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I. INTRODUCTION

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345.

2. Venue in the District of New Jersey is appropriate pursuant to 28 U.S.C. § 1391(b).

3. The United States has met all pre-filing requirements stated in the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997.

4. This Settlement Agreement (Settlement) is entered into between the United States and Defendants.

5. This Settlement resolves the investigation conducted by the United States Department of Justice (DOJ) at the Mercer County Geriatric Center (MCGC) pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997. The Settlement addresses the corrective measures set forth by DOJ in its October 9, 2002 letter to the County. This Settlement does not serve as an admission by the Defendants that corrective measures are necessary to meet the constitutional and statutory rights of the residents of MCGC operated by the Defendants.

6. In conformity with CRIPA, this Settlement represents a voluntary effort by the Defendants to meet the concerns raised by DOJ's investigation. See 42 U.S.C. § 1997b(a)(2)(B) and § 1997g.

7. By entering into this Settlement, the Defendants are not admitting to any violation of federal or state law.

8. The signatures below of officials representing the United States and the Defendants signify that these parties have given their final approval to this Settlement.

9. This Settlement is enforceable only by the parties and is binding upon the parties, by and through their officials, agents, employees, and successors. No person or entity is intended to be a third party beneficiary of the provisions of this Settlement for purposes of any civil, criminal or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Settlement in any civil, criminal, or administrative action. Similarly, this Settlement does not authorize, nor shall it be construed to authorize, access to Defendant documents by persons or entities not a party to this Settlement.

10. This Settlement shall constitute the entire integrated agreement of the parties. With the exception of the Justice Department's findings letter referenced in Part III, paragraph 4, hereof, no prior contemporaneous communications, oral or written, or prior drafts, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.

11. All parties shall bear their own costs, including attorney fees, in this and any subsequent proceedings.

12. The parties agree it is in their mutual interests to

avoid litigation. To that end, the parties have resolved their differences by agreeing upon provisions contained in this Settlement. The parties agree that resolution of this case is in the best interests of the Mercer County Geriatric Center residents.

13. This Settlement shall take effect on the day it is filed with the United States District Court, District of New Jersey.

II. DEFINITIONS

1. "Plaintiff" shall refer to the United States of America.

2. "Defendants" shall refer to - Mercer County, New Jersey; the Mercer County Executive, in his official capacity; the Mercer County Geriatric Center Hospital Administrator, in his official capacity; the Director of the Mercer County Department of Human Services, in her official capacity; and their agents and successors in office.

3. "Qualified staff," "staff," and "qualified professional," shall refer to an individual (or individuals) qualified to render the requisite and appropriate care, treatment, judgment(s), training and service, based on credentials recognized in the specific field.

4. "Substantial compliance" shall mean that the Defendants are complying with each paragraph of this Settlement and that such compliance has been maintained for a period of six months.

Isolated incidents of non-compliance shall not preclude a finding of substantial compliance.

5. Any reference in this Settlement to "Mercer County Geriatric Center" taking certain action implies that all of the Defendants are responsible for MCGC's compliance.

6. In all instances in this Settlement in which the Defendants agree to provide care, treatment, and services in keeping with "professional standards," it shall mean that the Defendants will provide care, treatment, and services consistent with "professional standards" as defined by Youngberg v. Romeo, 457 U.S. 307 (1982); Olmstead v. L.C., 527 U.S. 581 (1999); Americans with Disabilities Act, 42 U.S.C. § 12132 et seq. (ADA); 28 C.F.R. § 35.130(d) (ADA integration regulation); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 (Section 504), Grants to States for Medical Assistance Programs (Medicaid), 42 U.S.C. § 1396r (nursing home standards); 42 C.F.R. § 483 Subpart B (Medicare & Medicaid regulations); and applicable federal case law.

7. "Significant incidents" shall include all instances of alleged, suspected, or substantiated abuse, neglect, moderate or major injury, elopement, theft, hospitalization due to an injury, or unexpected death.

III. BACKGROUND

1. The Defendant Mercer County owns and operates the Mercer

County Geriatric Center (MCGC), a nursing home located in Trenton, New Jersey.

2. The Defendants are responsible for the operation of MCGC.

3. On December 10, 2001, the United States notified Defendants that the United States intended to investigate the Mercer County Geriatric Center pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997.

