



UPDATE

***US v. VA* Settlement Agreement**

Mar 9, 2023

**U.S. Department of Justice
Civil Rights Division
Special Litigation Section**

Background

- **Investigation – April 2010**
- **Findings – February 2011**
- **Settlement Agreement Approved – Aug 23, 2012**
- **Implementation / Enforcement - 10+ years**
- **GOALS:** Integration
 Self-determination
 Quality services

Background

“To prevent the unnecessary institutionalization of individuals with ID/DD and to provide them opportunities to live in the most integrated settings appropriate to their needs.”

Section III. A. of Settlement Agreement

“To ensure that all services for individuals receiving services under this Agreement are of good quality, meet individual needs, and help individuals achieve positive outcomes in all domains of life.”

Section V. A. of Settlement Agreement

DOJ Actions

- **Meet with Stakeholders**
- **Review Data, Documents, Records**
- **Meet with Virginia Leadership**
- **Meet with Independent Reviewer-Donald Fletcher**
- **Status Conferences with the Court**

Is DOJ still here?

- **YES**
- **Settlement Agreement was anticipated to end June 30, 2021.**
- **But the Settlement Agreement does not end until Virginia reaches compliance.**

2 PARTS:

(1) DATES

**(2) AGREEMENT
TOPICS**

PART 1: DATES

- **3/11/21** Court extended the anticipated end of the Consent Decree to July 1, 2022
- **3/18/21** VA said it believed it would not achieve full compliance until Dec. 31, 2023
- **5/23/22** Court extended the anticipated end of Consent Decree to Dec. 31, 2023
- **8/11/22** Public Status Conference in Richmond
- **12/16/22** Independent Reviewer's 21st Report: 42 non-compliant provisions
Total of 126 provisions
- **2/17/23** VA requested relief for 45 provisions in *sustained compliance*
- **3/02/23** VA requested stay of that relief while parties work on resolution

March 11, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,
Plaintiff,

v.

Civil Action No. 3:12cv59

COMMONWEALTH OF VIRGINIA,
Defendant,

and

PEGGY WOOD, et al.,
Intervenor-Defendants

“Accordingly, the Court extends the anticipated end of the Consent Decree to July 1, 2022...”

ORDER

This matter comes before the Court after a status conference in this case. In his December 15, 2020 Report, the Independent Reviewer reported that the Commonwealth had achieved “sustained compliance” with Sections IV. and VI.D. of the Consent Decree. (*See* ECF No. 383, at 21, 39.) At the status conference, the parties agreed. Accordingly, the Court FINDS the Commonwealth in compliance with Sections IV. and VI.D. of the Consent Decree and, RELIEVES the Commonwealth of those portions of the Consent Decree. (*See* Consent Decree at 33, § VII.C.) The Court commends the parties, and especially the Commonwealth, on a job well done as to those portions of the Consent Decree.

In his December 15, 2020 Report, the Independent Reviewer also reported that the Commonwealth remains out of compliance with many sections of the Consent Decree. At the status conference, the parties agreed and also reported that the Commonwealth would not be able to achieve full compliance by July 1, 2021—the date the Consent Decree identifies as when “[t]he Parties anticipate that the Commonwealth will have” achieved full compliance. (Consent Decree at 33, § VII.B.) Accordingly, the Court extends the anticipated end of the Consent Decree to July

March 18, 2021

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

Case 3:12-cv-00059-JAG Document 392 Filed 03/18/21 Page 11 of 14 PageID# 11013

UNITED STATES

Plaintiff

COMMONWEALTH OF VIRGINIA

Defendant

PEGGY WOODWARD

Intervenor

TO

By Order

Settlement Agreement

anticipated end

achieving compliance

full year by July

Court.

I. Factors that

The Court

necessary to achieve

indicators. The

The Court has noted that, in order for the Commonwealth to satisfy its obligations under the Settlement Agreement, it must achieve compliance and then maintain that compliance for one year thereafter. If the Commonwealth achieves first-time compliance with some provisions of the Settlement Agreement in December 2022 as expected, then one additional year will be needed for the Commonwealth to maintain and demonstrate compliance.

