

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF MISSISSIPPI,

Defendant.

CIVIL ACTION NO.
3:16-CV-00622-CWR-FKB

UNITED STATES' RESPONSE TO THE SPECIAL MASTER'S REPORT

As instructed by the Court, ECF No. 253, the Parties and the Special Master have submitted plans to bring the State into compliance with the Americans with Disabilities Act (ADA). ECF Nos. 262-1, 265-1, 269. In preparation for the scheduled hearing before the Court regarding these three plans, the United States provides this response to the Special Master's submission. The response highlights a central area of agreement between the United States and the Special Master as well as two areas of difference. At the upcoming hearing, the United States will be prepared to address all the provisions on which the proposals differ. After review of all three plans, the United States reaffirms its request that the Court issue an order consistent with its proposal.

I. The Special Master Correctly Recognizes That Verification and Monitoring Are Necessary to Ensure that the State Comes into Compliance with the ADA.

As the Special Master noted in his Report, the record in this case demonstrates "a crucial gap between the funded, theoretical capacity of services and the number of people who receive care. Addressing this gap and validating the adequacy of services, not just on paper, is central to resolving the case." ECF No. 269 at 4. The United States agrees that to remedy the ADA

violation identified by the Court, ECF No. 234, the State must provide the necessary community-based services, and then be held accountable for delivering those services to individuals who need them to avoid unnecessary institutionalization in State Hospitals. Holding the State accountable will require verification of what the State alleges to have done to address the Court's liability findings and of what remains to be done.

The State's adult mental health system on paper bears little resemblance to the system as it exists in reality. ECF No. 234 at 2. We agree with the Special Master's assessment that "[m]onitoring of whether services are in place, available and used by people with serious mental illness, and functioning according to their intent is essential." ECF No. 269 at 3-4. As the Special Master observed, "developing the capabilities for effective and efficient oversight of complex mental health systems is not achieved overnight." ECF No. 269 at 4. Verification of "the actual availability" and provision of services, regular reporting, and external monitoring will be critical to ensuring that the State provides appropriate community-based services to people who are in State Hospitals needlessly, or at serious risk of avoidable State Hospital admissions. *See* ECF No. 269 at 3-4.

The Special Master's recommendations regarding verification and monitoring further the same goals as the related provisions in the United States' proposal. *See* ECF No. 265-1 at ¶¶ 44-56. In particular, the Special Master's suggestion that the Court require an annual Clinical Review Process as part of the assessment of compliance is sound; it will give the Parties and the Court a clear sense of what aspects of the Order are being implemented effectively and where deficiencies remain. *See* ECF 269 at 21-22. Similarly, requirements relating to the collection, analysis, and sharing of system data; State oversight of Community Mental Health Center service provision; technical assistance; filing of implementation plans; and appointment of a monitor are

all necessary and appropriately tailored to bring the State into compliance with the ADA. *See id.* at 21-22.

II. The Special Master’s Recommendations Relating to Certain Services Are Insufficient to Hold the State Accountable for Preventing Unnecessary Hospitalization.

The ultimate goal of any remedial order in this case will be to “stop the cycle” of unnecessary State Hospital admissions by ensuring that adults with SMI across Mississippi have meaningful access to appropriate community-based services. ECF No. 234 at 59-60. In some areas, the Special Master recommends that the State collect and review data regarding whether community-based services are “working as intended,” *see* ECF No. 269 at 6, but would not require the State to take any responsive action if the data reveal that those services are available only in theory or are not reducing unnecessary State Hospital admissions as expected. Any remedial order that does not require the State to reach the ultimate outcome will fall short.

For example, the Special Master acknowledges that the State’s requirements for the timeliness of mobile crisis response “were not being met at the time of trial” and that timeliness “is an essential element of adequate crisis care.” ECF No. 269 at 8. To address this issue, the United States proposes that the State increase its mobile crisis capacity to meet its own standards for response times. By contrast, the Special Master recommends only that the State “monitor performance of Mobile Crisis Teams including response times defined in its Operational Standard 19.3, E, 1.” *Compare* ECF No. 265-1 ¶ 4-7, *with* ECF No. 269 at 16. Simply monitoring performance is not enough. The State must be required to expand its service capacity to provide core community-based services, including timely mobile crisis services, so as to prevent unnecessary State Hospital admissions. *See* ECF No. 234 at 23-24, 60.

Similarly, the Special Master’s recommendations adopt two unproven services on which evidence was not presented at trial—Intensive Community Outreach and Recovery Teams

(ICORT) and employment services through the Mississippi Department of Rehabilitation Services. The State proposes to implement these services in place of PACT and IPS Supported Employment, two evidence-based services proven to prevent unnecessary hospitalization about which there was ample trial testimony. *See* ECF No. 266 at 8-10, 13-14. Furthermore, both PACT and IPS Supported Employment have been provided in the State for years and have track records of success. Neither the State nor the Special Master's plan would require that the State demonstrate, now or later, that the newly developed services have comparable success in preventing unnecessary hospitalization relative to the evidenced-based services established at trial. While the United States agrees that the State should have flexibility in how it fulfills its obligations under the ADA, *see* ECF No. 265-1 at ¶ 4, there must be some guard rails. The Court's remedial order should require the State to implement the evidence-based services established at trial or alternative services that have comparable success in reducing unnecessary hospitalization.

In place of assessing comparability of outcomes, the Special Master suggests that the State develop tools to assess whether providers are providing ICORT and non-IPS Supported Employment consistent with the State's standards and then regularly use those tools to assess compliance with the standards. *See* ECF No. 269 at 6-7, 18. This approach is flawed. It would have the State assess fidelity to a service that the State created without research or evidence of efficacy. Beyond that, it would not require the State to take any action if the fidelity reviews reveal that a provider is not offering the service as intended. The better approach, as argued above, is to require that the State demonstrate the comparable effectiveness of any alternatives to the core services established at trial.

III. The Special Master’s Recommendations Regarding Permanent Supported Housing Capacity Are Inadequate and Unsupported by the Record.

The Special Master recognizes that a lack of stable housing “is a frequent cause of relapse and hospital readmissions” and that the evidence at trial shows that roughly half of the people admitted to a State Hospital would benefit from Permanent Supported Housing. ECF No. 269 at 10-11. The United States’ proposed expansion of Permanent Supported Housing by a total of 750 people served annually is based on the facts admitted at trial, including estimates by the State’s own officials and testifying experts. *See* ECF No. 266 at 11-13. By contrast, the Special Master’s proposed expansion of Permanent Supported Housing by 500 people over two years is not supported by the trial evidence and is inadequate to meet the demonstrated need for the service to prevent unnecessary State Hospital admissions.

IV. Conclusion

For the foregoing reasons, the United States respectfully requests a remedial plan consistent with the United States’ proposal.

Dated: June 21, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2021, I electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to all counsel of record.

/s/ Deena Fox

Deena Fox