COMMONWEALTH of VIRGINIA
DEPARTMENT OF
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MEMORANDUM

To: All Licensed Providers & Licensing Applicants

From: Jae Benz, Director, Office of Licensing

Date: July 12, 2019

Re: Requirement for 90 Days of Operating Expenses

Please be advised that per the *Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services* ("Licensing Regulations"), regulation 12VAC35-105-40 states that applicants seeking licensure by DBHDS must submit documentation of "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." (Note that per Code of Virginia § 13.1-1002 a limited liability company (LLC) is defined as an unincorporated organization). 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." Therefore, both applicants for licensure and licensed providers must be able to provide proof, at any time when requested by a representative from the department, that they have sufficient funds for 90 days of operating expenses, whether in cash or a line of credit.

The Office of Licensing considers a line of credit to be a contractual arrangement between a financial institution, bank, trust company, brokerage firm, or investment dealer and the provider. For all licensed services other than sponsored residential services, **the line of credit should be in the provider's or owner's name.** The provider must be able to access funds from the line of credit at any time. Therefore, any applicant for licensure or licensed provider utilizing a line of credit as evidence that they have 90 days of operating expenses, may **only** utilize lines of credit within the provider's or owner's name. **Lines of credit in the name of a third party will not be accepted by the Office of Licensing.**

Existing applicants or licensed providers currently utilizing a line of credit in the name of a third party will have 60 days from the publication of this memo to demonstrate to their respective licensing or policy review specialist that they have evidence of 90 days of operating expenses either in a bank account or line of credit in the provider's or owner's own name. Following this 60 day period, providers will be cited appropriately for failing to demonstrate evidence of the required funds.

The following forms of financial resources are acceptable to document proof of 90 days of operating expenses for all non-sponsored residential providers: 1) Personal or business savings account; 2) Personal or business checking account; 3) Home equity line of credit; 3) Bank line of credit; 4) Credit card with an available balance. Unacceptable forms of resources include but are not limited to: 1) Promissory notes; 2) Retirement accounts; 3) Life insurance policies; and 4) Gifted funds from other DBHDS licensed entities.

The provider must be able to access the funds from the line of credit at any time. This means that providers utilizing a line of credit must have an **AVAILABLE** line of credit for the amount needed for 90 days operating expenses. Lines of credit that exist, but do not have the necessary amount of funds available to the provider will not be accepted and will be considered to be a violation of the Licensing Regulations. Providers who fail to meet the regulatory requirements of the department may also be subject to the penalties enumerated in Code of Virginia § 37.2-418.

Lastly, for sponsored residential home staff, regulation 12VAC35-105-1180.C.4 states that providers shall document the ability of the sponsored residential home staff to meet the needs of the individuals placed in the home by assessing and documenting the financial capacity of the sponsor to meet the sponsor's own expenses for up to 90 days, independent of payments received for residents living in the home. This means that sponsors themselves, and not the sponsor’s employer, must have at all times the financial resources to cover their own mortgage or rent, utilities, dining expenses, etc., for 90 days independent of payments received for residents living in the home. In order to meet regulatory requirements, these resources must be kept separate from accounts from which personal daily operating expenses are withdrawn or from which payments received for residents living in the home are deposited.

If you have any concerns regarding the information contained within this memo please contact your assigned licensing or policy review specialist.

Sincerely,

Jae Benz

Jae Benz
Director, Office of Licensing
DBHDS