

SETTLEMENT AGREEMENT

I. INTRODUCTION

Pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, the United States initiated an investigation into conditions of confinement at the Wyoming State Penitentiary (WSP) located in Rawlins, Wyoming. (1) On June 29, 1999, the United States issued a findings letter in which it concluded that certain conditions at WSP violated the constitutional rights of inmates confined in the penitentiary. Wyoming denied that any conditions at WSP violated the constitutional rights of inmates. Wyoming, however, indicated and demonstrated an intention to improve conditions at WSP. The United States provided Wyoming with its consultant reports to assist in the achievement of voluntary remedial action.

In October and December, 1999, the United States conducted additional expert evaluations of the prison. On April 6, 2000 the United States informed Wyoming that a number of improvements had been achieved at WSP, but that it continued to conclude that certain conditions violate the constitutional rights of inmates.

While Wyoming denies that any conditions at WSP violate the constitutional rights of inmates, it has nonetheless demonstrated a willingness to resolve the remaining conditions at the penitentiary without the expense, time, and uncertainty of contested litigation. Nothing contained in this Settlement Agreement is to be construed as an admission that Wyoming violated the constitutional rights of any inmate.

Fulfillment of the terms of this agreement, voluntarily negotiated and entered into by the United States and the State of Wyoming, is intended to resolve all remaining issues relating to conditions of confinement at WSP. The State of Wyoming and the United States expect the State to achieve full compliance with the terms of this agreement within two years of the signing of this agreement, provided however, that compliance with specific individual items shall be within the time requirements specified within the agreement.

II. DEFINITIONS

1. "The Parties" refers to the State of Wyoming and to the United States.
2. "The State" refers to officials of the State of Wyoming, including the Wyoming Department of Corrections and the Wyoming State Penitentiary.
3. "The Wyoming State Penitentiary" includes any buildings or grounds occupied or utilized for correctional purposes at the "North Facility" or "South Facility" located at Rawlins, Wyoming.
4. "Medical Personnel/Professional" refers to a physician, physician's assistant, registered nurse or LPN, or correctional officer certified as an Emergency Medical Technician.
5. "Mental Health Personnel/Professional" refers to a physician, psychiatrist, psychologist, physician's assistant, nurse, psychiatric nurse, or others who by virtue of their education, credentials and experience, are qualified to evaluate and care for the mental health needs of patients.
6. "Substantial compliance" means there has been performance of the material terms of the Settlement Agreement. Materiality shall be determined by reference to the overall objectives of the Settlement Agreement. Substantial compliance may be achieved in any of the five substantive areas addressed in this settlement agreement (medical care, mental health care, security and protection from harm, fire safety, and environmental health and safety) prior to achievement of substantial compliance in all of the five areas. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will 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.

III. MEDICAL CARE

A. Policies and Procedures

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1. The State shall continue to develop, update, and implement appropriate medical policies, procedures, and protocols, that include, the following: initial inmate screening and inmate health assessments, staffing levels and job descriptions, sick call and other access to medical services, distribution and management of medications, physical assessment, emergency care, dental care, mental health care, communicable disease testing and control, medical records, staff training, quality control, and medical grievance procedures.

B. Medical Staffing and Professional Credentials

1. The State shall provide and maintain sufficient medical care staffing to ensure full-time physician or physician assistant coverage (under the supervision of a physician) five days per week, 52 weeks per year (excluding holidays). The State shall also provide and maintain appropriate 24-hour daily on-call physician coverage.

2. The State shall provide a report during each compliance reporting period, discussed infra, setting forth all medical staffing positions filled and unfilled on the first day of each reporting period. This report shall include all medical personnel/professional job classifications, as defined above.

3. The State shall ensure that qualified, licensed physicians appropriately supervise inmate medical and mental health treatment, nursing staff, and medical policy development.

4. The State shall verify medical credentials for all medical professionals upon initial hire, and at least every two years thereafter. The verification shall include inquiry into any restrictions or sanctions for each health professional who provides medical care to patients. The State shall maintain copies of current professional credential licensing for all medical and mental health professionals, and maintain appropriate records of its credential verifications.

C. Intake Screening, Sick Call, and Medication Management

1. The State shall perform timely initial health screens for new inmates within twenty-four (24) hours of arrival in order to identify health problems, communicable diseases, and medication needs. A physician or physician's assistant shall perform full health assessments within fourteen days of an inmate's arrival at WSP. A registered nurse may perform the assessment provided that the nurse has received documented training in physical assessment practices and procedures.

