



December 17, 2024

Plaintiffs' Response and Comments on Defendants' December 5, 2024 *Samantha R. Reporting Status Update*

Below are Plaintiffs' comments on Defendants' December 5 *Samantha R. Reporting Status Update* for the period April 1, 2024 – June 30, 2024 ("December 5 Report" or "Quarterly Report"). A report for this period was due October 15, 2024 but not submitted. Defendants provided a report on November 1, 2024, and Plaintiffs responded by letter on November 8, 2024. Those documents are attached. The November 8 letter was primarily focused on the terms of reporting required by the Consent Order and the lack of data originally provided. Those comments are incorporated here rather than being repeated.

Summary of Comments

The December 5 Report is missing core information needed to assess compliance and to ensure that gaps in services are remedied through future compliance or orders.

Specifically, the December 5 Report from Defendants raises the following concerns:

- Defendants have failed to gather core data regarding LME/MCO transition and diversion activities, making it difficult to determine whether Defendants are on track to meet the transitions and diversions benchmark. *Quarterly Report*, pp. 4-5.
- Defendants have failed to demonstrate compliance with the benchmark requiring a utilization rate of at least 82% for DSPs providing a core Innovations Waiver service; no data was reported or projected regarding this benchmark. *Quarterly Report*, p. 8.
- Although incomplete information makes it difficult to determine, Defendants do not appear to have met the benchmark requiring transition from (b)(3) services to 1915(i) services for those on the Innovations Waiver Waiting List by June 2024. *Quarterly Report*, p. 7.
- Defendants are not tracking the unmet needs of those on the Innovations Waiver Waiting List who are receiving 1915(i) services but still have unmet needs. *Quarterly Report*, p. 6.
- No data was provided for IV.1.h, which is qualitative information about successful and unsuccessful transitions.

Background

The Consent Order has two primary features. The first is a set of benchmarks for progress toward ensuring that individuals currently living in settings defined as "institutional" are provided an avenue for transitioning to community-based services and ensuring that

Defendants are actively and effectively building service capacity in the community. The second is a set of reporting requirements designed to provide the parties and the Court with information necessary to measure the continued unmet needs in the I/DD community for purposes of determining progress toward compliance with *Olmstead* principles and/or for developing future remedial orders and benchmarks.

The Consent Order requires Defendants to produce quarterly reports over a period of approximately two years that contain information to assess Defendants' compliance with the Consent Order, as well as data to guide further remedies. The December 5 Report covers the period from April 2024-June 2024 and was due on October 15, 2024. Defendants contested the timing requirement regarding the initial report, as reflected in the November 1, 2024 Report and Plaintiffs' response. However, the parties agree that the next report from Defendants is due January 15, 2025.

Benchmark Compliance

Benchmark 1.A requires the transition of 78 individuals from institutional settings to community-based services by June 2025. *Consent Order*, p. 9. It is unclear if Defendants are on track to meet this Benchmark.

- a. Basic information is missing from two of the four LME/MCOs on all reportable measures. *Quarterly Report*, pp. 4-5. Given that each LME/MCO should have an *Olmstead* coordinator and a focus on *Olmstead* compliance, it is unclear why there is no tracking of transitions or diversions.
- b. It is unclear how eligibility for diversion and diversion activities are being used. This may be a point to be clarified between the parties.
- c. No information was reported for IV.1.h regarding successful and unsuccessful transitions.

Benchmark 1.B requires the assessment of 3,000 individuals with I/DD for 1915(i) services by June 2024. *Consent Order*, p. 11. It also requires, by the same date, the transition to 1915(i) services of individuals on the Innovations Waiver Waiting List who are receiving a specific category of services called (b)(3). *Consent Order*, p. 12. The Consent Order further requires that Defendants provide assessments for 1915(i) within 90 days of receiving a request for assessment from an individual with I/DD. *Consent Order*, p. 11. Getting individuals connected with 1915(i) services is a core part of addressing unmet needs and developing the data to track the extent of continued unmet need.

- a. While Defendants have not tracked I/DD-specific assessments for 1915(i), they have made a plausible argument that, of those assessed for 1915(i), it is likely that at least 3,000 individuals with I/DD were assessed by the June 2024 deadline. *Quarterly Report*, p. 5.
- b. On the other hand, Defendants do not have data on how many individuals received an assessment within 90 days of requesting one. *Quarterly Report*, p. 5.

The Quarterly Report, item IV.1.I, also fails to include the number of days individuals have been waiting in excess of 90 days for assessment.

