



COMMONWEALTH of VIRGINIA

NELSON SMITH
COMMISSIONER

DEPARTMENT OF
BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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July 31, 2024

To: The Honorable L. Louise Lucas, Chair, Senate Finance & Appropriations Committee
The Honorable Luke E. Torian, Chair, House Appropriations Committee
Michael Maul, Director, Department of Planning and Budget

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

RE: Item 294 D.2, 2024 Special Session I Appropriations Act

Item 294 D.2 of the 2024 Special Session I Appropriations Act requires the Department (DBHDS) to submit a quarterly report on the provisions of the settlement agreement with the United States Department of Justice. The language reads:

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 noncompliant 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.

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



Virginia Department of Behavioral Health
and Developmental Services

Report on
DOJ Settlement Agreement
Compliance Status, FY2024, Q4
(Item 294 D.2, 2024 Special Session I)

January 14, 2025

DBHDS Vision: A Life of Possibilities for All Virginians

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Background

The Department of Behavioral Health and Developmental Services (DBHDS) has been the agency lead for the Department of Justice Settlement Agreement since it was finalized in August 2012. The Settlement Agreement comprises 121 provisions. The Commonwealth has successfully exited Section IV and VI.D, which comprise 34 provisions of the agreement. As of the Independent reviewer's 24th report, the Commonwealth is in sustained compliance (met the provision for two consecutive review periods) with an additional 60 provisions and in compliance (met the provision for one review period) with three more provisions. The Commonwealth complies 97 of the 121 provisions of the Agreement. Additionally, four provisions were removed by the court in July 2023, which changes the number of provisions under review to 117. The Commonwealth complies with 83 percent of the Settlement Agreement, meeting 97 out of 117 provisions.

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. Of the 20 provisions that the Commonwealth is not yet in compliance with. The Commonwealth is 75 percent or more compliant with the indicators of 11 of them. With the exception of one provision with eight indicators, the remaining nine are lower percentages because there are only three or fewer indicators associated with that provision.

DBHDS contends that all processes to come into compliance, with a focus first and foremost on a continuous quality improvement culture, are developed and operational within the agency.

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III	Serving Individuals with Developmental Disabilities in the Most Integrated Setting	53 provisions 40 in Sustained Compliance 1 in Compliance 11 in Non-Compliance 1 Removed	The 11 provisions in non-compliance	
III.C.5.b.i.	Assembling professionals and nonprofessionals who provide individualized supports, as well as the individual being served and other persons important to the individual being served, who, through their combined expertise and involvement, develop Individual Support Plans (“ISP”) that are individualized, person-centered, and meet the individual’s needs.	17 of 20 Compliance Indicators in Compliance	<ol style="list-style-type: none"> 1. Continue the Support Coordinator Quality Review process. 2. Memorialize technical assistance provided for every review cycle. 3. Report the SCQR percentages annually. 	December 2026
III.C.5.b.ii.	Assisting the individual to gain access to needed medical, social, education, transportation, housing, nutritional, therapeutic, behavioral, psychiatric, nursing, personal care, respite, and other services identified in the ISP.		When Virginia achieves the Indicators for III.C.5.b.i., it also achieves compliance for this Provision.	December 2026

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III.C.5.b.iii.	Monitoring the ISP to make timely additional referrals, service changes, and amendments to the plans as needed.		When Virginia achieves the Indicators for III.C.5.b.i., it also achieves compliance for this Provision.	December 2026
III.C.6.a.i.-iii.	<p>The Commonwealth shall develop a statewide crisis system for individuals with intellectual and developmental disabilities. The crisis system shall:</p> <ul style="list-style-type: none"> i. Provide timely and accessible support. ii. Provide services focused on crisis prevention and proactive planning. iii. Provide in-home and community-based crisis services that are directed at resolving crises and preventing the removal of the individual from his or her current placement whenever practicable. 	21 of 23 indicators in compliance	<p>DBHDS will:</p> <ol style="list-style-type: none"> 1. Update root cause analysis related to crisis assessments in the community and develop additional strategies to improve metric. 2. Work with CSBs to understand barriers to connectivity. 	December 2026
III.C.6.b.ii.B.	Mobile crisis teams shall assist with crisis planning and identifying strategies for preventing future crises and may also provide enhanced short-term capacity within an individual's home or other community setting.		The Parties agreed that the Indicators for III.C.6.a.i.-iii. and III.C.6.b.ii.A. cover this provision.	December 2026

