

MEMORANDUM OF AGREEMENT

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MEMORANDUM OF AGREEMENT

I. Definitions

As used in this Memorandum of Agreement ("Agreement"):

- A. The term "DOJ" means the United States Department of Justice and its agents and employees.
- B. The term "ADC" means the Arkansas Department of Correction.
- C. The term "CMS" means Correctional Medical Services.
- D. The terms "McPherson" or "Grimes" or, collectively, "the Facilities" mean the McPherson and Grimes Correctional Units of the Arkansas Department of Correction in Newport, Arkansas.
- E. The term "State" means the State of Arkansas, the Arkansas Department of Correction, the Director of the Arkansas Department of Correction in his official capacity, the Warden of the McPherson and Grimes Correctional Units in his official capacity, and their agents and successors in office.
- F. The term "effective date" means the date this Agreement is signed by all the parties.
- G. The term "inmates" means individuals incarcerated at the Facilities.
- H. The term "including" shall mean "including, but not limited to."
- I. The term "security staff" means all employees, irrespective of job title, whose duties include supervision of inmates at the Facilities.
- J. The term "SPU" means the Special Programs Unit at McPherson that is used to house inmates who have mental illness.
- K. The term "generally accepted professional standards" means those industry standards accepted by a significant majority of professionals in the relevant field, and reflected in the standards of care such as those published by the National Commission on Correctional Health Care.

II. General Provisions

- A. The State had contracted with the Wackenhut Correctional Corporation (“Wackenhut”) to build and operate the Facilities. Wackenhut built, managed, and operated the Facilities until June 30, 2001, which included providing medical and mental health care services to the inmates at the Facilities. When the State’s contract with Wackenhut expired on June 30, 2001, the State decided not to renew the contract. The ADC took over the direct management and operation of the Facilities on July 1, 2001.
- B. Upon the ADC’s assumption of direct management and operation of the Facilities on July 1, 2001, the ADC recognized a need to hire and train staff to provide services and to make physical changes to the Facilities.
- C. On July 1, 2001, CMS began providing both medical and mental health care to the inmates at the Facilities pursuant to a contract with the ADC. At that time, very few of the types of systems, processes, staffing models, and forms that CMS typically uses at similar facilities were in place. Additionally, many of the healthcare staff at the Facilities, including the Directors of Nursing and the Health Services Administrator, had resigned. CMS and the ADC worked together to focus on and address these outstanding issues.
- D. On May 8, 2002, the DOJ initiated an investigation of the conditions of confinement at the Facilities pursuant to the Civil Rights of Institutionalized Persons Act (“CRIPA”), 42 U.S.C. § 1997. The DOJ conducted on-site visits at the Facilities on July 23-26, August 20-23, and September 25-27, 2002. The DOJ retoured the Facilities on March 23-24, 2004.
- E. On July 1, 2003, the ADC took over mental health care responsibilities at the Facilities from CMS. Between July 2001 and July 2003, CMS had provided mental health services pursuant to a contract with the ADC.
- F. On November 25, 2003, the DOJ notified the State of what it found to be unconstitutional conditions at the Facilities at the time of its investigation, including inadequate medical and mental health care, failure to protect inmates from harm, and unsafe fire safety and environmental conditions.
- G. The State and CMS cooperated throughout the course of the DOJ’s investigation and voluntarily continued to implement some measures to improve conditions at the Facilities that had begun prior to the DOJ’s investigation.
- H. The State has always maintained and still maintains that there are no unconstitutional conditions at the Facilities.

- I. This Agreement resolves all of the issues identified in the DOJ's November 25, 2003 letter. The parties enter into this Agreement for the purpose of avoiding the risks and burdens, costs, and diversion of personnel time and resources of potential litigation.
- J. The parties agree that this Agreement does not constitute an admission by the State of the truth of the findings contained in the DOJ's findings letter and does not constitute an admission of liability by the State.
- K. The State is responsible for providing necessary support to the Facilities to enable them to fulfill their obligations under this Agreement.

