August 6, 2021

Mecklenburg County
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Charlotte, NC 28202
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Submitted via email

Re: Comments on Mecklenburg County's Disengagement / Realignment Plan

The Charlotte Center for Legal Advocacy is a nonprofit legal services provider with extensive experience in North Carolina's Medicaid managed care system, both with respect to the delivery of behavioral health services and the current Transformation to Medicaid Managed Care for the majority of NC Medicaid and Health Choice beneficiaries.

Council for Children's Rights is a nonprofit organization committed to protecting and promoting the rights of children in Mecklenburg County through legal representation, policy advocacy, and research. For more than 40 years, CFCR has provided legal representation to children in the areas of education, mental health, abuse and neglect, custody, and delinquency. As a result, CFCR has extensive firsthand experience with North Carolina's delivery of behavioral health services to children.

We strongly support Mecklenburg County's decision to disengage from Cardinal Innovations (Cardinal) and realign with Alliance Health (Alliance). For years, Cardinal failed to live up to its obligation to authorize and deliver the services that many consumers need. Throughout that time, providers, consumers, and advocates have raised issues, such as Cardinal's inadequate provider network. As the following examples illustrate, these failures have been devastating, especially for the Cardinal's most vulnerable members:

- A child in DSS custody for five years during which she has had nine different social workers. Since her adoptive placement was disrupted about two years ago, she has experienced significant instability. In 2019, she spent three months in a youth shelter. There was a fire at the shelter in the middle of the night, and she woke up to flames and

lost all her belongings. Less than a week after being placed in a Level III residential placement, she was hospitalized and recommended for a Psychiatric Residential Treatment Facility (PRTF). She spent almost a year in a PRTF located over three hours away from her support team. Most of that time, her team was unable to visit due to COVID-19 pandemic restrictions. After her discharge, she stepped down to an out-of-county Level III residential facility. She was taken to the hospital multiple times due to self-harming behaviors. A month and a half ago, she was discharged from an acute hospitalization with another recommendation for a PRTF. For six weeks she has been staying in a hotel supervised by DSS and has not received any therapeutic services.

- A 17-year-old in DSS custody, who is diagnosed with PTSD and currently has a recommendation for a therapeutic foster care (TFC) placement (Level II - family type). Her care coordinator has been searching for a TFC placement for over three months. Despite searching both in and out of network (27 in-network providers and 20 out-of-network providers), no options have been identified. In fact, of the 47 providers contacted, not one has an available TFC bed for a female teenager. Instead, this young person has had to find her own places to sleep, moving between friends and family. She will turn 18 and age out of DSS custody next month, likely without an identified clinically recommended therapeutic placement.
- A 14-year-old in DSS custody who is dually diagnosed (IDD, PTSD, ADHD, DMDD) sat in the hospital for close to two months. The hospital determined she did not meet medical criteria to remain in the hospital, but she stayed there while she waited for an appropriate therapeutic placement. She was finally placed in an out-of-county Level III group home. During her four months in this placement, she was hospitalized because of aggressive behaviors and suicidal ideations. A provider grievance was filed with Cardinal due to:
    - Concerns for the young person's safety in the facility;
    - Concerns about the group home staff's lack of training to handle behavioral issues in a therapeutic manner;
    - Concerns that the group home used the hospital as a behavioral intervention; and
    - The assigned Cardinal care coordinator suggesting that the group home contact the Department of Juvenile Justice to file a complaint against the young person, insinuating that detention may be a satisfactory replacement for an appropriate therapeutic placement.

  Following the placement disruption, the young person was hospitalized again and remained in the hospital's observation unit for five months while Cardinal attempted to identify a therapeutic placement. During her time in the hospital's observation unit, she did not receive any educational services. This young person has since been placed in an out-of-state PRTF.

