

## MEMORANDUM OF UNDERSTANDING

### I. INTRODUCTION

1. In the spirit of cooperation and for the purpose of providing adequate care to our Veterans, the United States Department of Justice ("DOJ"), the State of Alabama ("the State"), the State of Alabama Department of Veterans' Affairs ("ADVA"), and Health Management Resources - Governmental Services, Inc. ("HMR"), a contractee of the ADVA, jointly undertake the following Memorandum of Understanding ("MOU").

### II. BACKGROUND

2. On November 8, 2007, the DOJ notified State officials of its intent to investigate conditions of resident care and treatment at the W.F. Green State Veterans' Home ("W.F. Green") in Bay Minette, Alabama, pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 *et seq.*

3. In February 2008, a DOJ team toured W.F. Green.

4. Pursuant to 42 U.S.C. § 1997b(a)(1), and by letter dated December 18, 2008, the DOJ concluded that certain conditions at W.F. Green violated the federal rights of residents of the nursing home ("DOJ's Findings Letter").

5. The State, ADVA and HMR disagree with DOJ's conclusions. Some of these objections and/or responses were contained in letters dated December 23, 2008 and February 4, 2009 and/or discussed by telephone or in person.

6. The State, ADVA, and HMR do not admit to any violation of Federal or State law.

7. While not dispositive of the DOJ investigation, W.F. Green has been subject to surveys conducted by the Alabama Department of Public Health and Federal Department of Veterans Administration on 11 separate occasions since the February 2008 DOJ tour of W.F. Green. W.F. Green has been deemed in compliance with required standards applicable to W.F. Green on each of these occasions.

8. In the interest of providing appropriate care to Veterans, and to resolve disputed matters, the DOJ, the State, ADVA, and HMR agree to undertake and implement the measures set forth below.

### III. DEFINITIONS

The following definitions apply:

9. "Appropriate" shall mean that which is suitable for a particular purpose.

10. "Care Plan" shall refer to the comprehensive care plan set out in 38 C.F.R. § 51.110(e).

11. "Dietitian" shall mean a person who is qualified—based upon registration by the American Dietetic Association or on the basis of training, experience or education in the identification of dietary needs as well as in the planning and implementation of dietary programs.

12. "Fall" shall mean an uncontrolled, unintentional, downward displacement of a resident's body to the ground.

13. "W.F. Green" shall mean the William F. Green State Veterans' Home in Bay Minette, Alabama, a facility owned by the ADVA.

14. "Physician" shall mean a medical doctor lawfully entitled to practice medicine in the State of Alabama.

15. "Psychotropic Medication" shall mean any medication that affects the mind, emotions, or behavior.

16. "Qualified Professional" or "Qualified Staff" shall mean an individual who is competent, whether by education, training, or experience, to make the particular decision at issue.

17. "RNs" shall mean individuals licensed as Registered Nurses by the State of Alabama.

18. "LPNs" shall mean individuals licensed as Licensed Practical Nurses by the State of Alabama.

19. "CNAs" shall mean Certified Nursing Assistants certified by the State of Alabama.

20. "Physical Restraint" shall mean any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

21. "Chemical Restraint" shall mean any drug that is used for discipline or convenience and not required to treat medical symptoms.

22. "Resident" shall mean any person residing at W.F. Green during the operation of this MOU.

23. "Substantial compliance" shall mean a level of compliance that does not significantly deviate from the terms of this MOU, provided that any deviation poses no significant risk to a resident's health or safety. Noncompliance with mere technicalities, or temporary

failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.

#### IV. SUBSTANTIVE REMEDIAL MEASURES

24. The intent and purpose of this MOU is to enhance the level of care provided to our Veterans. Consistent with Congress' stated intent for the implementation of CRIPA, it will do so by putting in place a mechanism for cooperative resolution of potential issues identified by DOJ, while avoiding the unproductive consumption of resources inherent in litigation and the disruptive effect that litigation would have on W.F. Green's residents.

