



COMMONWEALTH of VIRGINIA

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September 1, 2024

To: The Honorable Janet D. Howell, Chair, Senate Finance Committee
The Honorable Luke. E. Torian, Chair, House Appropriations Committee
Michael Maul, Commissioner, Department of Planning and Budget

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

Re: Item 294 D.1, 2024 Appropriation Act

Item 294 D.1 of the 2024 Appropriation 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. 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."

cc: The Honorable Janet V. Kelly, Secretary of Health and Human Resources



Remaining DOJ General Fund Balances Report

Item 294 D.1, 2024 Appropriation Act

January 14, 2025

Preface

Item 294 D.1 of the 2024 Appropriation 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. 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."

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 34 provisions. As of Independent Reviewer's 24th Report to the Court, dated June 13, 2024, the Independent Reviewer has determined the Commonwealth to be in Sustained Compliance with an additional 60 provisions, 40 provisions in Section III and 19 provisions in Section V and 1 provision in Section IX. The Commonwealth is in Compliance with an additional 3 provisions and the court removed 4 provisions in July of 2023. Additionally, in January 2020, the Commonwealth agreed to 317 compliance indicators. As of the Independent Reviewer's 24th report to the court, the court removed 35 indicators and the Commonwealth has met a total of 254 of the 282 total compliance indicators.

Table 1: Agency 720 DOJ Remaining Balances Explanation

The following table details each remaining balance in Agency 720 along with an explanation for the balance. The total balance for Agency 720 is **\$10,060,038**.

Agency 720 General Fund DOJ Balances		
Item	Balance	Explanation
Event Tracking System	\$2,230,303	In FY 2024 the Department completed an RFP in attempt to secure an off-the-shelf software, after a formal review of submitted proposals, DBHDS determined that there was no available vendor able to accomplish the goals of the system. The Department is now in the process of amending the Advanced Planning Document (APD) with DMAS to internally build the system.
Quality Service Reviews (QSR)	\$1,876,843	This balance is the result of the timing of contract payments and Medicaid reimbursement. There was high contract spending in Q3 of FY 2023, resulting in a large reimbursement in Q2 of FY 2024. In FY 2024, expenses were concentrated in July and August, resulting in a large reimbursement in February 2024. There was no additional spending on the contract until June of 2024, which is the cause of the balance.

DDHSN	\$1,223,189	As a component of the permanent injunction, eight positions were added to the DDHSN office in the spring of 2024. Positions were not able to be filled prior to the end of the fiscal year, resulting in a remaining balance of \$936,570. The remaining balance of \$286,619 is the result of the timing of invoices received at the end of the fiscal year.
Provider Training	\$965,686	Of this amount, \$710,198 is from personnel. The Department was unable to execute on the \$530,000 requested through carryforward for Provider Readiness team, including advertised positions not being filled. Additionally, vacancies in this office resulted in an additional balance of \$180,198. The remaining balance of \$255,488 resulted from \$245,000 budgeted for supported decision making going unspent, and slight underspending on the Department's contract with VCU for Person Centered Thinking.
Individuals Family Support Program (IFSP)	\$926,041	<p>\$503,705 is associated with a contract with the Arc of Virginia requested in the previous fiscal year DOJ carryforward request. Due to the approval of the carryforward request's timing, the Department was not able to establish this contract until February. The first invoices were received in June; however, they were incorrectly completed by the vendor, therefore no funds were expensed in FY 2024.</p> <p>\$162,663 is the result of vacancies and reduced spending on non-personnel associated with vacancy savings.</p> <p>\$131,431 is the result of an administrative error related to incorrect payroll coding of a position that was corrected in the fourth quarter of the fiscal year.</p> <p>\$128,242 is the result of invoices that were received at the end of the fiscal year and were not able to be paid out until July 2024 (\$51,316) and invoices for services provided in June that have not yet been received (\$76,926).</p>
DOJ Admin	\$923,446	<p>\$728,436 is a result of vacancies and changes associated with the Departments Interagency Agreement (IAG) and Cost Allocation Plan (CAP) made in fiscal year 2024. These changes include re-budgeting and payroll re-coding of positions in a review of positions included in direct or indirect reimbursement, as well as the elimination of some items previously billed through the CAP that were removed, resulting in lingering reimbursements from expenses made prior to the CAP exclusion. This year the Department worked with DMAS to establish a new IAG which had a substantial impact on DBHDS CAP operations.</p> <p>\$131,170 was the result of an administrative coding issue related to receiving invoices on an incorrect line item in the eVirginia system.</p> <p>\$57,713 was the result of a vacancy in the Office of Human Rights for the majority of the fiscal year.</p> <p>\$6,127 was the result of minor underspending related to staff compensation. This could have resulted from changes in health care selections or changes in voluntary benefits such as deferred compensation.</p>