- An 18-year-old, who is diagnosed with ADHD, Major Depressive Disorder, ODD, and PTSD, was in DSS custody for five years. During those five years, this young person had eight residential placements and most recently was placed in a PRTF for almost two years, even though there was a clinical recommendation for a TFC placement for close to a year. The search for a TFC placement lasted a year with no success. This spring, after months of searching, his provider identified an out-of-network TFC placement. He finally transitioned to a TFC placement, his first family-type placement since entering DSS custody, three months before turning 18.

Thank you for the opportunity to comment on Mecklenburg County's Disengagement / Realignment Plan.

a. Transition Planning

While we appreciate the LME/MCO Realignment Committee's role in holding listening sessions with consumers, which are an essential source of input, some enrollees with compelling perspectives and information may be reluctant to participate in these sessions. The Committee needs more direct and active involvement from consumers and others who understand their needs firsthand to ensure that beneficiaries are meaningful collaborators throughout this process. As the population this plan is intended to support, consumers are dramatically underrepresented among required members for the Committee. We urge the County Manager to use her discretion in appointing consumer representatives and advocates to the Committee, recognizing fatigue and feelings of futility among consumers.

We recommend the following individuals and organizations for the Realignment Committee:

- Council for Children's Rights (https://www.cfcrights.org/)
- Mental Health America of Central Carolinas (https://www.mhacentralcarolinas.org/)

When will the LME/MCO Realignment Committee begin to meet?

When will its list of members be finalized?

We appreciate that Alliance is committed to demonstrating its readiness to address issues in the delivery of behavioral health services in Mecklenburg County. However, to do so, Alliance and the County need detailed information from Cardinal, including but not limited to:

- Financial statements for Mecklenburg County. Our understanding is that Cardinal's audited financial statements are not broken down by county. This information is essential for Alliance to determine staffing and other resource needs. It is also necessary to calculate what portion of Cardinal's fund balance should be transferred to Alliance.

- Information about providers in Cardinal's network and providers with whom Cardinal has had one-off relationships (e.g., one-time contracts for individual consumers) so that Alliance can maintain and create strategies for expanding the provider network in Mecklenburg and surrounding counties.
- Information identifying providers who left Cardinal's network or decided not to join the network, particularly about why they made this decision and what changes would induce them to participate in Alliance's network.
- Cardinal/Vaya's plans regarding existing Cardinal staff and detailed reference information for any staff who apply for positions at Alliance.
- Cardinal/Vaya's position on the proper distribution of the fund balance.
- The timeline for providing the information requested by Alliance or the County and the reasons for failure to provide that information thus far.
- Cardinal's position on the necessary components of a Transition of Care policy, including how long the period should last before the Alliance contract becomes effective.
- What preparations are needed for the transfer of all detailed consumer and provider data from Cardinal to Alliance and how long this process will take.

Because most of this information is public, Cardinal has a duty to provide it. For information that is not public, confidentiality protections should be arranged. The County must work with Alliance to evaluate what information is needed for each phase of the transition and establish deadlines for information sharing. Cardinal should be required to sign an agreement about this process before the transition begins. If necessary, the County should urge NC DHHS involvement to ensure that information sharing is complete and timely.

b. Continuity of Services Plan

We agree that continuity of services is one of the most important considerations in this transition. The disruption of behavioral health services can have significant and lasting impacts on consumers, including regression, relapses, and crises.

We appreciate that the County is committed to ensuring the continuity of services for consumers. However, the "Continuity of Services Plan" approved on June 15, 2021 does not contain sufficient specifics as to how this will be achieved.

When will more detailed information be made available?

