

EXECUTIVE SUMMARY
of the
FY 2024 ANNUAL REPORT OF THE INDEPENDENT REVIEWER

In the Matter of

UNITED STATES OF AMERICA v. THE STATE OF NORTH CAROLINA

Case 5:12-cv-00557-D

Submitted By: Martha B. Knisley, Independent Reviewer

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EXECUTIVE SUMMARY

This is the Executive Summary of the FY 2024 Final Annual Report¹ on the status of compliance with the provisions of the Settlement Agreement (SA) in United States v. North Carolina (Case 5:12-cv-000557-F) signed on August 23, 2012. The Independent Reviewer (Reviewer) submits an annual report each year of this Agreement.

The report documents North Carolina's (the State's) progress in meeting fiscal year (FY) 2024 requirements. The State met two major obligations in FY 2024, **Section III. (F) Pre-screening and Diversion** and **Section III. (G) Quality Assurance and Performance Improvement**.

The State is making discernable progress meeting **Section III. (E) Discharge and Transition Processes** as identified in this report. However, there is less progress with continuing and new challenges meeting **Sections III. (B) Supported Housing** and **(D) Supported Employment**. The State did not make progress meeting **Section III. (C) Community Based Mental Health Services** requirements.

This summary and report highlight the steps the State has taken to meet the Settlement Agreement obligations. The report also documents the State's overall progress and challenges it has meeting all the Settlement Agreement (SA) obligations as referenced in the Fourth and Fifth Modifications of the Settlement Agreement.

The Parties filed their fifth motion to modify the Settlement Agreement with the Court on March 1, 2023. The Fifth Modification extends the Settlement Agreement obligations until July 1, 2025.

The Fifth Modification added a new schedule for individuals in the target population to occupy supported housing. The Modification added a provision for the State to create an implementation plan describing steps it will take to meet its obligations as state in the Settlement and modified the notice date from March 1 to April 1, 2025. The Fifth Modification included language for draft and final due dates and consultation on the implementation plan with the US and the Reviewer. The plan included proposed steps the State needed to take to meet Settlement obligations. In the FY 2023 Annual Report, the Reviewer indicated that taking these steps, though, may not result in the State meeting its obligations in the newly established timeframe.

The implementation of this plan did not achieve results that would have led the State to meet all SA requirements in FY 2025. In some situations, the plan was helpful but

¹ The Reviewer submits annual reports for the State's fiscal year which begins on July 1 and ends on June 30 the following year.

focusing on it also distracted State and Local Management Entities/ Managed Care organizations (LME/MCO) staff to meet new reporting requirements rather than taking action steps to meet Settlement requirements. This report lays out accomplishments and challenges that prevent the State from meeting all the Settlement obligations by July 1, 2025.

This report references the program the State designed to comply with the obligations of the SA, as Transitions to Community Living (TCL). Individuals identified for TCL are eligible for assistance with the Discharge and Transition Process including discharge from adult care homes (ACHs) and state psychiatric hospitals (SPHs) and diversion from ACHs. Individuals may gain TCL eligibility through a required Pre-Admission Screening process. The SA also includes obligations the State has to ensure access to and assistance with Discharge and Transition, Diversion, Supported Housing, Community-Based Mental Health Services, and Supported Employment. The Settlement Agreement requires the State to develop and implement a Quality Assurance and Performance Improvement system and provide community-based placements and services.

Based on the FY 2024 individual reviews, interviews with staff in the field, and reports from a range of state and local sources, it is clear the Settlement Agreement requirements are achievable. However, the State needs to make transformative changes to meet the Supported Housing, Community Based Mental Health Services and Supported Employment requirements.

Even with the challenges presented by COVID and the Cardinal LME/MCO going out of business mostly abated, a number of challenges remain for the State to meet the SA obligations and new challenges are emerging now. First, the NC General Assembly required changes in the LME/MCO² structure in its biannual budget passed in September 2023. The General Assembly gave DHHS responsibility and authority to reduce the number of LME/MCOs. This led to the DHHS Secretary reducing the number of LME/MCOs from six to four. This reduction led to the closure and consolidation of the Sandhills and Eastpointe LME/MCOs and shifted their responsibilities to counties in the Alliance Health (Alliance), Partners Health Management (Partners), Vaya Health (Vaya), and Trillium Health Resources (Trillium) with all but three counties shifting to Trillium. Trillium now serves 46 counties. As forecasted, reducing the number of LME/MCOs created challenges for the remaining LME/MCOs in terms of absorbing staff, transferring leases for individuals in Supported Housing, and ensuring that each of the remaining LME/MCOs quickly began to serve individuals transferred to their area.

