

**SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES
AND
THE WORCESTER COUNTY SHERIFF**

BACKGROUND

1. This Settlement Agreement (the “Agreement”) is made between the Worcester County Sheriff (“Worcester County”) and the United States of America (“United States”) (collectively the “Parties”).

2. The United States Department of Justice, through the United States Attorney’s Office for the District of Massachusetts, opened an investigation into Worcester County’s policy denying, on the basis of disability, inmates with opioid use disorder (OUD) access to medications prescribed under supervision by a licensed health care professional, including medication prescribed for OUD, violates Title II of the Americans with Disabilities Act (“ADA”), 42 U.S. C. §§ 12131-12134, and Title II’s implementing regulation, 28 C.F.R. pt. 35. Title II provides, amongst other things, that no qualified individual shall, on the basis of disability, be excluded from participation in or be denied the benefits¹ of the services, programs, or activities of a public entity. 42 U.S.C. § 12132, 28 C.F.R. § 35.130(a).

3. The Parties agree it is in their best interests, and the United States believes it is in the public interest, to resolve this dispute through collaboration. Therefore, the Parties voluntarily enter into the following agreement:

TITLE II COVERAGE AND DETERMINATIONS

4. The United States of America, through the United States Department of Justice, United States Attorney’s Office, District of Massachusetts has the duty to enforce Title II of the ADA, 42 U.S.C. §§ 12131-12134, and the regulations implementing Title II, 28 C.F.R. pt. 35.

5. Worcester County is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation 28 C.F.R. pt. 35.

6. No qualified individual with a disability shall be excluded from participation in, be denied the benefits of the services, programs, or activities of a public entity, or be subjected to

¹ Throughout this Agreement, terms such as “enjoyment,” “benefit,” or “seek” that in other contexts might imply the voluntary and willing participation of a member of the public in Worcester County programs, services, or activities, shall also refer to a member of the public’s involuntary participation in the Sheriff’s Department’s programs, services, and activities, such as detention or incarceration. See 28 C.F.R. § 35.152.

discrimination by any public entity on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

7. Opioid Use Disorder (OUD) is disability under the ADA. 42 U.S.C. § 12102; 28 C.F.R. § 35.108. OUD is a physical or mental impairment that substantially limits one or more major life activities, which includes the operation of major bodily functions. 28 C.F.R. § 35.108(b)(2) (defining physical or mental impairment to include “drug addiction”). OUD substantially limits major life activities, such as caring for oneself, learning, concentrating, thinking, and communicating. 42 U.S.C. § 12102(2)(A); 28 C.F.R. § 35.108(c)(1)(i). OUD also limits the operation of major bodily functions, such as neurological and brain functions. 42 U.S.C. § 12102(2)(B); 28 C.F.R. § 35.108(c)(1)(ii). The determination whether an impairment substantially limits a major life activity is made without regard to the effect that ameliorating measures—including medication—may have on the impairment. 42U.S.C. § 12102(4)(E)(i); 28 C.F.R. § 35.108(d)(1)(viii).

8. The term “individual with a disability” excludes individuals “currently engaged in the illegal use of drugs, when the covered entity acts on the basis of such use.” 42 U.S.C. § 12210(a); 28 C.F.R. §§ 35.104; 35.131(a). This exclusion does not apply to individuals who are no longer using illegal drugs and who have (1) successfully completed drug rehabilitation, (2) are participating in a supervised rehabilitation program, or (3) are erroneously regarded as using illegal drugs. 42 U.S.C. § 12210(b); 28 C.F.R. § 35.131(a)(2).

9. Notwithstanding Paragraph 8, a public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual’s current illegal use of drugs, if the individual is otherwise entitled to such services. 42 U.S.C. § 12210(c); 28 C.F.R. § 35.131(b)(1).

10. Worcester County provides health care services to inmates housed in its facility. These services include medical care, mental health care, and various forms of addiction treatment programming. One of the services provided is distribution of medication to inmates under supervision by a licensed health care professional.

11. As part of its investigation, the United States has determined:

- a. Worcester County prohibits methadone and buprenorphine from being used to treat persons with OUD while they are at Worcester County and allows for no individualized medical determination to assess whether a person should be maintained on such treatment while at Worcester County.
- b. At intake, Worcester County gives the option to some individuals being maintained on methadone and buprenorphine to transfer to other county sheriff’s offices, to continue maintenance on those medications.

- c. Individuals with OUD who are incarcerated at Worcester County facilities who have been prescribed methadone or buprenorphine under the supervision of a licensed health care professional to treat their OUD and who do not elect a transfer must undergo forced withdrawal under medical supervision.
- d. The United States determined that Worcester County's practice of denying an individualized determination of whether persons with OUD who have been treated with either methadone or buprenorphine should be maintained on these medications while at Worcester County, excludes these individuals from participating in or benefiting from Worcester County's health care services in violation of 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a) and 35.131(b)(1). This determination is an allegation only, and has not been proven in a court of law.

ACTIONS TO BE TAKEN BY WORCESTER COUNTY

12. Within 30 days of the effective date of this agreement, Worcester County will submit a draft policy regarding its health services for individuals with OUD to the United States for its review, which provides for the following:

- a. Worcester County will not change or discontinue a particular medication used to treat OUD except upon an individualized determination made by a qualified medical specialist that the treatment is no longer medically appropriate based on the person's current condition.
- b. Worcester County will not use incentives, rewards, or punishments to encourage or discourage a person to receive any particular medication used to treat OUD while in the facility's custody.
- c. Worcester County will not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.

13. Within eight months of approval by the United States, Worcester County will implement the policy set forth in paragraph 12 with regards to providing buprenorphine on site. Within thirteen months of approval by the United States, Worcester County will implement the policy set forth in paragraph 12 with regards to providing methadone on site. Until Worcester County has capacity to provide buprenorphine and methadone on site, it will attempt to transfer any individual requiring either of these medications to a facility that can provide these medications. If any issues arise affecting any anticipated effective dates set forth in the policy in paragraphs 12, Worcester County will immediately notify the United States and the parties will attempt to resolve those issues in good faith.

OTHER PROVISIONS

14. In consideration for entering into this settlement agreement, the United States will close its investigation of USAO# 2021V00090 and DJ# 204-36-260 and will not institute a civil action based on the allegations set forth in paragraph 11. The United States may review Worcester County's compliance with this settlement agreement or Title II of the ADA at any time, and take appropriate action.

15. Failure by the United States to enforce any provision of this settlement agreement is not a waiver of its right to enforce any provision of this settlement agreement.

16. If any term of this settlement agreement is determined by any court to be unenforceable, the other terms of this settlement agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Worcester County shall engage in good faith negotiations to adopt mutually agreeable amendments to this settlement agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

17. The signatory for Worcester County represents that he or she is authorized to bind Worcester County to this settlement agreement.

18. This settlement agreement constitutes the entire agreement between the United States and Worcester County on the matters raised herein, and no prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, is enforceable. This settlement agreement can only be modified by mutual written agreement of the parties.

19. This settlement agreement does not constitute a finding by the United States regarding Worcester County's compliance with the ADA. This settlement agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this settlement agreement, including any other potential claims regarding discrimination on the basis of disability. Nothing in this settlement agreement relieves Worcester County of its obligation to comply with the requirements of the ADA.

20. Worcester County shall not discriminate or retaliate against any person because of his or her participation in this matter.

21. The effective date will be the date of the most recent signature below, and it will last for 12 months.

For the United States

For Worcester County

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District of Massachusetts

/s/

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/s/

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Date: 6/23/2021