4. On October 9, 2002, the United States issued a letter of findings that notified Defendants of the result of this investigation. This letter included recommendations to address cited deficiencies.

5. In order to avoid protracted litigation regarding conditions at MCGC, the parties agree to the provisions set forth in this Settlement.

6. MCGC residents have rights protected by the federal constitution, federal statutes, and federal nursing home regulations. See Youngberg v. Romeo, 457 U.S. 307 (1982); Olmstead v. L.C., 527 U.S. 581 (1999); Americans with Disabilities Act, 42 U.S.C. § 12132 et seq. (ADA); 28 C.F.R. § 35.130(d) (ADA integration regulation); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 (Section 504), Grants to States for Medical Assistance Programs (Medicaid), 42 U.S.C. § 1396r (nursing home standards); and 42 C.F.R. § 483

Subpart B (Medicare & Medicaid regulations). This Settlement was entered to ensure MCGC's compliance with generally accepted professional standards of care consistent with federal law.

7. Nothing in this Settlement is intended to serve as a waiver or exemption from standards identified in the above-referenced federal statutes, implementing regulations, and associated surveyor guidance. MCGC shall be required to continue fully complying with these federal standards.

8. Nothing in this Settlement shall preclude the United States Department of Health and Human Services (HHS), the Centers for Medicare and Medicaid Services (CMS), or relevant state agencies, from separately enforcing relevant nursing home standards. Any penalties or findings by these or other government agencies may be considered as relevant evidence, but shall not be determinative as to MCGC's compliance with this Settlement. The Defendants' submission of plans of correction to, or certification for receipt of federal funds by, the Centers for Medicare and Medicaid Services do not, in themselves, constitute compliance with this Settlement.

9. Nothing in this Settlement shall be construed as an acknowledgment, an admission, or evidence of liability under CRIPA, the Constitution, federal or state law.

10. MCGC has advised the United States that it has already taken significant steps to improve the quality of care in all

areas covered by this Settlement. The State recently found the Center in compliance with state and federal nursing home regulations with only one deficiency.

11. This Settlement, voluntarily entered into, shall be entered by the United States District Court for the District of New Jersey and shall be enforceable under the terms set forth herein as an order of the Court.

12. The parties agree that the provisions of this Settlement are a reasonable, lawful, and fundamentally fair resolution of this case.

IV. SUBSTANTIVE PROVISIONS

A. Assessment and Care Planning

1. MCGC shall provide adequate safety, medical care, and nursing care to MCGC residents. MCGC shall develop and implement policies and procedures to ensure timely and professionally appropriate assessment and treatment of MCGC residents.

2. Initial assessments and re-assessments shall be conducted as required by generally accepted professional standards.

3. MCGC will conduct initial assessments on all new residents and re-assessments of existing residents based on medical need. All assessments shall be done consistent with IV.A.3.(a)-(l) below. MCGC shall assess whether each resident may be at risk for, or have a present need for, care to address

the following issues and problems commonly found in a geriatric population:

a. Pressure sores, skin damage, and necrosis.

b. Restraint use.

c. Elopement.

d. Falls and unexplained injuries.

e. Loss of physical and mental function, including development of contractures, communication deficiencies, and cognitive impairment.

f. Adaptive care and disability accommodation needs.

g. Nutrition, hydration, and mealtime assistance needs.

h. Mental health care requirements and behavioral issues.

i. Rehabilitative and restorative care needs.

j. Chronic disease.

k. Pain.

l. Incontinence.

4. When a resident experiences a significant change in condition, a professionally appropriate re-assessment shall be conducted. Significant changes in condition include:

a. Development of pressure sores, unexplained skin wounds, skin deterioration or necrosis.

b. Deterioration in a resident's mental or physical

function, including the development of contractures.

c. Incidents of elopement, falls, or injury.

d. Significant changes in weight or dehydration.

e. A resident's transfer from another long-term care facility or a resident's return to MCGC after hospitalization at an outside medical facility.

f. Behavioral symptoms, increased depression, or appearance of other serious mental illness.

g. Incontinence.

5. Assessments and re-assessments shall be incorporated into resident care plans. Care plans shall meet generally accepted professional standards.

