

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAR 24 2026

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MITCHELL R. ELFERS
CLERK

JIMMY (BILLY) McCLENDON, et al.,

Plaintiffs,

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.

**SETTLEMENT AGREEMENT
BETWEEN PLAINTIFF INTERVENOR SUB CLASS AND COUNTY DEFENDANTS**

This matter comes before the Court by agreement of Defendant Bernalillo County and Plaintiff Intervenors ("the parties") regarding the resolution of current disputes between the parties concerning alleged noncompliance with certain requirements of Documents 1590 and 1724, with respect to establishing and implementing Corrective Action Plans designed to expedite achieving compliance with the requirements of COA #2.

Counsel for Plaintiff Intervenors have alleged several violations of Documents 1590 and 1724, with respect to the agreements regarding mental health Corrective Action Plans ("CAPs") that are set forth in Documents 1590 and 1724. Defendant Bernalillo County does not admit any


3/23/26

of those allegations and the Court makes no findings in regard to the substance of the dispute, beyond what is stated herein.

BACKGROUND

On January 17, 2023, the Court entered as its order *Stipulated Settlement Agreement To Avoid Litigation Regarding Noncompliance With Check-Out-Audit Number 2*, Doc. 1590. On November 11, 2024, the Court entered as its order *Amended Order and Stimulated Settlement Agreement Resolving a Dispute Regarding Noncompliance with Check-Out Audit Number 2*, Doc. 1724 (amending Doc. 1717). Pursuant to these Orders, the County committed to (a) having its medical Compliance Monitor Natalie Vance work with Plaintiff Intervenors' consultant Henry Dlugacz to draft mental health Corrective Action Plans ("CAPs") and (b) arranging for a "project manager" to help County Defendant implement those CAPs. Doc. 1590 at 3-4, ¶¶ B2, Doc. 1724 at 3-4, ¶ 2(a).

That project manager, Dr. Michael DeBernardi, was jointly selected by the parties. On January 27, 2026, the County finalized a contract with him to be the project manager for enacting the requirements of the mental health CAPs, and to work with the Court's mental health expert to recommend how to spend the \$800,000 that the County has allocated to improve mental health care provided to sub class members, as specified in Doc. 1724 at 3 ¶ 1.

The Parties agreed that the "County will allocate \$800,000 to be promptly expended to improve the mental health care being provided to sub-class members..." Doc. 1717, entered on July 7, 2024. The majority of those funds have not been spent. To the extent funds are needed for the implementation of these corrective action plans, the funding shall be drawn from and not exceed that \$800,000.00 already allocated.

The below compromise satisfies the requirement to develop corrective action plans in *Stipulated Settlement Agreement To Avoid Litigation Regarding Noncompliance With Check-Out-Audit Number 2*, paragraph 3, at p. 3 [Doc. 1590], and *Amended Order and Stimulated Settlement Agreement Resolving a Dispute Regarding Noncompliance with Check-Out Audit Number 2*, paragraph 2(a), at p. 3 [Doc. 1724] (amending [Doc. 1717]).

The County filed objections in *County Defendant's Objections to Mental Health Corrective Action Plan Pursuant to Doc. No. 1590* [Doc. 1615]. The below compromise resolves those objections and Plaintiff-Intervenors' response thereto, as well as their request for hearing.

Thus, the objections to the corrective action plan developed pursuant to [Doc. 1590] are hereby resolved by the below compromise. The revised corrective action plans, therefore, only includes the below compromise and the provisions of the original corrective action plan developed pursuant to [Doc. 1590] to which the County did not object.

The below compromise resolves all outstanding motions, objections and requests for hearing regarding the mental health corrective action plans.

**COMPROMISE
MENTAL HEALTH CORRECTIVE ACTION PLANS
REPLACING THE MAY 26, 2023 VERSIONS (Doc.1615-1)**

Start Dates

The parties will negotiate reasonable start dates for each CAP, and revise timeframes for any action item with a timeframe of less than 30 days to 30 days. If the parties are unable to agree on any date(s) for starting or completing any activity set forth below, the parties will meet with the project manager, Dr. Michael DeBernardi, and attempt to reach agreement on the date(s). If the parties do not then agree, Dr. DeBernardi will select the date(s). Provided, however, that no party may seek judicial review of Dr. DeBernardi's decision unless and until the parties have first participated in mediation before an agreed-upon mediator. If mediation does not result in resolution, either party may, within 30 days of the conclusion of mediation, apply to the Court for an order modifying Dr. DeBernardi's decision upon a showing of good cause.