² This report covers actions taken during FY 2024. LME/MCOs became “Tailored Plans” on July 1, 2024. Thus references in this report are to LME/MCOs in 2024 and references for future actions switch to Tailored Plans.

The second challenge is the State's shift in its approach and services for NC Medicaid beneficiaries who need enhanced services for a mental health disorder, substance use disorder, intellectual/developmental disability (I/DD), or traumatic brain injury (TBI). The State references this shift from LME/MCO management to "Tailored Plan" management. This shift includes the Tailored Plans (TPs) meeting new requirements to qualify as Tailored Plans under the Medicaid 1115 Waiver authority. This report continues to refer to these plans as LME/MCOs rather than TPs unless referencing future actions since the shift did not formally occur until July 1, 2024.

The Tailored Plans now include coverage and contracting for physical health services, pharmacy services, care coordination and care management, behavioral health services, and added services, such as wellness programs.

Four additional challenges emerged with the transition to Tailored Plans in FY 2024 that have had an impact on the State meeting Settlement requirements. The first was that the State's guidance to the LME/MCOs on Tailored Care Managers' (TCMs) responsibilities for working with TCL recipients did not match the Settlement requirements for LME/MCO and provider requirements. The State made some adjustments, but these did not occur until well after the fact and these adjustments did not cover all of the challenges that TCL recipients, their LME/MCOs and providers now face. The second was that there was not sufficient trained TCM staff to ensure making decisions for individuals in a timely manner. The third challenge was making certain TCMs aware of TCL requirements since most of the new staff did not have experience working with TCL-eligible recipients. The fourth and most challenging problem was the State's shift from covering Supported Employment services with Medicaid "(b)(3)" to reimbursing the service instead with federal funding under the Section 1915(i) Medicaid authority, which has created delays and confusion for providers and the LME/MCOs. This last challenge is not resolvable until the State makes significant changes to meet its Supported Employment requirements under the Settlement Agreement. These last three challenges are contributing to lower IPS fidelity scores and new challenges to meet IPS-SE fidelity requirements.

Below are summaries of FY 2024 by the Settlement Agreement major categories, requirements, and key sub-requirements. There are references to both the Fourth and Fifth Modifications to the Settlement Agreement.

Major Settlement Agreement Requirements

This report is informed from information yielded from 85 reviews of individuals, selected randomly, living in ACHs, in supported housing, in the community or other congregate setting but not using a housing slot, and individuals hospitalized at a state psychiatric hospital. This stratification enables the Reviewer to conduct a thorough assessment of the

State's actions and challenges assisting individuals to access supported housing. Each of these reviews included an interview with the selected individuals, when possible; a review of their records; and interviews with their LME/MCO, state staff and provider agencies. The FY 2024 review also included analysis of state and LME/MCO data and a review of draft state policies, plans, and action steps to meet these requirements. In the spring of FY 2024, the Reviewer and her review team members also met with State and LME/MCO staff, service providers, and state and the Division of Employment and Independence for Persons with Disabilities (EIPD) to review implementation and performance of supported employment and services requirements, housing, and In-reach and transition requirements.

The State took major step in the last half of FY 2022, developing a TCL Incentive Plan (TIP), and continued that plan with minor changes in expectations in FY 2024. The State awarded LME/MCOs approximately \$2.9 million meeting multiple quarterly requirements in FY 2024. The TIP provides funding to LME/MCOs for meeting initial plan requirements and ongoing performance requirements related to the use of federal housing vouchers, providing peer support services, referred to as peer bridgers, furthering the implementation of Complex Care Management, and improving access to supported employment and access to housing especially for individuals exiting ACHs.