6. Care shall include the following elements:

a. A care planning process that is conducted in an interdisciplinary manner by qualified direct care, nursing, physician, mental health, therapy, and social work staff.

b. Active participation by all appropriate staff (including professionally appropriate attendance, care review, and oversight by psychiatrists, physicians, and psychologists) in care planning meetings.

c. Active participation by social workers to ensure

that residents' psychosocial needs are addressed.

d. Objective, comprehensive, data-based evaluation of resident needs including careful incorporation of resident assessments into any care plan.

e. Professionally appropriate evaluation and consideration of reasonable, alternative care options.

f. Periodic update and review of care plans by qualified staff to ensure that care remains individualized and appropriate.

g. Professionally appropriate consideration and monitoring of factors that commonly contribute to the health and well-being of geriatric residents over the course of treatment, including:

   i) Restraint use,

   ii) Restorative or rehabilitative care needs,

   iii) Pain management needs,

   iv) Medication regimens,

   v) Availability of adaptive devices, adaptive equipment, hospital furniture, and appropriate housing environment,

   vi) Nutrition and hydration requirements.

7. Direct care staff shall be trained on the individual

needs and care plans for the residents in their care.

8. Assessments and care plans shall be implemented and incorporated into actual resident care. All medical and mental health treatment, therapeutic activities, and other resident care shall be designed to ensure that each resident attains or maintains the highest practicable physical, mental, and psychosocial well-being in accordance with each resident's individualized assessments and care plans.

9. MCGC shall take reasonable steps to ensure that:

a. Residents do not develop avoidable bedsores.

b. Residents are not fed by neo-gastric tubes unless unavoidable.

c. Residents do not experience avoidable malnutrition or dehydration.

d. Residents do not experience avoidable loss of physical or mental function.

10. MCGC staff shall ensure that residents who need assistance with personal hygiene receive professionally appropriate assistance with bathing, cleaning, grooming, and toileting.

B. Restraints and Medication Usage.

1. MCGC residents shall not be subjected to unreasonable restraints. MCGC shall meet generally accepted professional standards identified in federal statutes and regulations

governing the use of restraints. The United States acknowledges that Defendants have adopted a "no restraints" policy designed to be consistent with this Settlement. The Defendants acknowledge that MCGC restraint policies shall require implementation, staff training, and continued updating to ensure compliance with generally accepted professional standards on the use of restraints.

2. In order to minimize and decrease the use of mechanical and chemical (medication) restraints, MCGC shall:

a. Develop and implement meaningful alternatives to restraints including providing residents with restorative care, therapeutic activities, and changes to the living environment.

b. Ensure that restraints are never used for the convenience of staff or as punishment. Restraints shall not be incorporated into a resident's care plan or used on a resident unless there has been a thorough assessment of the need for restraint use, the harm associated with restraint use, and alternatives to restraint use. If emergency restraints are necessary, they will only be imposed pursuant to an clinically appropriate physician's order. Residents in emergency physical or mechanical restraints shall be monitored to ensure

that they have adequate circulation.

c. When restraints are recommended by staff to prevent falls, MCGC shall ensure that there has been an appropriate evaluation of the reasons for the falls and alternatives to restraints. MCGC shall assess whether addressing a resident's need for alternative seating, strength building exercises, adapted communication, assistance with toileting, pain management, or treatment for anxiety may be a more appropriate solution than restraints.

d. Where restraints are determined initially to be appropriate, MCGC staff shall periodically re-assess the perceived need for such restraints and attempt alternative approaches, as indicated.

e. Ensure that the use of devices such as bedrails and "lap buddies" are covered by facility policies and procedures governing use of restraints.

f. Ensure that residents' behavioral issues are assessed by qualified mental health professionals and behavioral plans are developed based on valid, reliable data and assessments. Any behavioral plans shall be integrated into residents' comprehensive care plans.

3. Residents placed in restraints shall be carefully supervised and provided food, water, and restroom breaks as required by professional standards.

4. MCGC shall evaluate restraint use as part of MCGC's quality assurance and improvement process. Clinical outcomes that may be associated with restraint use, such as weight loss and trauma, shall be evaluated as part of this process. Data and trends regarding restraint use should be identified for both individual residents and the MCGC system as a whole. Based on the data and trends identified by the quality assurance and improvement process, MCGC shall make professionally appropriate systemic and operational changes to facility restraint practices and procedures.