Furthermore, in the event the parties do not reach agreement regarding how to establish, articulate, improve or develop a system or process set forth below and, as a result, Dr. DeBernardi decides upon some aspect of the system or process, no party may seek judicial review of Dr. DeBernardi's decision unless and until the parties have first participated in mediation before an agreed-upon mediator. If mediation does not result in resolution, either party may, within 30 days of the conclusion of mediation, apply to the Court for an order modifying Dr. DeBernardi's decision upon a showing of good cause.

1. Decrease SMI Population

Issue: High prevalence of people with Serious Mental Illness (SMI) incarcerated at MDC overburdens scarce mental health and custody resources and is a barrier to provision of adequate mental health treatment encompassed within check-out agreement No. 2. (COA2).

Agreement to establish and implement a Process: The County will implement the following actions with the *goal* of reducing recidivism among the SMI population. The agreement is to plan, implement, benchmark, track, trend, and revise as necessary a *process* for achieving the goal of reducing recidivism among sub class members with SMI. Actually reducing recidivism among sub class members is not required by this agreement so long as the processes described below are implemented.

Tasks: Substitute these actions for Task #1:

- (1) Use the below definition of SMI accepted by Dr. Metzner both in the MDC and with providers who work with Bernalillo County on behalf of sub class members. SMI is defined by the Court's expert, as set forth in MDC Policy IRD 14.05 (February 2020), as: Inmates who "have a current diagnosis or recent significant history of any of the following types of DSM-V diagnoses:
 - a. Schizophrenia spectrum and other psychotic disorders.
 - b. Bipolar I & II disorders and related disorders when associated with significant functional impairments.
 - c. Major Depressive Disorder, or other depressive disorders when associated with significant functional impairments (e.g., actively suicidal or having engaged in a recent, serious suicide attempt).
 - d. Personality disorders associated with significant functional impairments (e.g., intermittent psychotic episodes, acts of self-harm or other behaviors that have a seriously adverse effect on life or on mental or physical health).
 - e. Other DSM-V mental disorders associated with significant functional impairments."
- (2) Conduct assessment to establish baseline prevalence of SMI at MDC, median and average lengths of stay and rate of recidivism for the SMI population using agreed upon definition of SMI and develop a mechanism to track and trend the prevalence, median/average length of stay and rates of recidivism for the same.
- (3) Use existing CJCC "Familiar Faces" data and other information possessed by the County to identify people with SMI who are high utilizers of jail based mental health services, as allowed by federal and state law.
- (5) Ensure that mental health/psychiatry assessment forms include information needed to develop

discharge plans to address post release psychosocial needs and services needed to attempt to reduce risk of recidivism. This task is exclusively about ensuring that forms are adequate. Once this form is complete, the agreement does not require additional revisions.

(6) Establish interim and ultimate *targets* for reduction of recidivism of subclass members with SMI and develop mechanisms to assess possible revisions to services and approach if targets are not met.

(7) Counsel for Plaintiff Intervenors, Henry Dlugacz (Plaintiff-Intervenor's consultant), counsel for the County and other County and/or other personnel selected by counsel for the County will meet once to revise the County's 2022 jail diversion plan in order to focus on sub class members, emphasizing the addition or revision of tasks addressing the needs of sub class members with SMI.

(8) Convene one special meeting of a stakeholders' group, including but not limited to the CJCC Diversion and Reentry subcommittee members, to review a draft of the updated jail diversion plan and to identify strategies to improve the effectiveness of the plan. After that meeting, the parties will meet again to discuss how to finalize the plan, and then the County will finalize the plan. Once this plan is finalized, the County is under no further obligation to meet with the parties regarding the jail diversion plan.

(9) The County will establish a system to routinely make their updated lists of "Familiar Faces," as currently defined by Bernalillo County, available to appropriate County personnel and their agents involved in jail discharge planning. Compliance with this provision is contingent upon establishment of the system described above, not with a certain percentage of compliance with the process.

