

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

- A. This Settlement Agreement ("Agreement") is entered into by: (1) the United States of America ("United States"); and (2) the State of Georgia ("State").
- B. This Agreement addresses the United States' investigation of the Georgia Regional Hospital at Atlanta, the Georgia Regional Hospital at Savannah, the Central State Hospital, the Southwestern State Hospital, the West Central Georgia Regional Hospital, the Northwest Georgia Regional Hospital, and the East Central Regional Hospital (collectively, the "Georgia Psychiatric Hospitals"), pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. This agreement addresses the corrective measures set forth in the United States' letter to the State dated May 30, 2008, and which shall be implemented at all Georgia Psychiatric Hospitals. This Agreement does not serve as an acknowledgement or admission by the State that corrective measures are necessary to meet the constitutional and statutory rights of the residents of the Georgia Psychiatric Hospitals, nor does this Agreement serve as an acknowledgement or admission by the United States that the State has acted, or continues to act, in compliance with the Constitution or other laws of the United States.
- C. The State, on July 1, 2008, entered a Voluntary Compliance Agreement with the United States Department of Health and Human Services Office for Civil Rights, concerning the State's compliance with Title II of the Americans with Disabilities Act, 42 U.S.C. § 12101, and implementing regulations at 28 C.F.R. Part 35 ("ADA"), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 and implementing regulations at 45 C.F.R. Part 84 ("Section 504"), which prohibit discrimination on the basis of disability and require certain public entities to administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. The Voluntary Compliance Agreement is not incorporated herein by reference.
- D. This investigation began on April 18, 2007, when the United States notified the State, pursuant to CRIPA, that it was initiating an investigation into the conditions of care and treatment of patients at the Georgia Psychiatric Hospitals. The State agreed that the United States' findings regarding four of the State's hospitals would stand as representative of all seven hospitals in the system. The United States began its on-site inspections with a tour of the Georgia Regional Hospital at Atlanta on September 17 through 21, 2007. Tours of the Northwest Georgia Regional Hospital and the Georgia Regional Hospital at Savannah occurred on October 29 through November 2, 2007, and on December 17 through 21, 2007, respectively. The tour of Central State Hospital did not occur.

- E. Each and every provision of this Agreement is entered into by clear agreement of the parties, after thorough negotiations. The purpose of this Agreement is to achieve the substantive outcomes set forth within this Agreement.
- F. It is agreed by the parties that disclosure of patient records to the United States in connection with the investigation of the Georgia Psychiatric Hospitals pursuant to CRIPA is authorized under the privacy regulations of the Health Insurance Portability and Accountability Act of 1996.
- G. The parties agree that the provisions of this Agreement are a lawful, fair, adequate, and reasonable resolution of this investigation.
- H. This Agreement is binding on the Georgia Psychiatric Hospitals through the State, its agencies, departments, or their successors or assigns that manage or operate the Georgia Psychiatric Hospitals. If the State contracts with an outside provider for any of the services which are covered under this Agreement, the Agreement shall be binding on any contracted parties, including agents and assigns. The parties understand that the State is considering privatization, and this Agreement will in no way impair the State's ability to privatize. This Agreement will continue in effect even if privatization occurs.

## II. DEFINITIONS

As used in this Agreement, the following definitions apply to the terms below, without regard to case, gender, tense, or number:

- A. "Competency-based training" shall mean the provision of knowledge and skills sufficient to enable the trained person to meet specified standards of performance consistent with generally accepted professional standards or specified in law, regulation, or policy, as validated by that person's demonstration that he or she can use such knowledge or skills effectively.
- B. "Consistent with Generally Accepted Professional Standards" shall mean a decision by a qualified professional that is not such a substantial departure from contemporary, accepted professional judgment, practice, or standards as to demonstrate that the person responsible did not base the decision on such accepted professional judgment.
- C. "Effective Date" shall be the date on which this Agreement is signed by both parties.
- D. "Georgia Psychiatric Hospitals" shall mean the facilities, services, and programs supplied by or provided by the State to patients of the Georgia Regional Hospital at Atlanta, the Georgia Regional Hospital at Savannah, the Central State Hospital, the Southwestern State Hospital, the West Central Georgia Regional Hospital, the Northwest

Georgia Regional Hospital, and the East Central Regional Hospital.

