

**EXECUTIVE SUMMARY
FY 2022 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

December 1, 2022

This is the Executive Summary of the FY 2022 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 fiscal year (FY) 2022 requirements. The report also documents the State's overall progress in meeting all the Settlement Agreement (SA) obligations as referenced in the Fourth Modification of the Settlement Agreement. The Parties filed their fourth motion to modify the Settlement Agreement with the Court on March 26, 2021. The Fourth Modification extended most of the Settlement Agreement obligations until July 1, 2023.

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, and 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 system and provide community-based placements and services in accordance with this Agreement.

The State reached a major milestone required by this Agreement in FY 2022. In September 2021, the State reported that 3,000 individuals in the Agreement's target population were living in supported housing, as the Agreement requires. That number increased to 3,088 by the end of FY 2022. The State also made considerable progress diverting individuals from ACHs, enabling eligible individuals to remain in the community with the benefit of added supports and services and, if qualified, a rental subsidy with move-in resources. The State also took positive steps toward meeting the Quality Assurance and Performance Improvement requirements.

The State is not making measurable progress to meet three major requirements in FY 2023. The first is the requirement that 2,000 individuals move from an ACH and are now living in Supported Housing (SH). The State also did not make measurable progress to meet the Community Based Mental Health Services and Supported Employment requirements. The State made slight progress toward meeting four Discharge and Transition Process requirements but needs to take further action to meet all the Discharge and Transition Processes. These are complex processes, which makes predicting when the State will meet these requirements more difficult.

Based on the FY 2022 individual reviews, interviews with staff in the field, reports from a range

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.

of State and local sources, it is clear the Settlement Agreement requirements are achievable, notwithstanding four challenges the State faced in FY 2022. One, a Local Management Entity-Managed Care Organization (LME/MCO) In-reach staff did not make “frequent” in-person visits to individuals living in ACHs even though the COVID outbreak was waning, and staff could take precautions when visiting an individual living in an ACH. This is important because in-person visits are key to individuals successfully transitioning to the community. All the other LME/MCOs had either not stopped in-person visits or returned to in-person ACH visits by January 2022, unless a particular home had a COVID outbreak for a period of time. Unfortunately, even when LME/MCOs returned to in-person visits, the State’s data reflects staff made more phone calls and letters than in-person visits.

Two, there were unprecedented rental rate increases in FY 2022. This is a widespread nationwide problem, and low income renters feel its impacted more acutely. Property owners are also choosing to not renew leases but instead rent their units to individuals who could pay higher rents, well above the Housing Choice Voucher (Section 8) payment standard and the corresponding state subsidized rent payment standard. This means when a lease is up for renewal the owner is not renewing an individual’s lease but instead is finding new renters who can pay more than those with Section 8 or the state’s rental subsidy. LME/MCO staff scramble to help individuals find another unit to rent but this slowed down LME/MCO assisting new individuals transitioning to the community.

Three, the regional LME/MCO system underwent a momentous change with 20 counties disengaging from Cardinal Innovations, the state’s largest LME/MCO. Eleven (11) counties chose to join 4 other LME/MCOs and 9 of Cardinal’s remaining counties agreed to a merger, becoming part of the Vaya Health LME/MCO. These re-alignments occurred between September 1, 2021, and February 2022. The Vaya merger enabled Cardinal staff to continue working for Vaya. However, staff working in counties absorbed by other LME/MCOs had to apply for a position with the new LME/MCO. This was a time consuming process and a distraction from meeting Settlement requirements.

This change impacted TCL recipients in four ways: 1) Cardinal was the subsidy payor and rental manager for at least 1,257 rental agreements and each of the new LME/MCOs had to change those rental agreements; 2) the LME/MCOs absorbing beneficiaries from the Cardinal catchment area had to build relationships and work with new ACHs, SPHs, guardians, county officials, including local departments of Social Services (DSS), and others, including families, Division of Vocational Rehabilitation (DVR) offices, and staff who process benefits; 3) LME/MCOs had to enter into new contracts with providers in the Cardinal catchment area. Simultaneously, providers in that catchment area had to begin working with staff in the new LME/MCOs, whose processes differed from Cardinal’s processes, including utilization management review staff, Pre-Admission Screening and diversion staff, care coordinators, TCL staff, and housing coordinators,

among others; and 4) Cardinal staff failed to transmit all of their records and contact information to the LME/MCOs that absorbed its beneficiaries. The Reviewer monitored these changes as they occurred and scheduled reviews in the most affected areas as late in the fiscal year as possible to give the three LME/MCOs most affected by this change as much time as possible to connect with their new individuals and hire staff to serve them.

The fourth challenge the State faced in FY 2022 is still a factor today. The service delivery system is facing unprecedented staff turnover, especially to find and retain frontline staff. The State will need to examine strategies to combat this problem, starting with ensuring wages are sufficient but also taking other steps to help provide opportunities for staff to choose and keep jobs.