The State also took major steps to raise salaries, expand Peer Support and Community Inclusion supports, increase LME/MCO staff, including adding funds for LME/MCOs to add housing specialists, In-reach staff and Transition Coordinators, additional Occupational Therapists and Nurses, Supported Employment managers and training, quality and barriers specialists. The State also began to shift responsibility for two LME/MCOs to assume initial responsibilities to worked with Low Income Housing Tax Credit developers to assist individuals lease rental units. This funding and shifts occurred over the course of the year and the impact of these additions and shifts became noticeable toward the end of FY 2024 and will likely have more impact on the State's performance in FY 2025.

Below are brief, specific findings in each of the six major Settlement Agreement requirements:

Section III (B) Supported Housing

The State met **Section III. (B)(2)** at the outset of the agreement when it established the five priority populations, but it has not met the requirements and sub-requirements for **Section III. (B)(1)(5)(7)(a)(b)(c)(d) and (f)** in FY 2024.

The State still has challenges meeting **Section III. (B)(1)**, access to community-based supported housing. According to the State's data, only 38% of individuals with a housing slot transitioned to supported housing after receiving a housing slot in FY 2024. Access to

supported housing within 90 days of a housing slot has been on a downward trend since 2020 when 66% of individuals transitioned to housing within 90 days.

One issue that has affected the State meeting the **(B)(1)** (access) and **(B)(7)(b)** (tenancy support) requirements is the challenging process that LME/MCOs have been required to use to help individuals access “targeted” units³ for LME/MCOs to assist individuals to get and keep housing. The process may have worked previously, before LME/MCOs developed their internal capacity to help individuals access housing. But the current process is time-consuming and does not give the authority for placing individuals in permanent supported housing to the LME/MCOs, which are responsible for ACH transitions and diversions and helping individuals remain in their housing. There is a detailed discussion of this challenge below. Since **(B)(7)(b)** includes a service intervention (tenancy supports), it is also reviewed as part of Section III (C) Community Based Mental Health Services. The State has not met its obligations for providing tenancy support as a service.

The State made negligible progress toward transitioning and serving 2,000 ACH residents in supported housing, as required in **Section III. (B)(5)**. The State only increased the number of individuals living in supported housing from 957 to 1000 in FY 2024. The State did not meet the requirement in the Fourth Modification of the Settlement Agreement to fill 1,660 slots by July 1, 2024. This deinstitutionalization requirement is one of the main requirements in this Settlement Agreement and was at the heart of the investigation leading to this Agreement. The FY 2024 review revealed at least 77%, or 14 out of 18 individuals reviewed, still living in ACHs on In-reach status could move into supported housing with adequate support, services and, when applicable, guardian agreement. However, it appeared that it was unlikely that seven of them would get the opportunity to move without more contact by In-reach specialists to provide education and support, and without guardian agreement. The Reviewer, with support from the State and the Tailored Plans, will conduct a review of individuals living in ACHs getting In-reach in FY 2025 to provide an accurate assessment of whether individuals who choose to, could move if given the opportunity.

Section III. (B)(7)(f) The challenges vary widely and often range from individuals not having access to accessible units and/or accessible features, not getting the right type or level of assistance for their daily living activities that they need to live in supported housing. Some individuals experience the challenge of getting turned down for a lease due to their criminal or credit history with no follow-up to request a reasonable accommodation from the landlord for disability-related past conduct. While overall scores for this sub-section appear to meet standard, there are still challenges with individuals getting accessible units, given

³ A “targeted unit” is an affordable housing unit in a building financed with federal Low Income Housing Tax Credits. In exchange for the tax credits, the housing developer agrees to “set aside” a percentage of units in the building for the State to use for individuals in the Transitions to Community Living program.

their physical disabilities, and a long-standing need to ensure home health is available. Since these are barriers, they impact the State's ability to meet the (B)(1) access requirements and the Discharge and Transition Processes (E)(7)(f) requirement.

As referenced in the last four Annual Reports, the DHHS has partnered closely with the State's Housing Finance Agency (NC HFA) to improve the capacity and performance of the State's supported housing system for adults with Serious Mental Illness (SMI) and Serious and Persistent Mental Illness (SPMI). This inter-agency collaboration has allowed the State to develop new affordable, accessible housing and make more housing options available, and leverage multiple types of federal funds, including adding the HUD 811 project based rental assistance in FY 2005. This collaboration has led to improvements in data collection and analysis to explore challenges and progress in meeting housing targets and utilizing a wide array of resources.