- c. It is unclear how many individuals with open (b)(3) authorizations were transitioned to 1915(i). The Defendants' comment on this issue says that I/DD data is not separated out (*Quarterly Report*, p. 5), but those receiving (b)(3) services due to being on the Innovations Waiver Waiting List are all presumably individuals with I/DD. The question for this Benchmark is whether everyone receiving (b)(3) services has been transitioned to 1915(i). The answer should be yes or no. Defendants should clarify the answer on this Benchmark.
- d. Defendants are required to report on unmet needs experienced by those receiving 1915(i) services but are not currently collecting that data. *Quarterly Report*, p. 6. ***It cannot be emphasized enough how critical this information is to the development of a better understanding of the unmet need and therefore a clearer picture of the remaining remedial efforts required.*** Given the lack of data collection, it is unclear how Defendants determined and report that 1,341 people with I/DD receiving 1915(i) services need additional support beyond what they are receiving through 1915(i). *Quarterly Report*, p. 6.

Benchmark 2.A requires that Defendants (through their contractors) ensure that the utilization rate for the Community Living and Supports (CLS) Waiver service is at least 82% by June 2024 and 85% by June 2025. *Consent Order*, p. 14. The purpose of this Benchmark is to promote and measure greater availability of Direct Support Professionals (DSPs). Requiring an increase in the utilization rate is meant to prompt greater support (e.g. pay, training) for DSPs, making it easier for those with approved services to actually have those services delivered.

- a. The comments regarding Benchmark 2.A indicate that contracts will be amended to track compliance with the requirement to reach 85% utilization rate for CLS by June 2025. *Quarterly Report*, p. 8. However, this does not address the June 2024 deadline for a utilization rate of 82%. Defendants should clarify whether they will be reporting data regarding compliance with the June 2024 benchmark.
- b. The Consent Order requires that Defendants report the overall number of hours of CLS that were authorized and billed, the number of units of CLS authorized, by LME/MCO, and the number of units billed, by LME/MCO. *Consent Order*, p. 18. These were not reported, but it appears from the comments that the necessary contract amendments were made to produce reporting on this data beginning with the next report. *Quarterly Report*, pp. 6-7.
- c. The next report should also include the number of units of CLS not utilized **due to lack of provider availability**. As with 1915(i) data regarding continuing unmet need, this is a core data point for assessing unmet needs and the extent to which the ongoing DSP shortage is being addressed by the LME/MCOs. It is imperative that the LME/MCOs be required to track this data in a way that isolates the cause of unbilled authorized hours. This is already a statutory requirement. N.C. Gen. Stat. § 122C-117.

Data Concerns

The Consent Order provides:

During this two year period [of the Consent Order], in order to inform the parties and the Court on appropriate next steps if any toward Olmstead principles and deinstitutionalization, including the potential development of one or more new benchmarks, DHHS will collect data pertaining to transitions, diversions, and the implementation of the 1915(i) service option and report that data as specified below in Section IV, **revising its contracts with LME/MCOs as needed in order to collect and report the specified data.**

Consent Order, pp. 12-13 (emphasis added).

The parties contemplated, and the Consent Order reflected, that compliance with the benchmarks and reporting requirements would entail Defendant DHHS amending contracts with its contractors (LME/MCOs). The December 5 Report indicates that, even though the Consent Order was finalized in proposed form in February 2024 and entered in May 2024, the relevant contract amendments have not been completed. While it was anticipated that some information would not be available immediately due to the new requirements, it was likewise anticipated that the amendments would be in place shortly after the Consent Order so that reporting would proceed in a timely manner.

A particular point of emphasis from Plaintiffs in the development of the Consent Order was oversight of LME/MCOs and Defendants' ultimate responsibility for the compliance (or non-compliance) of contractors. The state committed – in the form of a Consent Order – to the collection of specific data. The failure to ensure production of the data falls on Defendants as it relates to compliance with the Consent Order.

In summary, the December 5 Report indicates that Defendants have not met initial benchmarks, although the gaps in data make it unclear in some instances. In addition, the December 5 Report raises concerns about data collection, which is a primary purpose of the two-year Consent Order. Plaintiffs believe the next Quarterly Report (due January 15, 2025), will provide important insight regarding Defendants' capacity to meet the terms of the Consent Order, particularly with regard to reporting requirements.