1. <u>Protections Related to Existing Authorizations</u>

The Continuity of Services Plan states, "[o]nce the realignment is completed, Alliance will make every effort to honor all existing service authorizations . . . and . . . individual support plans." This is vague and does not impose any concrete requirements or restrictions. We urge the County to require protections around existing prior authorizations during this realignment that are similar to those for beneficiaries transitioning from fee-for-service Medicaid to Medicaid Managed Care Prepaid Health Plans (Standard Plans). These protections include but are not limited to:

- Minimum requirements for consumer-specific transition files. The Continuity of Services Plan only mentions "Cardinal providing service authorization information in a timely and suitable format." However, other information is also essential for the continuity of services, such as an individual's clinical assessments, current providers, current medications, and active diagnoses. It is also essential that "timely and suitable format" be defined, and deadlines be imposed on Cardinal's transfer of the files and Alliance's processing of the information.
- Protections to assure that patients continue to see their providers during the transition period, including requiring Alliance to waive prior authorization requirements (with limited exceptions) and cover out-of-network care during the first 60 days after their contract becomes effective, educating all providers that they will be paid for those services and the process for obtaining payment, and reminding providers they may not bill Medicaid beneficiaries except for applicable cost sharing during the transition. *When Alliance first begins operating as the County's LME/MCO, will Alliance or Cardinal (or both) be responsible for these costs?*
- Require Alliance to pay out-of-network providers at 100% of the in-network rate for the first 60 days.
- Require Alliance to honor all existing prior authorizations for a minimum of 90 days, unless the authorizations expire sooner. For services provided by out-of-network providers, requirements that Alliance make reasonable efforts during the transition period to contract with those providers and assist consumers in finding suitable in-network providers if contracting is not achieved.
- Require Alliance to allow pregnant enrollees to continue receiving behavioral health services from their providers without prior authorization until the birth of the child, end of pregnancy, or loss of eligibility.

2. <u>Care Coordination</u>

We encourage the County, Alliance, and Cardinal to create detailed guidelines for the transition of care coordination. Many consumers of behavioral health services rely on care coordinators to answer questions about the behavioral health system, connect them to providers, and ensure that their medical needs are addressed. Alliance must proactively ensure that consumers

develop positive relationships with new care coordinators as soon as its contract takes effect. These are relationships of trust, and even unintended bad first impressions can have enduring negative impacts. Delays in care coordination are particularly detrimental to enrollees experiencing or at risk of crises and those who are transitioning to different care settings and need discharge planning. We recommend the following requirements:

- Alliance care coordinators must reach out to all beneficiaries that receive care coordination within the first week of the transition. Where possible, care coordinators should reach out by phone, email, and ground mail in case beneficiaries prefer one over others.
- Care coordinators must explain any changes to enrollees' providers and processes for working with care coordinators. They also must address new and ongoing concerns that enrollees have.
- Alliance must increase the capacity of other consumer-facing staff members, such as those responding on Alliance's Access and Information Line, so that consumers are not deterred by delays in seeking support.
- Alliance must review all denied requests to Cardinal for care coordination over the prior year and reach out individually to those members about the criteria for care coordination services and the process for requesting them.
- Alliance must conduct general outreach to providers and consumers about what care coordination services are, the criteria for receiving them, and the process for requesting them.

In addition, in multiple cases, we have observed contentious relationships between Cardinal beneficiaries and care coordinators. In our experience, Cardinal's culture and practices unduly alienate enrollees. For example, care coordinators sometimes tell beneficiaries that it is their job to identify the services that they need or refuse to communicate through email even when that is a beneficiary's preferred method. In one particularly egregious situation, a care coordinator told a beneficiary's adoptive parents that if they weren't happy with the services offered, they should turn the beneficiary over to the State. Strained relationships with care coordinators have a substantial impact on the quality of care and success of the behavioral health care system.

From the start, Alliance must set a new standard for care coordination and cultivate trust with enrollees. If Alliance ultimately hires all or part of Cardinal's care coordination staff that currently works with Mecklenburg County consumers, we cannot assume that a change in leadership will lead to a change in culture. Yet such a change is necessary for the potential benefits of this realignment to be realized. We urge the County and Alliance to adopt the following mandates:

- Cardinal staff must apply for positions with Alliance in a competitive process.