- E. "Patient" means any person who is evaluated, assessed, admitted to (whether by admission to an inpatient unit or by operation of law) or treated in the Georgia Psychiatric Hospitals during the term of this Agreement and who resides in such hospital. This does not include persons who are not admitted to the Hospitals following said evaluation or assessment.
- F. "Physician" shall mean a medical or osteopathic doctor licensed to practice medicine in the State of Georgia.
- G. "Psychiatrist" shall mean a medical or osteopathic doctor licensed to practice medicine or osteopathy in the State of Georgia, who has completed a residency in psychiatry in a program accredited by the American Association of Medical Colleges or the American Osteopathic Association.
- H. "Psychology Staff" shall mean an individual licensed to practice psychology in the State of Georgia or a behavioral specialist working under the supervision of a licensed psychologist.
- I. "Psychotropic medication" shall mean any medication prescribed by a physician that is used in the treatment of mental illness which exerts an effect on the brain and is capable of modifying mental activity or behavior.
- J. "Registered Nurse" or "RN" shall mean an individual licensed as a registered nurse by the State of Georgia.
- K. "Short-Term Treatment Goal or Objective" shall mean the statement of a specific and realistic observable, measurable and time targeted incremental step that, if achieved, will assist the patient in meeting a long-term treatment goal.
- L. "State" or "Georgia" shall mean the State of Georgia, its agencies, departments, or their successors or designees, and the State's employees, agents, or assigns.
- M. "Student" shall mean any patient of school age or other patient who qualifies for special education as required by law.
- N. "Substantial Compliance" shall mean with regard to an individual hospital that the State has satisfied all of the requirements set forth in section III (Substantive Provisions) and IV (Implementation) of this Agreement. With regard to an individual hospital, substantial compliance is achieved if any violations are minor or occasional and are not systemic.

On a systemic level, substantial compliance is achieved, when evaluating the State's compliance with this Agreement as a whole, any noted deviations from specific requirements does not bring the level of care and treatment below care consistent with generally accepted professional standards. Noncompliance with mere technicalities will not constitute failure to achieve substantial compliance.

- O. "Sustained Compliance" shall mean substantial compliance as determined by the United States on two consecutive visits not more than eighteen months apart. The United States shall conduct an evaluation within ninety days of the State giving notice of its claim that a Hospital is in substantial compliance; provided, however, that the State may give notice of a claim of substantial compliance regarding any Hospital no more than once every ninety days. If the United States does not conduct an evaluation within ninety days of this notice, or conduct its second evaluation within eighteen months of the first evaluation (whichever comes first), the parties agree that that claim of substantial compliance regarding the applicable hospital shall be dispositive for purposes of evaluating compliance with this Agreement. The time period for evaluations shall be tolled during fiscal exigencies that prevent the United States from conducting compliance activities; the United States shall provide prompt written notice thereof.
- P. "Treatment Plan" shall mean a document that sets out, in an integrated manner, the individualized treatments and services to be provided to the patient to assist the patient in symptom stabilization and successful discharge from the hospital; is periodically reviewed; is revised in accordance with generally accepted professional standards and applicable laws, regulations, and policies; is based upon comprehensive assessments performed by members of an interdisciplinary team; incorporates the patient's input, preferences, strengths, and needs; and specifies methods to track and document progress toward identified goals and objectives.
- Q. "United States" shall mean the United States Department of Justice and its employees, agents, assigns, or successors.

### **III. SUBSTANTIVE PROVISIONS**

In order to protect the constitutional and federal statutory rights of Patients, the State shall promptly implement the remedial measures set forth below:

#### **A. Protection From Harm**

The Georgia Psychiatric Hospitals shall provide their patients with a safe and humane environment and protect them from harm. The Georgia Psychiatric Hospitals shall:

1. Create or revise, as appropriate, and implement an incident management system that comports with generally accepted professional standards. The Georgia Psychiatric Hospitals shall:
  - a. Create or revise, as appropriate, and implement comprehensive, consistent incident management policies and procedures that provide clear guidance regarding reporting requirements and the categorization of incidents, including those involving any physical injury or threats of serious physical injury; abuse and neglect; contraband; or suicide attempts;
  - b. Require all staff to complete competency-based training in the revised reporting requirements;
  - c. Create or revise, as appropriate, and implement thresholds for indicators of incidents, including, without limitation, patient injury, patient-on-patient assaults, self-injurious behavior, falls, and suicide attempts, that will initiate review at the unit/treatment team level and review by supervisors consistent with generally accepted professional standards and policy, regulation, and law; whenever such thresholds are reached, the treatment team shall review patient incidents and document in the patient medical record the rationale for changing/not changing the patient's current treatment regimen;
  - d. Create or revise, as appropriate, and implement policies and procedures addressing the investigation of serious incidents, including, without limitation, abuse, neglect, suicide attempts, unexplained injuries, and all injuries requiring medical attention more significant than first aid. The policies and procedures shall require that all investigations of such incidents are comprehensive, include consideration of staff's adherence to programmatic requirements, and are performed by investigators with no conflict of interest;
  - e. Require all hospital staff members charged with investigative responsibilities to complete competency-based training on investigation methodologies and documentation requirements necessary in mental health service settings;
  - f. Require the thorough, competent, and timely completion of investigations of serious incidents; monitor the performance of hospital staff charged with investigative responsibilities; and provide administrative and technical support and training as needed;

