



April 28, 2025

Plaintiffs' Comments on Defendants' *Samantha R.* April 15, 2025 Quarterly Report

Below are Plaintiffs' comments on Defendants' April 15, 2025 *Samantha R.* Quarterly Report for the period October 1, 2024 – December 31, 2024. The parties met on April 23, 2025 to discuss Plaintiffs' questions and comments regarding the April 2025 Quarterly Report.

General Comments

Plaintiffs appreciate Defendants' continued transparency, openness, and willingness to accept comments with regard to the status of benchmarks and reporting requirements, as well as ongoing efforts by DHHS leaders to address reporting and service gaps.

The April 2025 Quarterly Report continues Defendants' practice of reporting on Consent Order requirements in a narrative format, followed by a chart for the benchmarks and data reportable pursuant to the Consent Order. As noted previously, this format does not make the relevant information easily accessible to the public, the parties, and the Court. Defendants have begun providing for some data to appear online in more digestible formats and have indicated an intent to add additional Consent Order reporting data to the online portal.

Benchmark Compliance¹

Benchmark 1.A requires the transition of 78 individuals from institutional settings to community-based services for the fiscal year ending June 2025. *Consent Order*, p. 9. After two quarters, 28 individuals have been transitioned. *April 2025 Report*, p. 10. Defendants do not appear to be on track to meet this Benchmark but have indicated a belief that transitions should increase in the last two quarters of the year.

Benchmark 1.B required the assessment of 3,000 individuals with I/DD for 1915(i) services by June 2024 and subsequent assessments within 90 days of request. *Consent Order*,

¹ Several benchmark items are marked as "Complete" in Attachment 2 to the Report, but the narrative of the Report shows that Defendants did not meet the benchmark in question. For example, benchmark III.1.B related to transitioning 1915(b)(3) recipients to 1915(i) was marked "Complete" even though Defendants did not meet the timeline for that benchmark. *April 2025 Report*, p. A-4. Likewise, Defendants did not meet benchmark III.2.A regarding the June 2024 utilization rate but marked that benchmark "Complete" as well. *April 2025 Report*, p. A-5.

p. 11. **Defendants have conducted the 3,000 assessments but are not currently tracking the 90-day timeline for additional assessments.** *April 2025 Report*, p. 18.

Benchmark 1.B also required, by June 30, 2024, 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. **Defendants did not meet this aspect of Benchmark 1B but have since completed the transitions.**

Benchmark 2.A requires that Defendants ensure that the utilization rate for the Community Living and Supports (CLS) Innovations 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 have those services delivered. **Defendants did not meet the 2024 Benchmark and are not on track to meet the 2025 Benchmark.**

As with the prior reports, Defendants do not have data showing the number of units of CLS not utilized **due to lack of provider availability. This is a core data point for assessing unmet needs and the extent to which the ongoing DSP shortage is being addressed.** It is also a statutory requirement. N.C. Gen. Stat. § 122C-117. At the parties' April 23, 2025 meeting, Defendants indicated that they are working on options for collecting this information.

Finally, Plaintiffs noted in their comments to the January 2025 Report that there was a need to better define who is "eligible for In-Reach" or "eligible for diversion" in the context of benchmarks and reporting requirements. At the parties' meeting on April 23, 2025, Defendants described their efforts to ensure uniformity with regard to LME/MCO reporting of data on transitions and diversions. Specifically, Defendants are working with the LME/MCOs to ensure they are accurately capturing information on who is eligible for In-Reach activity and who may be counted as "diverted" under the terms of the Consent Order.

Reporting Compliance

A primary and continuing concern is the lack of data reporting on two key issues:

- DSP utilization rate, which is intended as a marker of progress on availability of services for those who have access to the Innovations Waiver; and
- Ongoing unmet need of those receiving services through 1915(i), which is a measure of the broader category of unmet need amongst those with I/DD who do not have Innovations Waiver services.
 - In the November 2022 Remedy Order, the issue of unmet service needs was addressed through a requirement that Defendants eliminate the waiting list for Innovations Waiver services. The Innovations Waiver provides for the broadest array and scope of I/DD services which, when appropriately staffed and supplemented as needed, will meet the needs of most people with I/DD.

- The Consent Order, entered after the implementation of 1915(i), sought to address the question of unmet need by first assessing how much of the previous unmet need was addressed through 1915(i). The purpose was to inform future remedial orders to address the remaining gap once 1915(i) was in place.
- At the time of the Consent Order, Defendants estimated that approximately 70% of those waiting for an Innovations Waiver slot would be eligible for 1915(i) services. As of the April 2025 Report, 38% of those on the waiting list are receiving some I/DD services (including but not limited to 1915(i)).
- Notably, 1915(i) offers more limited support than the Innovations Waiver, making it necessary to ascertain the unmet needs of all those with I/DD who do not have an Innovations Waiver slot, including those receiving some 1915(i) services.
- In sum, the lack of data and reporting on the unmet needs of those receiving 1915(i) services stands as a barrier to fulfilling the Consent Order's intended purpose to resolve service gaps and may suggest that a different remedial framework is necessary, including the potential to revisit a requirement that additional Innovations Waiver slots must be made available.

The Consent Order was entered in May 2024, with the express purpose of allowing for two years of data collection and analysis. Almost a year into the process, key data is still not available. The Consent Order, which was negotiated over a period of months and agreed to by the parties, presumed that Defendants had the means to ensure the necessary data collection. While appreciating the complexity of the undertaking, Plaintiffs remain concerned about the lack of availability of specific data.

Continued Concerns

The April 15, 2025 Report raises continued concerns regarding compliance with existing Benchmarks and reporting requirements.

Key takeaways from the April 2025 Quarterly Report:

- Defendants do not appear to be on track to meet the transitions benchmark, although they project increased transitions numbers in the next two quarters.
- Defendants did not meet the June 2024 utilization rate benchmark and remain well off the benchmark of a utilization rate of at least 85% for DSPs by June 2025. Uncertainty in data collection makes it more difficult to assess the trajectory of this benchmark.
- Defendants are not yet tracking how many hours of services individuals are losing access to because of a lack of available providers. *April 2025 Report*, pp. 23 and A-2. This is key data for assessing progress on DSP availability.
- Defendants are not tracking the unmet needs of individuals receiving 1915(i) services who still have unmet needs. *April 2025 Report*, p. 20. This is core data, as noted above.
- As with prior quarters, the April 2025 Report indicates that there are ongoing efforts on improving (and in some cases initiating) data collection, but deeply consequential gaps remain despite the fact that we are nearly a year into the two-year Consent Order.