##### A. HEALTH CARE ASSESSMENTS AND CARE PLANS

25. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial compliance with the provisions of this section. DOJ will give ADVA and HMR reasonable prior written notice of the tour and, prior to arriving at W.F. Green, shall identify to ADVA and HMR any expert consultants DOJ plans to bring to the tour. The State, ADVA, and HMR

may choose to have experts, agents, and/or representatives accompany the DOJ team during the tour. However, the parties will confer in good faith to determine the necessity of HMR and ADVA obtaining experts to accompany the DOJ team. W.F. Green shall be deemed in substantial compliance with the provisions of this section unless notified otherwise by DOJ in writing within 150 days from the date of the notification letter.

26. The ADVA and HMR shall continue to ensure that qualified professionals assess and document residents' medical, functional, nursing and psychological needs.

27. The ADVA and HMR shall continue to ensure that qualified professionals identify interventions necessary for residents to maintain or improve their medical status, functional abilities, and psychological status.

28. The ADVA and HMR shall continue to ensure that care plans are developed and implemented for each resident.

29. The ADVA and HMR shall continue to ensure that staff are trained in W.F. Green's policies and procedures.

30. The ADVA and HMR shall continue to ensure that W.F. Green's policies and procedures reflect appropriate care in evaluating, monitoring, and treating the needs of the residents of W.F. Green.

31. The ADVA and HMR shall continue to ensure that "standing orders" are used only in situations where there is appropriate oversight of their use.

32. The ADVA and HMR shall continue to ensure that appropriate follow-up is provided whenever a standing order is implemented.

33. The ADVA and HMR shall continue to evaluate residents' status to ensure that residents' health status is monitored accurately.

34. The ADVA and HMR shall continue to determine whether residents who experience a significant change of status require interdisciplinary review or revision of the care plan or both and to implement such revisions, as required.

35. The ADVA and HMR shall ensure that staff use available data (such as lab/diagnostic studies, other health professions' data) in their assessments to identify residents' problems/conditions and prepare care plans.

36. The ADVA and HMR shall ensure that the resident's physician continues to be notified of abnormal laboratory findings and the resident's physician responds and follows up as the physician deems appropriate.

37. The ADVA and HMR shall ensure that policies and practices are developed and implemented to appropriately identify and manage communicable diseases.

38. The ADVA and HMR shall continue to ensure that there are appropriate infection control practices.

39. The ADVA and HMR shall continue to ensure that there are trained staff, particularly RNs, LPNs, and CNAs, to provide routine, preventative, and restorative care, and to respond to residents' needs.

40. The ADVA and HMR shall continue to implement quality assurance mechanisms which track and analyze patterns and trends to

monitor the delivery of medical, nursing, and all other health care services to residents.

B. NUTRITION AND HYDRATION CARE AND ASPIRATION PREVENTION

41. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial compliance with the provisions of this section. DOJ will give ADVA and HMR reasonable prior written notice of the tour and, prior to arriving at W.F. Green, shall identify to ADVA and HMR any expert consultants DOJ plans to bring to the tour. The State, ADVA, and HMR may choose to have experts, agents, and/or representatives accompany the DOJ team during the tour. However, the parties will confer in good faith to determine the necessity of HMR and ADVA obtaining experts to accompany the DOJ team. W.F. Green shall be deemed in substantial compliance with the provisions of this section unless notified otherwise by DOJ in writing within 150 days from the date of the notification letter.

42. The ADVA and HMR shall continue to develop, review, and implement policies, procedures, and protocols necessary to ensure that W.F. Green residents receive appropriate nutrition and hydration care.

43. The ADVA and HMR shall continue to conduct individual nutrition and hydration assessments, and to develop and implement interventions which are reviewed and updated as needed.

44. The ADVA and HMR shall continue to engage a qualified dietitian to consult with appropriate personnel on residents' needs and on dietary services. The dietitian shall be responsible for assessing and care planning of residents' nutritional needs, both initially and on an on-going basis.