- Cardinal must share all complaints regarding any staff member applying for a position at Alliance.
- New Alliance care coordinators must complete Alliance's standard trainings and orientation before the realignment date.
- Alliance must ensure that training for all care coordinators addresses the major shortcomings of the current system. Training should, at least in part, be problem-solution-oriented. That way, care coordinators will have the understanding and tools they need to drive positive change. Suggested topics include:
    - Referrals for evaluations that are necessary according to mandatory timelines (e.g., under EPSDT) and because of changes in consumers' medical conditions
    - Referrals for services to *prevent* crises and other deteriorations of medical conditions, not in reaction to these circumstances
    - Crisis management
    - Understanding when home and community-based services, such as external case management and wraparound services, are appropriate
    - Discharge planning

3. Provider Network

We look forward to Alliance's plan to provide timely access to the full spectrum of behavioral health services for beneficiaries. Cardinal's network has been grossly inadequate to address the needs of consumers in a timely manner, particularly those in crisis. This has led to unnecessary and prolonged emergency department (ED) visits, people living with their families even when they are a danger to themselves and others, and law enforcement involvement in mental health crises that they are not equipped to deescalate. While there are currently shortages of providers at all levels of care, we are particularly concerned about the lack of available quality home and community-based services (HCBS), including community placements for those who cannot live at home and facility-based and mobile crisis services.

In general, HCBS are more effective and less costly than higher levels of care. They enable people to live with or near their families and friends and participate in community life. We have observed that Cardinal has not authorized or even considered appropriate HCBS for many consumers. For example, particularly in cases involving children with repeat ED visits and histories of institutionalization, Cardinal has not referred children to necessary HCBS, such as NC START, case management, wraparound services, and mobile crisis management. As a result, parents and guardians bear the brunt of managing complex and often dangerous behavioral issues. In these situations, Cardinal has a tendency of (a) blaming the family or the child, or (b) placing the burden on family members or consumers, usually non-clinicians, to come up with treatment plans.

This leads to a cycle of institutionalization. A consumer will receive institutional care for a period of time, then come home to practically no services. Sometimes, it is only matter of days before these individuals are clinically back to where they were before their institutional stays. To make matters worse, because the quality of care, supervision, and maintenance in institutions (e.g., both in-state and out-of-state PRTFs) are often inadequate, beneficiaries may return to their communities with additional traumas that must be addressed. We see many of these individuals end up in EDs, prolonged hospital stays, or in institutional settings once again. This is utterly inhumane and a flagrant violation of *Olmstead* and Medicaid mandates.

We understand that adequate HCBS incur up-front costs, such as higher reimbursement rates, higher training requirements for staff, 24-hour access to crisis intervention, and more intensive services. However, the cycle of institutionalization costs our system dearly—morally and financially. It is ultimately more expensive for us to wait for people to end up in institutions for life or, in some cases, the criminal system, than to proactively and meaningfully address their needs in the community.

We urge the County and Alliance to take the following measures or adopt the following requirements:

- Evaluate the availability of HCBS in the County and surrounding counties.
- Identify service gaps in the County, especially ones that often lead to crises and unnecessary institutionalization.
- Work with providers of all sizes to understand what it takes financially and administratively to provide various HCBS under Medicaid, including providers not currently contracting with Cardinal.
    - Alliance must make reasonable changes to reimbursements rates if doing so will enable it to build an adequate provider network.
    - Alliance must streamline administrative processes, such as prior authorizations, reauthorizations, and provider audits, that discourage providers from accepting Medicaid.
- Alliance must evaluate enrollees that are currently institutionalized for transitions to HCBS and more integrated settings.

4. <u>Reevaluating Documented Need and Clinical Recommendations</u>

In multiple cases related to Cardinal services, we have observed a pattern of basing clinical recommendations on the availability of providers. For example, a psychological evaluation may recommend TFC for a child, but after Cardinal is unable to find a TFC provider, it "updates" the recommendation to a service for which there are available providers. As Alliance expands the

provider network in Mecklenburg County, it will be essential to reevaluate the needs of many beneficiaries. While Alliance should honor existing authorizations, it should not assume that existing recommendations are clinically sound or up to date in all cases.