- g. Require that corrective action plans are developed and implemented in a timely manner;
  - h. Require qualified clinical professional(s) at the applicable hospital to review all findings and recommendations made by bodies investigating patient care and safety, and develop and implement appropriate remedial measures as necessary;
  - i. Review, revise as appropriate, and implement policies and procedures related to the tracking and trending of incident data; require that incidents are properly investigated and responsive corrective actions are identified and implemented in response to undesirable trends; and
  - j. Create or revise, as appropriate, and implement policies and procedures regarding the creation, structure, and preservation of all records of care and treatment of patients, including measures to address improper removal, destruction, or falsification of any record.
2. Develop and implement a comprehensive quality management system and risk management system, consistent with generally accepted professional standards. Such a system shall:
- a. Collect information related to the adequacy of safety, treatments, and services provided by the Georgia Psychiatric Hospitals;
  - b. Analyze the information collected in order to identify strengths and weaknesses within the current system;
  - c. Identify and monitor implementation of corrective and preventative actions to address identified issues; and
  - d. Assess and document the effectiveness of the actions taken.

B. Mental Health Care

1. Assessments and Diagnoses

The Georgia Psychiatric Hospitals shall require that their patients receive accurate, complete, and timely assessments and diagnoses, consistent with generally accepted professional standards, and that these assessments and diagnoses drive treatment interventions. More particularly, the Georgia Psychiatric Hospitals shall:

- a. Develop and implement comprehensive policies and procedures regarding the timeliness and content of initial psychiatric assessments and ongoing reassessments;
- b. Develop a clinical formulation of each patient that integrates relevant elements of the patient's history, mental status examination, and response to current and past medications and other interventions, that is used to prepare the patient's treatment plan;
- c. Require that psychiatric reassessments are completed within time-frames that reflect the patient's needs, including prompt reevaluations of each patient for whom a restrictive intervention was used;
- d. Develop diagnostic practices, consistent with generally accepted professional standards;
- e. Conduct multidisciplinary assessments of patients consistent with generally accepted professional standards. Expressly identify and prioritize each patient's individual mental health problems and needs, including, without limitation, challenging behaviors and substance abuse problems;
- f. Require that the information gathered in the assessments and reassessments is used to justify and update diagnoses and to establish the need to perform further assessments for a differential diagnosis;
- g. Review and revise, as needed, psychiatric assessments of all patients, providing clinically justified current diagnoses for each patient and removing all diagnoses that cannot be clinically justified. Modify treatment and medication regimens as necessary, considering factors such as the patient's response to treatment, significant developments in the patient's condition, and changing patient needs; and
- h. Develop or modify instruments to conduct ongoing systematic review of the quality and timeliness of all assessments according to established indicators, including an evaluation of initial assessments, progress notes, and transfer and discharge summaries; require the director of each clinical discipline to address the process and content of assessments and reassessments, identify individual and group trends, and provide corrective action consistent with generally accepted professional standards.

## 2. Treatment Planning

The Georgia Psychiatric Hospitals shall develop and implement an integrated treatment planning process consistent with generally accepted professional standards. More particularly, the Georgia Psychiatric Hospitals shall:

- a. Develop and implement policies and procedures regarding the development of individualized treatment plans consistent with generally accepted professional standards.
- b. Develop and implement policies and procedures to promote participation in the treatment process by: each patient, and where applicable the legal guardian; and family members if desired by the patient.
- c. Require that treatment plans derive from an integration of the individual disciplines' assessments of patients, and that goals and interventions are consistent with clinical assessments. At a minimum, this should include:
  - (1) Review by the attending psychiatrist, or, for those patients with no psychiatric diagnosis, by the attending physician, of all proposed behavioral plans to determine that they are compatible with the clinical formulations of the case;
  - (2) Integration of psychiatric and behavioral data and treatments in those cases where clinically indicated; and
  - (3) Documentation in the patient's record of the rationale for treatment.
- d. Require that treatment plans address repeated admissions and adjust treatment plans accordingly to examine and address the factors that led to re-admission.
- e. Develop and implement short-term treatment goals that establish an objective, measurable basis for evaluating patient progress, including goals that address barriers to successful placement in a community based setting.
- f. Require that treatment plans are assessed for their effectiveness and revised in accordance with policy and as clinically indicated.
- g. Provide mental health and behavioral services, including active treatment consistent with generally accepted professional standards.