45. The ADVA and HMR shall continue to provide training to staff in dietary services.

46. The ADVA and HMR shall continue to ensure that residents who need assistance in eating are assisted by appropriately trained staff.

47. The ADVA and HMR shall continue to ensure that appropriate fluids are available and accessible to residents at all times.

48. The ADVA and HMR shall continue to assess and identify residents who are at risk of aspiration and to provide appropriate care to prevent aspiration, where possible.

49. Utilizing an interdisciplinary approach, the ADVA and HMR shall continue to assess and treat residents with swallowing problems and residents who need assistance in eating. To this end, the ADVA and HMR shall continue to:

(a) Involve Speech Therapy and Occupational Therapy in developing a plan of care for residents who are identified as being at risk of aspiration;

(b) Provide training to staff in how to properly implement the feeding and positioning plans, and develop and implement a system to monitor residents who are at risk of aspirating;

(c) Identify and respond to changes in a resident's nutritional or hydration status; and

(d) Evaluate residents' medication regimens for the potential to pose undue risk of aspiration.

C. USE OF PSYCHOTROPIC MEDICATION

50. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial compliance with the provisions of this section. DOJ will give ADVA and HMR reasonable prior written notice of the tour and, prior to arriving at W.F. Green, shall identify to ADVA and HMR any expert consultants DOJ plans to bring to the tour. The State, ADVA, and HMR may choose to have experts, agents, and/or representatives accompany the DOJ team during the tour. However, the parties will confer in good faith to determine the necessity of HMR and ADVA obtaining experts to accompany the DOJ team. W.F. Green shall be deemed in substantial compliance with the provisions of this section unless

notified otherwise by DOJ in writing within 150 days from the date of the notification letter.

51. The ADVA and HMR shall continue to ensure that psychotropic medications are used only in accordance with a resident's care plan and by order of a physician.

52. The ADVA and HMR shall continue to ensure that a resident's psychotropic medications are used only in a manner consistent with State and Federal law and are not excessive in duration, without appropriate monitoring or indications for use, or without specific target symptoms.

53. As appropriate and unless contraindicated, the ADVA and HMR shall continue to ensure that residents will receive gradual dose reductions and behavioral interventions aimed at reducing medication use.

54. The ADVA and HMR shall continue to ensure that an interdisciplinary team oversees psychotropic medication practices at W.F. Green.

55. The ADVA and HMR shall continue to ensure that residents receiving psychotropic medication are reviewed for potential negative side-effects of such medication.

56. The ADVA and HMR shall continue to ensure that there is appropriate consultation from psychiatric or pharmacy consultants to respond to the residents' needs.

57. The ADVA and HMR shall continue to assess the use of psychotropic medications with residents who have a documented history of falling or who are at risk of falling.

58. The ADVA and HMR shall continue to ensure that psychotropic medications are not used solely to control residents' behavior in the absence of other appropriate, less-intrusive treatment modalities.

59. The ADVA and HMR shall continue to ensure that residents with mental illness, especially those with problematic behaviors, receive appropriate mental health services.

60. The ADVA and HMR shall continue to ensure that there are psychological and psychosocial services to meet the needs of residents, particularly those residents with a diagnosis of dementia.

D. PRESSURE SORE PREVENTION AND CARE

61. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial compliance with the provisions of this section. DOJ will give ADVA and HMR reasonable prior written notice of the tour and, prior to arriving at W.F. Green, shall identify to ADVA and HMR any expert consultants DOJ plans to bring to the tour. The State, ADVA, and HMR may choose to have experts, agents, and/or representatives accompany the DOJ team during the tour. However, the parties will confer in good faith to determine the necessity of HMR and ADVA obtaining

experts to accompany the DOJ team. W.F. Green shall be deemed in substantial compliance with the provisions of this section unless notified otherwise by DOJ in writing within 150 days from the date of the notification letter.

62. W.F. Green shall continue to develop and implement a pressure sore prevention program to aide in the prevention of pressure sores. W.F. Green shall provide appropriate treatment to residents who have pressure sores.