ATTACHMENTS

NC Department of Health and Human Services
Inclusion Connects: Samantha R. Reporting Status Update



Nov 1, 2024

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Reporting Update

In May 2024, North Carolina Department of Health and Human Services' (DHHS) and Disability Rights North Carolina (DRNC) agreed to a consent order in the Samantha R. et al. vs. DHHS and the State of North Carolina litigation (the Consent Order) outlining specific activities that DHHS will pursue to support individuals with intellectual and/or developmental disabilities (I/DD). DHHS is required to compile quarterly reports on specified measures to demonstrate compliance with the Consent Order. This report summarizes DHHS' approach to report on each measure and provides insight into the status of data collection required to fulfill Consent Order reporting requirements.

DHHS collects most data required under the Consent Order from the Local Management Entities / Managed Care Organization and the Tailored Plan (collectively, the LME/MCOs) reporting (monthly or quarterly). DHHS reviews and evaluates LME/MCO reporting to identify discrepancies and draw conclusions that can drive action. It is important to note that, while data quality from initial LME/MCO reporting has been inconsistent, DHHS continues to work directly with LME/MCOs to improve the quality and accuracy of the data.

In addition to the LME/MCO-reported data, DHHS also relies on claims and encounters data to draw insights on service delivery, utilization, etc. To ensure the most accurate, reliable insights from claims and encounters data, DHHS does not pull data extracts for analysis until at least 90 days after the end of a specific reporting period. As such, claims and encounters data prior to July 1, 2024, is not included in current reporting. Similarly, DHHS does not yet have access to some LME/MCO data because certain LME/MCO reports are not yet required to be submitted.

This report is intended to be a status summary of the availability of data required to meet Consent Order reporting requirements. DHHS intends to submit the first full quarterly report required under the Consent Order to DRNC on Jan 15, 2025.

Quarterly or Semi - Annual Reporting

The table below includes reporting requirements specified in Section IV (Quarterly or Semi-Annual Reporting) of the Consent Order.

Consent Order Section	Reporting Category	Reporting Requirement	Collection Method	Status
IV.1.a	Diversion and Transition Services	Number of individuals diverted from institutional settings during the preceding fiscal quarter, each preceding fiscal year (if applicable), and cumulatively.	LME/MCO data provided via a quarterly report (I/DD In Reach, Diversion, Transition Activity Report) as part of the TP Contract.	<ul style="list-style-type: none"> DHHS is conducting technical assistance calls with the LME/MCOs on Nov 6, 2024, to address discrepancies in the quarterly report covering Apr - Jun 2024. Report covering the period from Jul - Sep 2024 is due to DHHS on Nov 30, 2024.
IV.1.b	Diversion and Transition Services	Number of people transitioned from institutional settings during the preceding fiscal quarter, each preceding fiscal year (if applicable), and cumulatively.	LME/MCO data provided via a quarterly report (I/DD In Reach, Diversion, Transition Activity Report) as part of the TP Contract. MFP Program Data	<ul style="list-style-type: none"> DHHS is conducting technical assistance calls with the LME/MCOs on Nov 6, 2024, to address discrepancies in the quarterly report covering Apr - Jun 2024. Report covering the period from Jul - Sep 2024 is due to DHHS on Nov 30, 2024. <p>MFP Program reported 68 individuals with I/DD transitioned from institutional settings during SFY2024. Updated MFP program data will be included in the Jan 15, 2025 report.</p>
IV.1.c	Diversion and Transition Services	Number and percentage of individuals with I/DD eligible for In-reach activities who are engaged for In-reach activities.	LME/MCO data provided via a quarterly report (I/DD In Reach, Diversion, Transition Activity Report) as part of the TP Contract.	<ul style="list-style-type: none"> DHHS is conducting technical assistance calls with the LME/MCOs on Nov 6, 2024, to address discrepancies in the quarterly report covering Apr - Jun 2024. Report covering the period from Jul - Sep 2024 is due to DHHS on Nov 30, 2024.
IV.1.d	Diversion and Transition Services	Number and percentage of individuals with I/DD who began transition planning following In-reach.	LME/MCO data provided via a quarterly report (I/DD In Reach, Diversion, Transition Activity Report) as part of the TP Contract.	<ul style="list-style-type: none"> DHHS is conducting technical assistance calls with the LME/MCOs on Nov 6, 2024, to address discrepancies in the quarterly report covering Apr - Jun 2024. Report covering the period from Jul - Sep 2024 is due to DHHS on Nov 30, 2024.
IV.1.e	Diversion and Transition Services	Number and percentage of individuals with I/DD eligible for diversion activities.	LME/MCO data provided via a quarterly report (I/DD In Reach, Diversion, Transition Activity Report) as part of the TP Contract.	<ul style="list-style-type: none"> DHHS is conducting technical assistance calls with the LME/MCOs on Nov 6, 2024, to address discrepancies in the quarterly report covering Apr - Jun 2024. Report covering the period from Jul - Sep 2024 is due to DHHS on Nov 30, 2024.
IV.1.f	Diversion and Transition Services	Number and percentage of individuals with I/DD who remain in the community after engaging in diversion activities.	LME/MCO data provided via a quarterly report (I/DD In Reach, Diversion, Transition Activity Report) as part of the TP Contract.	<ul style="list-style-type: none"> DHHS is conducting technical assistance calls with the LME/MCOs on Nov 6, 2024, to address discrepancies in the quarterly report covering Apr - Jun 2024. Report covering the period from Jul - Sep 2024 is due to DHHS on Nov 30, 2024.
IV.1.g	Diversion and Transition Services	Number and percentage of individuals with I/DD age 18 and above identified for transition who are discharged through the transition planning process.	LME/MCO data provided via a quarterly report (I/DD In Reach, Diversion, Transition Activity Report) as part of the TP Contract.	<ul style="list-style-type: none"> DHHS is conducting technical assistance calls with the LME/MCOs on Nov 6, 2024, to address discrepancies in the quarterly report covering Apr - Jun 2024. Report covering the period from Jul - Sep 2024 is due to DHHS on Nov 30, 2024.
IV.1.h	Diversion and Transition Services	Information related to both successful and unsuccessful transitions.	LME/MCO data provided via a quarterly report (I/DD In Reach, Diversion, Transition Activity Report) as part of the TP Contract. Supplemented by Regional Housing Plan data beginning in CY2025.	<ul style="list-style-type: none"> DHHS is conducting technical assistance calls with the LME/MCOs on Nov 6, 2024, to address discrepancies in the quarterly report covering Apr - Jun 2024. Report covering the period from Jul - Sep 2024 is due to DHHS on Nov 30, 2024.

