

STATE OF NORTH CAROLINA

WAKE COUNTY

FILED  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
2023 FEB 10 AM 10:02  
17 CVS 6357

SAMANTHA R., by her Guardian, TIM R.,  
MARIE K., by her guardian, EMPOWERING  
LIVES GUARDIANSHIP SERVICES, LLC,  
CONNIE M., by her guardian CHARLOTTE  
R., JONATHAN D., by his guardian  
MICHAEL D., MITCHELL T., by his  
guardian, BETSY S., MICHAEL A. and  
DISABILITY RIGHTS NORTH CAROLINA,

WAKE CO., C.S.C.

BY HNT

Plaintiffs,

v.

STATE OF NORTH CAROLINA, THE  
NORTH CAROLINA DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, and  
KODY KINSLEY, in his official capacity as  
Secretary of the North Carolina Department of  
Health and Human Services,

Defendants.

ORDER CLARIFYING/  
CORRECTING ORDER  
ENTERED NOV. 2, 2022

This matter came before the Undersigned on February 3, 2023 on *Defendants' Motion to Stay Enforcement of Order Entered November 2, 2022* (filed Nov. 30, 2022). With the consent of all parties, the Court heard the motion in Orange County Superior Court via WebEx. After considering the parties' memoranda, exhibits, submissions and arguments, the Court issues the following ruling and Order:

1. The Court's Order entered November 2, 2022 included the following language in the final bullet to Benchmark 1, in Section III.A (Divert and Transition Individuals from Institutionalization):

After January 1, 2028, Defendants shall ensure a cessation on new admissions to institutional settings. This cessation on new admissions does not apply to or bar the use of institutional settings for respite or short-term stabilization.

*See Order, Benchmark 1, final bullet, at 6.*

2. The parties have advised the Court that certain interested parties have raised questions about the proper interpretation of this bullet, including whether this provision applies to a cessation on all new admissions to institutional settings, or whether it applies to a cessation on new admissions of individuals with intellectual or developmental disabilities (“I/DD”) to institutional settings.

3. The Court notes that the eight other bullets in Benchmark 1, Section III.A are focused on individuals with I/DD, which has been the focus of this civil action. The Court further notes that the final bullet of Benchmark 1, Section III.A likewise was intended to pertain to individuals with I/DD.

4. On November 30, 2022, Defendants filed a Notice of Appeal from the Order entered on November 2, 2022 (remedies order) and the Order entered on February 4, 2022 (summary judgment order).

5. N.C. Gen. Stat. Ann. 1A-1, Rule 62(c) provides, after an appeal has been taken, “the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.”

6. In their submissions to the Court, Plaintiffs proposed that the Court exercise its discretion to clarify the proper interpretation of the final bullet. Defendants agreed with this request, while also expressly reserving their appellate rights.

7. Therefore, in its discretion, and in order to clarify or correct any potential ambiguity in the final bullet, the Court hereby MODIFIES the final bullet in Benchmark 1, Section III.A as follows:

After January 1, 2028, Defendants shall ensure a cessation on new admissions **of individuals with IDD** to institutional settings. This cessation on new admissions does not apply to or bar the use of institutional settings for respite or short-term stabilization.

SO ORDERED this the 7 day of February 2023.

A handwritten signature in black ink, appearing to read "Allen Baddour", written over a horizontal line.

Judge Allen Baddour  
Superior Court Judge Presiding  
Designated Pursuant To Tenth Judicial  
District Local Rule 2.2

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he served the foregoing *ORDER* to Plaintiffs' counsel of record via US mail, postage paid and by email on this the 10<sup>th</sup> day of February, 2023.

FILED  
2023 FEB 10 A 10:02

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