Item 310 D.1. of Chapter 2 of the 2022 Appropriations Act directs the Department of Behavioral Health and Developmental Services (DBHDS) to submit a report detailing all unspent funds related to the Department of Justice (DOJ) settlement agreement 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 reads:

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.

Please find enclosed the report for the close of the Fiscal Year 2023 (July 1, 2022-June 30, 2023) in accordance with Item 310. D.1. Staff are available should you wish to discuss this request.

cc: Secretary John Littel



Fiscal Year 2023
Unspent Funds for the DOJ Settlement
Agreement
(Item 310.D.1 of the 2022 Appropriation Act)

Report on Remaining DOJ General Fund Balances

September 1, 2023

DBHDS Vision: A Life of Possibilities for All Virginians

Preface

Item 310 D.1. of 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 reads:

"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."

Item 310. D.1 Unspent Funds for the DOJ Settlement Agreement

Table of Contents

Introduction.....	4
Status of the DOJ Settlement Agreement	4
Agency 720 DOJ Remaining Balances Explanation	5
Agency 790 DOJ Remaining Balances Explanation	5

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 *Olmstead v. L.C.*. 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 33 provisions. As of Independent Reviewer's 22nd Report to the Court, dated June 13, 2023, the Independent Reviewer has determined that the Commonwealth is in sustained compliance (met the provision for 2 consecutive review periods) with 45 provisions and in compliance (met the provision for 1 review period) with 4 more provisions. The Commonwealth is in compliance with 82 provisions of 120 of the Agreement.

In January 2020, the Commonwealth of Virginia and the United States agreed upon a set of compliance indicators that address all provisions of the Settlement Agreement for which the Commonwealth was not yet found in compliance at the time of this joint filing. DBHDS was in compliance with 238 indicators of 317 indicators or 75%.

On July 27, 2023, the Judge held an open status conference during this court hearing, he relieved the Commonwealth of 35 indicators. The Commonwealth is now accountable to 282 compliance indicators. The Commonwealth is in sustained compliance (met at least twice consecutively) with 151 indicators, compliance (met once) with 30, and conditionally met (data needs to be validated) 41. The Commonwealth has not met 60 indicators. The Commonwealth is now conditionally in compliance with 79% of the compliance indicators.

Table 1: Agency 720 DOJ Remaining Balances Explanation

The following table details remaining balances in Agency 720 along with an explanation for each item.

Agency 720 General Fund DOJ Remaining Balances		
Item	Balance	Explanation
5th Quarter Direct Bill Reimbursement - Personnel	\$893,162	In FY 2022 there was a delay in reimbursement of direct bill spending items between DMAS and DBHDS. In FY 2023 the Departments caught up to the delay, resulting in DBHDS receiving five quarters of direct bill reimbursement. DBHDS received the fifth reimbursement at the end of FY 2023 which prevented the Department from making budgetary adjustments to utilize the surplus funding and resulted in balances related to personnel and personnel related expenses such as travel and training.
5th Quarter Direct Bill Reimbursement - Contracts	\$782,820	In FY 2022 there was a delay in reimbursement of direct bill spending items between DMAS and DBHDS. In FY 2023 the Departments caught up to the delay, resulting in DBHDS receiving five quarters of direct bill reimbursement. DBHDS received the fifth reimbursement at the end of FY 2023 which prevented the Department from making budgetary adjustments to utilize the surplus funding and resulted in balances related to contractual services.
Administrative - Personnel	\$995,877	<p>1. Vacancies: Many cost codes observed balances due to unfilled positions creating vacancy savings.</p> <p>2. Billing Lag: DBHDS receives reimbursement from DMAS three quarters after items are expensed. Changes in expenditures arising from vacancies, departmental reorganizations, or the timing of personnel related expenses such as travel and employee training impacts cash flow between fiscal years resulting in balances and over expenditures.</p> <p>3. Cost Code (CC) Changes and Coding Errors: Reimbursements return to the CC the expense was incurred, even if the current year CC for a project is expensed from a different CC. This results in potential balances. Additionally, DBHDS transitioned to a new HR system in October 2022 as a part of the statewide adoption of Cardinal HCM. Like many state agencies, DBHDS experienced payroll coding errors from bulk uploads of data to the new system. DBHDS Human Resources, Finance, and Accounts Payable worked to remedy the majority of these discrepancies, however, some errors remain at the close of the fiscal year resulting in balances.</p>

