

North Carolina Department of Health and Human Services

Pat McCrory
Governor

Richard O. Brajer
Secretary

December 22, 2015

Nicolas C. Lee
Trial Attorney
Disability Rights Section
U.S. Department of Justice
950 Pennsylvania Ave. N.W.
Washington, DC 20530

RE: Settlement Agreement with North Carolina

Dear Mr. Lee:

Thank you for your November 6th letter. What I clearly sensed while reading your letter, and what I trust you will sense while reading mine, is that you and I share common goals, motivations, and sense of urgency for the sustained improvement in systems which support the recovery process for people who live with serious and persistent mental illness.

Therefore, I appreciated your understanding of the challenges in implementing the Agreement and your acknowledgment of the continued efforts by our State as we move forward in partnering together on needed systematic changes.

This year, as with each of the prior years, the State is committed to achieving substantial compliance with the settlement agreement. Our focus and efforts are to work collaboratively with all stakeholders to prevent inappropriate institutionalization and to provide adequate and appropriate public services and supports in the most integrated setting that meets the needs of individuals with serious and persistent mental illness. Within the first few weeks of taking office, I selected Transitions to Community Living Initiative as one of my primary initiatives focusing on expectations and outcomes from the Department, Housing Finance Agency, LME-MCOs, County Commissioners and other stakeholders. This renewed evaluation and commitment has occurred with continued maturation and growth in the threshold areas of the settlement. Below are some of the highlights of the State's progress to date:

- 636 individuals have been provided supportive housing and services.
- 1,496 individuals have been provided quality supported employment
 - 1001 individuals were served by fidelity providers
 - 472 individuals were within the priority population
- 16 Individual Placement and Support – Supported Employment (IPS-SE) Teams meet Dartmouth fidelity

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- Over 5,000 individuals have been served through 77 Assertive Community Treatment teams that meet TMACT fidelity
- 24 additional In-reach Specialists and 44 additional Transition Coordinators have been funded by the State.
- New state-funded service for Tenancy Supports
 - Implementing process of making Tenancy Supports a Medicaid reimbursable service.
- Continued focus on Critical Time Intervention and evaluating for potential Medicaid service.
- Partnering with Housing Finance Agency to develop State Housing Plan.
- Partnering with the LME/MCO's to develop local housing plans.

The State respectfully disagrees with the assessment of the State's "ongoing noncompliance" with the Agreement. Your letter is untimely, as the State continues to make marked efforts and changes in support of being in substantial compliance with the Agreement by June 30, 2020. The letter and its assertions are also inconsistent with the recent baseline evaluation and report from the Independent Reviewer.

However, there are areas of needed change and the State has been diligently working to assess areas of needed change and develop action plans to put the State in a better position to be in substantial compliance at the end of the term of the agreement.

I would like to provide a response to your assertions.

1. State has failed to address gaps in needed services (Section III C of the agreement)

The Independent Reviewer's 2015 baseline evaluation assessed the state as either in partial compliance or full compliance with all of the provisions of Section III C of the agreement. Yet from that report, you quote in your letter only portions of the Reviewer's comments, and allege that the State is non-compliant with these requirements.

The reviewer noted her perceptions of gaps and services issues that existed as of June 30, 2015 based upon a small sample of 35 individual cases and conversations with stakeholders and providers. The Reviewer also noted that the LME-MCO system is still in its transformative stage of development in North Carolina and that there are a number of promising indicators that the LME-MCOs will be effective over time as they develop and mature.

The Reviewer does indeed have concerns about variation in availability and accessibility of services across the LME-MCOs. The State will be reviewing those concerns and will take steps with the LME-MCOs to provide greater access and availability of services where the needs exist.

The State, through its contracts, requires the LME-MCOs to perform an annual provider capacity, community needs assessment and gaps analysis (referred to simply as the gaps analysis). This gaps analysis is a comprehensive review of provider capacity and availability of services in the LME-MCO's catchment area. As part of this process, the LME-MCO and DHHS are able to identify areas of need, and develop and implement strategic plans to address those

needs. Examples of such strategic plans are modifying local business plans, provider network development plans and other strategic initiatives. Each year, the LME-MCO and DHHS review and assess action steps that have been taken and determine progress and any further challenges in meeting community needs and adjusting provider capacity to respond to gaps in services.