- h. Require that all psychologists who provide or supervise the provision of behavioral services have training and demonstrate competency in:
  - (1) performing behavioral assessments, including the functional analysis of behavior and appropriate identification of target and replacement behaviors;
  - (2) the development and implementation of thresholds for behaviors or events that trigger referral for a behavioral assessment;
  - (3) timely review of behavioral assessments by treatment teams, including consideration or revision of behavioral interventions, and documentation of the team's review in the patient's record;
  - (4) the development and implementation, when indicated, of behavior support plans that are consistent with generally accepted professional standards;
  - (5) the development and implementation of processes for collecting objective data on target and replacement behaviors; and
  - (6) supervision of staff who collect behavioral data and perform behavioral interventions, including monitoring the fidelity of implementation of the behavior plan.
- i. Assess patients' cognitive deficits and strengths and select treatment interventions based on the patient's capacity to benefit.
- j. Consistent with generally accepted professional standards and policy, regulation, and law, screen or rescreen all patients to identify those who have speech or communication deficits that are barriers to treatment or discharge and who would benefit from speech or communication therapy; when indicated, develop and implement interventions to establish and maintain communication behaviors that reduce or eliminate barriers to treatment and discharge; provide sufficient qualified and trained staff to provide adequate and timely communication intervention services that are consistent with and supportive of behavior support plans according to the outcome of each patient evaluation.
- k. Develop and implement a qualitative review process for treatment plans consistent with generally accepted professional standards. The review

process will include ongoing feedback and professional development for all professional staff.

- l. Require all treatment team staff, consisting of professionals and direct care staff involved in the treatment team, to complete successfully competency-based training, appropriate to their duties, on the development and implementation of individualized treatment plans, including behavioral plans and the development of clinical formulations, goals, interventions, and discharge criteria.
- m. Require the clinical director to review high-risk situations in a timely manner, consistent with generally accepted professional standards.
- n. Develop and implement policies to require that patients with special needs, including co-occurring diagnoses of substance abuse and/or developmental disability, physical, cognitive, and/or sensory impairments are evaluated, treated, or referred for timely treatment consistent with generally accepted professional standards.
- o. Develop and implement a policy for suicide risk assessment and management of suicidality.
- p. Require that, with the exception of emergency interventions, no planned restrictive interventions shall be used in the Georgia Psychiatric Hospitals without prior review and approval by a Human Rights Committee, or its equivalent, as to whether the degree of restriction of rights is necessary, appropriate, and of limited duration.
- q. Require that all psychotropic medications are:
  - (1) tailored to each patient's individual symptoms;
  - (2) administered as prescribed;
  - (3) monitored for effectiveness and potential side-effects against clearly-identified patient outcomes and time frames;
  - (4) modified based on clinical rationales;
  - (5) properly documented; and

- (6) subject to regular review consistent with generally accepted professional standards.
- r. Institute systematic monitoring mechanisms regarding medication use throughout the facility. In this regard, the Georgia Psychiatric Hospitals shall implement a procedure governing the use of pro re nata (“PRN”) and “Stat” medications that includes requirements for specific identification of the signs and symptoms prior to administration of PRN or “Stat” medication, a time limit on PRN orders, a documented rationale for the use of more than one medication on a PRN or “Stat” basis, triggers for review by the treatment team, and physician documentation to require timely, critical review of the patient’s response to PRN or “Stat” medication including reevaluation of regular treatments as a result of PRN or “Stat” use.

C. Seclusion or Restraint

The Georgia Psychiatric Hospitals shall require that the use of seclusion or restraint is used in accordance with requirements of applicable policies, regulations, and law, and consistent with generally accepted professional standards. More particularly, the Georgia Psychiatric Hospitals shall:

- 1. Eliminate the planned use of restrictive interventions, including planned seclusion and planned restraint, with the exception of the use of restrictive interventions for persons with diagnoses of developmental disability, which have received the prior review and approval of a Human Rights Committee, or its equivalent, as to whether the degree of restriction of rights is necessary, appropriate, and of limited duration.
- 2. Require that the use of restraint or seclusion:
  - a. Occurs only when persons pose an imminent threat to themselves or others and after less restrictive measures have been determined to be ineffective;
  - b. Is not an alternative to active treatment, as coercion, punishment, retaliation, or is not for the convenience of staff;
  - c. Is terminated at the earliest possible time;
  - d. Is documented in the clinical record; and
  - e. Is regularly monitored and assessed consistent with generally accepted professional standards and applicable policy, regulation, and law, and that

a qualified staff member with appropriate training makes and documents a determination of the need for continued seclusion or restraint.

3. Create or revise, as appropriate, and implement policies and procedures consistent with generally accepted professional standards and applicable law and regulation that cover the following areas:
  - a. The restrictive alternatives available to staff and a clear definition of each, including restrictive alternatives available for dental and medical procedures; and
  - b. The training that all staff receive in identifying factors that may trigger circumstances that require the use of restraint or seclusion, the safe use of restraint or seclusion, and the use of less-restrictive interventions.
4. Require that any order for seclusion or restraint includes:
  - a. The specific behaviors requiring the procedure;
  - b. The maximum duration of the order; and
  - c. Behavioral criteria for release, which, if met, require the patient's release even if the maximum duration of the initiating order has not expired.
5. Require that the patient's attending physician be consulted in a timely fashion regarding the seclusion or restraint if the attending physician did not order the intervention.
6. Require that at least every thirty minutes, if their clinical condition permits, patients in seclusion or restraint be re-informed of the behavioral criteria for their release from the restrictive intervention.
7. Require that following a patient being placed in seclusion or restraint, the patient's treatment team reviews the incident within one business day, and documents the review and the reasons for or against change in the patient's current pharmacological, behavioral, and/or psychosocial treatment.
8. Develop and implement a policy that addresses multiple episodes of restraint or seclusion that include revising the treatment plan if appropriate and consideration of a behavior support plan.
9. Act consistent with generally accepted professional standards and applicable law and regulations regarding assessments of any patient placed in seclusion or

restraints, by a physician, nurse practitioner or clinical nurse specialist licensed in the State of Georgia.