The State has also made significant strides in partnership with HUD's Regional Housing Offices and local Public Housing authorities to improve access to HUD funded Housing Choice Mainstream Vouchers. Leveraging both HUD 811 and Mainstream Vouchers enables the State to stretch its funds further to expand housing capacity in the state.

The NC HFA, NC DHHS, and HUD collaborative efforts have led to increasing affordable housing availability, although availability of safe, affordable rental housing always remains a challenge in North Carolina and is a nationwide issue.

Community-Based Mental Health Services

The FY 2024 review revealed the State's performance in meeting **Section III. (C) Community-Based Mental Health Services** did not substantially improve in FY 2024. The State has not taken the steps necessary to meet these requirements by July 1, 2025. The State is not meeting requirements for providing access to the array, frequency, and intensity of individualized recovery-based services and supports necessary to enable individuals to transition to and live in community-based settings. These findings are based on reviews that included interviews with 58 individuals living in the community, in supported housing or other locations, as well as individuals hospitalized at one of the three SPHs. This review included interviews with staff and review of the records for approximately 70 individuals in FY 2024 which when added to FY 2023 reviews, totaled 200 individuals in the past two years. Three LME/MCOs scored closer to the mean than others and one LME, Vaya, is primarily responsible for the State achieving slightly higher services scores. This review also included discussions with State staff, LME/MCOs and providers and analysis of other documentation, and data related to the provision of community based mental health services

The person-centered planning process scores were extremely low, with only 11 individuals in the review sample, or 21%, having a person-centered plan that fully meets requirements and another 12 individuals, or 23%, with plans that partially meet requirements. The plans and the planning process remain formulaic, repetitive, and not individualized. Often, staff write new plans with the same language as their previous plans. The provider lists services they will provide on the plan document, typically with generic, staff-written goals of “symptom reduction” and “medication management” listed first in the plan and some plans only listed these two interventions. This does not reflect current practice in recovery-based planning. Likewise, the scores were in the same low range on the requirement that the individual get individualized services that are recovery-oriented and provided with the flexibility and intensity needed.

Community-Based Mental Health Services requirements are the cornerstone requirements of this agreement and essential for individuals with a serious mental illness to live in the most integrated setting possible. The State initiated training and established a new guidance for person centered planning in FY 2024.

Supported Employment

The State met the **III. (D)(3)** requirement for 2,500 individuals “in or at risk of” ACH placement to receive IPS-SE from a provider that meets fidelity. The State provided Supported Employment to 2,611 individuals by June 30, 2024. However, 30 of the 39 individuals interviewed in FY 2024 who expressed an interest in employment or education did not get a referral and/or did not receive either IPS-SE or services provided by an ACT team employment specialist. This represents 30 individuals whose records contained information to determine if they have an interest in employment or education. The percentage has not varied since the review team began collecting this information as part of the annual review four years ago. The numbers of individuals interested in employment is consistent with the national average for individuals with serious and persistent mental illness interested in employment and/or education.

The State is not meeting the major SE requirement in **Section III. (D)(1)** to develop and implement measures to provide supported employment to individuals “in or at risk of entry into” adult care homes. The State is not meeting **Section III. (D)(2)** which requires services to be provided with fidelity to an evidenced-based supported employment model.

Over the course of the past two years the State has faced challenges to provide supported employment services with fidelity to this evidenced based employment model. This challenge is the result of a confluence of issues. As the state moved to an 1115 waiver authority for Tailored Plan implementation. This required the State to shift its Medicaid payment from a (b)(3) authority to a 1915(i) Medicaid authority for IPS-SE. The 1915(i)

authority requires that the state adopt an independent assessment process for this service. This process creates a challenge in terms of the time it takes from the point a service provider in the State's comprehensive mental health services delivery system makes a referral to IPS-SE to the point an individual can actually get the service. This has resulted in challenges meeting the fidelity model requirements for rapid engagement and providing a timely assessment process. To determine eligibility for 1915 (i) services, an independent assessment, external of the provider, must be completed. The State uses this assessment to determine eligibility. A care plan must also be completed for services to begin. These challenges also impact the State's ability to meet the **Section III. (D)(1)** requirements.