Consent Order Section	Reporting Category	Reporting Requirement	Collection Method	Status
IV.1.i	1915(i) Implementation	Number of individuals with I/DD for whom the 1915(i) assessment and approval process has been completed.	LME/MCO data provided via a quarterly report (1915(i) assessments completed for those with I/DD)	<ul style="list-style-type: none"> From July 2023 to April 2024, a total of 6,100 assessments were completed for individuals with open authorizations. However, DHHS was unable to separate data for individuals with I/DD from the larger assessment population for that period. The issue has since been resolved and DHHS can isolate the I/DD population for assessment data beginning in July 2024. For July- September 2024 reporting period, 2164 individuals with I/DD have completed 1915(i) assessments.
IV.1.j	1915(i) Implementation	Number of individuals with I/DD receiving 1915(i) services.	Quarterly data pulls from DHHS claims and encounters.	<ul style="list-style-type: none"> For the April – June reporting period, 10,131 individuals with I/DD received 1915(i) services.
IV.1.k	1915(i) Implementation	Number of individuals who received an assessment for 1915(i) services within 90 days of requesting an evaluation.	Will be added as contract requirement in future TP contract amendment.	<ul style="list-style-type: none"> DHHS does not currently have a mechanism to track the number of days from 1915(i) assessment request to completion of the evaluation. DHHS is working with the LME/MCOs on a solution to track this requirement and will include it in a future contract amendment.
IV.1.l	1915(i) Implementation	Number of individuals who waited, or have waited, more than 90 days for an assessment, including the number of additional days waiting.	Will be added as a contract requirement in future TP contract amendments.	<ul style="list-style-type: none"> DHHS does not currently have a mechanism to track the number of days from 1915(i) assessment request to completion of the evaluation. DHHS is working with the LME/MCOs on a solution to track this requirement and will include it in a future contract amendment.
IV.1.m	Continuing Unmet Need	Number and percentage of people on the Innovations Waiver Waitlist ¹ receiving I/DD-related services for the reporting quarterly period including 1915(i), HCBS, State-Funded Services, or In-Lieu of Services.	Quarterly data pulls from DHHS claims and encounters cross-referenced against LME/MCO monthly report (Innovations / TBI Waiver Slot and Waiting List Report).	<ul style="list-style-type: none"> Limited LME/MCO data is available for the reporting period of Apr-Jun 2024. DHHS is working closely to with LME/MCOs to improve data quality and completeness. For the April – June reporting period, 5,703 individuals (31%) on the Waitlist are receiving or have received one or more of the I/DD related services.
IV.1.n	Continuing Unmet Need	Number and percentage of individuals receiving 1915(i) services who need additional services in addition to their approved 1915(i) services.	Quarterly data pulls from DHHS claims and encounters cross-referenced against LME/MCO monthly report (Innovations / TBI Waiver Slot and Waiting List Report).	<ul style="list-style-type: none"> For the April – June reporting period, 1,341 individuals on the Waitlist were receiving 1915(i) services during the reporting period. The current data does not allow the department to see who needs additional services currently. For future calculations, Claims and Encounter data will be utilized to see how many of these individuals are receiving other services.
IV.1.o	Continuing Unmet Need	Number of people remaining on the Innovations Waitlist, and the number removed from the Innovations Waitlist during the data reporting fiscal quarter, each preceding fiscal year (if applicable), and cumulatively.	LME/MCO data provided via a monthly report (Innovations / TBI Waiver Slot and Waiting List Report)	<ul style="list-style-type: none"> As of June 30, 2024, there were 17,900 individuals remaining on the Waitlist. This data will be updated to reflect the full quarter in the January 15th report. 336 individuals were removed from the Waitlist from April – Jun 2024.
IV.1.p	Continuing Unmet Need	Status of the use of waiver slots and reserve capacity.	LME/MCO data provided via a monthly report (Innovations / TBI Waiver Slot and Waiting List Report)	<ul style="list-style-type: none"> As of June 2024, there were 13,899 active slots and 115 reserve slots open.

