

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES AND THE STATE
OF TENNESSEE REGARDING THE TENNESSEE STATE VETERANS' HOMES**

I. INTRODUCTION

1. This Memorandum of Agreement ("MOA") is entered into by the United States and the State of Tennessee ("State"). This MOA addresses certain aspects of the United States' investigation into the conditions of care and treatment of the residents in the Tennessee State Veterans' Homes in Humboldt and Murfreesboro, Tennessee (collectively, "TSVHs"), pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997.

2. The United States' investigation began on February 12, 2007, when the United States notified the State, pursuant to CRIPA, that it was initiating an investigation into the conditions of care and treatment of TSVHs residents.

3. As part of the investigation, the United States toured the TSVHs in April, May, and July 2007. On February 5, 2008, the United States notified the State of the findings of its investigation, and thereafter, conducted another tour of the facilities in October and November 2008.

4. This MOA addresses certain concerns raised by the United States in its February 5, 2008 findings letter.

5. It is the position of the United States that the care, living conditions, and the treatment of TSVHs' residents implicate rights of these residents that are secured or protected by the Constitution of the United States and the laws of the United States.

6. The State does not agree that conditions at the TSVHs implicate constitutional rights for the residents of the TSVHs. Nothing in this MOA in any way impacts the State from raising such a defense in any legal proceeding.

7. The parties entering into this MOA recognize, that since the initiation of this investigation, the State has made efforts to improve the care it provides to TSVHs residents.

8. The parties agree to the provisions set forth in this MOA to ensure that these ongoing improvements continue to be implemented and maintained at the TSVHs. This MOA provides for actions, practices, and procedures that the State agrees to implement.

9. Each and every provision of this MOA is entered into by clear agreement of the parties.

10. In entering into this MOA, the State does not admit any violation of state or federal law, and this MOA may not be used as evidence of liability in any legal proceeding.

11. The provisions of this MOA are a lawful, fair, adequate, and reasonable resolution of part of this investigation.

12. The purpose of this MOA is to achieve the substantive outcomes set forth within this MOA.

13. This MOA is binding on the State and its agencies and/or departments that may have an effect, either directly or indirectly, either currently or in the future, on the operations of the TSVHs.

14. This MOA is not intended to impair or expand the right any person or organization to seek relief against the State, or its officials, employees, or agents for their conduct or the conduct of State employees; accordingly, this MOA does not alter legal standards governing such claims, including those under Tennessee law.

II. DEFINITIONS

As used in this MOA Agreement, the following definitions apply to the terms below.

15. "Adequate" or "appropriate" shall mean the level of service required for compliance with all applicable federal, state, and local laws, regulations, and codes, and with generally accepted professional standards; and also means that level of service required by a resident to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being possible, given the resident's functional status, as required by 42 C.F.R. § 483.25.

16. "Care Plan" shall mean a written plan of care that meets the requirements of 42 U.S.C. § 1395i-3(b)(2) and (3), 42 U.S.C. § 1396r(b)(2) and (3), and 42 C.F.R. § 483.20(k).

17. "The TSVHs" shall mean the Tennessee State Veterans' Homes in Humboldt and Murfreesboro, Tennessee.

18. "Highest Practicable" shall mean the highest level of function and well-being possible consistent with generally accepted standards, limited only by the individual's presenting

functional status and potential for improvement or reduced rate of functional decline.

19. "Incident" shall mean any unusual or unexplained occurrence that results in actual or potential physical harm, pain, or mental anguish to a resident; any known, alleged, or suspected event of abuse, neglect, or exploitation of a resident; or any unexpected death of a resident.

20. "Qualified Professional or Qualified Staff" shall mean an individual who is competent, whether by education, training, or experience, to make the particular decision at issue.

21. "Resident" shall mean any person residing at the TSVHs during the operation of this MOA.

22. "Substantial Compliance" shall mean a level of compliance that does not significantly deviate from the terms of this MOA, provided that such deviation poses no significant risk to a resident's health or safety. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.

III. SUBSTANTIVE REMEDIAL MEASURES

A. HEALTH CARE ASSESSMENTS AND CARE PLANS

23. At six months from the effective date of this MOA, or shortly thereafter, the United States will assess the TSVHs to determine if the State is ensuring that adequate and appropriate

health care services are offered to the residents of the TSVHs.

24. The State shall continue to conduct comprehensive assessments of each TSVH resident's functional capacity consistent with 42 U.S.C. § 1395i-3(b)(3), 42 U.S.C. § 1395r(b)(3), and 42 C.F.R. § 483.20(b).

25. Consistent with the aforementioned statutes and regulation, the TSVHs shall continue to ensure that residents are provided, and have implemented by qualified staff, a care plan, developed by an appropriately comprised interdisciplinary team of qualified professionals, including a physician, a registered nurse, and a dietitian, and where appropriate, a psychiatrist, a pharmacist, or a rehabilitation/restorative therapist(s). The care plan shall describe the medical, nursing, and psychosocial needs of the resident and how such needs will be met.

