

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA,

Defendant.

Case No. 5:12-cv-557-D

**FIFTH MODIFICATION OF SETTLEMENT AGREEMENT**

1. This document modifies the Settlement Agreement (“Agreement”) in the above-referenced matter between the United States and the State of North Carolina (collectively, the “Parties”). The original version of the Agreement, D.E. 2-2, was filed with this Court on August 23, 2012, and the Court retained jurisdiction to enforce the Agreement by Order of October 5, 2012, D.E. 13. The Agreement has previously been modified four times, with the Court retaining jurisdiction each time. The Agreement, with its prior modifications, is incorporated here by reference. The four prior modifications are:
  - a. First modification, D.E. 30-1, entered by this Court on November 1, 2017, D.E. 32;
  - b. Second modification, D.E. 36-1, entered by this Court on October 21, 2020, D.E. 37;
  - c. Third modification, D.E. 39-1, entered by this Court on March 1, 2021, D.E. 40; and
  - d. Fourth modification, D.E. 41-1, entered by this Court on March 29, 2021, D.E. 42.

The Fourth modification discharged the obligations in Sections III(B)(3), III(B)(4), III(B)(6), III(E)(13)(a), III(E)(13)(b), III(E)(13)(d), III(F)(1), and III(F)(2) of the Settlement Agreement, subject to certain caveats. *See* D.E. 41-1, ¶¶ 2(a)-(b), (d).

2. The Parties now enter this Fifth Modification of Settlement Agreement. The terms of this modification are as follows:
  - a. The last sentence of Section I(H) of the Agreement is amended to read:

“Neither third parties, nor the Court, shall have the ability to modify the terms set out in this Agreement without consent of the Parties, subject to the enforcement provisions set forth in Sections VI(F) and (G), below.”

b. Section III(B)(5) of the Agreement is amended to read:

“As of January 1, 2024, the State shall provide Housing Slots to 1,449 of the individuals described in Sections III(B)(2)(a), (b), and (c) of this Agreement. The State shall provide Housing Slots to 1,633 such individuals by July 1, 2024; to 1,817 such individuals by January 1, 2025; to 2,000 such individuals by July 1, 2025. While achieving these totals, the State shall take all reasonable steps so that any individuals described in Section III(B)(2) of the Agreement who are eligible for the State’s Transitions to Community Living program and who have Housing Slots as of March 1, 2023 continue to retain their Housing Slots as long as they do not oppose supported housing and supported housing remains appropriate for them.”

c. The third sentence of Section IV(L) of the Agreement is amended to read:

“The Reviewer will not file these reports with the Court without the express authorization of the Parties, unless submission to the Court is in connection with the process set forth in Sections VI(F) and (G).”

d. Section V of the Agreement is redesignated as Section VI.

e. The following is added after Section IV of the Agreement:

“**V. IMPLEMENTATION PLAN**

**A.** By May 1, 2023, the State will submit a draft Implementation Plan to the Independent Reviewer and the United States. The State will consult frequently and regularly with the Reviewer in developing the Implementation Plan. The Implementation Plan must:

1. Be consistent with all terms of the Agreement;
2. Identify how the State will meet the metrics and timelines for its implementation of each of the Agreement’s requirements;
3. Assign to the relevant State offices or employees responsibility for achieving each benchmark and timeline;
4. Assign key tasks to State offices or employees with sufficient authority to implement those tasks;

5. Include performance indicators, which will be used (a) to evaluate processes and outcomes, (b) to determine the degree to which the implementation plan is being executed as intended and is achieving desired outcomes intended by this Decree, and (c) to inform implementation plan revisions or modifications to strategies; and
  6. Provide for ongoing monitoring of performance indicators and items listed in paragraph (A)(5) above.
- B.** Within 14 days of the State’s submission of the draft Implementation Plan, the Independent Reviewer and the United States will provide feedback to the State. The State will promptly revise the Implementation Plan to address this feedback; the Parties and the Reviewer will meet and consult as necessary.
- C.** If the State has not adopted any portion of the Independent Reviewer’s feedback by June 15, 2023, the Independent Reviewer may promptly provide the State and the United States with a written letter detailing challenges specific to the feedback not adopted that may impact the State’s ability to achieve substantial compliance with specified obligations in the Agreement. The State shall attach the letter to its final Implementation Plan, and shall also prepare and attach a response to the letter explaining in detail how and why it expects to achieve compliance with the specified obligations in the Agreement notwithstanding the Independent Reviewer’s concerns.
- f. The second sentence of Section VI(A) of the Agreement, as redesignated by paragraph 2(d) of this modification, is amended to read:
- “The Parties further agree that this case will remain on the Court’s inactive docket, with the Court retaining jurisdiction to enforce the Agreement in the event of any disputes that may arise between the Parties until the Agreement terminates, subject to the limitations set forth in Sections VI(F) and (G) of this Agreement.”
- g. Section VI(B) of the Agreement, as redesignated by paragraph 2(d) of this modification, is amended to read:
- “The implementation of this Agreement shall begin immediately upon execution. The Parties anticipate that the State will have substantially complied with all provisions of this Agreement by July 1, 2025, unless the Agreement is otherwise terminated, cancelled, or extended. Substantial compliance is achieved if any violations of the Agreement are minor and occasional and are not systemic. Any Agreement deadline may be extended by mutual agreement of both Parties or

pursuant to the process described in Section VI(C) below in the event that the State has not achieved compliance with the Agreement on or before July 1, 2025. This paragraph applies to all provisions of this Agreement to the extent that provisions have not expressly been discharged as described in subparagraphs 2(a)–(d) of the Fourth Modification of Settlement Agreement dated March 26, 2021.”

- h. Section VI(C) of the Agreement, as redesignated by paragraph 2(d) of this modification, is amended to read:

“The Court shall retain jurisdiction of this action for the purposes specified in Section VI(A) until July 1, 2025 unless: (1) the Parties jointly ask the Court to terminate the Agreement before July 1, 2025; or (2) the United States disputes that the State is in substantial compliance with the Agreement as of July 1, 2025. If the State has substantially complied with the Agreement before July 1, 2025, the United States shall not unreasonably decline to join the State in a motion to terminate the Agreement early. If the United States disputes that the State is in substantial compliance with the Agreement as of July 1, 2025, then the United States shall inform the Court and the State by April 1, 2025, and the Court may schedule further proceedings as appropriate. In any such proceedings, the burden shall be on the State to demonstrate substantial compliance.”

- i. The third and fourth sentences of Section VI(G) of the Agreement, as redesignated by paragraph 2(d) of this modification, are amended to read:

“If the Parties fail to reach agreement on a plan for curative action, the United States may seek an appropriate judicial remedy, and shall have the burden of proving such alleged noncompliance, other than as described in Section VI(C). The Parties will not seek to have the Court enforce implementation of this Agreement other than through the process set forth in Sections VI(F) and (G).”

- 3. This modification incorporates by reference and amends the Agreement the Parties filed on August 23, 2012 and the prior modifications that the Parties filed on October 27, 2017, October 21, 2020, March 1, 2021, and March 26, 2021. This modification supplements and does not supplant the Agreement or the prior modifications. Unless otherwise noted, all definitions, obligations, and terms and conditions in the Agreement and the prior modifications remain in force for the term of the Agreement as extended.

Executed on this 1st day of March, 2023.

FOR THE UNITED STATES OF AMERICA:

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Executed on this 1st day of March, 2023.

FOR THE STATE OF NORTH CAROLINA:

DocuSigned by:  
  
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KODY H. KINSLEY  
Secretary of the North Carolina Department of Health and Human Services