III. Conclusion

For the reasons stated above, the Commonwealth believes it will achieve full compliance with all terms of the Settlement Agreement by December 31, 2023.

Respectfully submitted,

FOR THE COMMONWEALTH OF VIRGINIA:

May 23, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,
Plaintiff,

v.

Civil Action No. 3:12cv59

COMMONWEALTH OF
DELAWARE

and

PEGGY WOOD, et al.,
Intervenor-Defendants.

“Accordingly, the Court EXTENDS the anticipated end of the Consent Decree to December 31, 2023...”

ORDER

This matter comes before the Court following a status conference in this case. During the meeting, the parties discussed the Commonwealth’s recent progress toward total compliance with the Consent Decree and the forthcoming twentieth report of the Independent Reviewer, due in June.

At the status conference, the parties agreed that the Commonwealth has yet to demonstrate sustained compliance with several provisions of the Consent Decree and will not do so by July 1, 2022. Accordingly, the Court EXTENDS the anticipated end of the Consent Decree to December 31, 2023, and retains jurisdiction of this action for all purposes until that date. If any party objects to either of these actions by the Court, that party SHALL file a written notice stating the basis for its objection within seven days of the entry of this Order.

Dec 13, 2022

REPORT OF THE INDEPENDENT REVIEWER
ON COMPLIANCE
WITH THE
SETTLEMENT AGREEMENT
UNITED STATES v. COMMONWEALTH OF VIRGINIA

United States District Court for
Eastern District of Virginia

Civil Action No. 3:12 CV 059

April 1, 2022 - September 30, 2022

Respectfully Submitted By

A handwritten signature in blue ink, appearing to read "Donald J. Fletcher".

Donald J. Fletcher
Independent Reviewer
December 13, 2022

**Independent Reviewer's
21st report showed
noncompliance with 42
out of 126 provisions.**

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

March 2, 2023

UNITED STATES OF AMERICA,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA,

Defendant.

and

PEGGY WOOD, et al.,

Intervenor-Defendants.

COMMONWEALTH OF VIRGINIA

On February 17, 2023, pursuant to

Commonwealth filed the Commonwealth

Agreement, ECF No. 437 ("Request for Relief")

of provisions of the Agreement that it has achieved and maintained compliance with for more than one year and that the Independent Reviewer has determined to be in Sustained Compliance.

During the status conference on February 23, 2023, the Parties and the Court discussed the Commonwealth's Request for Relief and a proposal to change the Independent Reviewer's review cycle. After the status conference, the Parties and the Independent Reviewer continued to discuss the Commonwealth's motion, the review cycle, and the substance of particular compliance indicators. The Commonwealth asks the Court to stay its ruling on the Request for Relief while the Parties continue to discuss these issues and work toward resolution. The United States assents to this request.

"During the status conference on February 23, 2023, the Parties and the Court discussed the Commonwealth's Request for Relief and a proposal to change the Independent Reviewer's review cycle. After the status conference, the Parties and the Independent Reviewer continued to discuss ... the review cycle, and the substance of particular compliance indicators."

People with Nursing Needs

Compliance Indicator #18.9: 70% of individuals with nursing needs will receive at least 80% of their authorized nursing hours.

- **That % (utilization) may not be the best way to measure whether a person's nursing needs are met.**
 - For example: individuals might request more nursing hours in a week just in case they need them if their needs increase. Better to be safe than sorry. And then they may not end up using the nursing hours. In that case, their needs were met, but the hours were unused.
 - Another example: individuals might go into the hospital and not use their community nursing hours but their needs were met in the hospital even though their hours were unused.

