

**EXECUTIVE SUMMARY
OF THE
FY 2020 FINAL 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

March 1, 2021

This is the Executive Summary of the FY 2020 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 submits an annual report each year of this Agreement. The report documents North Carolina's (the State's) progress in meeting July 1, 2020, requirements, and the State's overall progress in meeting all the Settlement Agreement (SA) obligations by July 1, 2021.

The State is on track to meet one of six major Settlement Agreement requirements, Pre-screening and Diversion, in FY 2021 and to meet two major milestones of the critical Supported Housing requirement: 1) three thousand (3,000) individuals living in supported housing slots before July 1, 2021; 2) individual have access to housing; and close to meeting a third requirement that individuals are provided housing with tenancy rights, housing locations that don't limit community activities and individuals have a choice of daily living activities. The State is not on track to meet the Supported Housing requirement for two thousand (2,000) individuals to move from an adult care home and occupy a supported housing slot. This requirement is one of the main sub-requirements in this Settlement Agreement and is at the heart of the alleged *Olmstead* violations leading to this Agreement.

Nonetheless, the State increased the number of individuals living in supported housing by three hundred and thirty-one (331) between March 1, 2020, and December 31, 2020. Many In-reach staff, Transition Coordinators, and service providers risked their own safety during this pandemic to ensure that if individuals wanted to move from institutions where they were living in extremely close contact with other people or living in unsafe community locations, they would find a way to assist them to move. They helped individuals remain safely isolated in their own home.

Based on current information, the State's current and immediate plans, and progress to date, the State is making substantial progress towards meeting up to four (4) of fourteen (14) Discharge and Transition Process requirements in FY 2021. The State cannot meet the Community-Based Mental Health Services, Supported Employment and Quality Assurance and Performance Improvement requirements by July 1, 2021.

This report will reference the program the State designed to comply with the obligations of the SA, as the Transitions to Community Living Initiative (TCLI). Individuals identified for TCLI are eligible for assistance with the Discharge and Transition Process including diversion from adult care homes (ACHs). Individuals may gain TCLI eligibility through a required pre-screening process, get access to and assistance with 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

¹ Annual reports are submitted for the State's fiscal year which begins on July 1 and ends on June 30 each year.

system to ensure that community-based placements and services are in accordance with this Agreement.

The worst health crisis in the United States in the past one hundred years stymied the State's efforts to meet all the FY 2020 requirements and has delayed progress to meet FY 2021 requirements. It has also interfered with the Independent Reviewer's planned field work to fully measure the State's progress toward compliance with all the 2012 Settlement Agreement requirements. Knowing that the review would take longer to complete, the Reviewer has submitted the Annual Report in two parts. The first was an Interim Report submitted to the Parties on November 15, 2020, which included information and findings for items assessed at the end of the FY 2020 fiscal year. This Final FY 2020 Annual Report includes findings that required the Reviewer to complete field work in the first four months of FY 2021 when it was determined safer to conduct reviews in the community. This extra time afforded the Reviewer the opportunity to complete the field work necessary to complete this Annual Review. Given that FY 2021 was the last scheduled year of the Settlement Agreement, this report also includes progress and findings for information reported to the Reviewer through the end of calendar year 2020. This enabled the Reviewer to project that the State will meet several important Settlement Agreement requirements by July 1, 2021.

This report includes information from one hundred and forty-eight (148) interviews, including forty-seven (47) interviews and desk reviews referenced in this report as the "fall 2020 review²." A desk review includes a review of records and transition timeframes, and an interview of service provider(s) and staff of the Local Management Entities/Managed Care Organizations (LME/MCOs). There were twenty-seven (27) joint interviews of state psychiatric hospital (SPH) and LME/MCOs staff.

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

The state made progress meeting the **Section III. (B)(3) Community-Based Supported Housing** requirement for individuals occupying housing slots, falling short of its FY 2020 requirement to fill two thousand five hundred and fifty-four (2,554) by just four (4) slots, despite the challenging last four months of the reporting year because of the pandemic. The State made excellent progress in the first six months of FY 2021 enabling individuals to occupy housing slots and will meet the requirement for three thousand (3,000) individuals to be occupying housing slots by July 1, 2021.

² This report includes a number of references to a fall 2020 review. The fall 2020 review includes first person interviews with individuals eligible for TCLI benefits, including supported housing, services and supports, LME/MCO staff, service providers, State staff including State Psychiatric Hospital staff and Guardians. The review also included a review of documents including but limited to clinical records and reports.

