

**SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
ALLEGHENY COUNTY**

DJ No. 204-64-172

BACKGROUND

1. This Settlement Agreement (the Agreement) is entered into by: Allegheny County related to its administrative unit the Allegheny County Bureau of Corrections (hereafter, collectively referred to as Allegheny County); and the United States of America (United States) (collectively, the Parties).

2. The United States, through the U.S. Department of Justice (Department), is authorized to enforce Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. pt. 35.

3. Allegheny County operates the Allegheny County Jail (ACJ) and is responsible for the care, custody, and control of all persons incarcerated at ACJ. Allegheny 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.

4. The Department opened an investigation of Allegheny County under Title II of the ADA after receiving a complaint from an individual (Complainant) who alleged that while he was incarcerated at ACJ, Allegheny County refused to provide him with methadone even though he was receiving methadone treatment for his opioid use disorder (OUD) from a licensed methadone treatment provider prior to his incarceration. The Department investigated whether Allegheny County’s treatment of Complainant violated the ADA. The Department also investigated whether Allegheny County failed to provide methadone to other nonpregnant individuals with OUD for whom methadone was medically appropriate and thereby violated the ADA by discriminating against those individuals on the basis of disability and excluding them from participation in or denying them the benefits¹ of Allegheny County’s services, programs, or activities. 42 U.S.C. 12132, 28 C.F.R. § 35.130(a).

5. The Parties agree it is in their best interests, and the United States believes it is in the public interest, to resolve this matter collaboratively on mutually agreeable terms that promote and enhance the rights of individuals with disabilities. Therefore, the Parties voluntarily enter into this Agreement.

¹ Throughout this Agreement, terms such as “participate in” and “benefit from,” that include voluntary or willing participation of a person in Allegheny County’s programs, services, or activities, also refer to a person’s involuntary participation in Allegheny County’s corrections-related programs, services, and activities such as detention or incarceration. See 28 C.F.R. § 35.152.

6. The Parties enter into this Agreement to resolve the disputed claims described in paragraph 11 below and to avoid the costs and risks of litigation of the matter. Neither this Agreement nor the payment being made hereunder shall be construed as an admission of liability or wrongdoing on the part of Allegheny County or its officers and employees.

TITLE II COVERAGE AND DETERMINATIONS

7. Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

8. People with OUD typically have a disability because they have a drug addiction—a physical or mental impairment that substantially limits one or more of their major life activities. 28 C.F.R. § 35.108(a)(1)(i), (b)(2). While the term “individual with a disability” excludes individuals “currently engaging 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, .131(a), 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).

9. Methadone, naltrexone, and buprenorphine are medications approved by the U.S. Food and Drug Administration (FDA) to treat OUD. How long a patient receives OUD medication is tailored to the needs of each patient, and in some cases, treatment can be indefinite. Any determination that a patient should stop using their OUD medication should be based on an individualized assessment of the patient’s treatment needs and should be part of an individualized treatment plan collaboratively developed and agreed upon by the patient and their medical provider.

10. Allegheny County provides healthcare services to individuals housed at ACJ. These services include medical care, mental healthcare, and various forms of addiction treatment programming. One of the services provided is distribution of medication to inmates under the supervision of a licensed healthcare professional.

11. As part of its investigation, the United States alleges that it substantiated allegations that Allegheny County did not provide methadone to all individuals with OUD for whom methadone was medically appropriate, including individuals who were receiving methadone treatment from a licensed treatment provider prior to their incarceration. Specifically, the Department contends that:

- a. Allegheny County did not provide access to methadone to Complainant during his incarceration at ACJ.
- b. At the time Complainant was incarcerated, Allegheny County only provided access to methadone to individuals incarcerated at ACJ if they were pregnant and were in methadone treatment prior to their incarceration.

- c. At intake, nonpregnant individuals who were in methadone treatment to treat their OUD were put through medically supervised withdrawal.
- d. Allegheny County has taken steps to increase its capacity to provide methadone and asserts that since October 2022 it has provided continued access to methadone for all individuals already in methadone treatment when they are admitted to ACJ. Allegheny County does not, however, initiate any individuals on methadone who are not pregnant.
- e. The United States alleges that Allegheny County’s failure to provide methadone to individuals with OUD for whom the medication is medically appropriate denied them an equal opportunity to participate in and benefit from Allegheny County’s programs, services, and activities—including healthcare services—in violation of 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a) and 35.131(b).