5. Medication audits at MCGC are conducted by an independent pharmacy professional. The professional services contract with the pharmacy professional has been executed, and a copy of this agreement has been provided to the United States Department of Justice. MCGC shall continue evaluating whether residents are receiving necessary medications. Non-pharmacological interventions shall be evaluated to determine their efficacy and appropriateness given each resident's assessed care needs. MCGC shall continue to identify and eliminate professionally inappropriate medication practices.

6. MCGC shall monitor medication side-effects both as part

of each resident's care plan and as part of facility-wide oversight procedures.

C. Mealtime Assistance, Nutrition and Hydration Practices

1. MCGC shall provide all residents with adequate nutrition, hydration, and mealtime assistance consistent with generally accepted professional standards.

2. Facility nurses shall participate in the coordination and oversight of staff response to residents' significant weight changes.

3. All appropriate staff shall be given competency-based training on mealtime procedures and hydration. Additionally, MCGC shall train facility nurses in conducting appropriate weight evaluations. Competency-based training on feeding and hydration shall be provided specifically for RN's, certified nurse aides, and activity professionals who assist with resident feeding.

4. MCGC shall ensure that nurses and direct care staff are supervised by facility management and physician staff to ensure appropriate follow-through when significant weight changes are identified.

5. For residents who need mealtime assistance or who are losing, or at risk of losing, their ability to feed themselves, MCGC shall provide professionally appropriate assistive devices, therapeutic positioning, and functional seating programs. Such assistance shall be part of the resident's care plan and be based

on the individual resident's assessments.

6. MCGC shall develop and implement clinically appropriate, individualized mealtime assistance, hydration, and nutrition plans for residents assessed as requiring such plans.

D. Therapeutic Activities, Rehabilitation, and Restorative Care

1. As part of the assessment and treatment process, all MCGC residents shall be assessed for loss of physical or mental function and their corresponding need for therapeutic activities, rehabilitation, and restorative care. MCGC shall ensure that residents have professionally appropriate rehabilitation and restorative care plans. Resident mobility and self-care skills, including the ability to bathe, toilet, communicate, and self-feed, shall be specifically addressed in those plans. The activity, rehabilitation, and restorative care plans shall be periodically reviewed and updated to ensure continued individualization and compliance with generally accepted professional standards.

2. MCGC shall develop and implement therapeutic activity programs for residents with limited physical or cognitive function, including those residents with dementia, depression, aphasia, visual impairments, communication issues, or hearing loss. These programs shall be designed to help residents maintain or improve their functional abilities.

3. MCGC shall obtain training and consulting services from

a qualified provider for the development and implementation of restorative and rehabilitative care programs. The parties anticipate that the Monitor will evaluate the Defendants' current contracts for consulting services and provide further guidance on how additional services can be provided by outside contractors or in-house staff.

E. Mental Health Care

1. MCGC shall provide adequate and appropriate mental health services in accordance with generally accepted professional standards.

2. Psycho-pharmacological medications shall be ordered pursuant to generally accepted professional standards. Residents shall be assessed to determine any need for anti-depressants, and anti-depressant use shall be properly documented in resident medical records.

3. MCGC shall carefully monitor residents for medication side-effects. Staff shall be trained on identifying such side-effects in geriatric residents whose limited function and medical problems can sometimes obscure the existence of such side-effects.

4. Physicians and psychiatrists shall include in resident medical records:

a. Resident symptomatology and functioning;

b. Mental status exam;

c. Assessments, formulations, and care plans; and

d. Any identified medication side-effects and laboratory testing results.

F. Treatment in the Most Integrated Setting Appropriate to Individualized Needs

1. MCGC residents shall be provided services in the most integrated setting appropriate to their individualized needs.

2. Consistent with Olmstead, the ADA, and ADA regulations, MCGC shall ensure that the facility's treatment professionals reliably assess each resident to determine whether community placement is appropriate for the individual. Such assessments shall be conducted in a reasonable manner that meets generally accepted professional standards. The assessments shall take place before admission and periodically throughout a resident's placement at MCGC. If placement in a more integrated treatment setting is determined to be appropriate, then MCGC shall ensure that such placement shall be provided, if the affected person does not oppose such placement, and the placement can be reasonably accommodated. The parties acknowledge that in certain situations, an assessment cannot occur prior to admission due to a resident's transfer from a hospital or admission in an emergency situation. In such situations, MCGC shall conduct the placement assessment shortly after admission.