26. The State shall continue to ensure TSVHs' staff are trained in TSVHs' policies and procedures that reflect current standards of evaluating, monitoring, and treating the needs of the residents of the TSVHs.

27. The State shall require that the TSVHs' continue to adequately evaluate residents' acute and ongoing medical status to ensure that residents' health status is monitored accurately, and that residents who experience a significant change of status are evaluated and treated.

28. The State shall require that the TSVHs' staff use all available data in their assessments (such as lab/diagnostic studies, other health professions' data, etc.) to identify

residents' problems/conditions and revise care plans to address abnormal laboratory findings and any other problems/conditions.

29. The State shall continue to ensure that there are sufficient numbers of nursing staff, present and on duty on each shift at the TSVHs as required by 42 U.S.C. § 483.30; 42 U.S.C. § 1395i-3(b)(4)(C), (5), and (8); and 42 U.S.C. § 1395r(b)(4)(C), (5), and (8).

30. The State shall ensure that qualified professionals conduct morbidity reviews for every resident transferred to an acute care setting and that these morbidity reviews are reviewed to determine whether the TSVHs provided adequate care to the resident prior to the transfer. If a morbidity review identifies any deficiencies in care provided by the TSVHs, the TSVHs shall institute reasonable and appropriate corrective measures to address any such deficiency.

31. The State shall ensure that qualified professionals conduct mortality reviews for residents who die at the TSVHs or who die at an acute care facility after being transferred there from the TSVHs, to the fullest extent that the TSVHs' access to residents' medical records from the acute care facilities permits. If a mortality review identifies any deficiencies in care provided by the TSVHs, the TSVHs shall institute reasonable and appropriate corrective measures to address any such deficiency.

32. The TSVHs shall continue their ongoing efforts to implement adequate quality assurance mechanisms to monitor the

delivery of health care services to residents of the TSVHs, consistent with 42 C.F.R. § 483.75(o), 42 U.S.C. § 1395i-3(b)(1)(B), and 42 U.S.C. § 1395r(b)(1)(B).

B. PRESSURE SORE PREVENTION AND CARE

33. At six months from the effective date of this MOA, or shortly thereafter, the United States will assess the TSVHs to determine if the State has implemented measures to ensure that residents do not develop otherwise preventable pressure sores and that adequate and appropriate treatment is provided to residents who have pressure sores, as required by 42 C.F.R. § 483.25(c).

34. Consistent with the aforementioned regulation, the State shall continue to assess and identify residents who are at risk of developing pressure sores.

35. The State shall continue to develop and implement adequate and appropriate skin care plans for residents identified as at risk of skin breakdown or with actual skin breakdown.

36. The State shall continue to ensure that staff, especially staff dedicated to wound care treatment, are trained adequately in current professional standards, practices, and techniques regarding pressure sore assessment and methods of care.

C. REHABILITATIVE AND RESTORATIVE CARE

37. At six months from the effective date of this MOA, or shortly thereafter, the United States will assess the TSVHs to ensure that all residents receive adequate and appropriate

rehabilitative and restorative care consistent with 42 C.F.R. §§ 483.25(a), 483.25(d), 483.25(e), and 483.45.

38. The State shall continue to ensure that residents receive adequate adaptive equipment, including wheelchairs, and that residents are appropriately positioned in wheelchairs.

39. The State shall continue to ensure that residents who need assistance with feeding or bathing, receive such assistance.

40. The State shall continue to ensure that residents who can ambulate with assistance, receive such assistance and are not unduly restrained.

41. The State shall continue to ensure that residents receive exercises, such as range-of-motion and walking, to prevent unnecessary loss of function.

42. The State shall continue to ensure that residents who wander are provided the means to do so safely.

43. The State shall continue to ensure that residents who have behavior difficulties receive treatment to address such behaviors in as non-intrusive a manner as possible.

44. The State shall continue to ensure that residents who could benefit from continence care programs, receive such programs.

D. ACTIVITIES AND PSYCHOSOCIAL PROGRAMS

45. At six months from the effective date of this MOA, or shortly thereafter, the United States will assess the TSVHs to determine if residents are provided an adequate and appropriate ongoing program of meaningful activities consistent with

42 C.F.R. § 483.1(f), 42 U.S.C. § 1395i-3(b)(4)(A)(v), and 42 U.S.C. § 1395r(b)(4)(A)(v).

46. Consistent with the aforementioned statutes and regulation, the State shall ensure that activities and psychosocial programs are directed by qualified professional(s).

47. The State shall continue to ensure that adequate and appropriate activities shall take place on weekends and evenings, as well as during the weekdays.