As referenced in the Interim Report, the NC Department of Health and Human Services (DHHS) has partnered closely over the last several years with the State's Housing Finance Agency (NC HFA) to improve the capacity 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, leverage multiple types of federal funds, and improve its decision-making tools and technical assistance. This collaboration has reduced the problem of housing availability, although it will always remain a challenge; affordable housing for individuals with low incomes and other barriers is a nationwide issue.

Availability is no longer the greatest barrier to the State meeting its housing obligations. Ensuring access to safe affordable housing with support for daily living activities is a greater challenge especially for individuals living in ACHs, those with health challenges and/or with criminal justice backgrounds, The DHHS and NC HFA have built the infrastructure, established processes and reduced barriers for individuals with those challenges. The LME/MCO Housing Specialists have built stronger relationships with landlords and property managers. These steps have enabled the State to make progress meeting **Section III. (B)(1)** but the State's performance implementing discharge and transition process requirements **Section III. (E)** are not yet effective for a significant number of individuals eligible for TCLI to gain access to supported housing in a timely manner if at all.

The State did not make progress, however, toward providing supported housing for two thousand (2,000) individuals exiting adult care homes to occupy supported housing slots, as required in **Section III. (B)(5)** of the SA to occur by July 1, 2021.

The State is continuing to make progress to provide pre-and post-tenancy support to ensure individuals have access to housing, with tenancy rights, and housing that affords individuals choice in daily activities, community activities of their choosing, and with access to non-disabled individuals as required in **Section III. (B)(7)**.

The fall 2020 review revealed the State's performance is far short of meeting requirements in **Section III. (C) Community-Based Mental Health Services** 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 of sixty-five (65) individuals living in the community, either in supported housing or in other locations³ in the Fall 2020 review and other documentation related to the provision of community based mental health services. The state achieved slightly higher scores on the requirement for staff to assist individuals to access natural supports and to utilize natural

³ Individuals living in the community but not living in supported housing may have been issued a housing slot but either chose not to use it or have left their supported housing unit and remain eligible for supported housing, services and supports.

supports to prevent crises, but the State's performance was still insufficient to meet these requirements.

The person-centered planning process scores were extremely low, with slightly more than forty percent (40%) of individuals having a person-centered plan that fully or even partially meets requirements. The process is often formulaic and repetitive and not individualized; sometimes the plans only included the instructions for filling out the form and not responses to the instructions. The Plans are often out of date and often new plans are the same as previous plans. Securing service authorizations appears to be the primary purpose for completing these plans. 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 met the requirement to adopt an evidence-based supported employment model, Individual Placement and Support (IPS-SE) in 2013 as required **Section III. (D)(2)**. But the State is not meeting the requirements in **Section III. (D)(1) Supported Employment** to develop and implement measures to provide supported employment to individuals "in or at risk of entry into" adult care homes. The State needs to take further action to demonstrate that individuals in TCLI, who are interested in employment, get the opportunity and access to supported employment and are provided assistance with preparing for, identifying, and maintaining employment. The fall FY 2020 reviews revealed that of the thirty-eight (38) individuals indicating an interest in employment and/or education, only four (4) received support to pursue this interest. Not all providers utilize vocational rehabilitation funding, there is limited interaction between the individual's service provider and their IPS-SE team, and there is a limited number of supported employment providers that meet fidelity as required in the Settlement Agreement in some areas of the state. It is more understandable that this would be a challenge in rural areas, but the problems were also present in some urban areas.

The State took one major step in FY 2020 toward its **Section III.(D)(1)** obligation to increase the effectiveness of the IPS-SE program. This step was to test out a new financing and incentive model to increase TCLI referrals and to cover expenses for individual engagement and follow-along supports. This model contemplates a full partnership between LME/MCOs, service providers, and counselors from the Division of Vocational Rehabilitation (VR). The model is in a pilot phase with the Vaya LME/MCO, its provider agencies, and VR. The pilot program, referred to as NC CORE, began in January 2020 and was beginning to show good preliminary results when COVID delayed job searches and a number of service recipients disengaged. Managing this process requires the pilot's managers to have cross-systems data (VR, mental health, and

Medicaid) to track results and demonstrate the effectiveness of the model to assist individuals in TCLI to get and maintain employment.