3. Prior to discharging a resident pursuant to § G.2, above, MCGC shall provide sufficient preparation and orientation

to the resident to ensure safe and orderly transfer or discharge from the facility.

4. The Defendants shall not discharge residents to facilities that would not be considered appropriate for the resident according to generally accepted professional standards. MCGC and the Defendants shall provide the United States with copies of all proposed and final discharge plans. MCGC shall be given four months from the time this Settlement is filed to prepare such plans on all residents who do not currently have such plans.

5. MCGC's quality assurance system shall include evaluation and review of resident or family complaints about the discharge assessment and planning process.

6. To ensure compliance with ADA requirements, MCGC shall ensure that the facility's therapy, restorative, and rehabilitative care programs are developed by qualified professionals with training and experience in implementing such programs for residents with limited mental or physical function. The parties anticipate that the Monitor will evaluate the Defendants' current system for providing such programs and offer further guidance on how additional services can be provided by outside contractors or in-house staff.

7. In addition to the other requirements of this Settlement, MCGC shall:

a. Develop and implement an equipment management program to ensure that adaptive equipment is in good functioning order.

b. Evaluate whether the use of wheelchairs or staff mealtime assistance practices are resulting in the unnecessary deterioration of resident self-care skills.

c. Develop and implement a policy for discharge planning that includes consideration of hospice care or transfer to the most integrated community settings.

d. Participate in State planning to implement the requirements of the Americans with Disabilities Act (ADA), ADA implementing regulations, and Olmstead. As part of this planning process, MCGC shall identify community placement resources for any MCGC residents who may be appropriately placed in a community setting and the barriers to such placements.

e. Ensure that the resident assessment and care planning process includes assessment of the appropriateness of placement at MCGC. The process shall also include the identification of treatment options, therapeutic activities, rehabilitation,

and restorative care that may be necessary to ensure that residents receive care in the most integrated setting appropriate to their individual needs.

G. Management, Oversight, and Training

1. Defendants shall ensure that MCGC is operated and managed in a manner consistent with generally accepted professional standards.

2. MCGC shall develop and implement a gerontologic core training program that meets generally accepted professional standards. This training shall include competency evaluations of staff to ensure that staff are proficient to implement care plans for residents in their care. MCGC shall ensure that the facility training program:

a. Trains staff on relevant federal regulations regarding nursing homes, the nursing home guidelines set forth in federal law and generally accepted professional standards;

b. Provides appropriate MCGC staff with educational instruction on methods of evaluation, diagnosis, and treatment of residents with psychiatric and/or behavioral problems;

c. Provides continuing medical education on age-related mental health issues;

d. Educates all appropriate staff on generally accepted professional approaches to promoting improved function, resident safety, health, hydration, and nutrition. The approaches addressed by such training shall include, but not be limited to - using adaptive devices to avoid more restrictive restraint or mealtime practices, modifying living conditions to allow greater resident independence, and providing appropriate therapy and activities;

e. Educates staff on "restraint-free" treatment approaches and alternatives to restraints;

f. Educates staff on their roles in the interdisciplinary care planning process, implementation of care plans and medical orders, and the individualization of resident assessments and treatment;

g. Educates staff on medication side effects;

h. Educates staff on the psychosocial needs of geriatric residents;

i. Trains staff on therapeutic activities, restorative care, and rehabilitation programs;

j. Trains staff on medical issues specifically related to the aging process.

3. MCGC shall ensure that a qualified geriatric physician oversees resident medical care, including care provided by any physicians with privileges at MCGC. This medical director shall be board certified with a certificate of added qualifications in geriatrics. The medical director's oversight shall comport with generally accepted standards and shall include review of care plans, physician orders, staff implementation of physician orders, and compliance with facility quality assurance policies. The medical director shall actively participate in the development of policies and procedures at MCGC. The medical director shall also play an active role in the credentials and hiring approval and review process for attending physicians.