63. The ADVA and HMR shall continue to assess and identify residents who are at risk of developing pressure sores.

64. The ADVA and HMR shall continue to develop and implement skin care plans for residents identified as at risk of skin breakdown or with actual skin breakdown.

65. The ADVA and HMR shall continue to monitor the skin conditions of residents identified as at risk of skin breakdown or with actual skin breakdown.

66. The ADVA and HMR shall continue to ensure that the Wound Care Coordinator and his/her designee are trained in current professional standards, practices, and techniques regarding pressure sore assessment and methods of care.

67. The ADVA and HMR shall continue to ensure that, as appropriate, residents are provided appropriate pressure relieving practices and devices, such as pillows, mattresses and cushions to "float" areas of skin breakdown.

68. The ADVA and HMR shall continue to ensure that residents' medical conditions, including nutrition and hydration needs and

continence status, are taken into account when addressing residents' skin care needs.

E. REHABILITATIVE AND RESTORATIVE CARE

69. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial compliance with the provisions of this section. DOJ will give ADVA and HMR reasonable prior written notice of the tour and, prior to arriving at W.F. Green, shall identify to ADVA and HMR any expert consultants DOJ plans to bring to the tour. The State, ADVA, and HMR may choose to have experts, agents, and/or representatives accompany the DOJ team during the tour. However, the parties will confer in good faith to determine the necessity of HMR and ADVA obtaining experts to accompany the DOJ team. W.F. Green shall be deemed in substantial compliance with the provisions of this section unless notified otherwise by DOJ in writing within 150 days from the date of the notification letter.

70. The ADVA and HMR shall continue to:

(a) Implement a screening and referral system to identify residents with rehabilitation and restorative needs;

(b) Provide interdisciplinary services to residents with rehabilitation and restorative needs and monitor those services;

(c) Provide space throughout the facility, to include the designated therapy room, residents' rooms and common areas for rehabilitation services, to meet the needs of residents;

(d) Provide residents with adaptive equipment, including wheelchairs, and residents are appropriately positioned in wheelchairs;

(e) Provide assistance to residents who need assistance with feeding or bathing;

(f) Provide assistance to residents who can ambulate with assistance;

(g) Provide to residents who can benefit therefrom exercises, walking and/or movement exercises; and

(h) Provide continence care programs to residents who require it.

F. FALL PREVENTION

71. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial

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72. The ADVA and HMR shall continue to conduct comprehensive, interdisciplinary assessments of residents upon admission, and periodically thereafter, to determine whether residents are at risk for falls.

73. For all residents who are identified to be at risk of falls, the ADVA and HMR shall continue to:

(a) Develop and implement a proactive, individualized, fall prevention plan;

(b) Include the resident's fall prevention plans in their care plan;

(c) Provide residents with appropriate supervision to prevent falls to the extent reasonably possible;

(d) Ensure that residents receive appropriate assistive devices to prevent falls;

(e) Utilize appropriate safety devices to prevent falls; and

(f) Take actions to ensure that the residents' environment remains as free of fall hazards as possible.

74. When a fall or a suspected fall has occurred, the ADVA and HMR shall continue to:

(a) Assess the resident's health status, which assessment shall include performing neurological assessments when there may have been an unwitnessed fall or when the resident falls and hits his/her head, measures necessary to protect the health and well-being of the resident are put into place;

(b) Complete an incident report and submit it to the Director of Nursing and/or his/her designee;

(c) Notify the resident's family/responsible party;

(d) Investigate the fall to determine the possible cause(s) of the fall;

(e) Maintain records of residents' falls at W.F. Green, which shall include: the date and time of the fall; the specific cause of the fall, if known; the identity of the nursing staff member or members who witnessed the fall, if any; and any follow-up education provided to these staff members; and

(f) Continue to conduct a monthly review of all falls and take action to eliminate, to the extent possible, the causes of falls.