2. The State shall keep records, by month, of the number of health assessments performed on new inmates and whether the assessments were performed in a timely or untimely manner.

3. The State shall timely respond to inmate sick call requests and document the missed appointment rate monthly. Within sixty days, medical personnel shall develop a plan to reduce the rate of missed appointments.

4. Within sixty days, the physician and the psychiatrist shall develop a plan to provide periodic and systematic review of all inmate medical charts to ensure medication continuity and appropriate medication prescription and distribution practices. The program shall include a performance measurement component.

D. Infirmary Care

1. The State shall continue to refine its program to provide medically appropriate infirmary care. The program shall include protocols regarding physician and nursing visits, medical and mental health evaluations, medical orders, discharge decisions, and chart documentation.

2. The State shall continue to monitor nutrition, fluid intake, and weight levels of inmates admitted to the infirmary due to hunger strikes.

E. Referrals to Specialty Medical Services

1. The State shall establish a system to ensure that inmates receive necessary specialty care in a timely manner.

F. Chronic Care

1. The State shall continue to improve its chronic care disease management program. As part of this program, the State shall maintain an updated chronic disease registry of inmates suffering from chronic illnesses, including, but not limited to, the following conditions: asthma, cardiac disease, diabetes, HIV infection, hypertension, and seizure disorder.
2. The State shall develop and maintain updated chronic disease treatment guidelines and utilize them to provide appropriate treatment for chronic illnesses, including routine tests and examinations.
3. The State shall document all care, including routine tests and examinations provided to inmates suffering from chronic illnesses.

G. Mortality Reviews

1. The State shall request an autopsy and shall conduct a mortality review for every inmate who dies while in the custody of the State. During each reporting period, discussed infra, the State shall report mortality statistics including the number of deaths; date of death; age; and suspected cause of death. The State shall also summarize the facts surrounding the death and summarize any quality improvement actions taken as a result of the mortality review.
2. Mortality reviews shall involve physicians, nurses, and other relevant State personnel and shall seek to determine whether there was a pattern of symptoms which might have resulted in earlier diagnosis and intervention. In addition, mortality reviews shall examine events immediately surrounding the inmate death to determine if appropriate interventions were undertaken.

H. Medical Safety

1. The State shall continue to improve its medical safety procedures. The State shall continue to ventilate the respiratory isolation room appropriately, utilize proper medical masks, sterilize medical instruments, and immediately discard expired medications and medical diagnostic materials.
2. The State shall maintain, inspect, and calibrate the x-ray equipment on a regular basis.
3. The State shall maintain and implement current site-specific blood borne pathogen and tuberculosis control plans. The State shall train all staff and inmate workers on these plans on an annual basis. In the event of an inmate exposure to blood or body fluids, the State shall take prompt and appropriate responsive measures.
4. The State shall continue to improve its communicable disease testing, monitoring, and treatment program. The State shall eliminate any unreasonable delays between identification and treatment of tuberculosis.

IV. MENTAL HEALTH CARE

A. Mental Health Staffing

1. The State shall provide and maintain sufficient mental health care staffing to ensure the following: provision of adequate mental health treatment; developing appropriate treatment plans; maintaining adequate mental health records; timely screening of new inmates; evaluating inmates to determine appropriate housing placements; and managing acute mental health episodes. To assure the adequate provision of mental health services, the State shall provide the following mental health professionals: a psychiatrist providing services at least three full days per week, a full-time Ph.D. psychologist/mental health director, two full-time licensed clinical social workers, and a full-time psychiatric registered nurse.

B. Mental Health Screening

1. The State shall continue to promptly conduct mental health intake evaluations of new inmates to identify and refer inmates needing or requesting mental health services.
2. The State systematically shall collect and document relevant information by month regarding its mental health intake system including, at minimum, the following: the number of new receptions per month; the number of inmates screened positive for further mental health evaluation; the number of inmates who enter WSP with psychotropic medications; the

number of inmates determined to require mental health services; and the type of mental health services required.

C. Administrative and Punitive Segregation

1. The State shall conduct mental health screens and maintain appropriate documentation of inmates newly arrived in administrative segregation in order to ensure that mental health needs of inmates so classified will be met. The State shall provide ongoing necessary mental health care to inmates in administrative segregation and remove any obstacles to obtaining mental health care while in administrative segregation.