¹ Previously referred to as “Registry” or “Registry of Unmet Needs.” This term has been retired by DHHS and will no longer be used.

Consent Order Section	Reporting Category	Reporting Requirement	Collection Method	Status
IV.1.q	DSP Availability	The overall percentage of authorized hours of Community Living and Supports (CLS) that were billed.	LME/MCO data provided via a quarterly report (1915 Service Authorization) as part of the TP Contract.	<ul style="list-style-type: none"> First LME/MCO report that tracks this metric is due to DHHS on Jan 1, 2025, which will cover the reporting period from Jul 1, 2024 – Sep 30, 2024.
IV.1.r	DSP Availability	Number of units of CLS authorized, by LME/MCO.	LME/MCO data provided via a quarterly report (1915 Service Authorization) as part of the TP Contract.	<ul style="list-style-type: none"> First LME/MCO report that tracks this metric is due to DHHS on Jan 1, 2025, which will cover the reporting period from Jul 1, 2024 – Sep 30, 2024.
IV.1.s	DSP Availability	Number of units of CLS billed, by LME/MCO.	LME/MCO data provided via a quarterly report (1915 Service Authorization) as part of the TP Contract.	<ul style="list-style-type: none"> First LME/MCO report that tracks this metric is due to DHHS on Jan 1, 2025, which will cover the reporting period from Jul 1, 2024 – Sep 30, 2024.
IV.1.t	DSP Availability	Number of units of CLS not utilized because of lack of provider or staff availability, by LME/MCO	LME/MCO data provided via a quarterly report (1915 Service Authorization) as part of the TP Contract.	<ul style="list-style-type: none"> First LME/MCO report that tracks this metric is due to DHHS on Jan 1, 2025, which will cover the reporting period from Jul 1, 2024 – Sep 30, 2024.

General Consent Order Requirements

The table below includes general Consent Order requirements that are not explicitly included in Section IV (Quarterly or Semi-Annual Reporting) of the Consent Order.