10. Require that staff successfully complete competency-based training regarding implementation of seclusion or restraint and the use of less-restrictive interventions.

#### D. Medical and Nursing Care

The Georgia Psychiatric Hospitals shall provide medical and nursing services to its patients consistent with generally accepted professional standards for an inpatient psychiatric facility and for long-term care, as applicable, including individualized care, services and treatment, consistent with their treatment plans. More particularly, the Georgia Psychiatric Hospitals shall:

1. Require adequate clinical oversight of the standard of care consistent with generally accepted professional standards.
2. Require sufficient nursing staff to provide nursing care and services consistent with generally accepted professional standards.
3. Require that before nursing staff work directly with patients, they have completed successfully competency-based training, appropriate to their duties, regarding mental health diagnoses, related symptoms, psychotropic medications, identification of side effects of psychotropic medications, monitoring of symptoms and responses to treatment, and documenting and reporting of the patient's status.
4. Require that nursing staff accurately and routinely monitor, document, and report patients' symptoms and responses to nursing interventions in a manner that enables treatment teams to assess the patient's status and to modify the treatment plan as required.
5. Require that nursing staff actively participate in the treatment team process.
6. Require that nursing staff provide input to and implement interventions in the individualized treatment plan.
7. Require that licensed nurses are appropriately supervised in the administration, monitoring, and recording of the administration of medications and any errors, consistent with generally accepted professional standards.
8. Require that, prior to assuming their duties and on a regular basis thereafter, all

staff responsible for the administration of medication have completed successfully competency-based training on the completion of the Medication Administration Record.

9. Require that all failures to properly sign the Medication Administration Record and/or the Narcotics Log are treated as medication errors and that appropriate follow-up occurs to prevent recurrence of such errors.
10. Establish an effective infection control program to minimize the spread of infections or communicable diseases. The infection control program shall:
  - a. Actively collect data with regard to infections and communicable diseases;
  - b. Analyze these data for trends;
  - c. Initiate inquiries regarding undesirable trends;
  - d. Identify necessary corrective action;
  - e. Monitor to determine whether remedies are achieved consistent with generally accepted professional standards;
  - f. Integrate this information into the hospital quality management system; and
  - g. Require that nursing staff participate in the infection control program.
11. Establish an effective physical and nutritional management program for patients who are at risk for aspiration or dysphagia, including but not limited to the development and implementation of assessments, risk assessments, and interventions for mealtimes and other activities involving swallowing. The physical and nutritional management program shall:
  - a. Identify patients at risk for aspiration or choking and assign an appropriate risk level to that patient;
  - b. Identify triggers on an individualized basis for patients identified as at risk;
  - c. Assess and determine appropriate and safe positioning for each at risk patient for the 24 hour day;

- d. Develop and implement plans that include specific instructions on implementation of the appropriate techniques for all patient activities based on the patient's assessment, with clinical justifications;
  - e. Monitor and document objective clinical data for at risk patients; and
  - f. Implement a system to review and revise plans based on appropriate triggering events and outcomes.
12. Require that staff with responsibilities for patients at risk for aspiration and dysphagia have successfully completed competency-based training on duties commensurate with their responsibilities.
  13. Provide adequate, appropriate, and timely rehabilitation/habilitation therapy services and appropriate adaptive equipment to individuals whose special needs affect their daily functional abilities, consistent with generally accepted professional standards, policy, regulation and law.
  14. Establish an effective medical emergency preparedness program, including competency-based staff training; require staff familiarity with emergency supplies, their operation, maintenance and location; and conduct sufficient practice drills to attain adequate performance when confronted with an actual emergency.
  15. Develop, implement, and review as necessary medical/nursing protocols for medical conditions commonly found within the patient population of the Georgia Psychiatric Hospitals, consistent with generally accepted professional standards.

E. Services to Populations with Specialized Needs

The Georgia Psychiatric Hospitals shall provide services to patients with specialized needs. More particularly, the Georgia Psychiatric Hospitals shall:

1. Provide services to patients with limited English proficiency, consistent with the requirements of the State's Limited English Proficiency and Sensory Impaired Client Services Manual and federal law.
2. Require the provision of adequate education and special education services for qualified students, including:
  - a. Adequate assessments of individual educational needs and

monitoring and reporting of individual progress, including reporting all relevant assessments and information to a new school upon discharge from the hospital;

- b. Development and implementation of Individualized Education Plans (“IEPs”) consistent with the requirements of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1401; and
- c. A requirement that students receive instruction and behavioral supports appropriate to their learning abilities and needs, consistent with generally accepted professional standards.