Below are three sets of summaries of FY 2022 findings. The first set includes a summary of findings of requirements that the Fourth Modification of the Settlement Agreement anticipated the State might comply with in FY 2022. The second set references requirements the State met, as reported in the Fourth Modification. The third set includes a summary of major findings on all other requirements. The Fourth Modification obligates the State to not materially regress on the sections with which it has achieved substantial compliance.

Requirements Referenced in Fourth Modification of the Settlement Agreement

The Parties referenced in the Fourth Modification that they anticipated the State would comply with eight requirements by July 1, 2021. The State met seven of those requirements in FY 2021, **Section III. (B)4 and (B)(6), III. (E)(13)(a)(b) and (d), and (F)(1) and (2).**

The State did not meet **Section III(B)(3)**, the requirement for eligible individuals to occupy 3,000 housing slots by July 1, 2021 but did meet this requirement in September 2021 and reached 3088 by June 30, 2022.

The State met two **Section III. (F)(1) and (2)** Pre-Admission Screening and Diversion requirements in FY 2021: 1) determining if individuals who are applying for admission to an ACH meet eligibility for mental health services and, if yes, providing an opportunity for the individual to choose diversion from admission with services, supports, and housing; 2) that LME/MCOs assist individuals to develop a community integration plan to access services, supports, and housing. The State and LME/MCOs continued to improve their performance further and exceeded their FY 2021 performance in FY 2022.

The Parties indicated in the Fourth Modification they would confer 90 days following the issuance of the FY 2021 Annual Report to determine if the State has substantially complied with three other sections: **Section III. (E)(9) and (10) and (E)(14).** The State met the **Section III. (E)(9)** requirement to create a transition team (identified as the State Barriers Committee) to assist local transition teams address and overcome barriers in FY 2021.

The State is on track to meet the **Section III.(E)(10)** requirement in FY 2023. This is the requirement that the State's transition team train local teams, including adequately training teams in person-centered planning, and that local teams will effectively inform individuals of community living opportunities. The FY 2022 individual reviews revealed that the State did not meet **Section III.(E)(14)**, the Resident's Bill of Rights, and continues to have challenges meeting this requirement. This requirement, referenced in state and federal statutes, obligates the State and/or the LME/MCO to monitor ACHs to ensure each individual is free to exercise his or her rights and that exercising those rights does not adversely affect the way the LME/MCO or State agencies treat the individual. This requirement is relevant to the State meeting its obligation for 2,000 individuals exiting ACHs into Supported Housing.

The State met the requirements for **Section III. (B)(7)(c) and (d)** but did not meet the sub-requirements for **Section III. (B)(7)(a) and (f)** in FY 2021. The State fell short of meeting all the **(B)(7)** sub-requirements in FY 2022. Nonetheless, the State is close to meeting **Section III(B)(7)(c)(d) and (f)** given the efforts underway to improve tenancy rights, community-based housing locations, and assistance with daily living skills, and the State is in position to meet these requirements in FY 2023.

This report includes information from 91 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 move from ACHs to supported housing. Each of these reviews included an interview with the selected individual when possible, a review of their records, and staff interviews. The FY 2022 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 2022 the Reviewer and her review team members also met with State and LME/MCO staff, service providers, and state and local Division of Vocational Rehabilitation (DVR) staff to review implementation and performance of supported employment and services requirements, housing, and In-reach and transition requirements.

The State took a major step in FY 2022 developing a TCL Incentive Plan (TIP). The plan 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 housing, especially for individuals exiting ACHs. The State has added resources to the community inclusion projects they began funding in FY 2019.

The State recognizes that it needs to improve the accuracy of its data and is working internally and with the LME/MCOs to verify the data they are collecting, and to verify that reporting is correct. They project completing this task before the end of the 2022 calendar year.

The State is embarking on a major change in its managed care arrangements, shifting the current LME/MCO managed care arrangements to “Tailored Plans” covering enhanced Medicaid and state funded services for individuals who qualify for TCL, as well as other individuals with a mental health disorder, substance use disorder, intellectual/developmental disability (I/DD), or traumatic brain injury (TBI). Tailored Plans will include coverage for physical health services, care coordination, and care management as well as other services. The State is still ensuring the new requirements for Tailored Plans will not conflict with the Settlement requirements or inadvertently create challenges for individuals to get access to and retain housing and get required assistance with In-reach, transition and diversion and get required services and supports. The TCL requirements and the supports, services, and housing arrangements the State has already made, adopted policies for and provide enhancements are a model for strengthening the tailored plans for other populations beyond those in the TCL program.

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

Community-Based Supported Housing Slots

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 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 led to improvements in data collection and analysis to explore challenges and progress in meeting housing targets and utilizing a wide array of resources.

