VACBP Comment on *"Requirement for 90 Days of Operating Expenses"* Guidance Document

September 3, 2019

On behalf of the Virginia Association of Community-Based Providers (VACBP), which includes more than 50 private-sector providers of community-based behavioral health services throughout Virginia with more than 160 locations, I write to express significant concern about the proposed interpretation of the "**Requirement for 90 days of operating expenses."**

12VAC35-105-40 requires that providers must submit the following when applying for a license:

2. Documentation of working capital to include:
a. Funds or a line of credit sufficient to cover at least 90 days of operating expenses if the provider is a corporation, unincorporated organization or association, a sole proprietor, or a partnership…

In addition, regulation 12VAC35-105-210.A. states that licensed providers shall "document financial arrangements or a line of credit that are adequate to ensure maintenance of ongoing operations for at least 90 days on an ongoing basis. The amount needed shall be based on a working budget showing projected revenue and expenses."

With these requirements, licensed providers must be able to demonstrate at any time compliance with these requirements. That being said, the VACBP is concerned the interpretation provided in the draft guidance document creates a number of challenges for providers.

(1) **Consideration of "Projected Revenue."** The VACBP is concerned that a provider's "projected revenue" is not being fairly determined, which impacts the amount a provider must hold in a cash or line-of-credit reserve. All VACBP members rely in part if not entirely on Medicaid revenues and, as such, believe these revenues should be included in a provider's "projected revenue." While many of our members continue to face challenges in receiving timely payment from the MCOs for services provided, we do not believe this is something for which a provider should be penalized. If there is concern about the reliability of Medicaid as a revenue source, this is an issue that we encourage be addressed with the MCOs.

(2) **Unreasonable Requirement that Cash/Line-of-Credit Reserve be Sequestered.** The VACBP believes that providers should strive to be good cash managers, and, in that vein, should maintain reserves to meet unforeseen circumstances. The challenge with the proposed guidance document is that it assumes and, in fact, would require that a provider will never utilize any of the specified reserves. This interpretation would create a situation where providers would actually require 180 days of reserves – 90 days of reserves that would need to be sequestered or "untouched" in order to be in compliance with the proposed guidance document and 90 days of reserves that could be used to meet unforeseen needs. Given the difficulty in establishing a line of credit and/or a reserve of cash to begin with, requiring that a provider essentially sequester 90 days of operating funds and create an additional reserve as part of a good business practice is an extraordinary burden. Lines of credit sufficient for three months of operating expense (without consideration of revenue) will be virtually impossible to obtain without real assets to offer as security, and if not "used" and interest paid, will be extremely difficult to maintain.

In addition, we have questions regarding a number of other related items that will be important to clarify before proceeding. This includes:

- Whether reserves must be either a line of credit or cash, or may other investments that could be converted to cash if needed be used. For example, an organization may have invested assets (e.g. mutual funds, CDs, stocks and bonds.) That is not cash but is a normal component of a reserve fund or endowment.
- For those agencies that do other work that is unrelated to Medicaid behavioral health, are operating expenses for the entire agency included in the required 90-day reserve requirement or just operating expenses for that portion of the business that performs Medicaid-reimbursed behavioral health. Many of our members have more than just one business line or division, so this is important to consider.

While the VACBP does not condone providers failing to meet their legal or financial obligations, we urge DBHDS to reconsider the interpretation of this regulation so that these significant concerns can be addressed. Further, the VACBP is more than willing to work with the Office of Licensing to help them to utilize existing tools or develop new ones if necessary to help ensure providers are operating in a fiscally responsible manner.

Thank you for your consideration of the VACBP's perspective on this important issue.