DHHS uses the information provided to inform the General Assembly and the public of progress, challenges and upcoming needs and to guide and identify priorities. Understanding gaps in services at the local and state levels is critical for maintaining effective, viable service systems that balance need with capacity and resources.

As part of our ongoing commitment to meeting the goals of the agreement, we will continue to work with the LME-MCOs to identify service issues through this process.

The State has been diligently reviewing and addressing the concerns raised by the reviewer as well as reviewing the actual data from the gaps analysis done by the LME/MCOs. ACT, crisis services, community support teams, care coordination, peer support services, and psychosocial rehabilitation services are available and have been provided to persons in the settlement population through the person centered planning process.

The State has made extensive efforts to identify gaps and create access to a broader array of services. Examples are that we:

- Conduct annual Division of Medical Assistance (DMA)-LME-MCO contract compliance reviews with the LME-MCOs through a vendor, Mercer Consulting Group. This includes a review of clinical services as well as fiscal oversight.
- Conduct External Quality Reviews (EQRs) of the LME-MCOs as required by CMS.
- Provide training, technical assistance, and fidelity review to ACT providers, so that 77 ACT teams now meet fidelity and have provided services to over 5,000 individuals.
- Developing 16 supported employment teams that meet IPS-SE through extensive statewide training and technical assistance; The state has redoubled efforts in increasing IPS-SE capacity and is in the midst of witnessing significant growth and progress by providers who have only recently (since the DOJ settlement agreement) been exposed to the shift in thinking and the “employment first” culture that is promoted by IPS-SE.
- Revised the state service definition of supported employment.
- Increased flexibility of LME-MCO in developing alternative services, and (b)3 services.
- Identifying opportunities to increase the availability of crisis services in order to avoid hospitalization by intervening earlier and more appropriately through the establishment of facility-based crisis and behavioral health urgent care centers being developed in four counties; Funding was allocated last year, and these projects are expected to begin serving consumers in the Spring and Fall of 2016
- Defining a new tenancy support service definition that allows providers in the community to take on this role with local consumers, which we believe will better

enable providers to understand how to support individuals in independent housing and help shift the culture to one of “housing first”; The state is encouraging LME/MCOs to work with us to be creative in allowing providers to offer this service most effectively; The state is looking at optimal ways to fund tenancy support in the future

- Expanding Critical Time Intervention to two more sites in order to further measure the effectiveness for the target population and eventually incorporate the service into the array of Medicaid-funded services

2. The State has failed to provide 708 individuals with Supportive Housing slots (Section III B 3c of the agreement)

As the Department has noted during face to face meetings, and in correspondence, we disagree with the USDOJ counting only the number of individual’s housed on a given day towards our compliance goals. The limited manner in which USDOJ and, at USDOJ’s request, the Independent reviewer, portray the compliance to date regarding the number of individual’s provided housing is inconsistent with the plain language and intent of the terms of the Agreement. As of June 30, 2015, the State had provided a housing slot, which included combinations of transition year stability funding, a rental subsidy, additional financial support, community mental health services, and tenancy supports, to 519 individuals in the settlement population. The reviewer’s assessment of only 416 individuals does not reflect over 100 individuals who have been housed, and the efforts of the State and its partners to achieve that number. For each individual who desires to return to housing, those same efforts are repeated. We hope to work collaboratively on a solution to this fundamental disagreement that will more accurately reflect the State’s compliance with the Agreement.

The Department recognizes that 519 is short of the goal set, and has been working diligently with the Housing Finance Agency and our LME-MCOs to increase the number of individuals provided housing slots. These actions include:

- Developing a Statewide housing plan in partnership with Housing Finance Agency,
- Working with the LME-MCOs to develop Local Housing Plans,
- Contracting with a third party to continue housing plan and evaluate all efforts over the long term to maximize potential strategies
- Developing new criminal history guidelines for Low Income Housing Tax Credit (LIHTC) units
- Setting aside funding for a Master lease program, where either the LME-MCO or the State leases properties and then subleases to eligible individuals. Evaluating pilot project sites for pilots with non-profit for housing search
- Establishing referrals to LIHTC units that for anyone with approved housing slot that includes weekly conversations between DHHS regional housing coordinators and LME-MCO transition coordinators.

