

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

NOV 12 2024

JIMMY (BILLY) McCLENDON, et al.,

Plaintiffs,

MITCHELL R. ELFERS
CLERK

vs.

CIV 95-24 JB/KBM

CITY OF ALBUQUERQUE, et al.,

Defendants,

vs.

**E.M., R.L., W.A., D.J., P.S., and N.W.,
on behalf of themselves and all others
similarly situated,**

Plaintiff-Intervenors.

**AMENDED ORDER AND STIPULATED SETTLEMENT AGREEMENT
RESOLVING A DISPUTE
REGARDING NONCOMPLIANCE WITH CHECK-OUT AUDIT NUMBER 2**

This matter comes before the Court by agreement of Defendant Bernalillo County and Plaintiff-Intervenors ("the parties") regarding the resolution of the issues raised in Plaintiff and Plaintiff-Intervenors' July 19, 2023 letter to Special Master Torgerson regarding noncompliance with Check-Out-Audit ("COA") Number 2, (Doc. 1222-3).

Based on the stipulations of the parties, and the reports of the Court's expert, the Court finds as follows pursuant to 18 U.S.C. § 3626(a)(1):

1. This Order resolves the issues raised in Plaintiff-Intervenors' July 19, 2023 letter to Special Master Torgerson.

2. County Defendant stipulates it is not in compliance with some of the requirements of Check-Out Audit Agreement #2 (Doc. 1222-3)

3. County Defendant has already begun steps to remedy the problems alleged in the Plaintiffs' letter and the parties have determined that the terms of this agreement are the most efficient manner to resolve this dispute.

4. It is in the best interests of Defendant Bernalillo County, the Plaintiff Intervenors and the public for this settlement agreement to be entered at this time, without the expense and distraction of further litigation; and

5. the settlement agreement is proper, and all of the relief described in this settlement agreement:

- a. is narrowly drawn;
- b. extends no further than necessary to correct the violations of the federal rights of class and subclass members;
- c. is the least intrusive means necessary to correct the violations of the federal rights of class and subclass members; and
- d. will have no adverse impact on public safety or the operation of the criminal justice system.

THEREFORE, IT IS HEREBY ORDERED that Defendant Bernalillo County and Plaintiff Intervenors will implement the following settlement agreement forthwith.

**SETTLEMENT AGREEMENT BETWEEN
PLAINTIFF INTERVENORS AND DEFENDANT BERNALILLO COUNTY**

1. The County will allocate \$800,000 to be promptly expended to improve the mental health care being provided to sub-class members to compensate the sub-class for past violations of the Court's orders and to pay for remedial actions to promptly achieve compliance.

Some of this fund will be used to pay for items 5 and 8 below. The project manager and the Court's mental health expert shall make recommendations regarding expenditure of the remainder of this fund to improve mental health care provided to sub-class members. However, any expenditure must still comply with applicable law and County policy and will not be unreasonably delayed or withheld. If County Defendant objects to a recommendation made regarding use of this fund, it will lodge an objection that will be resolved by the Court. Once this fund is exhausted, County Defendant has no obligation to renew this funding or to continue funding measures originally funded by this account. All proceeds in this fund shall be used to improve the mental health care provided to sub-class members and none of this fund shall be left unused for this purpose except by agreement of the parties.

2. The County will:

a. Pay for Catherine Knox to perform with respect to mental health care the functions that the County is now paying Catherine Knox to perform with respect to medical care. She will communicate freely with Henry Dlugacz and discuss with Mr. Dlugacz each proposed expenditure from the \$800,000 allocation prior to deciding whether to spend the money. The expert is not required to defer to Mr. Dlugacz' recommendation. If Ms. Knox does not agree to

undertake the expert project manager task, the County and the Plaintiff Intervenors' counsel will confer with Ms. Knox and jointly select a different project manager.

b. Compensate counsel for Plaintiff Intervenors up to \$60,000 through April 1, 2025 to cover the reasonable fees and costs of Henry Dlugacz's assistance in the development and implementation of this agreement, modifying the mental health CAPs and implementing the provisions of COA #2. The County is not required by this agreement to compensate Mr. Dlugacz beyond this amount. However, counsel for the sub class reserve the right to seek compensation for reasonable and necessary expert consultation services provided by Mr. Dlugacz outside the scope of this agreement.

3. The parties will jointly revise the mental health Corrective Action Plans required by Doc. 1590; Henry Dlugacz, the County's contract monitor (currently Natalie Vance), the County's other selected participants and counsel for the parties will discuss modifications of the CAPs in an attempt to reach agreement on each CAP. However, counsel will retain the ability to litigate disputes over CAPs regardless of a consensus by non-attorney participants.

4. The County, the MDC Health Authority and UNMH will work with Henry Dlugacz and Catherine Knox to modify current "detoxification procedures" for people who have been arrested and could be booked into the MDC, including:

a. Providing appropriate medical professionals at the Prisoner Transport Center whenever the Prisoner Transport Center is open to assess and screen out people who are under the influence of alcohol or drugs who have appropriate skills to determine which detainees should receive care outside the MDC rather than be booked into the MDC;

b. Specific procedures to determine which persons who are brought to the Prisoner Transport Center or to the MDC have needs with respect to alcohol or drug use that are too

complex to safely admit them into the MDC and procedures for sending them to a hospital or other existing detox program (e.g. Care Campus, new program at Gibson Health, etc.); and

c. Modifying procedures for safely managing people who are detoxing from alcohol and drugs while they are in the MDC. ~~To~~ the extent the parties cannot agree upon modifications, MDC is not bound to accept recommendations by other parties; however, those parties are not precluded from arguing the procedures used by the County are insufficient to meet the requirements of COA #2 or applicable federal law.