G. PROTECTION FROM OTHER HARM

75. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the

notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial compliance with the provisions of this section. DOJ will give ADVA and HMR reasonable prior written notice of the tour and, prior to arriving at W.F. Green, shall identify to ADVA and HMR any expert consultants DOJ plans to bring to the tour. The State, ADVA, and HMR may choose to have experts, agents, and/or representatives accompany the DOJ team during the tour. However, the parties will confer in good faith to determine the necessity of HMR and ADVA obtaining experts to accompany the DOJ team. W.F. Green shall be deemed in substantial compliance with the provisions of this section unless notified otherwise by DOJ in writing within 150 days from the date of the notification letter.

76. The ADVA and HMR shall continue to institute measures designed to protect residents from harm resulting from instances of resident-on-resident assaults, to the extent reasonably possible.

77. The ADVA and HMR shall continue to implement policies, procedures, and practices to investigate and respond to instances of potential resident abuse, instances of resident-on-resident assaults, neglect, and/or mistreatment. As an element of these practices and processes, W.F. Green's Medical Director should also periodically review incident reports to ensure that interventions are appropriate.

Investigations shall be performed by staff who are appropriately trained in performing investigations.

78. The ADVA and HMR shall continue to ensure that there are sufficient numbers of staff, particularly RNs, LPNs, and CNAs, present and on duty on each shift to attempt to prevent injuries and incidents, including resident-on-resident assaults.

79. The ADVA and HMR shall continue to identify residents who pose a risk of harm to other residents, based upon the resident's dangerous behaviors, assess the possible causes of a resident's threatening behavior, and develop and implement interventions. Such interventions shall be implemented without the resort to unduly restrictive measures, such as restraints imposed for the purpose of discipline.

80. The ADVA and HMR shall continue to identify residents who are at risk of being targeted and implement measures to attempt to protect them.

81. The ADVA and HMR shall continue to ensure that whenever a resident suffers an injury or is harmed, or there is an unusual occurrence exposing a resident to significant harm, the incident is investigated and that remedial action is taken. Accordingly, the ADVA and HMR shall continue to take the following actions:

(a) An RN supervisor shall assess the resident to determine if there is actual or suspected injury and shall notify the physician in the event of an injury;

(b) A physician shall be timely notified if there is a change in the resident's condition as a result of the incident and shall

ensure that appropriate administrative or clinical action is being taken;

(c) The resident's family or responsible party shall be timely notified of the resident's condition or incident;

(d) An incident report shall be completed at the time of the occurrence or upon the discovery and/or identification of an injury; and

(e) The results of the investigation shall be reported to the Administrator or his/her designee.

82. Upon completion of the investigation, the ADVA and HMR shall continue to ensure that the Administrator or his/her designee, where appropriate, determines whether further action should be taken.

83. The ADVA and HMR shall continue to ensure that the Administrator and the Director of Nursing, or their designees, discuss any incidents as well as discuss and implement, as appropriate, any measures that should be taken to prevent further incidents.

#### H. ACTIVITIES AND PSYCHOSOCIAL PROGRAMS

84. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial

compliance with the provisions of this section. DOJ will give ADVA and HMR reasonable prior written notice of the tour and, prior to arriving at W.F. Green, shall identify to ADVA and HMR any expert consultants DOJ plans to bring to the tour. The State, ADVA, and HMR may choose to have experts, agents, and/or representatives accompany the DOJ team during the tour. However, the parties will confer in good faith to determine the necessity of HMR and ADVA obtaining experts to accompany the DOJ team. W.F. Green shall be deemed in substantial compliance with the provisions of this section unless notified otherwise by DOJ in writing within 150 days from the date of the notification letter.

85. The ADVA and HMR shall continue to ensure that activities and psychosocial programs are directed by a qualified therapeutic recreation specialist or a qualified activities professional.

86. The ADVA and HMR shall continue to provide supplies and staff to facilitate residents' participation in activity programs.

87. The ADVA and HMR shall continue to ensure that activities provide the opportunity for resident interaction with others.

