

**ADA SETTLEMENT AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
BIG SANDY REGIONAL JAIL AUTHORITY**

DJ No. 204-30-103

BACKGROUND

1. This Settlement Agreement (the Agreement) is entered into by: Big Sandy Regional Jail Authority (hereafter, Big Sandy Authority); 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. Big Sandy Authority operates Big Sandy Regional Detention Center (the Jail and collectively, Big Sandy), which serves Johnson, Lawrence, Magoffin, and Martin Counties and is responsible for the care, custody, and control of all persons incarcerated at its facility. Big Sandy Authority 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 Big Sandy under Title II of the ADA after receiving a complaint by a medical provider (Complainant) on behalf of patient J.F., a patient of Complainant's who had been lawfully prescribed buprenorphine to treat his opioid use disorder (OUD). Specifically, Complainant alleged that the Jail refused to provide J.F. with his lawfully prescribed medication while he was incarcerated at the Jail. The Department investigated whether the Jail's treatment of patient J.F. violated the ADA as well as whether the Jail had a general practice of refusing to provide buprenorphine to individuals with OUD who had been lawfully prescribed such medication that 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 the Jail's services, programs, or activities. 42 U.S.C. 12132, 28 C.F.R. § 35.130(a).

5. Big Sandy denies the allegations against it, including any violations of J.F.'s rights or that it has engaged in a pattern or practice or has maintained a policy of discrimination against individuals in the provision of goods, services, facilities, privileges, advantages, or accommodations on the basis of OUD. Big Sandy agrees to terms of this

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

10/24/2024 10:00 AM

Settlement Agreement out of a spirit of cooperation with the United States and its desire to fully comply with the requirements of the ADA.

6. 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.

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. Big Sandy provides healthcare services to individuals housed at its facility. These services include medical care and mental healthcare. 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 substantiated allegations that Big Sandy effectively bans medications for OUD. Specifically, the Department contends that:

- a. Big Sandy failed to provide buprenorphine to J.F. during his incarceration even though he had been lawfully prescribed

- buprenorphine for treatment of his OUD. This failure to provide J.F. was not based on an individualized medical assessment.
- b. Big Sandy's policies and practices operate to deny persons with OUD treatments with medications for OUD (i.e., methadone, buprenorphine, and naltrexone) while they are at Big Sandy and allows for no individualized medical determination to assess whether a person should be maintained or initiated on such treatment while at Big Sandy.
 - c. Big Sandy's practice of denying an individualized determination of whether MOUD should be maintained or initiated for people with OUD while at the facility, denies them an equal opportunity to participate in and benefit from Big Sandy'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 BIG SANDY

12. **Policy Revision and Implementation (MOUD Maintenance):** Within 30 days of the effective date of this Agreement, Big Sandy will provide to the United States a draft policy or policies regarding its healthcare services for individuals with OUD that addresses maintenance of medications for OUD that provides for the following:

- a. Big Sandy 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.
- b. Big Sandy will not use incentives, rewards, or punishments to encourage or discourage individuals from receiving any particular medication to treat OUD while they are in Big Sandy's custody and control.
- c. Big Sandy 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.

13. Within three months of approval by the United States, Big Sandy will implement the policy set forth in the preceding paragraph and will ensure that all individuals with OUD under its custody and control for whom OUD medication is prescribed by a qualified medical provider before or during their incarceration will be maintained on such medication pursuant to the criteria described in Paragraph 11.

14. Policy Revision and Implementation (MOUD Maintenance): Within 90 days of the effective date of this Agreement, Big Sandy will provide to the United States a draft policy or policies regarding its healthcare services for individuals with OUD that addresses the induction of medications for OUD and that provides for the following:

- a. Big Sandy will ensure that all individuals under its custody and control are medically evaluated for OUD at the outset of their incarceration.
- b. Big Sandy 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.
- c. Big Sandy will offer the option to all individuals with OUD under its custody and control 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 all individuals with OUD, including those who were not prescribed OUD medication prior to their incarceration at Big Sandy.
- d. Big Sandy will not use incentives, rewards, or punishments to encourage or discourage individuals from receiving any particular medication to treat OUD while they are in Big Sandy's custody and control.
- e. Big Sandy 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.

15. Within six months of approval by the United States, Big Sandy will implement the policy set forth in the preceding paragraph and will provide the appropriate OUD medication to all individuals with OUD under its custody and control for whom OUD medication is deemed medically appropriate by a qualified medical provider.

16. Throughout the term of this Agreement, Big Sandy will notify the United States of any material alterations to its policy regarding provision of OUD medication.

17. Training: Big Sandy will provide training on the requirements of Title II of the ADA to: (1) all current personnel involved in developing and implementing Big Sandy's policies regarding use, prescription, and administration of medication for opioid use disorder within 45 days of the effective date of this Agreement; and (2) all new personnel involved in such activities who are hired during the term of this Agreement within 30 days of their hiring.

18. All trainings must be conducted by a trainer who is knowledgeable about Title II of the ADA and approved by the United States. Big Sandy 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.

19. Big Sandy 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. Big Sandy will provide copies of these sign-in sheets as well as any other training-related materials to the United States upon request.

20. Complaints: Big Sandy will report to the United States any lawsuit, written or oral complaint, charge or other allegation that Big Sandy has engaged in disability-based discrimination and/or violated the ADA regarding its provision of services to an individual with OUD. Within 14 days of receiving such a complaint, Big Sandy 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 Big Sandy to the complaint.

ADDITIONAL PROVISIONS

21. The United States may review Big Sandy's compliance with this Agreement or Title II of the ADA at any time. Big Sandy will cooperate fully and 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 Big Sandy activities relevant to compliance with this Agreement. This also includes providing any information relevant to compliance that is requested by the United States within 14 days of receiving a request.

22. If the United States believes Big Sandy has failed to comply in a timely manner with any requirement of this Agreement, the United States will notify Big Sandy 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, Big Sandy 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, Big Sandy 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 Big Sandy 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.

23. 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.

24. 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 Big Sandy 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.

25. Any time limits imposed by this Agreement may be extended by the mutual written consent of the Parties. If any issues arise affecting Big Sandy's ability to meet any of the time limits in this Agreement, Big Sandy will immediately notify the United States and the Parties will attempt to resolve those issues in good faith.

26. All materials sent to the United States pursuant to this Agreement shall be sent by e-mail to the undersigned counsel. If the materials cannot be e-mailed, they shall be sent to the following address by overnight mail, delivery prepaid, to: Carrie Pond, Assistant U.S. Attorney, 260 W. Vine Street, Suite 300, Lexington, KY 40507-1612.

27. This Agreement constitutes the entire agreement between the United States and Big Sandy 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.

28. 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 Big Sandy of its continuing obligation to comply with the requirements of the ADA.

29. Big Sandy shall not discriminate or retaliate against any person because of his or her participation in this matter.

30. This Agreement will be effective on the date of the most recent signature below and will last for 3 years.

31. Big Sandy will provide a copy of this Agreement to any person upon request.

32. The signatory for Big Sandy Authority represents that they are authorized to bind the Big Sandy Regional Jail Authority and the Big Sandy Regional Detention Center to this Agreement.

33. This Agreement may be executed in counterparts.

AGREED AND CONSENTED TO:

For the United States of America

For Big Sandy Regional Jail Authority

CARLTON S. SHIER, IV

United States Attorney for the
Eastern District of Kentucky

Carrie B. Pond

CARRIE B. POND
Assistant United States Attorney

Dated: 11-29-2023

D. CASTLE

Daniel Castle, Chairman

Dated: 10 NOV 23