III. Medical Care

- A. McPherson shall provide pap smears to each incoming inmate and annually thereafter, and provide mammograms as clinically indicated. McPherson shall also inform individual inmates of these and other test results, consistent with generally accepted professional standards.
- B. The Facilities shall provide on-site physician coverage to ensure the supervision of nursing staff and the provision of primary and chronic care that timely and appropriately meets the inmates' serious medical needs.
- C. The Facilities shall continue to ensure that inmates who make sick call requests are seen in a timely manner.
- D. The Facilities shall ensure that the implemented quality assurance system monitors the quality of medical care services and access to such care.
- E. The Facilities shall: (1) provide a system to ensure that the existing chronic care program and protocols are implemented consistently; (2) continue to allow asthmatic inmates access to their inhalers and educate security staff on the need for asthmatic inmates to receive breathing treatments; and (3) implement the policies and procedures regarding appropriate treatment of Hepatitis C.
- F. The Facilities shall ensure that: (1) inmates with special medical needs are appropriately scheduled for and transported to outside care appointments; (2) findings and recommendations of outside care providers are tracked and documented in inmates' medical charts; and (3) outside treatment recommendations are followed as clinically indicated.
- G. The Facilities shall continue to provide reasonable and necessary dental services, including surface restorations, prophylaxis, and preventative dental care.

- H. The Facilities shall ensure that medical personnel are properly trained and supervised regarding emergency medical equipment and procedures, including AED and CPR, consistent with generally accepted professional standards.
- I. The Facilities shall ensure that medications, including psychotropic medications, are distributed in a timely manner.

IV. Mental Health Care

- A. The Facilities shall: (1) continue to implement the policy that requires mental health staff to make regular rounds in the segregation units; (2) continue to ensure that mental health practitioners provide accurate diagnoses; and (3) timely implement appropriate treatment plans.
- B. The Facilities shall: (1) implement policies, procedures and practices to ensure that staff triage and respond to mental health requests in a timely manner and provide adequate ongoing mental health care consistent with generally accepted professional standards; and (2) provide, where consistent with legitimate security concerns, an appropriate confidential environment for psychological testing and counseling.
- C. The Facilities shall provide on-site psychiatrist coverage to ensure the supervision of mental health staff and the provision of mental health care that timely and appropriately meets inmates' serious mental health needs consistent with generally accepted professional standards.
- D. The Facilities shall: (1) monitor and treat inmates with serious mental illness through regularly scheduled visits with mental health professionals; and (2) continue to require inmates who take psychotropic medications to have regular contact with mental health staff as required by ADC policy.
- E. The Facilities shall: (1) ensure that suicide precaution cells are free from suicide hazards; (2) provide appropriate housing for suicidal inmates; (3) ensure proper supervision of suicidal inmates; and (4) continue to ensure the availability of cut-down tools.
- F. The Facilities shall continue to conduct training for security and SPU staff on how to understand symptoms of mental illness and respond appropriately.
- G. The Facilities shall continue to implement policies, procedures, and practices to ensure that: (1) the mental health caseload roster is regularly updated to reflect intakes and discharges; and (2) the provision of mental health services is tracked through an effective management information system.

- H. The Facilities shall ensure that the quality assurance system monitors the quality of mental health services and access to such care.
- I. The Facilities shall revise the restraint chair policy to: (1) clarify that a physician or independent licensed practitioner must evaluate an inmate within four hours of restraint use; (2) specify range of motion exercises for restrained inmates; and (3) further clarify when the restraint chair will be used for mental health purposes. The revised policy shall be submitted to the DOJ for review within 90 days of the effective date of this Agreement. Thereafter, any proposed revisions during the pendency of this Agreement shall be submitted, by facsimile copy and express delivery, to the DOJ for review at least 30 days prior to their promulgation.
- J. The Facilities shall comply with AD-04-12 when disciplining any inmate with a Serious Mental Illness for an infraction in order to determine the extent to which the infraction was related to the Serious Mental Illness, to ensure that inmates who commit infractions resulting from a Serious Mental Illness are not punished, and to allow an inmate's Serious Mental Illness to be used as a mitigating factor when punishment is imposed on inmates with a Serious Mental Illness.