88. The ADVA and HMR shall continue to ensure that appropriate activities take place on weekends and evenings, as well as during the weekdays.

I. RESTRAINTS

89. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the

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90. The ADVA and HMR shall continue to ensure that any device that intentionally serves as a restraint is used only after the purpose of the restraint is reviewed and justified to treat the resident's medical symptoms.

91. Notwithstanding the foregoing paragraph, the ADVA and HMR may use restraints in emergency circumstances where there is not sufficient time for an interdisciplinary review, i.e., where the situation presents a danger to the resident and/or others. Such emergency use of devices will be reviewed and the devices removed as soon as safety allows.

J. QUALITY ASSURANCE

92. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial compliance with the provisions of this section. DOJ will give ADVA and HMR reasonable prior written notice of the tour and, prior to arriving at W.F. Green, shall identify to ADVA and HMR any expert consultants DOJ plans to bring to the tour. The State, ADVA, and HMR may choose to have experts, agents, and/or representatives accompany the DOJ team during the tour. However, the parties will confer in good faith to determine the necessity of HMR and ADVA obtaining experts to accompany the DOJ team. W.F. Green shall be deemed in substantial compliance with the provisions of this section unless notified otherwise by DOJ in writing within 150 days from the date of the notification letter.

93. The ADVA and HMR shall continue to identify quality assurance issues, and develop and implement appropriate quality assurance mechanisms to address resident quality of care deficiencies. Nothing in this MOU, including disclosure of any information to DOJ pursuant to the provisions of this MOU, shall be construed as a waiver

of any quality assurance privilege recognized under State or Federal law.

K. MORE INTEGRATED SETTING

94. No later than 9 months from the effective date of this MOU, ADVA and HMR will achieve substantial compliance with the provisions of this section and will notify DOJ in writing (notification letter) of such compliance. DOJ will have 90 days after the date of the notification letter to confirm substantial compliance with this section. Toward that end, upon request, ADVA and HMR will provide DOJ documentation that is reasonably related to determining substantial compliance with the terms of this MOU and that is consistent with applicable laws. DOJ may tour the facility to confirm substantial compliance with the provisions of this section. DOJ will give ADVA and HMR reasonable prior written notice of the tour and, prior to arriving at W.F. Green, shall identify to ADVA and HMR any expert consultants DOJ plans to bring to the tour. The State, ADVA, and HMR may choose to have experts, agents, and/or representatives accompany the DOJ team during the tour. However, the parties will confer in good faith to determine the necessity of HMR and ADVA obtaining experts to accompany the DOJ team. W.F. Green shall be deemed in substantial compliance with the provisions of this section unless notified otherwise by DOJ in writing within 150 days from the date of the notification letter.

95. W.F. Green shall evaluate residents upon consideration for admission to determine if they require a nursing home level of care, inform the resident or the resident's responsible party of programs

and services that may be available to support the resident in a more integrated setting, and enable the resident or the resident's responsible party to make an informed choice prior to admission to W.F. Green.

96. W.F. Green shall insure that the resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility.

97. No later than 14 days after the date of admission, W.F. Green will make an initial comprehensive assessment of a resident's needs describing the resident's capability to perform daily life functions, strengths, performances, needs as well as significant impairments in functional capacity. W.F. Green's initial comprehensive assessment must include an examination of the resident's desire to be discharged into the community.

98. W.F. Green shall conduct annually, quarterly, and as required by a significant change in the resident's condition a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, including whether the resident could be served in a more integrated setting. As part of each assessment, in the event that W.F. Green's treatment professional determines that a more integrated setting would be more appropriate for the resident's needs, the resident or the resident's responsible party will be informed of community alternatives, and the resident or the resident's responsible party will be asked whether he or she wants to talk to someone about the possibility of the resident returning to the community. In each instance where W.F. Green's treatment

professionals determine that the resident's needs could be met in a less restrictive setting and the resident or his or her responsible party agrees to such transition, the resident's care planning team will identify the services necessary to support the transition and discharge.