4. In conjunction with facility management and as part of a facility-wide quality oversight process, the medical director and as appropriate, the independent pharmacy professional referenced in IV.B.5 above, shall:

a. Review resident charts and medication practices to ensure that there is no professionally inappropriate polypharmacy or unnecessary drug and restraint use;

b. Review resident charts to ensure that physicians and staff are properly documenting clinical information, including the basis for their treatment decisions, drug reduction efforts, care

plans, lab results, treatment data, and resident health evaluations;

c. Monitor staff to ensure appropriate supervision of residents and implementation of care plans;

d. Ensure that the care provided at MCGC is designed to pro-actively improve resident quality of life and prevent declines in resident function; and

e. Ensure that medication practices comport with generally accepted professional standards and that the use of medications is professionally justified, carefully monitored, documented, and reviewed by qualified staff.

5. MCGC shall develop and implement professionally appropriate quality assurance and staff oversight policies. These policies shall include:

a. Mortality and peer reviews (i.e. an organized procedure conducted by appropriate medical professionals for completing detailed assessments of resident deaths, negative outcomes, and resident care, in order to evaluate the performance of treating professionals in meeting the standards of their specialty);

b. Objective, reliable, verifiable data collection to identify problem trends or issues;

c. Professionally appropriate corrective action in response to any identified problem trends or issues (e.g. facility, shift, resident, or housing unit patterns of resident abuse; injuries; pressure sores; falls; restraint use; infections; communicable disease outbreaks; psychotropic medication use; incontinence; or loss of function).

d. Procedures to ensure accurate reporting of serious incidents, including the reporting of possible abuse to other agencies as required by law.

6. MCGC shall develop and implement policies and procedures to ensure adequate clinical supervision of all staff, including physicians and psychiatrists.

7. MCGC shall ensure that physician and psychiatrist staff provide adequate on-site coverage at the facility and participate meaningfully in the assessment and care plan process. MCGC shall monitor and evaluate the adequacy of physician and psychiatrist coverage pursuant to its quality assurance procedure.

8. MCGC shall train and monitor staff on obtaining informed consent as required by generally accepted professional standards. Specifically, MCGC shall ensure that residents are not subjected to medications, restraints, or other treatment without appropriate consultation and consent from the residents or their guardians/medical decision-makers.

9. MCGC shall ensure that there are adequate numbers of staff to carry out the requirements of this Settlement. This shall include, but not be limited to:

a. Retaining three social workers to regularly provide timely, direct, social services care to the residents. These social workers shall assist with development and implementation of resident care plans, discharge planning, and ADA compliance. This staffing requirement is based on current MCGC resident needs and assumes that the population count remains stable at approximately 180 residents. If the resident population increases or decreases substantially, the social worker staffing requirement may be adjusted based on generally accepted professional standards.

b. Retaining a qualified registered nurse to serve as the facility's wound care nurse.

10. MCGC shall develop and implement a facility housekeeping, preventive maintenance, and safety inspections policy.

11. Resident hygiene, including grooming condition, shall also be reviewed periodically as part of the facility's quality assurance process. MCGC shall monitor and maintain adequate supplies of clothing, linens, towels, blankets and resident

hygiene supplies.

12. MCGC shall train and monitor staff on compliance with resident advanced directives. MCGC shall ensure that such directives comply with applicable laws. To that end, MCGC shall not rely on untrained staff to prepare resident's legal papers, such as their advanced directives and care instructions. In cases where there are no legal guardians, MCGC will continue to seek appointment of guardians for residents.

VI. Monitoring and Technical Assistance

1. The United States and its attorneys, consultants, and agents shall have access to MCGC, MCGC residents, MCGC residents discharged after entry of this Settlement, MCGC staff, and documents as reasonably necessary to assess compliance with this Settlement. The United States, its attorneys, consultants, and agents, shall have the right to request, inspect, review and copy facility records, resident charts and other documents; conduct interviews with residents outside the presence of County lawyers and staff; conduct interviews with staff outside the presence of supervisory staff; and observe activities normally conducted at MCGC to assess compliance with this Settlement. The United States agrees to provide the Defendants with reasonable notice before seeking access to documents, staff, residents, and facilities.