PART 2:

AGREEMENT

TOPICS

Waivers

2012

➤ **Waiver slots: 8,997**

2022

➤ **Waiver slots: 16,939**

- **Settlement Agreement required: 4,170**
- **Virginia actually created: 7,589**

Training Centers

2012

- **5 Training Centers**
- **Census = 1,084**

2022

- **1 Training Center (SEVTC)**
- **Census = 68 (as of 2/27/23)**

Group homes 5+ beds

2016

➤ **2,446 individuals**

2022

➤ **1,770 individuals**

Integrated Settings

Department of Behavioral Health and Developmental Services
Division of Developmental Services
HCBS Residential Settings Report 2/08/2023

Table 1: Number of Individuals per Residential Setting

Settlement Living Situation	Integrated Setting	Baseline 9.30.2016	
		#	%
Group Home (Less than or equal to 4 bed)	Yes	2,189	18.4%
Other Group Home (greater than 4 bed)	No	2,446	20.6%
Sponsored Residential	Yes	1,513	12.7%
Supported Living	Yes	50	0.4%
Living with Family *	Yes	5,459	46.0%
Living Independently	Yes	214	1.8%
Building Independence *	Yes	0	0.0%
Total		11,871	100.0%

9.30.2022		% Change from Baseline
#	%	
3,197	20.0%	+46%
1,770	11.1%	-28%
1,998	12.5%	+32%
228	1.4%	+356%
7,789	48.8%	+43%
804	5.0%	+276%
162	1.0%	+ infinity
15,948	100.0%	+34%

Integrated Services

New Waiver Services Started in 2016:

- **Community Coaching**
- **Community Engagement**
- **Community Guide**
- **Shared Living**
- **Supported Living**
- **Workplace Assistance**

Services Active: 2021-11-01 to 2022-04-30

Table 1. Total number of unique individuals authorized for each Service Type, Total and by DBHDS Primary Region and Levels

Service Type	Total	Region 1	Region 2	Region 3	Region 4	Region 5	Total SIS@ Level 6	Total SIS@ Level 7
Assistive Technology	317	73	114	17	41	72	40	32
Benefits Planning Services	100	28	27	4	16	25	1	6
Center-Based Crisis Supports	15	2	1	8	4	0	0	5
Community Coaching	265	78	43	46	55	43	21	65
Community Engagement	2,296	733	318	451	245	549	64	116
Community Guide	72	14	33	3	8	14	1	3
Community-Based Crisis Supports	83	8	30	23	20	2	0	21
Companion	259	27	203	2	1	26	6	28
Companion - CD	1,083	331	161	166	255	170	30	58
Crisis Support Services	18	2	16	0	0	0	0	0
Electronic-based Home Supports	76	17	39	3	0	17	3	5
Employment & Community Transportation	11	3	8	0	0	0	0	1
Environmental Modifications	113	23	29	9	9	43	34	5
Group Day Support	5,756	1,153	933	819	1,530	1,321	303	314
In-home Supports	1,978	275	324	447	228	704	96	88
Independent Living Supports	147	9	46	32	23	37	1	0
Individual & Family Caregiver Training	9	0	4	0	0	5	0	0
Integrated Group Residential	3,208	543	615	421	831	798	259	298
NonIntegrated Group Residential	1,997	431	371	290	570	335	134	68
Peer Mentoring	2	0	2	0	0	0	0	0
PERS	59	12	38	3	0	6	9	3
Personal Assistance - AD	790	79	490	46	53	122	100	53
Personal Assistance - CD	3,967	1,124	662	823	686	672	518	237
Private Duty Nursing	348	35	159	34	47	73	270	7
Respite	4,132	1,047	1,000	632	696	757	472	271
Shared Living	3	0	0	1	2	0	0	0
Skilled Nursing	203	55	35	67	5	41	80	7
Sponsored Residential	2,248	591	113	594	326	624	272	276
Supported Employment, Group	363	26	128	7	135	67	1	8
Supported Employment, Individual	777	228	137	140	187	85	12	23
Supported Living	172	46	21	9	76	20	0	2
Therapeutic Consultation	2,128	329	592	259	565	383	98	349
Transition Services	1	0	0	0	1	0	0	1
Workplace Assistance	66	33	11	8	13	1	0	2
Total # of Unique Individuals	15,131	3,203	2,697	2,719	3,088	3,424	1,374	1,016