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.C.6.b.iii.B.	Crisis stabilization programs shall be used as a last resort. The State shall ensure that, prior to transferring an individual to a crisis stabilization program, the mobile crisis team, in collaboration with the provider, has first attempted to resolve the crisis to avoid an out-of-home placement and, if that is not possible, has then attempted to locate another community-based placement that could serve as a short-term placement.	3 of 4 indicators are met	DBHDS is in the process of conducting root cause analysis related to the remaining one indicator and developing quality improvement initiative to meet the requirement.	December 2026
III.C.6.b.iii.E.	With the exception of the Pathways Program at SWVTC...crisis stabilization programs shall not be located on the grounds of the Training Centers or hospitals with inpatient psychiatric beds. By July 1, 2015, the Pathways Program at SWVTC will cease providing crisis stabilization services and shall be replaced by off-site crisis stabilization programs with sufficient capacity to meet the needs of the target population in that Region.		<i>The Parties agreed that the Indicators for III.C.6.b.iii.G cover this provision.</i>	
III.C.6.b.iii.G	By June 30, 2013, the Commonwealth shall develop an additional crisis stabilization program in each Region as determined necessary by the Commonwealth to meet the needs of the target population in that Region.	2 of 3 compliance indicators are met	The Commonwealth is developing additional crisis therapeutic home capacity in each of the remaining three regions.	December 2026

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.C.7.a.	To the greatest extent practicable, the Commonwealth shall provide individuals in the target population receiving services under this Agreement with integrated day opportunities, including supported employment.	0 of 3 compliance indicators are met	DBHDS has reconstituted the Community Engagement Advisory Group to improve community inclusion outcomes and continues to work with the Employment First Advisory Group to address employment outcomes.	December 2026

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.C.7.b.	<p>The Commonwealth shall maintain its membership in the State Employment Leadership Network (“SELN”) established by the National Association of State Developmental Disabilities Directors. The Commonwealth shall establish a state policy on Employment First for the target population and include a term in the CSB Performance Contract requiring application of this policy. The Employment First policy shall, at a minimum, be based on the following principles: (1) individual supported employment in integrated work settings is the first and priority service option for individuals with intellectual or developmental disabilities receiving day program or employment services from or funded by the Commonwealth; (2) the goal of employment services is to support individuals in integrated work settings where they are paid minimum or competitive wages; and (3) employment services and goals must be developed and discussed at least annually through a person-centered planning process and included in the ISP. The Commonwealth shall have at least one employment service coordinator to monitor implementation of Employment First practices for individuals in the target population.</p>		<p>The indicators for III.C.7.a. serve to measure III.C.7.b.</p>	<p>December 2026</p>

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
III.D.1.	The Commonwealth shall serve individuals in the target population in the most integrated setting consistent with their informed choice and needs.	22 of 23 compliance indicators are met	DBHDS continues to review the data and make quality improvement efforts to improve compliance with the metrics.	December 2028
IV.	Discharge Planning and Transition from Training Centers	33 Provisions in sustained compliance	The Commonwealth exited this section of the Agreement on March 11, 2021.	
V.	Quality and Risk Management System	33 Provisions 19 Sustained Compliance 2 Compliance 9 Non Compliance 3 Removed		
V.B.	The Commonwealth's Quality Management System shall: identify and address risks of harm; ensure the sufficiency, accessibility, and quality of services to meet individuals' needs in integrated settings; and collect and evaluate data to identify and respond to trends to ensure continuous quality improvement.	27 of 33 indicators in compliance	Finalize implementation of look behind processes. Start Sedation contracts in Region I and III and finalize HCSB reviews.	June 2025