Consent Order Section	Reporting Requirement	Status
III.A. Transitions	<p>Defendants will support increased access to community-based services by transitioning eligible individuals who make an informed choice to transition to a community-based setting, and for whom a community-based setting is appropriate, as provided in the schedule below. These transitions may be facilitated and funded through Money Follows the Person and/or other appropriate funding sources.</p> <ul style="list-style-type: none"> For the fiscal year ending June 30, 2025, Defendants will transition at least 78 individuals with I/DD from institutional settings to community-based settings. 	In Progress - DHHS continues to explore ways to leverage informed decision-making tools and transition standardization strategies. To increase awareness of and access to community-based resources, DHHS is releasing a Community Living Guide on their website on Nov 4, 2024. Progress on the number of transitions from SFY2025 (July 2024 - Dec 2024) will be included in the Jan 15, 2025, report.
III.A. Transitions	Defendants will require LME/MCOs to engage in and track In-Reach efforts, as defined above, about individuals with I/DD living in the following settings: (1) Intermediate Care Facilities for Individuals with Intellectual Disabilities not operated by the State, (2) State Developmental Centers, (3) State psychiatric hospitals, (4) Psychiatric Residential Treatment Facilities, and (5) Adult Care Homes (at present, for member with Serious Mental Illness only).	In Progress - DHHS tracks LME/MCO In-reach data through quarterly LME/MCO reporting (the I/DD In Reach, Diversion, Transition Activity Report). Beginning in CY2025, DHHS will also require LME/MCOs to submit Regional Housing Plans, which will include greater detail about In-reach efforts and activities.
III.A. Transitions	With respect to In-reach within Adult Care Homes, DHHS will update its contract language with LME/MCOs to remove the limitation that In-reach obligations pertain to members with Serious Mental Illness only.	In Progress - DHHS to add I/DD members to Adult Care Home in-reach obligations during the upcoming Winter 2024 Tailored Plan Contract amendment cycle.
III.1.B. Diversion and Addressing Unmet Needs Through the Medicaid 1915(i) Service Option and Collecting Data Relating to Its Implementation.	By June 30, 2024, Defendants will have completed the assessment and approval process for 3,000 individuals with I/DD for eligibility for 1915(i) services. Completing the approval process may include approving for services, denying services, or approving in part and denying in part requested services. DHHS will document evidence of the number of individuals with I/DD who are not interested in being assessed for 1915(i) services, in the quarterly report.	<p>In Progress – From July 2023 to April 2024, a total of 6,100 assessments were completed for individuals with open authorizations for 1915(b)(3) services. However, DHHS was unable to separate data for individuals with I/DD from the larger assessment population for that period.</p> <p>The issue has since been resolved and DHHS can isolate the I/DD population for assessment data beginning in July 2024. For July- September 2024 reporting period, 2164 individuals with I/DD have completed 1915(i) assessments.</p>
III.1.B. Diversion and Addressing Unmet Needs Through the Medicaid 1915(i) Service Option and Collecting Data Relating to Its Implementation.	By June 30, 2024, all 1915(i) eligible individuals with I/DD with open authorizations for 1915(b)(3) services will be transitioned to appropriate 1915(i) services.	<p>In Progress – From July 2023 to April 2024, a total of 6,100 assessments were completed for individuals with open authorizations for 1915(b)(3) services. However, DHHS was unable to separate data for individuals with I/DD from the larger assessment population for that period.</p> <p>Due to delays in assessment processing and challenges with the FPL, the original Jun 30, 2024, deadline to complete all assessments was extended to Nov 30, 2024. DHHS is working with CMS to resolve the challenges with FPL.</p>
III.1.B. Diversion and Addressing Unmet Needs Through the Medicaid 1915(i) Service Option and Collecting Data Relating to Its Implementation.	<p>To advance implementation of 1915(i) services, DHHS will do the following:</p> <ul style="list-style-type: none"> Initiate and participate in quarterly and as-needed discussions with LME/MCOs, providers, community stakeholders and the public about the implementation of 1915(i) services. 	Ongoing - DHHS has initiated a comprehensive, ongoing education campaign to enhance awareness and understanding of 1915(i) services for individuals with I/DD. DHHS facilitates quarterly discussions with LME/MCOs, service providers, community stakeholders, and the public, providing crucial updates and guidance on service implementation.
III.1.B. Diversion and Addressing Unmet Needs Through the	To advance implementation of 1915(i) services, DHHS will do the following:	Complete – DHHS hired a vendor to develop and implement a plain language campaign that includes communication-related to 1915(i) services. The campaign is designed to foster collaboration, address