**Community
Coaching = 265**
**Community
Engagement = 2,296**
**Community
Guide = 72**
**Shared
Living = 3**
**Supported
Living = 172**
**Workplace
Assistance = 66**

[←](#)
[↺](#)
[https://dojsettlementagreement.virginia.gov](#)
A An Agency of the Commonwealth of Virginia
[Virginia.gov](#)
[Find an Agency](#)

Official Site of the Commonwealth of Virginia – DOJ Settlement Agreement

- Introduction
- Definitions
- Serving Individuals with Developmental Disabilities In the Most Integrated Setting
- Discharge Planning and Transition from Training Center
- Quality and Risk Management System
- Independent Reviewer
- Construction and Termination
- General Provisions
- Implementation of the Agreement

Integrated Settings ▾ Providers ▾ Quality & Risk Management ▾

Welcome

On January 26, 2012, a [Settlement Agreement](#) was reached to address the US Department of Justice findings that the Commonwealth failed to provide services to individuals with intellectual disabilities in the most integrated setting appropriate to their needs as required by the Americans Disabilities Act and US Supreme Court’s Olmstead Decision. Implementation of the requirements of the Agreement were projected to take 10 years. In May of 2019, a [federal court order](#) was filed tasking the parties to the 2012 Agreement with creating a document system, or “library”, to ensure that the Commonwealth will perform all provisions of the [Settlement Agreement](#). The purpose of the library is to enable interested parties to review documentation of the Commonwealth’s compliance, even after the consent decree terminates. This website is created to meet that need.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA Richmond Division		
United States of America,)	CIVIL ACTION NO: 3:12cv059-JAG
Plaintiff,)	
v.)	
COMMONWEALTH OF VIRGINIA,)	
Defendants,)	
and)	
PEGGY WOOD, et al.)	
Intervenor-Defendants)	
)	
)	

Calend... Out - M... Final A... Meetin... Negotit... 2023.03... Meetin... 2023.03... Official ... W 2023.03... W 2023.03... N P 2022.08... P 2023.03...

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DOJ Library

2012

- **Nothing**

2022

- Created to provide reports on outcomes
- Also will contain charters, processes, tools, training materials, etc
- <https://dojsettlementagreement.virginia.gov/>