This collaboration has led to increasing affordable housing availability, although it will always remain a challenge. Developing and finding affordable housing for individuals with low incomes and other barriers is a nationwide issue. This problem has escalated in the past two years with rising rents and challenges with escalating development costs.

The State still has challenges meeting **Section III. (B)(1)**, access to community-based supported housing. This is in large measure related to the State’s performance implementing discharge and transition process and services requirements as required in **Sections III. (B)(7),(C) and (E)**. Ensuring access to safe affordable housing with support for daily living activities is a challenge, especially for individuals living in ACHs, with health challenges, and/or with criminal justice backgrounds.

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 1,156 to 1,206 in FY 2022. The State did not meet the requirement in the Fourth Modification of the Settlement Agreement to fill 1,660 slots by

July 1, 2022 and is not on track to meet the requirement to fill 1,830 slots by January 1, 2023, and 2,000 by July 1, 2023. This requirement is one of the main sub-requirements in this Settlement Agreement and was at the heart of the investigation leading to this Agreement. The FY 2022 review revealed at least 64%, or 20 out of 31 individuals reviewed, still living in ACHs could move into Supported Housing with adequate support and services. It is also clear that ACH residents are going to need more information from their In-reach Specialists about the supports and services available in the community, and more opportunities to meet individuals who have successfully transitioned to the community as required in **Section III. (E)(2) and (4)** to make an informed choice about where to live and receive services.

Community-Based Mental Health Services

The FY 2022 review revealed the State's performance in meeting **Section III. (C) Community-Based Mental Health Services** did not improve in FY 2022. 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, either in supported housing or other locations, as well as ACH residents². This review included interviews with staff and review of records, other documentation, and data related to the provision of community based mental health services for 91 individuals. Over the past three years, the Reviewer and her team have interviewed over 150 and LME/MCO and provider staff and reviewed documents and data for 80 additional individuals. The results have largely been the same over this period of time. As in the FY 2021 review, the State achieved slightly higher scores on the requirement for staff to assist individuals to access natural supports and to utilize natural supports to prevent crises. Even with this higher score, the State's performance was still insufficient to meet these requirements.

The person-centered planning process scores were extremely low, with 7 individuals, or 12% of individuals, having a person-centered plan that fully meets requirements and another 23 individuals, or 40%, with plans that partially meet requirements. The plans and the planning process remain formulaic, repetitive, and not individualized. Often, new plans are the same as previous plans. The provider lists services they will provide on the plan document and submits the plan to the LME/MCO utilization management (UM) unit. The UM staff reviews and authorizes or denies payment based on established criteria. This means the DHHS has coupled service authorization, payment and person centered planning in one document, one process. This has resulted in service authorization becoming the primary purpose for person centered planning. This does not reflect current practice in recovery-based planning. Likewise, the scores

² 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.

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.

Supported Employment

The State met one of the three Supported Employment requirements in 2013, the requirement to adopt an evidence-based supported employment model, Individual Placement and Support (IPS-SE) required in **Section III. (D)(2)**. But the State is not meeting the requirement 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 is also not meeting 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 made progress, though, having provided Supported Employment to 2,425 individuals by June 30, 2022. The State also made the needed adjustment to their verification of individuals receiving services as referenced in the FY 2021 Annual Report. Based on FY 2022 data, TCL recipients represent 5% of the total number of individuals receiving IPS-SE. This data is relevant because of the individuals to IPS-SE or assisted by an employment Provider and/or Transition staff had not referred eighty-five percent (85%) of the individuals interviewed who expressed an interest in employment or education to IPS-SE or to employment specialists on ACT teams.

The State is promoting a new financing and incentive model to increase TCL referrals and to cover expenses 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 Division of Vocational Rehabilitation (VR). The model is in a pilot phase with the Vaya LME/MCO, its provider agencies, and VR. The Vaya Health model launched in January 2020 and showed good preliminary results when COVID delayed job searches and service recipients disengaged. The FY 2022 data reveals that of those enrolled³ in the pilot in FY 2022, the number of individuals receiving a service (Milestone 1) was down by over 200 since June of FY 2021. Only 17 individuals in TCL had at least one service (claim) in the fourth quarter of FY 2022. Vaya also reported high staff turnover among its IPS-SE providers.

The Alliance LMC/MCO began its NC CORE initiative in the last quarter of FY 2022 but data on performance of its initiative is not available yet. Nonetheless, the Alliance has made progress providing IPS-SE services to 50 TCL recipients in the last quarter of FY 2022, nearly equaling the

³ Vaya and DVR report 245 individuals in an active Milestone status on 5/21/2021.

combined total of individuals receiving at least one unit of service in the remaining five catchment areas of the state.