2. Nothing in this Settlement shall preclude the parties

from exercising their right to conduct discovery pursuant to the Federal Rules of Civil Procedure; nor shall this Settlement be construed as a waiver of any legal or equitable rights, remedies, defenses or privileges. It is not, however, the intention of the parties to exercise any discovery rights associated with active litigation, such as depositions and interrogatories, unless litigation resumes.

3. To evaluate the Defendants' compliance with § IV.F above, the United States, and the Monitor referenced below, may visit alternative placement settings. The Defendants will work with the United States and the Monitor to facilitate visits to such settings.

4. MCGC shall submit quarterly compliance reports to the United States, the first of which shall be submitted within 45 days after entry of this Settlement as a court order. The reports shall describe the actions MCGC has taken during the reporting period to implement this Settlement and shall make specific reference to the Settlement provisions being implemented. MCGC shall make available records or other documents to verify that they have taken such actions as described in their compliance reports (e.g., census summaries, staffing summaries, contracts, bills, incident reports), and will provide copies of all documents reasonably requested by the United States without charge. As part of the compliance report,

information provided shall include, but not be limited to:

a. All mortality or serious incident reviews or investigations (e.g. for elopements, emergency hospitalizations, fires, staff-on-resident abuse, communicable disease outbreaks, resident injuries);

b. Surveys by state, local, or federal officials (e.g. health department, fire marshal, state Medicaid agency);

c. Quality assurance reports generated during the reporting period;

d. Staffing vacancy reports, staffing rosters, and any staffing needs assessments;

e. Resident population report and roster; and

f. Resident or family complaints, grievances, or investigation notices, and the investigation reports completed in response to any of these items.

5. The Defendants shall retain a qualified Monitor with experience and training on geriatric issues to assist in remedial efforts under this Settlement. A copy of the Monitoring Protocol is hereby incorporated at Exhibit A.

6. The Monitor shall evaluate MCGC's compliance with this Settlement, and provide a report to the parties and the Court at least once every six months as to the status of MCGC's remedial

efforts. Either party may use the reports or testimony of the Monitor for this case, but the reports and testimony of the Monitor shall not be determinative for purposes of ascertaining compliance with this Settlement. Either party may contest any findings or recommendations by the Monitor. The Monitor shall not testify in any other case unless both parties consent, the Court orders the testimony, or such testimony is otherwise required by law.

7. The Monitor shall provide on-site technical assistance to staff to assist the Defendants in achieving compliance with this Settlement. To facilitate such technical assistance and compliance evaluation, the Monitor shall have the right to request, inspect, review and copy facility records, resident charts and other documents, conduct interviews with residents outside the presence of Defendants' lawyers and staff, conduct interviews with staff outside the presence of Defendants' lawyers and supervisory staff, and observe activities normally conducted at MCGC to assess compliance with this Settlement.

8. The Defendants shall bear all cost of the Monitor consistent with the Monitoring Protocol and budget incorporated into this Settlement as Exhibit A. A copy of the contract shall be filed with the Court and served upon the United States.

9. Both the United States and the Defendants expect to agree on the Monitor selected for this position. If the parties

have not agreed to an Monitor before submission of this Settlement, the parties intend to meet and confer on selection of the Monitor within 45 days after entry of this Settlement. Assuming the parties agree to the selection of a Monitor, the parties shall file a Joint Motion requesting that the Court appoint the selected individual as Monitor. If the United States and the Defendants cannot agree on the Monitor within the 45 day conferral period, then either party may file a unilateral Motion requesting that the Court select the Monitor. In that circumstance, each party shall submit a list of no more than three candidates with its motion (or response) to the Court for review and appointment of an Monitor from those lists. After the Court appoints the Monitor, the Defendants shall file a copy of a completed contract within 60 days after the Court's decision.

10. The Monitor shall not be terminated without leave of the Court. Neither party shall move to terminate the Monitor without providing at least 30 days' written notice to the other party of their intention to do so. If a party unilaterally seeks to terminate the Monitor, termination shall be granted only for cause. The Monitor may be terminated on any grounds, however, if both parties agree to such termination. If both parties agree to terminate the Monitor, they shall file a Joint Motion for Termination with the Court.