Crisis Services

2012

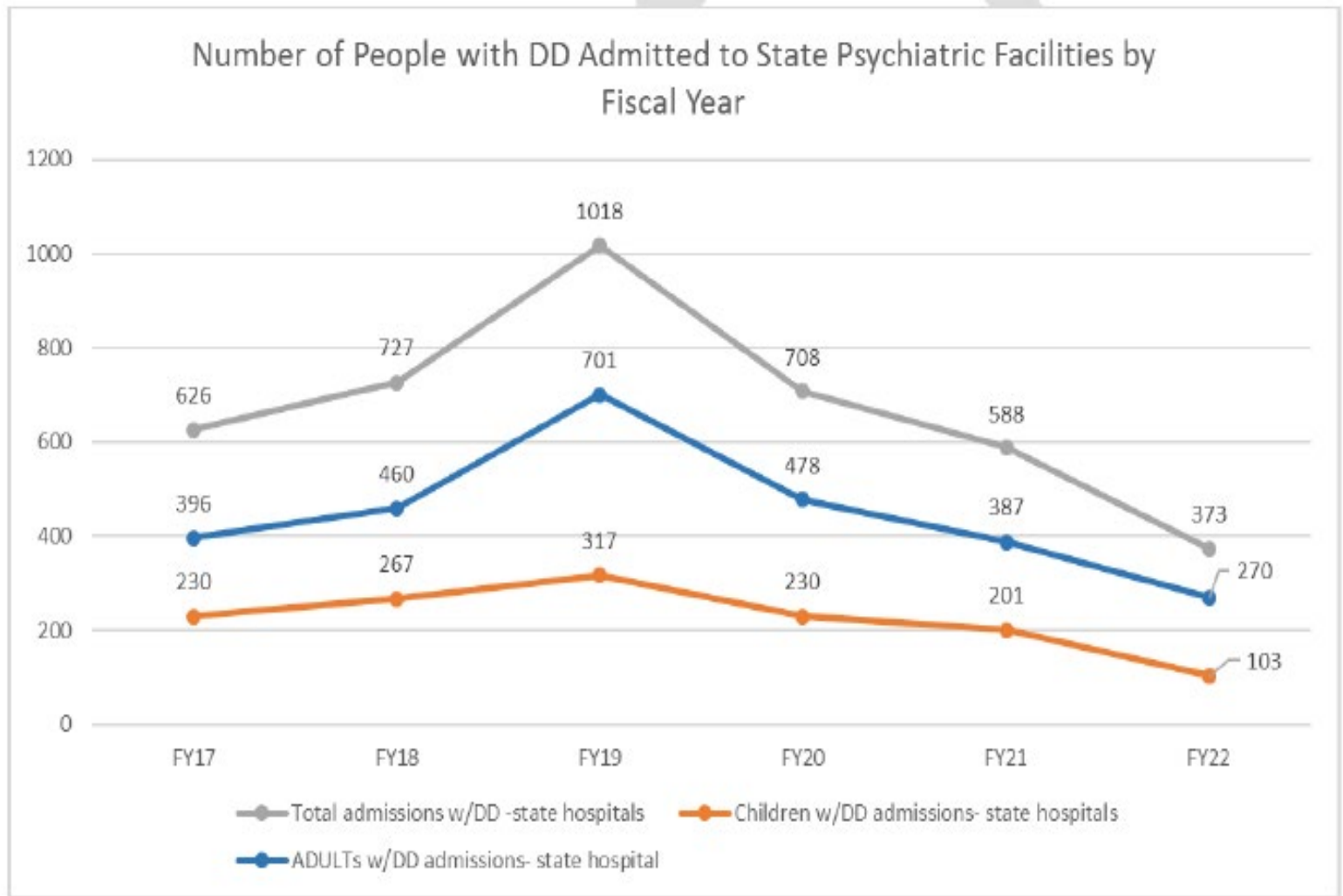
- **CSB Emergency Services**
- **Psychiatric Hospitals**

2022

- **REACH Program**
 - 36 adult mobile crisis teams
 - 36 children mobile crisis teams
 - 5 adult Crisis Therapeutic Homes
 - Each home has 6 beds
 - 2 Children Crisis Therapeutic Homes
 - Each home has 6 beds
 - 2 Adult Transition Homes
 - Each home has 6 beds
 - Out of Home crisis prevention for children