Alliance must refer enrollees for new clinical assessments where there have been changes in recommendations that could be due to provider shortages. This includes changes not explicitly tied to those shortages but are based on illegitimate, unclear, or unexplained reasons for new recommendations, rather than documented changes in medical need and consumers' life circumstances.

c. Notification of Stakeholders

We commend the County and Alliance for their commitment to notifying stakeholders of this transition. We cannot emphasize enough the importance that consumers understand this transition and are able to self-advocate if issues do arise. We agree that a variety of communication methods is necessary.

In working with clients, we have seen many reasons why some consumers may need to receive information multiple times or through several means of communication. For example:

- People who move, especially those who move multiple times, may forget to update their contact information with their local DSS.
- Some folks are intimidated by, overwhelmed by, or wary of mail from government entities.
- Information, especially contained in a letter, can be complex and difficult to understand.
- Some people have limited access to the internet or social media.
- It can be difficult to give due attention to information when a consumer is balancing other responsibilities, such as caring for family members and working.

Because these challenges make it difficult to create a comprehensive plan for notifying consumers, we encourage the County and Alliance to err on the side of too much communication. We also urge the County and Alliance to consider other methods of communication, such as outreach through places of worship, community organizations, food banks, schools, and providers. For example:

- In addition to educating providers about the realignment, provide them with consumer-targeted materials and information that they can share with patients.
- Provide materials and consumer-specific information to trusted community organizations for dissemination.

- Work with community organizations that hold large gatherings, such as religious services or community events, or that are connected with large groups of beneficiaries through virtual platforms, such as Facebook groups or Facebook live events, to share information with consumers through presentations and printed or electronic materials.

Readiness & Tailored Plans

We are concerned about the complexity of this realignment. *We would like more information about what Alliance is currently doing and what Alliance needs to have in place for a successful transition.*

We are also concerned about the transition of consumers of behavioral health services to Tailored Plans in July 2022. With the anticipated date of realignment on April 1, 2022, there would be two huge transitions requiring two complex outreach campaigns within a few months of one another. This will add to consumers' and providers' confusion and frustration regarding the different changes. *We would like to know how the County and Alliance will navigate these two big changes in such a short period of time.*

If the County and Alliance need more time to successfully complete the realignment and/or if these two sets of changes to Medicaid would be too difficult to implement so close to one another, then we support delaying the Tailored Plan implementation.

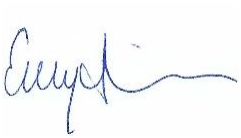
We also have significant concerns about the foster care population in the County. These children are almost by definition survivors of severe trauma, and many children in foster care have significant behavioral health needs. They are also grossly overrepresented in institutional settings, such as PRTFs. The transition to Alliance for children in foster care presents additional challenges. Because many of these children depend so heavily on behavioral health services, service disruptions are very risky and potentially detrimental. In addition, many children in foster care rely on DSS social workers to advocate for them. While DSS social workers are caring and talented individuals, they are often overworked and may not have enough hours in the day to resolve issues related to Medicaid transitions in a timely manner. We urge the County and Alliance to implement safeguards to protect and monitor the welfare of children in foster care, including:

- Assigning these children care coordinators that are specifically trained in serving the foster care population
- Mandatory reviews of all beneficiaries in foster care to ensure that existing clinical recommendations meet their needs, as described above in b(4) "Reevaluating Documented Need and Clinical Recommendations"

- Monitoring of the transition for this population by the Clinical & Contractual Services Division
- Expedited reviews for services requiring prior authorizations for at least three months after the transition

We are happy to discuss any of our questions, comments, and suggestions further by phone or email. Please feel free to contact Emily Kim at 980-202-4026 or EmilyK@charlottelegaladvocacy.org. Thank you for your consideration, and we look forward to collaborating throughout this process.

Sincerely,



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