2. The State shall consider and appropriately address mental health issues during disciplinary hearings.

3. The State shall continue to house all inmates requiring suicide precautions in the infirmary.

D. Mental Health Medication Practices

1. The State shall continue to refine its policies and procedures for managing use of psychotropic medications, including medication reviews, medical monitoring, and delineation of appropriate roles for non-psychiatric physicians. The State shall direct particular attention to assuring medication continuity for inmates prescribed psychotropic medications. A psychiatrist or psychiatric nurse shall review a ten percent (10%) sample of mental health medication records, at a minimum, each month to determine the rate of missed dosages and to assist staff to take any appropriate corrective actions.

2. The State shall continue to provide medication for newly arrived inmates with verified prescriptions of psychotropic medication and promptly psychiatrically evaluate those inmates to determine whether medication continuation is an appropriate course of action.

3. The State shall continue to ensure that a licensed, qualified psychiatrist periodically examines every inmate who receives psychotropic medication.

E. Treatment Planning and Documentation

1. For every inmate on psychotropic medication and for any other inmate in need of significant or ongoing mental health services, the State shall prepare and document a treatment plan including a clinical assessment by appropriate mental health personnel, including diagnosis, identification of needs, problems, and treatment regimen.

2. The State shall prepare a summary report every four months setting forth the number of inmates on psychotropic medications and the number with current treatment plans. The State shall base this report on statistics gathered on the first day of each respective four month reporting cycle.

3. The State shall continue to improve its mental health record keeping practices. The State shall maintain complete, well-organized mental health records which appropriately document all mental health services rendered and include all physicians' orders, medication records, and clearly identified progress notes.

V. SECURITY AND PROTECTION FROM HARM

A. Staffing

1. The State shall continue to budget for, hire, and retain sufficient managerial and correctional staff to adequately supervise and operate WSP. To this end, the State shall implement the correctional officer staffing plan of April 9, 2001, approved by the United States. Prior to implementation of any revised staffing plan, the State shall notify the United States within a reasonable time frame of the proposed modifications and the parties shall conduct further negotiations as appropriate. The State shall not be required to notify the United States prior to temporary implementation (lasting less than 72 hours) of a revised staffing plan based upon emergency needs.

B. Supervision

1. The State shall ensure that correctional officers shall be stationed, and shall follow procedures, to provide adequate

supervision of inmates in every housing unit to minimize and to quickly intervene in acts of violence among inmates; respond to emergencies; and otherwise provide for the basic needs of inmates.

C. Classification and Housing

1. The State shall continue to audit its inmate classification system in order to classify and house inmates based upon sound professional, penological principles. The State shall also continue to reclassify all inmates at the time of disciplinary hearings.
2. The State shall take action to assure the safety of vulnerable inmates by, among other measures, (a) reducing its use of double-celling of special needs inmates; (b) within ninety (90) days of signing this agreement, the State shall devise a plan for housing protective custody inmates and high risk inmates (e.g., disciplinary segregation, maximum custody, and death row) in sufficiently distinct housing configurations from one another; (c) responding in a timely fashion to reported credible threats of harm from inmates.
3. The State shall continue to identify and utilize appropriate alternative locations for housing WSP inmates in order to alleviate crowding and to provide each inmate with a safe, adequate, and well-supervised living environment.

VI. FIRE SAFETY

A. Occupant Protection

1. The State shall maintain Self Contained Breathing Apparatus (SCBA) equipment on site and continue to train sufficient staff so that at least two (2) staff persons on each shift are trained and certified in SCBA use.
2. The State shall continue to equip each security officer with a radio.
3. The State shall maintain appropriate emergency exiting procedures.

B. Fire Safety Training and Planning

1. The State shall provide initial training to all new correctional staff and annual refresher training to all staff in the use of the fire suppression equipment available in the facility.
2. The State shall continue to conduct fire drills/emergency evacuation drills on at least a quarterly basis for every shift. The drills should include evacuation of inmates except when, in the judgement of the State, there is evidence that institutional security would be compromised by the evacuation of all inmates. The State shall document all drill results and incorporate them into staff training.
3. The State shall review and update its fire/emergency evacuation plan annually with the assistance of a qualified fire safety consultant (e.g., fire chief).
4. The State shall hire and retain a full time Life Safety Officer whose job shall include the following: ensuring the proper maintenance of all fire protection systems and equipment; ensuring timely and regular inspections and tests of all fire protection equipment and systems by qualified inspectors; ensuring that all emergency evacuation plans and procedures are regularly reviewed and updated; ensuring that all means of ingress and egress function properly; and controlling the presence of combustibles throughout the facility, including inmate cells and in the shops.