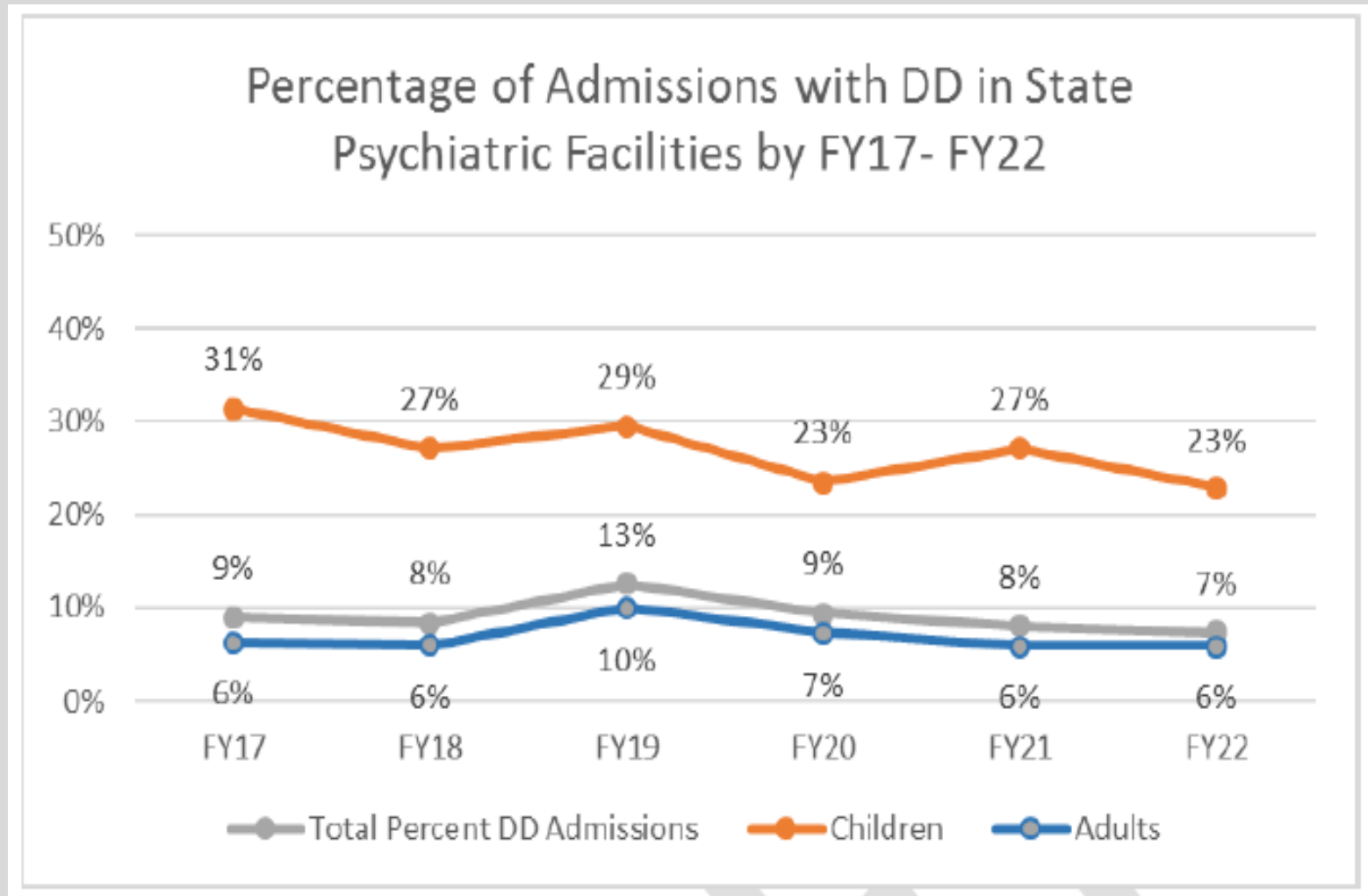
Crisis Services

Source: Supplemental Crisis Report found **DOJ LIBRARY**
<https://dojsettlementagreement.virginia.gov/dojapplication/provision/iii.c.6.a/>



Crisis Services

Source: Supplemental Crisis Report found **DOJ LIBRARY**
<https://dojsettlementagreement.virginia.gov/dojapplication/provision/iii.c.6.a/>



Independent Housing

2012

- **Nothing**

2022

- **State Rental Assistance for 1,229 individuals**
- **1,654 individuals living independently**
 - **Settlement only required a pilot program for 28 people.**