This agreement does not require the County to collect additional data or create new audits beyond those currently in effect.

(10) Develop a process to compile data, analyze the data and to issue annual reports on progress towards meeting targets for recidivism reduction among the SMI population; then issue the first annual report by April 4, 2027. Develop and implement corrective actions based on analysis of results and lessons learned when targets are not met. Developing the process and issuing the first annual report fulfills the requirements of this paragraph.

Task #2: Continue current periodic meetings which the County convenes with local community providers discussing how to improve reentry for individuals who are receiving Medication Assisted Treatment for their substance abuse disorders, to utilize existing community programs and provider agencies to explore the development and enhancement of substance use and mental health services for sub class members with SMI who leave the MDC.

Task #3: Continue to improve the functionality of the Resource and Reentry Center, with the goal of better matching the hours key community mental health and substance use treatment providers who are paid by the County operate their services with MDC release times by discussing with community providers how to expand timeframes when they can serve subclass members leaving the MDC, so that released incarcerated people can connect with needed treatment and other adjunct services on the day of their release.

2. Increase Recruitment & Retention

Issue: Assess staffing needs given the number of incarcerated people with SMI housed in MDC.

(This pertains to mental health and custody staffing but this CAP focuses on mental health staffing)

Task #1: Improve recruitment and retention of psychiatry and other mental health staff

- a. The County will meet with its mental health vendor to assess salary levels and benefit packages required to make MDC Mental Health staff positions attractive to applicants. (1) assess effectiveness of hazard pay for MDC Mental Health staff positions. (2) If higher salaries are indicated, the County will meet with its mental health vendor to discuss ways to improve recruitment and retention of Mental Health staff.
- b. Continue use of telepsychiatry for patients as clinically appropriate at outpatient levels of care. If changes are necessary to the use of telepsychiatry, the County will decide how to develop and implement those changes.
- c. The County will meet with current mental health vendor to discuss flexible work schedules and to consider hybrid assignments in jail.
- d. Make good faith efforts to hire a Nurse Educator to provide access to in-service training; and provide continuing education opportunities in relevant professions.

Task #2: Conduct annual staffing reviews, by establishing a modified methodology that takes into account the timeliness of responses to sick call requests, initial assessments, follow-up contacts, and other essential clinical and administrative processes during the past year. In the event the parties do not fully agree on a modified methodology, Dr. DeBernardi will resolve the disagreement, subject to an appeal to the court.

Task #3 Articulate caseload ratios for mental health and discharge planning staff based upon whether or not they are treating people who are SMI and upon the level of acuity they serve. The ratios will not be considered as evidence of compliance or non-compliance with substantive clinical requirements of COA #2.

3. Intake Screening MH

Issue: Whether MDC has developed and implemented an appropriate screening instrument that identifies mental health needs and ensures timely access to a mental health professional when inmates present symptoms requiring such care.

Task #2: Implement the corrective action plans identified in most recent Audits regarding correct identification of people needing treatment plans and treatment, and the parties then consult with Dr. Debernardi regarding what further steps, if any, are needed to improve the Medication Verification, history review, and acuity referral processes.

4. Morbidity

Issue: Whether MDC developed and implemented a Suicide Prevention Committee (“SPC”) and M&M Committee that reviews individual and system data about triggers and thresholds and determines whether these data indicate trends either for individuals or for the adequacy of treatment and suicide prevention overall.

Task #1: Ensure SPC and/or M&M Committee, whichever is appropriate, reviews suicides, serious suicide attempts, and other deaths of people in custody. Ensure meetings occur monthly

Task #4: Consult with Dr. DeBernardi regarding improvements to tracking system for corrective actions undertaken as a result of quality improvement studies, SPC, and morbidity and mortality reviews.

6. Treatment Plans

Issue: Ensure MDC's treatment plans adequately address patients' MH needs.

Task #2: Ensure training, supervision, and CQI of revised templates, workflows, and forms.

Task #3: Clinical Supervision to include periodic attendance of treatment team meetings and regular chart reviews. Develop feedback loop.