<p>Administrative - Contracts</p>	<p>\$2,199,233</p>	<p>1. Billing Lag: DBHDS receives reimbursement from DMAS three quarters after items are expensed. The timing of contract expenditures, particularly for large contracts that receive high reimbursement, such as the Waiver Management System (WaMs), impacts cash flow between fiscal years resulting in balances. The WaMs system accounted for \$1.2 million of the \$2.2 million in this balance category.</p> <p>2. Procurement and Contract Execution: Cost codes observed balances related to one-time errors in contract execution including delayed invoicing to DBHDS from vendors, delayed payment of invoices, and contract coding issues related to the transition to a new eVA system in the second quarter of FY 2023. \$450,000 of this balance is the result of contracts funded by DOJ carryforward funds authorized for FY 2023 that were not executed. Additionally, \$360,000 of this balance was the result of a contract coding in which invoices were mistakenly coded to the wrong cost center. This resulted in over expenditure in one area of the DBHDS budget and a balance in the PASSR budget.</p>
<p>Event Tracking System (EVT)</p>	<p>\$1,730,292</p>	<p>Funding for this item was not spent due to the prioritization of other I.T. needs, namely, the Office of Licensing Data System (OLIS). Funding has been requested in the FY 2024 DOJ Carryforward to execute this project this fiscal year. The project is expected to be completed in FY 2024.</p>
<p>Quality Service Reviews (QSR)</p>	<p>\$1,345,563</p>	<p>In FY 2022 the Office of Clinical Quality Management conducted a round of reviews of 100 percent of providers to meet DOJ Settlement Agreement requirements. The majority of the expenses for this round were paid in the fourth quarter of FY 2022, resulting in significant reimbursement in the third quarter of FY 2023. This reimbursement resulted in significant balances in this cost center even though DBHDS expended over \$2.2 million on this contract throughout FY 2023.</p>
<p>DDHSN</p>	<p>\$1,161,835</p>	<p>DBHDS is required by Item 312 A of the 2022 Special Session I Appropriation Act to spend \$5,050,000 per year on DDHSN. Additionally, the Department bills DMAS for a portion of this service in accordance with CAP/APD, which results in balances for this item. DBHDS recently received guidance from DMAS to no longer bill for this service, therefore this balance will not be realized in FY 2024.</p>
<p>Non-Medicaid Community Supports</p>	<p>\$326,828</p>	<p>Funding supports residential, day program, and community integration services for individuals who have been discharged from training centers but who are not eligible for Medicaid coverage. Due to the lingering effects of the COVID-19 pandemic, the Department saw lower utilization of community integration services which resulted in balances. Additionally, the Department has not yet established a contract with the Jewish Foundation for Group Homes. DBHDS anticipates that this balance is one-time in nature and plans to spend the full appropriation for this service in FY 2024.</p>
<p>SIS Renorming</p>	<p>\$250,000</p>	<p>DBHDS began work on this initiative in FY 2023 after finalizing a contract with the Human Services Research Institute (HRSI) in December of 2022. The Department did not begin to receive invoices against this contract until July of 2023, shifting costs for this initiative into FY 2024. This item was included in the FY 2024 DOJ Carryforward request.</p>

Supported Decision Making Modifications for ISP and WAMs System.	\$255,511	Funding was budgeted in FY 2023 for the tool development and modifications for the Waiver Management System (WAMs) and Individualized Service Plans (ISP) systems. The modifications and tool developments were able to be accomplished with existing I.T. budget allocations. Balances resulted from the efficiency of the execution of this project.
Incident Management Unit Look Behind Contract	\$135,982	Unanticipated delays in the RFP process led to underutilization of this contract at the beginning of the fiscal year.
Support Intensity Scale (SIS)	\$120,906	The vendor that DBHDS contracts with for SIS faced challenges in FY 2023 related to availability of workforce and was unable to complete the services provided for in the contract. DBHDS initiated change orders on SIS contracts to shift the majority of the contract to an alternative vendor to mitigate this challenge in future fiscal years.
Health Management Associates Rate Setting	\$94,000	The General Assembly transferred authority of rate setting for DD waiver services to DMAS effective July 1, 2022. Prior to this change this function was managed by DBHDS through a contract with Health Management Associates. DBHDS intends to transfer \$80,000 in funding to DMAS in future fiscal years to cover the cost of this contract.

Table 2: Agency 790 DOJ Remaining Balances Explanation

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

Agency 790 General Fund DOJ Remaining Balances		
Item	Balance	Explanation
DV Rental - Rental Subsidy Partnerships	\$1,437,277	This balance is the result of pursued partnerships with housing developers that did not come to fruition in FY 2023. This balance represents a small portion of the total \$15,252,833 budget for ID/DD rental subsidies, of which the department expended \$13,530,566 in FY 2023.
DV Rental - Software	\$200,000	DBHDS received \$200,000 in DOJ carryforward funding to support the acquisition and management of technology to administer rental assistance funds. The Department has been unable to purchase the software from the identified vendor due to delays in procurement and approval of the contract.
DV - Contractual Challenges	\$84,991	DBHDS contracts with private organizations to provide home and community-based services for recipients of rental subsidies. One of the vendors, 22nd Century, had staff vacancies that resulted in underspending of \$59,752. Additionally, the Department underspent the budgeted allocation of a contract with Community Residences Inc by \$25,239 due to the timing of invoices as the contract spans both fiscal years 2023 and 2024.
Small Dollar Balances	\$5,961	Minor balances resulting from underspending of three contracts. Balances amount to less than a quarter of a percent of the total amount budgeted for each contract.

Administrative Error	(\$190,000)	Payment made in FY 2023 for services in prior fiscal year due to administrative error.
IFSP	(\$201,244)	Overspent contracts in IFSP program due to rising service costs and inflationary pressures. Partner organizations deliver information and support to individuals who are waiting for waiver services, including facilitating connection to community supports and services.