Independent Housing



Virginia Department of
Behavioral Health &
Developmental Services

DBHDS Independent Housing Outcomes Table

December 2022

Baseline # of People in Settlement Agreement Population Living in their own home (as of July 2015)*	341
Number of People in Settlement Agreement Population Living in their own home with a resource created from the DOJ Settlement Agreement (after July 2015)	978
Number of People in Settlement Agreement Population Living in their own home with another resource	553
TOTAL # of People in Settlement Agreement Population Living in their own home	1872
GOAL for People in Settlement Agreement Population Living in their own home by end of FY 2021	1,866
Percentage of Independent Living Goal Met to Date	100%
# of individuals in Application, Intake or Housing Search Process	108
# of Rental Assistance Resources Set-Aside for the Settlement Agreement Population	1229
Goal for Rental Assistance Resources Set-Aside for the Settlement Agreement Population by end of FY 2021	847
Percentage of Resource Goal Met to Date	145%

Data as of: 1/13/2023 Time: 9:00 AM

Independent Housing

Number of People Living Independently

	<i>Target</i>	<i>Actual Outcome</i>	<i>Target</i>	<i>Actual Outcome</i>
Fiscal Year	Proposed Number of people in Settlement Agreement Population living in Independent Housing each FY	Number of people in Settlement Agreement Population living in Independent Housing each FY	Cumulative Number of people in the Settlement Agreement population living in Independent Housing by Fiscal Year	Cumulative Number of people in Settlement Agreement population living in Independent housing each Fiscal Year
Baseline	341	341	341	28
FY 2015	30	30	373	371
FY 2016	20	101	393	472
FY 2017	41	193	434	665
FY 2018	157	142	591	807
FY 2019	205	147	796	954
FY 2020	409	422	1,205	1,376
FY 2021	661	278	1,866	1,654

Indiv. and Family Support Program

2012

- **Nothing**

2022

- **4 Part-program**
- **Part 1: funding program**
 - **Distributed approx. \$25M since 2012**
- **Part 2: Peer Mentoring/
Family to Family**
- **Part 3: IFSP Council**
- **Part 4: My Life My
Community Website**

Indiv. and Family Support Program

IFSP-Funding Program Summary 2013 – 2020

Fiscal	Applications Received	Applications Funded	Total Amount Awarded	Average Award Amount	Under 18	18 & over	Region 1 (Western)	Region 2 (Northern)	Region 3 (South western)	Region 4 (Central)	Region 5 (Eastern)
2013	982	802	\$1,814,000	\$2,261	558	344	100	190	107	265	140
2014	1545	1300	\$3,132,356	\$2,409	835	457	196	281	186	399	237
2015	5176	1202	\$3,000,000	\$2,495	832	368	192	295	178	290	246
2016	3170	2943	\$2,748,147	\$933	1997	966	483	820	347	636	657
2017	3045	2674	\$2,601,325	\$972	1695	981	453	745	363	603	512
2018	3538	3210	\$3,150,945	\$981	2177	1033	540	978	405	742	545
2019	4497	3028	\$2,998,243	\$990	3066	1431	745	1314	544	1072	822
2020	3646	2531	\$2,500,226	\$988	2532	1114	651	1137	429	842	587
CUMULATIVE TOTAL		17690	\$21,945,242								

Indiv. and Family Support Program

IFSP-Funding Timeline January 2023

Version Date: 1/10/2023

Date	Event
January 23 rd at 9:00 a.m.	Application opens for individuals with Priority 1 status in new IFSP-Funding Portal in WaMS at https://www.dbhds.virginia.gov/waitlistforms
January 25 th at 9:00 a.m.	Application opens for individuals with Priority 2 and Priority 3 status in new IFSP-Funding Portal in WaMS at https://www.dbhds.virginia.gov/waitlistforms
February 22 nd at 5:00 p.m.	Application closes for individuals with Priority 1 status
February 24 th at 5:00 p.m.	Application closes for individuals with Priority 2 and Priority 3 statuses

Supported Employment

2012

- **154 waiver Individ. Supported Employment (not incl. DARS)**
- **806 people in sheltered workshops**
- **No data on total number of people with DD employed**

2022

- **530 waiver Individ. Supported Employment (not incl. DARS)**
- **314 people in sheltered workshops**
- **21% of people with DD employed (incl. DARS) (high of 24% pre-pandemic, which was ahead of the national average)**