ACTIONS TO BE TAKEN BY ALLEGHENY COUNTY

12. Capacity for Methadone Initiation: Within 6 months of the effective date, Allegheny County will contract with a licensed opioid treatment provider (the Provider) to provide methadone initiation for all individuals booked into ACJ² for whom such treatment is medically appropriate.

13. Policy Revision: Within 2 months of retaining the Provider, Allegheny County will provide to the United States a draft policy regarding its healthcare services for individuals with OUD (the Policy) that provides for the following:

- a. Allegheny County will continue to ensure that all individuals incarcerated at ACJ are medically evaluated for OUD at the outset of their incarceration and are reevaluated thereafter when necessary and appropriate.
- b. Allegheny County will ensure that all individuals with OUD incarcerated at ACJ are provided with any FDA-approved medications to treat OUD that they were prescribed or were receiving from a licensed opioid treatment provider prior to their incarceration. Allegheny County will not change or discontinue an individual’s use of a particular medication to treat OUD unless doing so is based on an individualized determination by a qualified medical provider that the treatment is no longer medically appropriate based on the individual’s condition or repeated diversion or misuse by the patient.
- c. Allegheny County will offer the option to all individuals with OUD booked into ACJ to receive treatment with any FDA-approved OUD medication if a qualified medical provider determines that such treatment is medically appropriate based on the individual’s condition. This provision applies to

² Individuals “booked into” ACJ includes all individuals incarcerated at ACJ for more than 72 hours but not individuals temporarily held at ACJ prior to arraignment.

all individuals with OUD, including those who were not being treated with OUD medication prior to their incarceration at ACJ.

- d. Allegheny County will not use incentives, rewards, or punishments to encourage or discourage individuals from receiving any particular medication to treat OUD while they are in Allegheny County's custody and control.
- e. Allegheny 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 drug use, if the individual is otherwise entitled to such services.

14. Policy Implementation: Within 3 months of the United States approving the Policy, Allegheny County will implement the Policy and will offer the option to all individuals with OUD booked into ACJ to receive treatment with any FDA-approved OUD medication if a qualified medical provider determines that such treatment is medically appropriate based on the individual's condition.

15. Notification of Material Alterations of Policy: Throughout the term of this Agreement, Allegheny County will notify the United States of any material alterations to its Policy regarding provision of OUD medication.

16. Training: Within 3 months of the United States approving the Policy, Allegheny County will provide training on the requirements of Title II of the ADA and the Policy to all County employees directly involved in implementing Allegheny County's policies regarding use, prescription, and administration of medication for OUD. Thereafter, during the term of this Agreement, Allegheny County will provide the same training to all new personnel involved in the aforementioned activities within 30 days of their hiring.

17. Trainer Qualifications: Trainings must be conducted by a trainer who is knowledgeable about Title II of the ADA and approved by the United States. Allegheny County will provide the trainer's curriculum vitae or resume and the trainer's proposed training curriculum and associated materials to the United States for approval at least 21 days before any training is conducted.

18. Documentation of Trainings: Allegheny County will maintain sign-in sheets for each training identifying the date the training was held and the names and job titles/responsibilities of everyone who attended. Allegheny County will provide copies of these sign-in sheets as well as any other training-related materials to the United States upon request.

19. Complaints: Allegheny County will report to the United States any lawsuit, written or oral complaint, charge, or other allegation that Allegheny County has engaged in disability-based discrimination and/or violated the ADA with regard to its provision of services to individuals with OUD incarcerated at ACJ. Within 14 days of receiving such a complaint, Allegheny County will send the United States written notification along with a copy of any written complaint (or, if an oral complaint was made, a description of the oral complaint) as well as a copy of any response by Allegheny County to the complaint.

20. Specific Relief for Complainant: Within 15 days of the effective date of this Agreement, Allegheny County shall offer to pay Complainant \$10,000.00 as compensatory damages. This amount shall not be subject to withholding deductions, and Allegheny County shall issue an IRS Form 1099 to Complainant for this amount.

21. Documentation to Be Provided to Complainant: Along with the offer, Allegheny County will send Complainant a copy of this signed Agreement, the Notice Letter and Release of Claims Form attached as Exhibits 1 and 2, a W-9 and County vendor creation form, and an offer of payment. Allegheny County will also include an overnight shipping envelope, with postage prepaid, in which the Complainant can return the Release of Claims and accompanying forms. Allegheny County will send the United States copies of the Notice Letter and the Release of Claims Form when they are sent to Complainant.