F. Discharge Planning

The Georgia Psychiatric Hospitals shall, consistent with federal law, treat patients in a manner consistent with their clinical needs and legal status and shall, consistent with federal law, actively pursue the clinically indicated discharge of patients when not otherwise legally prohibited from doing so. The foregoing shall be satisfied if the State shall:

1. Identify and address in treatment planning within three days of admission but in all cases prior to discharge, barriers to discharge for a particular patient, including but not limited to:
  - a. The individual patient’s symptoms of mental illness or cognitive impairment;
  - b. Any other barriers preventing that specific patient from transitioning to a more integrated setting, including problems identified as creating the need for readmission that can be addressed by the hospital;
  - c. The types of resources necessary for discharge; and
  - d. The patient’s strengths, preferences, and personal goals.
2. Provide the opportunity for every patient to be an active participant in the discharge process, commensurate with the patient’s ability and willingness to participate.
3. Include in treatment interventions the development of skills necessary to achieve



successful discharge.

4. Provide hospital transition services to patients consistent with generally accepted professional standards.
5. Create a Repeat Admissions Review Coordinator position (“RARC”):
  - a. The State shall have at each hospital a RARC who will be a senior member of the social work department;
  - b. Every patient admitted with three or more admissions in a twelve month period or more than ten total admissions to any of the Georgia Psychiatric Hospitals, shall have a “repeat admissions review” conducted by the RARC or such coordinator’s staff that is consistent with generally accepted professional standards. The review shall, at a minimum, specify barriers to successful discharge, reasons for repeat admissions, and recommended strategies to promote successful discharge;
  - c. The findings of the repeat admissions review shall be supplied to the treatment team at least one day prior to the team meeting to write the individualized treatment plan;
  - d. The treatment team shall consider the findings of the RARC and shall address the findings of the repeat admissions review in writing in the treatment plan, including specific reasons for adopting or rejecting the recommendations made in the repeat admissions review;
  - e. Upon request by any treatment team, the RARC will attend the treatment planning meeting to assist with discharge planning; and
  - f. The RARC shall participate in the quality assurance or utilization review of the hospital’s discharge process.
6. Create or revise, as appropriate, and implement a quality assurance or utilization review process to oversee the hospital's discharge process.

#### **IV. IMPLEMENTATION OF THE AGREEMENT**

- A. The State shall implement all reforms necessary to effectuate this Agreement. The implementation of this Agreement shall begin immediately upon the Effective Date.

- B. Within six months of the Effective Date of this Agreement, the State shall communicate with Georgia Psychiatric Hospital officials, employees, agents, and independent contractors involved in providing care to the patients at the Georgia Psychiatric Hospitals the provisions set forth in this Agreement that are applicable to their respective job duties.
- C. The Georgia Psychiatric Hospitals shall comply with all applicable federal and state licensing requirements.
- D. The State shall appoint a person at the Division of MHDDAD to serve as a point of contact for the United States during monitoring of compliance with this Agreement. The foregoing person shall prepare reports regarding compliance with this Agreement within six months and twelve months of the Effective Date and annually thereafter, which reports shall be promptly provided to the United States along with any reports prepared by the State's technical consultants regarding compliance with this Agreement and any other reports routinely submitted to the point of contact regarding compliance with this Agreement.
- E. If the State selects technical consultants that it used prior to the execution of this agreement, such action does not waive or impair the attorney work product protections and attorney client privileges that apply to the parties outside of this Agreement.
- F. The State shall make reasonable efforts to coordinate its remedial actions across the Georgia Psychiatric Hospitals, so that adequate remedial measures developed at one Georgia Psychiatric Hospital may be implemented system wide.
- G. For the purpose of ascertaining compliance with this Agreement, the United States and its attorneys, expert consultants, and agents shall have reasonable access to: all of the Georgia Psychiatric Hospitals' buildings and facilities; documents (except those documents not in the Georgia Psychiatric Hospitals' possession, custody, or control); records; State officials, employees, agents, and independent contractors; and patients, including the right to meet with patients privately when clinically appropriate and with their consent; and to patient records, documentation, and information relating to the issues addressed in this Agreement, except where covered by attorney work product protections or the attorney-client privilege. Such reasonable access shall encompass physical access to admissions and to records of patients, but this shall in no way limit the United States' ability to talk to persons. The State shall make all employees available so that they may choose to cooperate fully with the United States. The United States agrees to provide the State with at least 15-days notice of any visit or inspection, although the United States and the State agree that no notice shall be

required in an emergency situation where the life, immediate health, or immediate safety of a patient is at issue. Nothing in this Agreement shall abridge the whistleblower rights of State employees or contractors under law. Such access shall continue until this Agreement is terminated in accordance with the termination provisions herein. Within 30 days of receipt of reasonable written questions from the United States concerning the State's compliance with the requirements of this Agreement, the State shall provide the United States with written answers and any requested documents. The State shall provide copies of all documents, except peer-review documents, reasonably requested by the United States in an electronic format.