Section III. (C)(1) requires the State to ensure individuals have access to services and supports they choose to receive. This includes IPS-SE and ACT Employment Specialist services. The State needs to take action to demonstrate that individuals in TCL, who are interested in employment, get the opportunity and access to supported employment and assistance preparing for, identifying, and maintaining employment. The FY 2022 reviews revealed that of the 41 individuals indicating an interest in employment and/or education, only 6 received any support to pursue this interest even though there was little progress reported of individuals getting assistance with job placement. 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 in certain areas of the state, including at least two urban areas.

The number of individuals eligible for TCL expressing an interest in employment has been and continues to be consistent with national data for individuals with this interest who have a serious mental illness. Yet the State's performance in providing meaningful assistance for TCL eligible individuals is lacking. There continues to be a widespread, 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 is an underlying and unspoken assumption on the part of many service providers responsible for making IPS-SE referrals, LME/MCO staff and leadership across the system 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. Regardless of whether this message is subtle or not subtle, it sends a powerful and clear message to individuals that they are not capable of working. Thus, it is discriminatory against individuals who have expressed a desire to seek employment and/or education and training.

Discharge and Transition Processes

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 from non-hospital settings. The FY 2022 review included 62 individuals whose reviews included discharge and transition processes.

In FY 2022, the State only met one of the Discharge and Transition Process requirements, but scores showed staff improved their scores in 4 of the 9 categories scored following individual reviews. LME/MCO in-reach staff did not make frequent contact with most individuals who expressed interest in moving or provide them with accurate information. Some "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 a pattern of sporadic or no contact with individuals and staff not facilitating community visits that occurred at the same rate before and after COVID restrictions took effect. The State is meeting **(E)(10)** and making progress meeting **(E)(9)**.

Pre-Admission Screening and Transition Process

The State met **Section III. (F)(1)** and **(F)(2)** as referenced above but still needs to make improvements to meet **(F)(3)** to fully implement individualized strategies to address concerns and objections individuals have to placement in integrated settings and monitoring individuals choosing to reside in ACHs.

Quality Assurance and Performance Improvement

The State is in the process of developing the required QA/PI monitoring system in accordance with the required quality assurance and performance improvement requirements. As referenced in the FY 2021 Annual Report, the State retained Mathematica, a well-respected research and consulting organization with expertise in the provision of information collection and analysis. Mathematica is providing technical support to the State to meet its obligations in this agreement. Its scope of work includes: (1) conducting performance measurement planning; (2) initial data management and analysis; (3) creating and using data dashboards; (4) overall quality assurance and performance improvement development and implementation; and (5) project management and reporting to create a useable prototype for reporting metrics.

Mathematica will continue leading an iterative process over the 2023 fiscal year with DHHS staff taking on more responsibility for the transition by the end of June 2023. Based on this timetable, it may be possible to review the State's ability to manage the system in the first six months of FY 2024, fulfilling requirements in **III. (G)(1-4, 7-8)**.

The State, with Mathematica's assistance, is beginning to report on frequency of services provided to individuals, by service type. This is a vital indicator to determine trends in housing and services retention and engagement in IPS services. This also enables the State to assess the relationship between the array, intensity, and frequency of services with housing stability and individuals getting support to obtain and sustain employment.

The State continues to meet the Quality of Life (QOL) survey requirements in **III. (G.)(5)** and the External Quality Review (EQR) requirements in **III.(G)(6)**.

Summary

The State met one additional requirement in FY 2022, exceeding the requirement to fill 3,000 housing slots by an additional 88 slots in FY 2022. However, the State's progress in meeting **Section III. (B)(3)** requirements for 2,000 individuals living in ACHs to exit and occupy supported

housing slots was negligible. The State exceeded its FY 2021 performance in meeting two Pre-Screening and Diversion requirements, **(F)(1) and (F)(2)**. The State also demonstrated progress but fell short of replicating gains made in FY 2021 ensuring individuals get permanent housing with tenancy rights and ensuring individuals get a choice in their daily living activities. The State did not meet the requirements in three major sections of the agreement: **Section III (C) Community-Based Mental Health Services, Section III. (D) Supported Employment, and Section III. (E) Discharge and Transition Processes**. The State is making progress meeting Quality Assurance and Performance Improvement requirements.

Many dedicated individuals, state psychiatric hospital, 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 lingering COVID pandemic and challenges created with the Cardinal dissolution.

The State's efforts, already underway, to implement the aforementioned TCL Incentive Plan, to divert individuals who choose to live in the community instead of an ACH and improve access to housing for individuals exiting ACHs, has the potential to accelerate the State's progress to meet many of the Settlement Agreement requirements and partially transform its adult mental health services system. However, the changes the State is contemplating and/or attempting to make to meet the SA's requirements for community-based mental health services and supported employment falls short of changes needed to transform the services system. Without additional changes in these systems, the system transformation this SA requires will not be complete.