C. Ignition and Fuel Control

1. The State shall provide every inmate with a fire resistant mattress and will provide or allow inmates to purchase fire safe wastebaskets and storage containers.
2. The State shall continue to properly label and store flammable chemicals and combustible items in smoke tight rooms or enclosures.

3. The State shall enforce a facility-wide policy on smoking to prohibit smoking in areas where flammable or combustible liquids are stored or used.

VII. ENVIRONMENTAL HEALTH AND SAFETY

A. General housekeeping and maintenance

1. The State will implement a preventive maintenance plan to respond to routine and emergency maintenance needs.

B. Food sanitation

1. The State shall operate WSP's kitchen in a manner consistent with public health standards. To that end, the State shall continue to train kitchen employees and inmates in safe food handling practices. The State shall ensure that a qualified food service supervisor is present during all hours of kitchen operation.

2. The State shall prepare, serve, and store food in a clean, healthful manner. The State shall maintain food temperatures adequate to minimize the possible transmission of food borne illnesses. The State shall ensure that qualified inspectors perform quarterly inspections of the kitchen.

C. Tool Control

1. The State shall control and account for the location of all tools, utensils, and personal effects that could be used as weapons. The State shall secure all areas in which metal objects are stored or disposed. The State shall install "shadow boards" in tool storage, shop, and kitchen utensil areas and daily account for and document all tools and utensils accessible to inmates. The State shall not provide inmates access to any area in which metal objects are stored or held for removal as trash, unless the State directly and constantly supervises the inmates.

VIII. MONITORING

A. Documentation

1. The State shall maintain adequate documentation to ensure compliance with the obligations of this settlement agreement and to facilitate monitoring of compliance. In order to carry out these obligations, the State shall maintain the documentation discussed above and shall comply with the provisions below.

B. Plan Approval

1. The State shall provide each plan required by this settlement agreement to the United States within the time specified. Unless the United States raises an objection to the plan within thirty days of receipt, the State shall implement the plan as submitted. If the United States raises an objection to the plan, the State and the United States shall make good faith efforts to resolve any disputed items.

C. Reporting

1. The State shall prepare and submit to the United States a comprehensive report regarding compliance with each paragraph of the settlement agreement together with any required corrective plans. The State shall submit the first report within ninety (90) days of the last signature affixed to this settlement agreement and every four months thereafter. The reports shall include, as appropriate, documentation, certifications, receipts and such other information as requested by the United States to assist in the evaluation of compliance with the terms of this agreement. Upon achieving and maintaining substantial compliance for one (1) year, as determined pursuant to this settlement agreement, for any of the five (5) substantive areas of the agreement, no further reporting shall be required for that substantive area.

D. Access

1. During the term of this settlement agreement, upon reasonable notice, the United States and its consultants shall have access to those operations of the North and South facilities referenced in this settlement agreement and to the records of

inmates and compliance records to the extent necessary to assure compliance with the specific terms of this settlement agreement. Upon request, the State shall provide the United States with copies of, or access to, Wyoming State Penitentiary documents or records within a reasonable time. The United States shall have the right to conduct confidential interviews with inmates. The State shall continue to permit inmates to send and to receive confidential legal mail to attorneys of record, courts and representatives of the Department of Justice.

2. Any information or documents obtained pursuant to this agreement shall not be disseminated, except as provided by law, to any person not a party (or an employee or contractor of a party) to this settlement agreement. In the event of a request under the Freedom of Information Act or any other statute or provision of law, by a third party for disclosure of any information or documents provided by the State to the United States, the United States will assert all applicable exemptions from disclosure permitted by law. Additionally, the United States will notify the State of any request for information, including a complaint filed in court, by a third party pursuant to the Freedom of Information Act or other disclosure statute. Information or documents provided to the United States may, however, be used in any subsequent judicial proceedings brought by the United States involving conditions of confinement at WSP.