Task #5: Based on assessments, the treatment plan explicates the frequency and modality of services and implementation is tracked by CQI audit(s): Tracking and monitoring outlined in treatment plan utilizing appropriate frequency and methodology of audits.

Issue: Ensure MDC inmates have the opportunity to participate meaningfully in the development of a treatment plan.

Task #7: Staff will encourage patient participation. Staff document in chart patient attendance or reason for non-attendance. For cases where patients are not attending, team will need to review plan and revise as clinically indicated.

Task #8: At monthly CQI meeting report number of treatment team meetings occurring, number where patients were afforded the opportunity to participate, and the number given an opportunity to participate who attended.

8. Suicide Precautions

Issue: Ensure MDC's suicide prevention policies, procedures, and practices include provisions for constant direct supervision of actively suicidal inmates, close supervision of special needs inmates with lower levels of risk (e.g., 15 minute checks), and follow-up assessments after the suicide watch is discontinued.

Task #1b: Policies to be implemented to include training, supervisory and CQI oversight.

Issue: Whether MDC security staff or Watchers provide the amount of supervision specified by a Qualified Mental Health Professional and accurately document their well-being checks on forms that do not have pre-printed times.

Task #2a: Initiate and monitor reliable process for communication between MHP and security staff/watchers.

Task #2b: Continue use of CQI to include supervisor review and quality checks of welfare checks with video. Quality checks to be reported monthly.

Issue: Whether MDC conducts all follow-up assessments on all inmates discharged from suicide watch.

Task #4a: Implement the process.

Task #4b: Train staff (one time proof).

Task #4c: Provide ongoing proof of practice to include quality assurance for twelve months or until the Check-Out Audit, paragraph C(5), shows compliance, whichever comes first, at which time the task will be considered closed.

Issue: Whether MDC assures that its policies and procedures regarding suicide precautions are followed.

Task #5: Assure quality assurance reports are conducted and remediated as indicated.

Issue: Whether MDC conducts appropriate mental health assessments within the following periods from the initial screen:

Task #6b: Mental Health Director or Designee to provide supervision and oversight to include chart review and observation of screenings.

9. Access to Care

Issue: Need to explore and develop procedures to obtain access to hospital level treatment.


Task #1: Conduct a meeting including County, representatives of Plaintiff Intervenors and Henry Dlugacz to discuss short-term and long term strategies for arranging a system in the future for serving the most psychiatrically/behaviorally complex people who are booked into the MDC in an alternative secure location for their treatment, and to discuss better ways to identify patients committed to MDC custody requiring hospital level treatment. Compliance with this requirement does not require proof of implementation of ideas discussed.

Task #2: If the parties cannot agree upon an adequate process, Dr. DeBernardi will provide input.

Issue: Fully implement Chronic care models to include dedicated PAC Coordinators

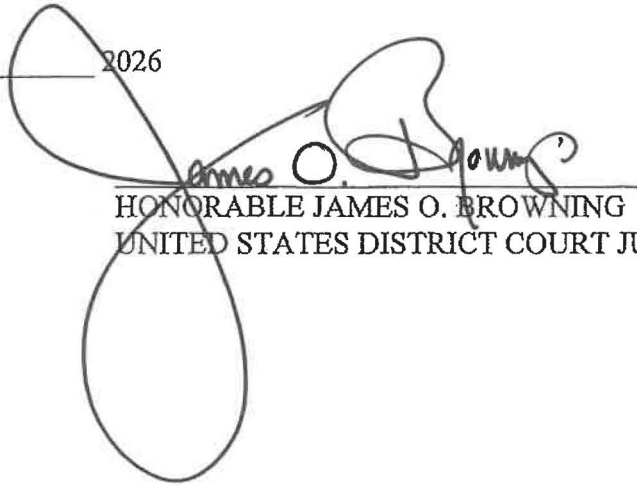
Task #3: Written Procedure for Chronic Care models to be created and submitted to Federal Monitor for review

Agreed on March 19, 2026 by


Counsel for County Defendants


Counsel for Plaintiff Intervenor sub class

SO ORDERED on _____ 2026


HONORABLE JAMES O. BROWNING
UNITED STATES DISTRICT COURT JUDGE