The State was slow in completing a data-sharing agreement between three Department of Health and Human Services (DHHS) divisions responsible for financing and implementing IPS-SE and is still in the early phase of implementing this agreement. This agreement is vital for the State to measure the effectiveness of this model, which in turn is vital to determine what steps are necessary to meet the SA's Supported Employment requirements. The State has discussed expansion of this model, but planning is still in an early stage and, as evidenced by the NC CORE pilot, may require more time, given COVID and continued lack of referrals for individuals in the "in or at risk" and TCLI group.

It is also not clear that the State met the FY 2020 metric in **Section III. (D)(3)**, requiring it to provide **IPS-SE** services to two thousand one hundred and ninety-three (2,193) people in the target population, because nearly twenty percent (20%) of the two hundred and eighteen (218) individuals verified as eligible to receive the service were in the count as "provided" the service in FY 2020 through April 1, 2020. By October 1, 2020 that the number of individuals in that group receiving supported employment services dropped to forty percent (40) when there was no evidence from claims data indicating individuals received a service. Information from the fall 2020 review and follow-up analysis also revealed that the State needs to refine the verification process to accurately track the number of individuals provided Supported Employment Services who are "in or at risk of" adult care home placement. A review of this requirement will take place again prior to the end of FY 2021.

The **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 diverted from admission to ACHs. The COVID outbreak led to restricted access to adult care homes, so the fall 2020 review included only five (5) ACH visits to interview six (6) individuals. The psychiatric hospitals were mostly successful in controlling the COVID outbreak, providing an opportunity to conduct twenty-three (23) joint interviews with state psychiatric staff and LME/MCOs in August and September and another three (3) in November. These were in addition to interviews conducted in psychiatric hospitals in June and July, reported on in the FY 2020 Interim Report. There was also an opportunity to review thirty-three (33) individuals diverted from ACHs, including individuals who had recently transitioned into the community, were living in supported housing or other community locations, or had returned to an ACH.

In-reach staff did not always make frequent contact with individuals who expressed interest in moving or provide them with accurate information. There was evidence that over time there were increasingly fewer issues brought to the State's Barriers Committee addressing transition barriers and of staff being unclear on their responsibilities to document, report, and mitigate

barriers. Some of these “follow-through” delays were related to COVID, as was a failure to facilitate community visits for individuals considering a move to supported housing. The review team reviewed the timelines of transitions that occurred before and after the onset of the COVID pandemic, along with other records and progress notes. These reviews revealed that patterns of infrequent contact with individuals on in-reach and not facilitating community visits occurred both before and after COVID restrictions took effect.

On a positive note, the State has continued to address discharge, in-reach, and transition process challenges, including developing a new jointly informed decision-making tool, remediating some critical barriers, and challenging LME/MCOs to report barriers as they arise. The state is creating action plans to address these critical issues, establish and monitor performance, and give attention to improving access requirements. The State is on track to meet four (4) of the fourteen (14) Discharge and Transition Process sub-requirements and if the State takes prompt action, the State can potentially meet the discharge and transition process requirements in the next twelve months.

The State failed to provide information on five (5) of eight (8) **Section III. (G) Quality Assurance and Performance Improvement** requirements. This includes information on steps the State is taking to develop and implement a quality assurance and performance improvement system. The State is now seeking assistance from an outside firm to develop a State QA/PI system to meet the Settlement Agreement requirements. The State continues to report information on their External Quality Review (Medicaid requirement) and has established a Transition Oversight Committee. The State requires LME/MCOs to conduct quality of life surveys, but the method used typically yields similar results regardless of the individual’s experience. The Settlement Agreement does not specify the type of survey to use, just the timing of the survey. However, other more useful methods are available and could provide better information that is more helpful to individuals and to staff.

Many dedicated individuals, state psychiatric hospital staff, and LME/MCO and service provider staff worked tirelessly this year to assist individuals to move to and continue to live in their own home even in light of the COVID pandemic. State staff made progress to implement selected requirements of this Agreement, that when implemented help individuals transition and live successfully in the community. But the fall FY 2020 review brought to mind the final phrase from the FY 2018 Reviewer’s Annual Report, still an all-too-common refrain:

So many individuals voiced their feelings of being isolated, lonely, and unsure if they have the strengths to live successfully in the community. Life is not just a service, although services and supports are essential. It is also community, faith, friends, acquaintances, and family. It is a safe and decent home, a job and/or activities that an individual finds rewarding and fulfilling.