- H. The State shall notify the United States promptly upon the death of any patient and other sentinel events. The State shall forward to the United States copies of all completed incident reports and final reports of investigations related to such incidents as well as any autopsies and death summaries in the State's possession.
- I. The parties and all of their agents shall, to the fullest extent allowed by law, maintain the confidentiality of patients' confidential, personal, and protected health information. All non-public information obtained by the United States shall be maintained in a confidential manner.
- J. The State shall implement Quality Assurance mechanisms to assess its compliance consistent with generally accepted professional standards, policies, regulations, and law. The Quality Assurance program shall require:
  - 1. Comprehensive audits of relevant areas at the Georgia Psychiatric Hospitals by qualified professionals, to monitor compliance with the Georgia Psychiatric Hospitals' policies and procedures. A comprehensive audit of each Hospital shall be conducted within one year of the Effective Date of this Agreement, and on a semi-annual basis thereafter. The comprehensive audit shall include:
    - a. Review of relevant documents for both adequacy of documentation of the rationale and provision of services;
    - b. Interviews with appropriate staff, including not only those staff directly involved in the service being audited, but also other staff who may have relevant information, including administrators;
    - c. Interviews with patients as indicated;
    - d. Observation of activities involving patients;

- e. Steps to determine whether there are patients in the Georgia Psychiatric Hospitals who should be receiving appropriate services but are not, including random re-evaluations of recent admissions and assessments, and interviews of line staff who may be aware of patients who would benefit from, but are not receiving, appropriate services;
  - f. Written findings and the development of plans of improvement, as necessary; and
  - g. Periodic review of the adequacy of each Hospital's internal quality management activities.
2. Monitoring and review of the status of remedial measures implemented based on findings and recommendations made by bodies investigating patient care and safety, relevant to the area of care being assessed. Such review shall involve debriefings with relevant staff to determine whether policies, practices, or training should be modified to minimize the risk of such events in the future.
  4. Analysis of relevant key indicator data to measure compliance with the Georgia Psychiatric Hospitals' policies.
  5. Regular reports at least once every six months summarizing quality assurance activities, findings, and recommendations.
- K. The State shall provide reports to the United States at least once every six months during the term of this agreement regarding its Quality Assurance mechanisms.

## **V. MODIFICATION AND TERMINATION**

- A. If, at any time, any party to this Agreement desires to modify it for any reason, that party shall notify the other party to this Agreement, in writing, of the proposed modification and the reasons therefor. No modification will occur unless there is written agreement by and between the United States and the State.
- B. The State will undertake its best efforts to obtain the necessary appropriations, limitations, or other expenditure authority to comply with this Agreement. If the State's executive agencies cannot comply with the terms of this Agreement due to legislative action or inaction, the United States has the right to seek judicial enforcement of this Agreement.
- C. The parties agree to file this Agreement with the United States District Court for the Northern District of Georgia, Atlanta Division, in conjunction with a complaint and a joint

motion, pursuant to Fed. R. Civ. P. 41(a)(2), for the conditional dismissal of the case. The motion shall request that the case be placed on the Court's inactive docket.

- D. With the exception of conditions or practices that pose an immediate and serious threat to the life, health, or safety of patients served by the Georgia Psychiatric Hospitals, during the term of this Agreement, if the United States reasonably believes that the State has failed to fulfill any obligation under this Agreement, the United States shall, before initiating any court proceeding to remedy such failure, give written notice of the failure to the State. With the exception of an immediate or serious threat to life, health, or safety of patients of a Georgia Psychiatric Hospital, the State shall have 90 days from the date of such notice to cure or substantially cure the non-compliance and provide the United States with sufficient evidence of such cure. The Parties shall attempt to resolve any differences during this period. If the parties fail to agree upon a modification or on an extension of time for cure by the end of the 90-day cure period, and the United States determines that the failure has not been cured, the United States may, without further notice, take appropriate legal action, including filing a motion to restore the case to the court's active docket to enforce any provision of this Agreement.
- E. This Agreement shall terminate five years from the Effective Date. Within one year of the Effective Date, the Georgia Psychiatric Hospitals shall be in substantial compliance regarding choking and aspiration risk assessment and prevention, suicide risk assessment and prevention, prevention of patient on patient assault, and implementation of emergency medical codes consistent with generally accepted professional standards. The Agreement may terminate earlier as to any particular hospital if the hospital has achieved sustained compliance. The burden shall be on the State to demonstrate this level of compliance. The United States agrees to modify this agreement to show the removal of a particular hospital based on its achievement of sustained compliance, and the United States will not unreasonably withhold such modification of this agreement. During the last twelve months of this Agreement, the United States shall conduct an evaluation of any of Georgia's Psychiatric Hospitals that remain subject to this Agreement. The State will undertake its best efforts to bring the Georgia Psychiatric Hospitals into compliance at the earliest possible date and will notify the United States that the State is in substantial compliance no later than twelve months before the expiration of this Agreement.