V. Security, Supervision and Protection from Harm

- A. The Facilities shall: (1) provide adequate correctional officer staffing and supervision to ensure inmate safety; and (2) continue to ensure that inmate work areas are supervised whenever inmates are present.
- B. The Facilities shall continue to ensure that cell doors cannot be opened at will.
- C. The Facilities shall continue to maintain security cameras in the intake, kitchen, laundry, muster room, program, and mess areas.
- D. Grimes shall continue to maintain an objective classification system that separates inmates in housing units by classification levels and work assignments.
- E. The Facilities shall continue to maintain a policy for effective tool control and a procedure to prevent inmates from possessing or having access to contraband.
- F. The ADC shall provide appropriate training for investigators. The training shall provide investigative templates to assist in gathering evidence, conducting witness interviews, and preparing investigative reports.
- G. The ADC shall continue to maintain an investigative process that ensures that: (1) administrative and criminal investigations are handled appropriately; (2) sexual misconduct allegations are referred to the proper authorities even when a

staff member is fired or resigns; and (3) if during the course of any investigation, an investigator discovers evidence of other misconduct, the other misconduct will also be investigated to its logical conclusion.

- H. The ADC shall continue to ensure that established protocols for reporting and investigating sexual misconduct allegations, which shall include a policy and procedure for confidential reporting of inmate allegations directly to senior facility staff, are followed consistently. When necessary, the ADC may disclose allegation(s) to witnesses being interviewed in connection with the investigation of the allegation(s). In such instances, the ADC shall require witnesses to maintain the confidentiality of the complaint. Moreover, ADC staff investigating sexual misconduct allegations shall maintain the confidentiality of such allegations except from appropriate state and ADC employees and from any witnesses to whom disclosure is necessary. Alleged perpetrators are allowed to disclose the specifics of sexual misconduct allegations to their attorneys.
- I. The Facilities shall continue to conduct a regular review of grievances for allegations of sexual misconduct or harassment, and open investigations into those allegations where appropriate.
- J. The Facilities shall continue to restrict unsupervised inmate movement and ensure that isolated areas are adequately staffed, monitored and, when not in use, secured and locked.
- K. McPherson shall continue to provide for privacy in inmate showers, consistent with legitimate security concerns.

VI. Life Safety and Sanitation

- A. The Facilities shall continue to maintain a key procedure that permits identification of cell block keys in emergency situations.
- B. The Facilities shall continue the established procedure for emergency door inspections.
- C. The Facilities shall continue to : (1) maintain permanently mounted standpipe control wheels; and (2) provide and maintain fire hoses.
- D. The Facilities shall continue to ensure proper training and procedures for food safety and food handling, including sanitation, preparation, and storage.

- E. The Facilities shall continue to maintain the hot water temperatures in all housing and program areas at temperatures that will not allow inmates to harm themselves or others.

VII. Implementation and Enforcement

- A. Within 90 days of the effective date of this Agreement, the State and the Facilities shall implement each and every provision of this Agreement that has not already been implemented absent circumstances beyond the State's control.
- B. Any proposed revision during the pendency of this Agreement to a policy, procedure, or protocol implicated by this Agreement shall be submitted, by facsimile copy and express delivery, to the DOJ for review at least 30 days prior to its promulgation.
- C. The DOJ may tour the Facilities with expert consultants and have access to records and documents at any time during the pendency of this Agreement. Notification regarding tours and all requests for documents shall be made to the Office of the Arkansas Attorney General.
- D. Nothing in this Agreement will preclude the DOJ from filing an action under CRIPA alleging a pattern or practice of unconstitutional conditions at the Facilities. The DOJ will give the State 30 days notice prior to filing any complaint.
- E. This Agreement shall terminate two years after the effective date, or earlier if the State has substantially complied with each provisions in the Agreement and has maintained such compliance for at least one year. The burden will be on the State to demonstrate this level of compliance.

FOR THE DEPARTMENT OF JUSTICE:

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Dated: August 27, 2004

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Dated: 8-29-09