G. PROTECTION FROM OTHER HARM

48. At six months from the effective date of this MOA, or shortly thereafter, the United States will assess the TSVHs to ensure that the TSVHs' residents are adequately and appropriately protected from harm, particularly harm resulting from the behavior of other residents.

49. The State shall, immediately upon the signing of this MOA, take reasonably effective steps to provide adequate and appropriate supervision of the residents of the TSVHs to protect them from harm resulting from instances of resident-on-resident assaults.

50. The State shall continue to identify residents who are at risk of harm, or who pose a risk of harm to other residents, based upon residents' cognitive impairments or dangerous behaviors, and develop and implement measures to protect residents from the potential of self-harm or harm to other residents.

51. The TSVHs shall continue to identify residents who are at risk of being victimized and take adequate steps to protect them.

52. The TSVHs shall continue to ensure that whenever a resident suffers an injury or experiences any event that exposes the resident to mental, physical, or psychological harm, the State shall ensure that following occurs:

a. An incident report shall be completed at the time of the occurrence and submitted to the Medical Director and the Director of Nursing;

b. The Medical Director and the Director of Nursing shall review and sign all incident reports and initiate any appropriate administrative and/or clinical action;

c. At the time of the occurrence, a RN shall assess the resident to determine if there is actual or suspected injury and implement necessary and appropriate care to prevent further complications;

d. A physician shall be notified immediately of any change in the resident's condition as a result of the incident and shall evaluate the resident's condition and the circumstances surrounding the incident and prescribe medical care as needed;

e. The resident's family shall be promptly notified of the incident whether the resident suffers an injury or not; and

f. All incidents shall be investigated by the Director of Nursing or a competent designee.

53. The Administrator and the Director of Nursing or their designee shall meet daily to discuss any incidents as well as any measures that should be taken to prevent further occurrences. Further, the Administrator shall ensure that such incidents, including incidents of unknown origin, are reported to State authorities in accordance with state statutes and regulations. See 42 C.F.R. § 483.13(c) (2).

54. For residents who sustain more than one injury during any three-month period of time, the Director of Nursing, or the Director's designee, shall refer the record(s) of each incident to an appropriately compromised interdisciplinary team for review.

IV. IMPLEMENTATION OF THE MOA

55. This MOA will be effective on the date it is fully executed by the parties.

56. Within one month of the effective date of this MOA, the State shall communicate to TSVH employees and any independent contractors involved in providing residents' care of the conditions set forth in this MOA that are applicable to their respective job duties.

57. The United States and its expert consultants and agents may, at its discretion, tour the TSVHs to assess compliance with this MOA.

58. Prior to any tour, the United States shall provide reasonable notice to the State. Within a reasonable time in

advance of the tour, the United States shall identify any expert consultants it plans to use on the tour.

59. The United States and its attorneys, expert consultants, and agents shall have reasonable access to the facilities, documents, records, residents, and employees of the TSVHs upon reasonable notice to the State for the purpose of ascertaining compliance with this MOA. Such access shall continue until this MOA is terminated as set forth in paragraph 62 below.

60. Throughout the duration of the MOA, the United States and its expert consultants and agents will maintain the confidentiality of TSVH residents' medical and personal information, to the fullest extent allowed by law.

61. Within a reasonable period of time after the conclusion of any visit, the United States shall make available to the State any post-tour reports prepared by its expert consultants.

62. This MOA will terminate 18 months after the effective date of the MOA. The MOA may terminate prior to the 18 month date if the parties agree that the TSVHs are in substantial compliance with each of the provisions of this MOA, and that the TSVHs have maintained substantial compliance for at least six months.

63. Nothing in this MOA shall prevent the State from modifying or closing the TSVHs or from developing alternative community placements for the residents of the TSVHs

64. All parties shall bear their own costs, including attorneys' fees, related to assessing compliance with this MOA.

V. DISPUTE RESOLUTION

65. The parties will work in good faith to meet the terms of this MOA and maintain the goal of ensuring appropriate care for the residents of the TSVHs.

66. This MOA is binding upon the parties, by and through their officials, agents, employees, assigns, and successors.

67. If the State fails to comply with this MOA in whole or in part, the United States retains the right to seek appropriate judicial relief in federal court if, after sixty (60) days prior written notice to the State of the breach, the State has failed to cure such breach during the sixty (60) day period. Nothing in this MOA shall be construed to preclude the State from asserting any legal defense or theory in any legal proceeding.

68. Failure by any party to enforce this entire MOA, or any provision thereof, with respect to any deadline or any other provision herein, shall not be construed as a waiver of its right to enforce other deadlines and provisions of this MOA.

VI. MODIFICATION OF THE MOA

69. If, at any time, any party to this MOA desires to modify it for any reason, that party will notify the other party

in writing of the proposed modification and the reasons therefor.
No modification will occur unless there is written agreement by
the parties.

AGREED TO:

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