DMAS	\$578,652	Of this amount, \$470,000 is associated with a contract receiving issue. \$160,561 is the result of increased spending in the previous fiscal year contributing to higher reimbursement at the beginning of the fiscal year. \$34,271 is the result of a vacancy. In addition to these balances, there was overspending totaling \$86,180 associated with positions previously budgeted to this line item being moved to another cost center in association with the IAG.
Individuals in Crisis	\$350,000	The Department was not able to execute this item because the carryforward was provided in Agency 720, and the mechanism for distributing the base appropriation associated with this line item is in Agency 790. The carryforward request for FY 2025 requests these funds in Agency 790.
Housing Software	\$344,468	Procurement of the software was delayed, in part due to the timing of the DOJ approval carryforward request, shifting the time frame of the contract.
SPARC	\$250,000	This contract was not executed in fiscal year 2024 due to an administrative error. The Department is in the process of connecting with the organization to distribute funding in FY 2025.
Waiver Management System (WaMS)	\$242,607	The balance is the result of the delayed approval of the DOJ carryforward request. The Department had a truncated timeline to complete all CRs requested in the previous fiscal year carryforward report. The CR related to the Individual Service Plan (ISP) upgrade was not initiated until the end of FY 2024, therefore, expenses are expected to be made in FY 2025.
RMRU Lookbehind	\$167,197	The amount of \$280,000 requested in the FY 2024 carryforward was higher than required following contract renegotiations and renewal. The amount requested for the FY 2025 carryforward has been reduced to equal the total annual contract value.
Individuals not Covered by Medicaid	\$142,119	This balance is the result of one individual that was previously supported by these funds passing away, and another individual obtaining citizenship, reducing the payment to only the cost of room and board. Additionally, there is a 10% contingency built into the agreements for any emergencies that may arise which contributed to these balances.
Independent Reviewer	\$114,465	This balance is the result of timing of invoices. The last invoice for the fiscal year was not received until June 2024, and therefore, was not able to be paid using FY 2024 funds. Costs associated with the independent reviewer are expected to be lower in FY 2025, funding for this item is not included in the DOJ carryforward request, unlike previous years.
MRE Truck	\$95,150	The Department was not able to execute this item due to the delayed timeframe available to procure resources associated with the delayed approval of the 2024 carryforward request.
Jewish Foundation for Group Homes	\$89,396	This line item was not executed until the end of the fiscal year, and the payment was not made in time to expend FY 2024 funds. This amount has already been provided to the organization for FY 2025.
Community Quality Improvement	\$16,923	This balance is the result of minor overspending related to travel and non-personnel.

Data Warehouse	-\$14,767	This overage is the result of an administrative error related to position coding in the coding issue.
Supports Intensity Scale (SIS)	-\$123,558	Balance is the result of vacancies and reduced contract spending in FY 2023. SIS is reimbursed at a 50% rate by Medicaid, therefore fluctuations in spending in the previous fiscal year reduce the offset available for the next fiscal year.
Preadmission Screening and Resident Review (PASRR)	-\$338,122	This overage is the result of an administrative error in receiving contract invoices in fiscal year 2023. The PASRR program receives 75% reimbursement from Medicaid for expenses. Invoices at the end of fiscal year 2023 were received in the incorrect cost center, which resulted in a loss of reimbursement revenue for the agency. This loss of revenue was realized in fiscal year 2024 due to the delay between expending funds and receiving reimbursement.

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. The total balance for Agency 790 is \$1,326,586.

Agency 790 General Fund DOJ Balances		
Item	Balance	Explanation
State Rental Assistance Program (SRAP)	\$1,312,089	The balance is the result of invoice timing, fluctuation in program elements including timing of lease ups and volatility in rent and utility prices that contribute to a difficulty in predicting the budget needed for each partnership with CSBs and local housing authorities.
Crisis Stabilization	\$15,537	This was a result of timing of invoices for individuals who experience crisis events and invoices being more than what remained in the budget therefore needing to be paid out of FY 2025 funds.
DV State Funds	\$16	This is a result of the allocation methodology and likely .80 per region per quarter allocation error.
Individuals Family Support Program (IFSP)	-\$1,040	Overspending on this line item was associated with invoice receiving errors resulting in funds being spent from Agency 790, rather than Agency 720.