Consent Order Section	Reporting Requirement	Status
Medicaid 1915(i) Service Option and Collecting Data Relating to Its Implementation.	<ul style="list-style-type: none"> Create a plain-language messaging campaign for potential beneficiaries of the 1915(i) service. DHHS will issue at least one communication using plain language to explain the 1915(i) service, and the implementation of same, to potential beneficiaries by June 30, 2024. 	<p>questions and concerns, and ensure that all stakeholders are fully informed about the processes, availability, and benefits of 1915(i) services.</p> <p>On June 18, 2024, DHHS hosted a webinar and published flyers to explain 1915(i) services to potential beneficiaries in plain language, meeting the Consent Order requirement. Subsequent communications have continued to build on this foundation, offering updated information, addressing ongoing inquiries, and ensuring continuous awareness as implementation progresses.</p>
III.1.B. Diversion and Addressing Unmet Needs Through the Medicaid 1915(i) Service Option and Collecting Data Relating to Its Implementation.	<p>To advance the implementation of 1915(i) services, DHHS will do the following:</p> <ul style="list-style-type: none"> Ensure that trainings are in place for LME/MCOs, Tailored Care Management entities, and Tailored Care Management providers. 	<p>Complete - DHHS has ensured that comprehensive training programs are in place for LME/MCOs, TCM entities, and TCM providers. These trainings focus on equipping stakeholders with the necessary knowledge and skills to effectively manage and deliver 1915(i) services. Tailored educational sessions have been provided to meet the specific needs of each group, and ongoing support ensures that these entities are fully prepared to implement 1915(i) services in line with state guidelines.</p> <p>Regular updates and refreshers are also provided to adapt to any changes or developments in service delivery processes, ensuring a smooth and informed implementation across all relevant organizations.</p>
III.2.A. Establish minimum utilization rates for Community Living and Supports.	<p>To increase access to CLS, DHHS will provide for the following minimum utilization percentages for CLS, revising or amending its contracts with the LME/MCOs as needed: By June 30, 2024, the minimum utilization rate of authorized CLS services provided to qualified individuals on the Innovations Waiver will be 82 percent.</p>	<p>In Progress – There is a Winter 2024 TP Contract Amendment currently being negotiated to raise the minimum utilization rate of authorized CLS services to qualified individuals on the Innovations Waiver to at least 82%, as required by the Consent Order.</p> <p>First LME/MCO report that tracks CLS utilization is due to DHHS on Jan 1, 2025, and will cover the reporting period from Jul 1, 2024 – Sep 30, 2024.</p>
III.2.B. Issues Relating to Training and Credentialing for DSPs.	<p>DHHS will evaluate recommendations from the AHEC Report and Best Practices to determine actionable activities to address the DSP Training and Credentialing Needs.</p>	<p>Complete – DHHS evaluated the AHEC Report and Best Practices during the DSP Workforce Plan development process.</p>
III.2.B. Issues Relating to Training and Credentialing for DSPs.	<p>DHHS will present a draft DSP Workforce Plan to address DSP workforce deficits to an advisory committee consisting of stakeholders including individuals with IDD, family members, DSPs, providers, and other stakeholders to garner feedback.</p>	<p>Complete – The Draft DSP Workforce Plan was presented to an advisory committee consisting of stakeholders including individuals with I/DD, family members, DSPs, providers, and other stakeholders to garner feedback, to develop a final Workforce Plan.</p>
III.2.B. Issues Relating to Training and Credentialing for DSPs.	<p>DHHS will provide a draft DSP Workforce Plan to Plaintiffs’ Counsel by May 1, 2024. Plaintiffs’ Counsel will provide any input or proposed changes to the draft to Defendants within 21 days of receipt. Defendants will receive and evaluate Plaintiffs’ proposed changes, if any. The parties agree to meet and confer on or before June 5, 2024, on any issues that cannot reasonably be resolved.</p>	<p>Complete – A Draft DSP Workforce Plan was submitted to DRNC on May 1, 2024.</p>
III.2.B. Issues Relating to Training and Credentialing for DSPs.	<p>DHHS will develop a final DSP Workforce Plan with specific actions and identified implementation dates no later than June 14, 2024. Plaintiffs retain the right, after evaluation of the final DSP Workforce Plan, to file a motion to challenge one or more terms of the Plan</p>	<p>Complete – A final DSP Workforce Plan, along with a redlined copy, was delivered to DRNC on Jun 14, 2024.</p>
III.2.B. Issues Relating to Training and Credentialing for DSPs.	<p>DHHS will launch implementation of DSP Workforce Plan no later than July 1, 2024. Nothing in this Consent Order shall be construed to preclude future orders by the Court regarding training or credentialing for DSPs or other matters related to availability of DSPs.</p>	<p>Complete – The DSP Workforce Plan initiatives were launched on or before Jul 1, 2024, and DHHS will continue to monitor progress towards completing its goal to strengthen the DSP Workforce in North Carolina.</p>



November 8, 2024

Michael Wood
Erin Hukka
NC Department of Justice
P.O. Box 629
Raleigh, NC 27601

Via email only

Re: Consent Order Report

Dear Michael and Erin:

Please see our comments below regarding the November 1, 2024 report you shared with us. As noted below, we hope to set up a time to discuss.