22. Complainant's Actions for Relief: In order to accept the relief offered by Allegheny County, Complainant must execute and return the Release of Claims (Exhibit 2), W-9, and vendor creation form to Allegheny County within 60 days of receiving the Notice Letter (Exhibit 1).

23. Payment to Complainant: If Complainant accepts the relief offered, Allegheny County must pay the Complainant via check the total monetary amount offered within 60 days of receiving Complainant's signed Release of Claims Form. Within 7 days of paying Complainant, Allegheny County shall send the United States written proof of payment that includes a copy of the check and a copy of Complainant's signed Release of Claims Form.

ADDITIONAL PROVISIONS

24. Compliance Monitoring: The United States may review Allegheny County's compliance with this Agreement or Title II of the ADA at any time. Allegheny County will cooperate in good faith with any efforts by the United States to monitor compliance. This includes permitting the United States to conduct on-site reviews of activities relevant to compliance with this Agreement. This also includes providing any information relevant to compliance that is requested by the United States within 21 days of receiving a request.

25. Alleged Non-Compliance: If the United States believes Allegheny County has failed to comply in a timely manner with any requirement of this Agreement, the United States will notify Allegheny County in writing and the Parties will attempt to resolve the issue in good faith. When the United States asserts there is an immediate and serious threat to the life, health, or safety of an individual with a disability, Allegheny County must cure the violation or otherwise respond to the notice as soon as practicable but no later than 7 days after the date of notice. For all other situations, Allegheny County must cure the alleged violation or otherwise respond to the notice within 21 days. If, within 21 days of the date of the notice, the United States and Allegheny County are unable to reach a resolution, the United States may institute a civil action in the appropriate U.S. District Court to enforce this Agreement and/or Title II of the ADA.

26. No Waiver: Failure by the United States to enforce any provision of this Agreement is not a waiver of its right to enforce any provision of this Agreement.

27. Severability: If any term of this Agreement is determined by any court to be unenforceable, the other terms of the Agreement shall 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 Allegheny County shall engage in good faith negotiations to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the Parties as closely as possible to the initially agreed upon relative rights and obligations.

28. Modification of Time Limits in Agreement: Any time limits imposed by this Agreement may be extended by the mutual written consent of the Parties. If any issues arise affecting Allegheny County's ability to meet any of the time limits in this Agreement, Allegheny County will immediately notify the United States and the Parties will attempt to resolve those issues in good faith. Such issues may include unexpected delays in retaining the Provider due to factors outside of Allegheny County's control. The United States will grant reasonable requests made in good faith to extend deadlines imposed by this Agreement.

29. Notices: All materials sent to the United States pursuant to this Agreement shall be sent by e-mail to undersigned counsel. If the materials cannot be e-mailed, they shall be sent to the following address by overnight mail, delivery prepaid, to: Adam Lewis, Trial Attorney, Disability Rights Section – 4CON, 950 Pennsylvania Ave, NW, Washington, DC, 20530.

30. Merger: This Agreement constitutes the entire agreement between the United States and Allegheny County on this matter. No other 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 is enforceable.

31. Compliance with ADA and Other Laws: This Agreement is not intended to remedy any other potential violations of the ADA or of any other law that is not specifically addressed in this Agreement, including any other potential claims regarding discrimination on the basis of disability. Nothing in this Agreement relieves Allegheny County of its continuing obligation to comply with the requirements of the ADA.

32. Non-Discrimination: Allegheny County shall not discriminate or retaliate against any person because of his or her participation in this matter.

33. Term: This Agreement will be effective on December 1, 2023, and will last for 3 years.

34. Availability of Agreement: This Agreement is a public document. Allegheny County will provide a copy of this Agreement to any person upon request.

35. County Signatory Authority: The signatory for Allegheny County represents that he or she is authorized to bind Allegheny County and the Allegheny County Bureau of Corrections to this Agreement.

36. Execution in Counterparts: This Agreement may be executed in counterparts.

AGREED AND CONSENTED TO:

For the United States of America

REBECCA B. BOND
Section Chief

/s/

KEVIN J. KIJEWski
Deputy Chief
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Trial Attorney

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Dated: 11/30/2023

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/s/

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Dated: 11/30/2023

For Allegheny County

/s/

COUNTY MANAGER

APPROVED AS TO FORM:

/s/

COUNTY SOLICITOR

/s/

ASSISTANT COUNTY SOLICITOR