## VI. GENERAL PROVISIONS

- A. This Agreement is enforceable only by the parties and is binding upon the parties, by and through their officials, agents, employees, assigns, and successors. No person or entity is intended to be a third party beneficiary of the provisions of this Agreement 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 Agreement in any civil, criminal, or administrative action. This agreement does not authorize, nor shall it be construed to authorize, access to State documents by persons or entities not a party to this Agreement except as allowed by applicable law.

- B. The State agrees that it shall not retaliate against any person because that person has filed or may file a complaint, provided assistance or information, or participated in any other manner in the United States' investigation of the Georgia Psychiatric Hospitals or in proceedings related to this Agreement. The State agrees that it shall timely and thoroughly investigate any allegations of retaliation in violation of this Agreement and the non-retaliation provision of CRIPA and take any necessary corrective actions identified through such investigations.
- C. Nothing in this Agreement shall be construed as an acknowledgement, an admission, or evidence of liability of the State under CRIPA, the United States Constitution or federal or state law, and this Agreement may not be used as evidence of liability in this or any other civil or criminal proceeding.
- D. "Notice of Non-Compliance" under this Agreement shall be provided by overnight courier to the following or their successors:

Executive Counsel to the Governor  
Governor's Office  
201 State Capitol  
Atlanta, Georgia 30334

Georgia Attorney General  
40 Capitol Square, S.W.  
Suite 132  
Atlanta, Georgia 30334-1300

Commissioner for the Department of Human Resources  
2 Peachtree Street, N.W.  
Suite 19.240  
Atlanta, GA 30303-3142

Chief Legal Officer for the Department of Human Resources  
2 Peachtree Street, N.W.  
Suite 29.201  
Atlanta, Georgia 30303-3142

Director of the Division of Mental Health, Developmental Disabilities and Addictive Diseases  
2 Peachtree Street  
Suite 22-235  
Atlanta, Georgia 30303-3142

- E. "Notice" under this Agreement, with the exception of "Notice of Non-Compliance" described above, shall be provided by overnight courier to the following or their successors:

Chief of the Special Litigation Section  
601 D Street, N.W.  
Washington, D.C. 20004

Attorney General of Georgia  
40 Capitol Square, S.W.  
Atlanta, Georgia 30334

Executive Counsel to the Governor of Georgia  
201 State Capitol  
Atlanta, Georgia 30334

- F. If an unforeseen circumstance occurs that causes a failure to timely fulfill any requirements of this Agreement, the State shall notify the United States in writing within 20 calendar days after the State becomes aware of the unforeseen circumstance and its impact on the State's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The State shall take all reasonable measures to avoid or minimize any such failure.
- G. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.
- H. The parties shall promptly notify each other of any court or administrative challenge to this Agreement or any portion thereof.
- I. In the event any provision of the Agreement is declared invalid, for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

- J. This Agreement shall constitute the entire integrated agreement of the parties.
- K. Each party shall bear the cost of its fees and expenses incurred in connection with this case.

Executed this 15<sup>th</sup> day of JANUARY, 2009.

By: \_\_\_\_\_  
Grace Chung Becker  
Acting Assistant Attorney General  
On behalf of the United States

By: \_\_\_\_\_  
Shanetta Cutlar  
Chief, Special Litigation Section  
United States Department of Justice

By: \_\_\_\_\_  
Judy Preston  
Deputy Chief, Special Litigation Section  
United States Department of Justice

By: \_\_\_\_\_  
David Deutsch  
Mary Bohan  
Timothy Mygatt  
Amin Aminfar  
Special Litigation Section  
United States Department of Justice




FOR THE UNITED STATES



---

GRACE CHUNG BECKER  
Acting Assistant Attorney General  
Civil Rights Division



---

SHANETTA Y. CUTLAR  
Chief  
Special Litigation Section



---

JUDY C. PRESTON  
Deputy Chief  
Special Litigation Section



---

DAVID DEUTSCH  
MARY R. BOHAN  
TIMOTHY D. MYGATT  
AMIN AMINFAR  
Attorneys  
United States Department of Justice  
Civil Rights Division  
Special Litigation Section  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Tel: (202) 514-6255  
Fax: (202) 514-0212  
Email: Timothy.Mygatt@usdoj.gov

By: Sammy Beedue  
Governor of the State of Georgia