Failure to Make First Scheduled Report

The report that you shared entitled “Inclusion Connects: Samantha R. Reporting Status Update,” dated November 1, 2024, does not meet the requirements of the Consent Order issued in May 2024. The Consent Order requires the reporting of data to the Court and to counsel for Plaintiffs beginning with an October 15th report to cover the period of April to June 2024. Specifically, the Consent Order provides:

Defendants shall begin reporting on **currently available data** after the entry of this Consent Order, **on the schedule below**. For data that is not being collected as of the date of this Consent Order, reporting will begin after the first full quarter when the relevant data is available, either directly or through contractor reporting requirements, with all categories of data being available by January 1, 2025.

Consent Order, p. 18 (emphases added). The first sentence specifies that the reporting begins after entry of the Consent Order and not after the first full quarter after the order was entered, which is how you have interpreted it. The exception for reports that are not available until January wouldn't make any sense if all the reports were to start in January. Some data, such as the DSP utilization rates, are specifically tagged to dates within this first reporting period and were to be included in contracts for reporting such that they would be available.

The update that you shared does not have the data required in the reporting section of the Consent Order. *See Consent Order*, pp. 16-18 (listing 21 data points to be included in quarterly reports). In addition, the Consent Order requires that reports are to be shared with counsel for

Plaintiffs as well as the Court. *Consent Order*, p. 19. It does not appear that the report was shared with the Court. It is unclear whether the report was posted online as required by the Consent Order (p.19), although data that would be of interest to the community is not included in the report in any event.

Status of Benchmarks

The information included in the report indicates that some benchmarks have been met and some have not been met. Below we have summarized our understanding of what the report shows at this point, with the obvious caveat that we do not have the underlying data to assess the statements in the report.

Benchmark 1A – Not Applicable

Benchmark 1A requires 78 diversions for the fiscal year ending June 2025. Therefore, there is no data associated with benchmark 1A that needs to be addressed at this point.

Benchmark 1B Is Not Met

Benchmark 1B requires the completion of 1915i assessments for 3000 individuals and the transition of all individuals receiving b3 services to 1915i. The report indicates delays in accurate data collection from LME/MCOs. Requiring data reporting by LME/MCOs is an important aspect of the Defendants' obligations under the Consent Order. This benchmark is not met because it is unclear how many individuals with I/DD received assessments to date, or by the deadline of June 2024. In addition, not all individuals with I/DD receiving b3 services have been transitioned to 1915i. Defendants have failed to meet the June 2024 deadline for Benchmark 1B.

Benchmark 2A is Not Met

Benchmark 2A required the state to establish a DSP utilization rate of at least 82% by the end of June 2024. This is a critical measure because it is designed to help assess DSP availability and whether there are improvements in access to services that have been approved. Measuring the utilization rate requires tracking data from LME/MCOs. It was our understanding that the contracts would be updated in sufficient time to ensure that the data to track this benchmark would be collected. It appears that the contracts were not updated in a timely manner resulting in a lack of clarity on where DSP utilization rates stand. Notably, the terms of the Consent Order were negotiated over the course of months beginning over a year ago. Under the circumstances it is unclear why contracts were not updated in time to report this data. Benchmark 2A has not been met.

Benchmark 2B Appears to Be Met

We agree that the DSP plan was published to us and to stakeholders by the relevant deadlines. We do not have any information to verify or contest whether the plan is being implemented at this point.

Please let us know when we can expect the data report for the period from April through June 2024. In addition, we believe the Consent Order requires that these reports be submitted to the Court and published online. We believe that includes the November 1, 2024 report you have sent to us.

We hope to resolve issues with the reporting in a way that enables the Defendants to report the applicable data to the Plaintiffs, the Court, and the community soon. To that end, we would like to meet to discuss the data collection being done so that we can ensure that the January report is as robust as possible.

Please let us know by November 15th how you would like to proceed with regard to submitting the report to the Court and meeting to discuss the next report.

Thank you!

Sincerely,

A handwritten signature in black ink, appearing to be 'Lisa Grafstein', written in a cursive style.

Lisa Grafstein

A handwritten signature in black ink, appearing to be 'Emma Kinyanjui', written in a cursive style.

Emma Kinyanjui