5. The County will work with Henry Dlugacz and with an expert consultant retained by the County who is acceptable to counsel for Plaintiff Intervenors to develop and provide to the State Human Services Department (“HSD”) a draft application seeking approval from the federal Centers for Medicare and Medicaid Services (“CMS”) to use Medicaid funding to pay for all of the types of treatment for incarcerated individuals that have been authorized by Congress. The expenses of this application will be covered by the fund addressed in item #1. Once the application is submitted, the County will have no further obligation under this paragraph. The parties expressly agree the County is not responsible for the actions of HSD.

[Note, Congress has authorized Medicaid to pay for these services to people in MDC custody]

- a. for any Medicaid-eligible person under age 21 who is in MDC: case management; medication assisted treatment for Substance Use Disorders, with appropriate counseling; and a 30-day prescription supply immediately on release;
- b. transition-related services to people of any age, for up to 90 days before release;
- c. transition-related services for every Medicaid-eligible person in the MDC who is under the age of 21, including Early Periodic Screening Diagnostic and Treatment (“EPSDT”) required assessments and services, including behavioral health screenings or diagnostic services, and who has not yet been adjudicated

guilty of a crime (which includes everyone under 21 who is a “pre-trial detainee” and everyone under 21 who may be incompetent to stand trial);

d. targeted case management services, including referrals to appropriate care and services, in the 30 days prior to release and for at least 30 days following release; and

e. full Medicaid and CHIP coverage to anyone under age 21 in the MDC (prior to adjudication).]

6. The County will work with the CJCC and create a plan by (December 31, 2024) to implement the Stepping Up Initiative as provided in County Commission ADMINISTRATIVE RESOLUTION NO. 2015-37. (attached). Once an implementation plan is created, the County is under no further obligation regarding Item #6 pursuant to this agreement and will not be required to continuously report to Plaintiff-Intervenors’ on progress of the implementation plan.

7. The County will

a. Collaborate with the MDC Health Authority and UNMH to improve the functioning of the Resource and Re-entry Center and will work cooperatively with Henry Dlugacz to modify current practices at the MDC and the Resource and Reentry Center (“the Center”) to make reentry practices more effective for sub class members. The County will ensure that the Center operates 24 hours a day every day of the year, except in the case of national or local emergencies, and take actions to better align release times from the MDC with the hours that community providers are available to receive people who are leaving the MDC by discussing with community providers how to expand the time frames when they can serve subclass members who leave the MDC and will allow inmates to elect to delay their release until hours when provider agencies are open. This order neither requires nor authorizes the County to seek to have any court delay releasing class members and/or subclass members. This

requirement does not impose a duty upon the County to control hours of community providers or court actions regarding ordering release. The parties expressly acknowledge the County has no authority over the courts and/or community providers; and

b. Discuss with UNMH in six months whether UNMH will take over managing the operation of the Center. This provision is satisfied upon the County having a discussion with UNMH. The parties expressly acknowledge the County cannot force UNMH to assume control over the Center. This agreement does not otherwise modify the parties' Settlement Agreement (Doc. 1222-1) and does not otherwise place County services outside MDC under the scope of this litigation.


8. The County will work cooperatively with Henry Dlugacz, and any other consultant that the County may choose who is an expert in providing Medicaid-funded Intermediate Care services to people with behavioral health disabilities, and jointly develop a proposal to HSD and CMS to provide Home and Community-Based Supportive Housing services to sub class members who, due to their mental and developmental disabilities, cannot avoid future incarceration without that service and the County and MDC Health Authority will collaborate with counsel for the sub class through the end of the 2025 regular legislative session to endeavor to obtain Medicaid funding for that program. The costs of this proposal will be covered by the fund discussed in Item #1. Once the County provides the proposal to HSD and CMS, and endeavors through the end of the 2025 legislative session to obtain the Medicaid funding, it will have no further obligation under Item #8. The parties expressly agree the County is not responsible for the actions of HSD or CMS.

9. The County will re-initiate providing discharge prescription medications by 1) providing medication to discharging detainees on-site, subject to reasonable restrictions on

pharmacy hours, 2) providing a written prescription to discharging detainees at discharge as allowed by law, and 3) sending the prescription(s) to the pharmacy of the patient's choice as identified by the patient at intake, or later identified by the patient while receiving treatment in the facility. This information will be included in the patient's chart and communicated to all necessary personnel. The County will attempt to verify with discharging detainees prior to discharge which pharmacy they prefer. All sub class members on medication will be informed of how to obtain their medications during psychiatric encounters, as well as at releasing. This information will also be posted on the kiosks. Compliance with this provision does not require proof that any specific percentage of inmates receive medication upon discharge.

10. The County may not file any Prison Litigation Reform Act ("PLRA") motion to terminate prospective relief until eighteen (18) months following the date the Court entered the original Order on July 3, 2024. This order will expire after eighteen (18) months, but Intervenor may request an extension of this order if the provisions of this Settlement Agreement have not been implemented.

IT IS SO ORDERED.



JAMES O. BROWNING
United States District Judge

APPROVED:

/s/ Taylor Rahn
Taylor Rahn
Attorney for County Defendants

/s/ Kelly Waterfall
Kelly Waterfall
Attorney for Plaintiff-Intervenors

/s/ Alexandra Freedman Smith
Alexandra Freedman Smith
Attorneys for Plaintiffs