E. Inmate Notification

1. The State shall make the substantive terms of this agreement available to all inmates by posting a general summary of the agreement in all housing units and the law library.

F. Third Party Beneficiary Rights

1. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this agreement shall not be construed so as to create such status. The rights, duties, and obligations contained in this agreement shall operate only between the parties to the agreement, and shall inure solely to the benefit of the parties to this agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the State for its conduct or the conduct of State employees or agents; accordingly, it does not alter legal standards governing any such claims.

IX. PROCEDURAL PROVISIONS

A. Application and Enforcement

1. In response to the United States' June 29, 1999 findings letter and April 6, 2000 letter, the State has agreed to vacate the North Facility of the Wyoming State Penitentiary, except the kitchen and laundry areas, until such time as the life safety and other structural concerns have been remedied. Furthermore, the State has represented to the United States that the State is in the process of constructing a new kitchen and laundry facility which is anticipated to be operational by June 2002. Accordingly, this settlement agreement applies only to the North Facility kitchen and laundry areas and to those operations of the South Facility as specifically set forth in this settlement agreement. Except as otherwise provided by law, nothing herein shall be construed as granting the United States jurisdiction or enforcement authority over any matters not specifically enumerated herein.

2. This settlement agreement shall be applicable to and binding upon all parties, their officers, agents, employees, assigns, and their successors in office all in their official capacities.

3. The State shall conform applicable policies, procedures, and post orders to accurately reflect the requirements of this settlement agreement.

4. The State shall immediately explain the pertinent terms of this settlement agreement to responsible WSP staff and contract medical staff in order to ensure their understanding of the requirements of this settlement agreement and the necessity for strict compliance with the settlement agreement.

5. Except where otherwise specifically indicated, the State shall complete implementation of all the provisions of this settlement agreement within one year of the entry of the settlement agreement.

B. Termination Provision

1. The State shall diligently implement the terms of this agreement within the time lines provided herein.
2. The parties agree to lodge this agreement with the Court in conjunction with a joint motion, pursuant to Fed. R. Civ. P. 41(a)(2), for the dismissal of this case. The dismissal shall be conditioned upon the State's achieving substantial compliance with the entire agreement and maintaining compliance for at least one year thereafter. Substantial compliance may be achieved and maintained for one (1) year in any of the five substantive areas addressed in this settlement agreement prior to achievement of substantial compliance in all of the five areas. The motion shall request that the case be placed on the Court's inactive docket. If the United States believes the State has failed to substantially comply with the terms of this agreement, the United States shall give the State written notice of the substantial noncompliance within twenty (20) days of the United States' belief of non-compliance. The State shall have thirty (30) days from receipt of the notice of non-compliance to cure the non-compliance. If the State does not cure the non-compliance within the thirty (30) day period, the United States may file a motion to restore the case to the Court's active docket. In the event the United States believes that the State has failed to substantially comply with the terms of this agreement and such non-compliance threatens the immediate health and safety of inmates, the United States may, without further notice, file a motion to restore the case to the Court's active docket.
3. If unforeseen circumstances occur which cause a failure to carry out timely any requirements of this Agreement, the State shall notify the United States in writing within 20 calendar days of the time that 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. Upon receipt of any such notice, the parties agree to confer. If the United States agrees that delay in meeting any schedule or obligation in this Agreement has been caused by unforeseen circumstances, it shall re-negotiate a deadline for completion of the task.
4. Once the State has determined that it is in substantial compliance with this agreement or any of its five substantive areas the State shall notify the United States in writing, by certified mail, return receipt requested. If the United States has not provided written objection to such determination within forty-five (45) days of receipt of said notice, the State will be deemed to be in substantial compliance with the specified area beginning on the date of the notice. If the United States provides written objection to such determination, the parties shall make good faith efforts to resolve the dispute. One (1) year from the date the State has reached and maintained substantial compliance with the terms of the entire agreement, the parties shall file a joint motion for final dismissal of this action.

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1. When the United States initiated its investigation, WSP consisted of one compound. During the course of the investigation, the State completed construction of a new compound. The older compound is referred to as the "North Facility" and the new compound is referred to as the "South Facility." As discussed in Section IX of this settlement agreement, the State has agreed to vacate the North Facility of WSP until such time as the life safety and other structural concerns regarding the facility are remedied.