The requirement for an independent assessment is rooted in historical service systems designed for individuals with Intellectual and Developmental Disabilities—not for individuals with SMI. Inserting this requirement into the State's comprehensive mental health services delivery system is duplicative and burdensome for service providers making referrals to IPS-SE. It unnecessarily delays individuals with SMI from receiving Supported Employment Services.

The State is continuing their work to implement a new financing and incentive model to drive the system toward paying for performance and achieving outcomes for individual engagement and follow-along supports for individuals receiving supported employment services. This model, referred to as NC CORE, contemplates a full partnership between LME/MCOs, service providers, and counselors from the EIPD. The State has experienced challenges moving to this model. These challenges are inherent to adopting the CORE model to ensure eligible individuals get assistance to prepare for, identify, and maintain integrated, paid competitive employment, LME/MCOs adopted different approaches, created challenges for providers who have contracts with multiple LME/MCOs, and one other major challenge is the need for the State to speak to provide the leadership necessary for this transformational and necessary change.

Section III. (C)(1) requires the State to ensure individuals have access to services and supports they choose to receive. The State is not meeting the requirement for access to supported employment, both IPS-SE and ACT Employment Specialist services. The State needs to take action to demonstrate that individuals in TCL who are interested in employment and/or education get the opportunity and access to supported employment and assistance preparing for, identifying, and maintaining employment. The interaction between individuals' service providers and their IPS-SE teams is often limited or non-existent and there continues to be a limited number of supported employment providers in certain areas of the state, including in at least two urban areas.

The State added incentives for providers who make IPS-SE referrals in the last two quarters of FY 2024, but this proposal had limited results. There continues to be an inaccurate belief

among service recipients and provider agency staff that individuals will lose their Supplemental Security Income (SSI) benefits if they go to work. There also continues to be an underlying assumption by many service providers responsible for making IPS-SE referrals that individuals in the TCL program are incapable of working. Guardians and families often make this assumption but are more verbal in their objections to an individual going to work. Typically, they raise objections for one and/or two reasons. The first is they believe if the individual goes to work, he or she will lose their benefits. Second, they worry that the individual cannot work and trying to go to work will have a detrimental effect on the individual. Regardless of whether this objection is subtle or not subtle, it sends a powerful and clear message to individuals that they are not capable of working. Thus, it is discrimination against individuals who have expressed a desire to seek employment and/or education and training.

On a positive note, the new Supported Employment specialists in the LME/MCOs have taken positive steps to dispel inaccurate beliefs and encourage and track referrals to the service. Over time, their leadership could make the difference for the State to meet supported employment requirements.

Discharge and Transition Processes

Section III. (E) **Discharge and Transition Process** review covered the discharge and transition process for three groups of individuals: those admitted to and then discharged from state psychiatric hospitals, those exiting ACHs, and those being considered for admission to an ACH but upon review are provided with community-based alternatives. The FY 2024 review included 62 individuals who experienced a discharge and transition process.

In FY 2024, the State met **Section III. (E)(14)** on monitoring Adult Care Homes Residents' Bill of Rights requirements but did not meet any additional Discharge and Transition Process requirements. But the Discharge and Transition Process scores from this year's individual reviews improved in four out of seven of the categories⁴ in this section. LME/MCO staff nearly doubled the number of face-to-face In-reach contacts during FY 2024 from the previous two years, when they more frequently sent letters or attempted to make contact by phone. The state and local Barriers Committees have retained their focus and hopefully there will be progress with staff identifying transition barriers in FY 2025. Because of the focused performance improvement approach by State staff, the Discharge and Transition Process requirements of the SA are potentially achievable by July 1, 2025. Many challenges remain, however, for the State to meet these requirements, as detailed in the full report below.

⁴ Several requirements are combined for scoring purposes.

Pre-Admission Screening and Transition Process

The State has met all the Pre-Admission Screening and Diversion obligations in **Section III. (F)(1-3)**. The State had previously met **Section III. (F)(1)-(2)** and met **(F)(3)** in FY 2024. The State accomplished this through follow-up and monitoring of the requirement to fully implement individualized strategies to address concerns and objections individuals have to placement in integrated settings for individuals choosing to reside in ACHs. The State conducts a review of the required follow-up with periodic sampling. The LME/MCOs routinely address these concerns.