11. In the event the Monitor is unable to carry out his or

her obligations due to unforeseen circumstances (e.g. due to death, illness, termination, or resignation), the parties shall confer on the replacement of the Monitor. If they are unable to jointly agree on a replacement, then the procedure outlined above for appointment by the Court shall be applicable.

12. The Defendants, their agents, employees, contractors, and subcontractors shall not take any retaliatory action against any individual or individuals who cooperated with the United States' investigation of MCGC, or who cooperate with the United States or the Monitor during the pendency of this Settlement.

VII. Construction, Termination, and Enforcement of Settlement

1. This Settlement shall be applicable to and binding upon all parties, their officers, agents, employees, assigns, and their successors in office.

2. The Defendants shall begin implementing this Settlement immediately upon the filing of the Settlement with the Court. Except where otherwise specifically indicated, the Defendants shall complete implementation of all the provisions of this Settlement within one hundred and eighty (180) days after the filing of this Settlement with the Court. If Defendants are unable to complete implementation of any provisions of this Settlement within this one hundred and eighty (180) day period, they may seek an additional sixty (60) day-extension from the Court by filing a motion with the Court. The Motion for

Extension shall include a certification from the Monitor that a good faith basis exists for granting this extension. Prior to filing such a Motion for Extension, Defendants shall consult with the United States. If the Defendants fail to implement the terms of this Settlement on a timely basis, the United States may seek appropriate relief from the Court, including immediate injunctive relief if Defendants' failure to comply with the Settlement creates a condition or practice at MCGC that rises to the level of an emergency (imminent threat to the health, safety, or life of a resident or residents).

3. This Settlement will terminate three years after approval of this Settlement by the Court. Nothing in this Settlement shall preclude early termination of this Settlement before the three year date if Defendants attain substantial compliance with this Settlement (as defined in II.4 above) before the three year termination date.

4. Any time after approval of this Settlement by the Court, the parties may seek termination of the Settlement by filing a Joint Motion for Termination. If the parties jointly move for termination, termination may be granted without any further proceedings, and the case will be dismissed with prejudice. Alternatively, Defendants may file a Motion for Termination once they have substantially complied (as defined in II.4 above) with this Settlement. If Defendants unilaterally move for

termination, early dismissal shall be granted unless the United States objects to termination within 90 days after Defendants filed their Motion for Termination. If the United States objects to termination, a hearing shall be held on the Motion for Termination, and dismissal shall not be granted unless Defendants have substantially complied (as defined in II.4 above) with this Settlement.

5. Consistent with the Federal Rules of Civil Procedure, the burden of proof shall be on the movant in any adversarial hearing set by the Court.

6. All staff members and other individuals responsible for implementing this Settlement shall be apprised of the contents of this Settlement. This Settlement shall be made available promptly to residents and resident family members upon request. Notices that this Settlement has been entered shall be posted in all resident housing areas. A copy of the Settlement shall be posted on the Justice Department, Civil Rights Division, Special Litigation Section website.

7. The parties reserve the right to withdraw consent to this Settlement in the event that this Settlement is not approved by the Court in its entirety.

8. If any provision of this Settlement, or the application thereof to any person or circumstance, is held invalid after entry of the Settlement, the remainder of the Settlement and its

application to other persons or circumstances shall not be affected thereby.

9. Except as otherwise expressly provided in this Settlement, any notice or request to be given hereunder by either party to the other shall be in writing and may be affected either by personal delivery or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the following addresses, but either party may change its notice address by providing written notice to the other in accordance with this paragraph.

10. In the event this Settlement is challenged in state or federal court, either party may seek removal to federal court.

11. The parties may jointly agree, in writing, to modify this Settlement.

12. Any notice or request that must be given under this Settlement in writing by either party to the other may be effected either by personal delivery, Federal Express, or by mail, registered or certified, postage prepaid with return receipt requested.

Agreed to by:

COUNSEL FOR THE UNITED STATES:

Date: _____, 2005

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Date: 12/28, 2004

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WHEREFORE, the parties to this action having agreed to the provisions in the Settlement set forth above, and the Court being advised in the premises, this Settlement is hereby entered as the order and judgment of this Court.

It is so ordered, this _____ day of _____, 2005, at Trenton, New Jersey.

_____
United States District Judge