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.C.1.	The Commonwealth shall require that all Training Centers, CSBs, and other community providers of residential and day services implement risk management processes, including establishment of uniform risk triggers and thresholds, that enable them to adequately address harms and risks of harm.	9 of 11 indicators in compliance	DBHDS has increased consultation and technical assistance targeted to providers who are not meeting the requirements of these indicators to help them to develop risk management and quality improvement plans that are in compliance.	<i>December 2026</i>
V.D.1.	The Commonwealth's HCBS waivers shall operate in accordance with the Commonwealth's CMS-approved waiver quality improvement plan to ensure the needs of individuals enrolled in a waiver are met, that individuals have choice in all aspects of their selection of goals and supports, and that there are effective processes in place to monitor participant health and safety. The plan shall include evaluation of level of care; development and monitoring of individual service plans; assurance of qualified providers. Review of data shall occur at the local and State levels by the CSBs and DMAS/DBHDS, respectively.	4 of 8 indicators in compliance	<p>DBHDS has developed a new application to help gather the data related to the implementation of the performance measures as part of the waivers.</p> <p>DBHDS continues to implement the Quality Service Reviews.</p> <p>DMAS conducts the quality review team and gathers data through this as well.</p> <p>DBHDS/DMAS annually report on the findings related to the implementation of the waivers.</p> <p>DBHDS ad DMAS are implementing HCBS reviews.</p>	December 2026

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.D.2	The Commonwealth shall collect and analyze consistent, reliable data to improve the availability and accessibility of services for individuals in the target population and the quality of services offered to individuals receiving services under this Agreement.	7 of 8 indicators in compliance	DBHDS implemented a new process to identify whether or not individuals' needs are being met through an Intense Management needs review process.	December 2026
V.E.1.	The Commonwealth shall require all providers (including Training Centers, CSBs, and other community providers) to develop and implement a quality improvement ("QI") program including root cause analysis that is sufficient to identify and address significant issues.	4 of 5 indicators in compliance	DBHDS has increased consultation and technical assistance targeted to providers who are not meeting the requirements of these indicators to help them to develop risk management and quality improvement plans that are in compliance.	December 2026
V.E.3.	The Commonwealth shall use Quality Service Reviews and other mechanisms to assess the adequacy of providers' quality improvement strategies and shall provide technical assistance and other oversight to providers whose quality improvement strategies the Commonwealth determines to be inadequate.	1 of 2 indicators in compliance	DBHDS implements the Quality Service Review process annually including a process to make improvements based on lessons learned and feedback gathered from various stakeholders.	December 2026

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.F.2.	<p>At these face-to-face meetings, the case manager shall: observe the individual and the individual’s environment to assess for previously unidentified risks, injuries, needs, or other changes in status; assess the status of previously identified risks, injuries, needs, or other change in status; assess whether the individual’s support plan is being implemented appropriately and remains appropriate for the individual; and ascertain whether supports and services are being implemented consistent with the individual’s strengths and preferences and in the most integrated setting appropriate to the individual’s needs.</p>		<p><i>When Virginia achieves the Indicators for III.C.5.b.i., it also achieve compliance for this Provision.</i></p>	<p>December 2026</p>
V.F.5.	<p>Within 24 months from the date of this Agreement, key indicators from the case manager’s face-to-face visits with the individual, and the case manager’s observation and assessments, shall be reported to the Commonwealth for its review and assessment of data. Reported key indicators shall capture information regarding both positive and negative outcomes for both health and safety and community integration and will be selected from the relevant domains listed in V.D.3.</p>	<p>0 of 1 indicator in compliance</p>	<p><i>This information is collected and reported as part of the Case Management Steering Committee.</i></p>	<p>December 2026</p>

Settlement Agreement Reference	Provision	Status	Plan for Compliance	Anticipated Completion Date
V.H.1.	The Commonwealth shall have a statewide core competency-based training curriculum for all staff who provide services under this Agreement. The training shall include person-centered practices, community integration and self-determination awareness, and required elements of service training.	11 of 13 indicators in compliance	<ol style="list-style-type: none"> 1. Utilize QSR to assess DSP/DSP Supervisor competencies 2. Focus QSR observation on implementation of competencies 3. QSR reviewer will notify DBHDS when someone is not competent 4. DBHDS will assess the data related to findings and report on them. 	December 2026
VI.	Independent Reviewer	1 Provision Relieved	The Commonwealth exited this section of the Agreement on March 11, 2021.	
IX.	Implementation of the Agreement	1 Provision in Sustained Compliance		