Quality Assurance and Performance Improvement

In FY2024, the State met all obligations for **Section III (G)(1-8)** Quality Assurance/Performance Improvement requirements. The State is continuing to develop and implement its required QA/PI monitoring system in accordance with the quality assurance and performance improvement requirements. As stated in the full report below, the State should continue to focus attention on community-based mental health services and supported employment requirements. This focus will require the QA/PI team to give attention to the metrics and identify key strategies for necessary improvements.

Summary

The State has made substantial progress meeting major requirements agreed upon in the 2012 Settlement Agreement and extended through multiple modifications, with still more challenges ahead. The Parties entered into their Fifth Modification in March 2023, extending the Agreement to July 1, 2025. This Modification also added housing slot requirement due dates and a requirement that the State develop a detailed Implementation Plan in consultation with the US DOJ and the Reviewer.

The State has now met all obligations for Pre-Screening and Diversion and Quality Assurance and Performance Improvement. The State has designed and agreed upon processes to sustain the Pre-Screening and Diversion requirements. The state should continue to build upon their work to strengthen their new QA/PI system meeting key requirements with an a performance improvement focus on key metrics and practices.

The State continued to make progress filling housing slots, filling an additional 302 slots, or 8%, by the end of FY 2024. Progress in meeting the housing requirement for 2,000 individuals living in ACHs to exit and occupy supported housing slots was again negligible. The State only had a net gain of 43, or 4%, for individuals exiting ACHs filling housing slots at the end of FY 2024.

The State began to show progress in FY 2021, ensuring individuals get permanent housing in a location they choose with tenancy rights, tenancy support, and ensuring individuals get

assistance in their daily living activities. However, the State needs to continue to make progress on all of these requirements to meet Supported Housing obligations. The State is continuing their incentive plan and expanding their efforts to identify and reduce transition barriers, expand their Complex Care Initiative, and expand bridge housing programs to enable people to move out of ACHs and SPHs, or avoid unnecessary admissions to those facilities, while they look for permanent supportive housing. Bridge housing is especially important for individuals discharged from SPHs, being diverted from an ACH or moving from an ACH. Individuals often need assistance with preparing to move into their home, gather documents and explore community options. If an individual is living in unstable housing or being discharged from a hospital or moving from an ACH, moving into a safe “bridge” home in a community where they want to live is beneficial and over 85% of individuals with a short term bridge or even an extended bridge stay move into their permanent supported housing.

The State met the requirement that 2,500 individuals in or at risk of ACH placement or individuals exiting ACHs or discharged from SPHs receive IPS-SE, but the rate of individuals receiving IPS-SE each of the last two fiscal years has decreased. This presents sustainability challenges for providers. The State made progress with their milestone payment increase and with adding new dedicated LME/MCO Supported Employment staff.

The State did not make progress meeting Community-Based Mental Health Services and is not on track to meet these requirements in FY 2025. The State’s Senior Advisor on *Olmstead*, DMHDDSAS leadership, and LME/MCO TCL leadership recognize the challenges that remain to transform the services system to a recovery-based services system and are committed to changes needed to accomplish this.

The State developed a new Implementation Plan in early FY 2024 but the level of system transformation the SA requires remains incomplete, thus the State cannot meet all of the key Settlement requirements by July 1, 2025. In the FY 2023 Annual Report, the Reviewer made reference to the State needing to avoid the trap of establishing new processes and practices to improve systems on the existing culture, beliefs, and structures rather than creating a new recovery-oriented system. Unfortunately, the State seems to have followed this old track with community mental health services.

Many dedicated individuals across state agencies, SPHs, LME/MCOs, and service provider staff worked tirelessly again this year to break down barriers and assist individuals to move to and continue to live in their own home even considering workforce issues and staff turnover. Perhaps the most encouraging work has occurred with LME/MCO, now Tailored Plan, staff and leaders among individuals with lived experience. Their voices, creativity, and commitment are key to the State meeting its obligations in the Settlement Agreement and the promise of a recovery-focused community-based system for individuals in the future.