- Undertaking joint DHHS/HFA follow-up with housing development management staff who deny applications
- Planning to provide fair housing and reasonable accommodation trainings for providers, LME-MCO staff, landlords, and property managers.
- Streamlining the housing approval process

3. The State has failed to provide 708 individuals with access to supported employment services (Section III D 3 of the agreement)

There also continues to be a disagreement with the assertion of noncompliance and with the interpretation of the Agreement requirements. The Agreement relating to supported employment has three parts. Part 1 is to develop and implement measures to provide supported employment to individuals with SMI/SPMI who are in an adult care home or who are at risk of entry into an adult care home. Part 2 is to make sure that the supported employment services are provided with fidelity to an evidenced based model. Part 3 requires the state to provide supported employment services to a certain number of individuals.

It is impossible to build a system of fidelity supported employment services with only one subset of individuals. Providers must have a pool of clients to serve. These statements have been supported in the recommendations received by the state from the expert on IPS-SE that increasing the number of individuals being referred to supported employment providers is key to building capacity of fidelity providers.

As of June 30, 2015 the State had provided supported employment services to 1054 individuals, using providers who had either met fidelity or were working toward fidelity. Of that number, 314 were individuals who were SMI or SPMI and living in an adult care home or at risk of entry into an adult care home receiving services from a fidelity provider.

In evaluating continued progress it is apparent that the number of individuals served who meet the in or at risk criteria remains a small percentage of the total number served. We are taking action to increase this number, and to increase access to supported employment services to more individuals across the state.

Actions since June 30, 2015 include:

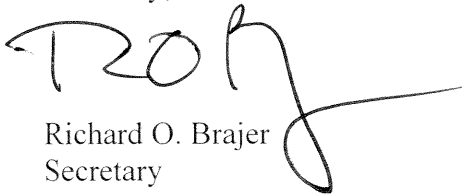
- Contracted to provide a total of 6 Dartmouth trained IPS- SE fidelity technical assistance providers across the state.
- Changed the state service definition and increased the rate of IPS-SE to \$74 per hour
- Provided funding for startup incentives for 10 new teams and the expansion of 5 existing teams.
- Expanded efforts with Division of Vocational Rehabilitation to identify and prioritize individuals who are living in, or are at risk of entry to, an adult care home.
- Continued efforts to expand number of fidelity reviewers in state
- Brought 4 new teams up to fidelity level across the state

In addition to the above highlighted efforts, we are committed to further actions that will move the State forward in achieving substantial compliance with the terms of the Agreement by July 1, 2020. Those actions are set forth in the attached corrective action plan.

The State will be monitoring progress and updating the items in the action plan on a bi-weekly basis by following up with the agencies and individuals responsible. The LME/MCOs will be given a weekly dashboard showing their progress on the tasks assigned. DHHS will be monitoring HFA's work through bi-weekly phone contact and monthly meetings. Lastly, DHHS responsibilities will be monitored on a day to day basis by direct supervisors. The Settlement Steering Committee will meet monthly to review progress. The Steering Committee consists of the Special Advisor to the Secretary on ADA, the Deputy Secretaries of Medical Assistance and Behavioral Health and Developmental Services, and the Division Directors for Mental Health, Developmental Disabilities and Substance Abuse Services; Vocational Rehabilitation Services, and Aging and Adult Services, and representatives from the Division of State Operated Health Care Facilities (DSOHF) psychiatric hospitals. These key leaders have the responsibility for the ongoing work required to fulfill the State's responsibility to comply with the agreement, and will be held accountable.

The success of the Transitions to Community Living Initiative is a high priority for me, and I will be continuing my support and oversight. I look forward to hearing from you soon regarding our corrective action plan, and continuing our collaborative efforts to improve the lives of individuals with mental illness in North Carolina.

Sincerely,

A handwritten signature in black ink, appearing to read 'ROB', with a long horizontal flourish extending to the right.

Richard O. Brajer
Secretary