99. Prior to discharging a resident, W.F. Green must prepare a discharge summary that includes a post-discharge plan of care (transition plan) that is developed with the participation of the resident and his or her family.

V. MONITORING

100. During the operation of this MOU, upon the DOJ's prior written request, at mutually agreeable times, the ADVA and HMR shall provide the DOJ reasonable access to facility records, residents' records and staff records relating to this MOU and consistent with applicable laws.

101. During the operation of this MOU, the DOJ may conduct confidential interviews with W.F. Green residents, consistent with applicable laws.

102. During the operation of this MOU, within a reasonable time period after the DOJ receives any reports of its experts, the DOJ shall provide copies of those reports to the ADVA and HMR, and if the DOJ issues a findings letter, no later than the date of the findings letter.

VI. RIGHTS

103. The DOJ does not forego by this MOU its right to seek appropriate judicial relief in federal court for any violation of Federal law alleged in its December 18, 2008 Findings Letter.

104. The State, ADVA, and HMR do not waive any defense, counterclaim, or cross-claim by entering into this MOU. Moreover, the State, ADVA, and HMR do not waive their right to seek appropriate judicial relief in State or Federal court.

105. The parties agree that this MOU is not enforceable in any court of law or equity, in administrative proceedings, or in alternative dispute resolution forums.

106. This MOU does not create any new rights or causes of action, either for the signatories thereof or for any third party.

107. No third party or person is intended to be a third party beneficiary of this MOU.

108. During the operation of this MOU, the DOJ agrees to timely provide the ADVA and HMR with written notice of any alleged breach and to provide time to remedy the alleged breach before initiating legal action. The ADVA and HMR shall be afforded 60 days from receipt of the written notice to remedy any alleged breach. Notwithstanding the foregoing, in the event the alleged breach poses an immediate threat to the health and safety of a W.F. Green resident, the DOJ, in its discretion, may simultaneously provide written notice of the alleged breach and initiate legal action.

109. This MOU shall constitute the entire integrated agreement of the DOJ, the State, the ADVA, and HMR. This MOU may be amended

only by a writing signed by all signatories, except that the United States may commit financial resources to assist the ADVA and HMR in remedying any alleged breach without the need for an amendment to this MOU.

110. This MOU may not be used as evidence of liability in any legal proceeding.

111. The DOJ, the State, the ADVA, and HMR agree that this MOU shall not be admissible in any court for any purpose insofar as litigation between or among them is concerned.

112. Nothing in this MOU shall prevent or interfere with the State's and the ADVA's ability to enforce the terms of the ADVA's separate contract with HMR.

113. Nothing in this MOU shall prevent or interfere with the State's ability to enforce State law.

114. The effective date of this MOU shall be the date that it is signed by the last signatory below.

AGREED TO:

FOR THE UNITED STATES:

*s/ Jonathan M. Smith*

*1/20/11*

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Jonathan M. Smith, Chief  
Special Litigation Section

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Date

*s/ Mary R. Bohan*

*1/20/11*

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Mary R. Bohan, Deputy Chief  
Special Litigation Section

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Date

*s/ Verlin Deerinwater*

*1/20/11*

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Verlin Deerinwater, Senior Trial Attorney  
Special Litigation Section  
Civil Rights Division  
601 D Street, NW  
Room 5928  
Washington, DC 20004  
(202) 514-6260  
verlin.deerinwater@usdoj.gov

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Date

FOR THE STATE OF ALABAMA:

*s/ Bob Riley*

*1/11/2011*

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Bob Riley, Governor

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Date

FOR THE STATE OF ALABAMA DEPARTMENT OF VETERANS' AFFAIRS

*s/ W. Clyde Marsh*

*1/7/11*

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W. Clyde Marsh, Commissioner

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Date

FOR HEALTH MANAGEMENT RESOURCES - GOVERNMENTAL SERVICES, INC.

*s/ William S. Biggs*

*1/7/11*

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William S. Biggs, President and COO

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Date