Office of Integrated Health and the Health Support Network

2012

- **Nothing**

2022

- **Created to provide services to meet the needs of former residents of Training Centers, nursing facilities, and ICFs**
 - **Dental Services**
 - 3,159 since 2015
 - **Mobile rehab engineering (like fixing wheelchairs)**
 - 8,643 repairs completed in FY 22
 - **Technical assistance for community providers (like nurses)**
 - 46 meetings with 3,475 participants across trainings (not unique individuals) in FY 22

People with Complex Medical Needs

VA's Review (QSR): 57 people with complex medical needs for services provided from Jan - June 2021. Review conducted Nov 2021 - May 2022.

Independent Reviewer's (IR's) Look Behind: 32 of those 57 people, which allowed a generalized sample. Look behind review conducted Sept - Oct 2022.

Positive:

- The IR's nurse consultants agreed with the QSR reviewers that there were no unmet healthcare needs for 10 of the 32 people.

Negative:

- Of the 15 people his nurse consultants identified as needing dental care, the QSR reviewers did not identify 11.
- Of the 7 people his nurse consultants identified as needing clinical assessments or consultations, the QSR reviewers did not identify 6.
- Of the 5 people's ISPs that needed modification due to new or changed service needs, the QSR reviewers did not identify the 2 that had not been modified.

* Numerous requested documents were not provided/ not provided in a timely manner. Therefore, it is possible that certain identified discrepancies in the respective findings were not actually discrepancies in fact but were the result of inconsistent sources of information.

People with Complex Behavioral Needs

Compliance Indicator #7.8: “86% of children and adults who are known to the system will receive REACH crisis assessments at home, the residential setting, or other community setting (non-hospital/non-CSB location).”

OUTCOME:

- | | |
|------------------------|------------------------|
| • FY 21 Q1: 53% | • FY 22 Q1: 51% |
| • FY 21 Q2: 34% | • FY 22 Q2: 36% |
| • FY 21 Q3: 35% | • FY 22 Q3: 40% |
| • FY 21 Q4: 42% | • FY 22 Q4: 36% |

***Data not verified by Independent Reviewer**

People with Complex Behavioral Needs

Compliance Indicator #7.18: “[By March 31, 2022], 86% of those identified as in need of the Therapeutic Consultation service (behavioral supports) are referred for the service (and a provider is identified) within 30 days.”

OUTCOME:

*Data not verified by Independent Reviewer

Time period	Individuals who newly needed a behaviorist	Individuals who accessed a behaviorist within 30 days	% of individuals who accessed a behaviorist within 30 days
9/1/2020 - 2/28/2021 (6 mo)	601	271	45%
3/1/2021 - 8/31/2021 (6 mo)	639	222	35%
9/1/2021 - 1/31/2022 (5 mo)	387	231	60%
2/1/2022 - 7/31/2022 (6 mo)	675	432	64%

People with Complex Behavioral Needs

Compliance Indicator #7.20 & #29.21:

First, DBHDS will report the total number of people identified who needed Therapeutic Consultation in their ISP and how many of those people actually *received it*.

Second: At least 86% of people who need behavioral support services will receive the services that are “adequate and appropriately delivered,” (i.e. good quality) using a behavioral quality tool.

OUTCOME:

- **#1 – No data. It was expected Nov. 2022 but DBHDS needed a unique billing code which it only created in September 2022.**
- **#2**
 - **FY22 Q3: Based on 100 sets of Therapeutic Consultation records = 13% (13/100) were adequate**
 - **FY23 Q1: Based on 100 sets of Therapeutic Consultation records = 41% (61/150) were adequate**

Contact Information

Kyle Smiddie (Attorney)
Kyle.Smiddie@usdoj.gov

Leia Washington (Paralegal)
Leia.Washington@usdoj.gov

Bo Tayloe (Deputy Chief)
Benjamin.Tayloe@usdoj.gov