AGREEMENT

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A. OVERVIEW AND CONSTRUCTION

1. Reginald P. White Skilled Care (RWSC) is a state-owned and operated nursing home facility located in Meridian, Mississippi. The State of Mississippi (State) is responsible for the care and treatment of RWSC residents.

2. RWSC residents have rights protected by the federal constitution, federal statutes, and federal nursing home regulations. See Youngberg v. Romeo, 457 U.S. 307 (1982); Olmstead v. L.C., 527 U.S. 581 (1999); Americans with Disabilities Act, 42 U.S.C. § 12132 et seq. (ADA); 28 C.F.R. § 35.130(d) (ADA integration regulation); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 (Section 504), Grants to States for Medical Assistance Programs (Medicaid), 42 U.S.C. § 1396r (nursing home standards); and 42 C.F.R. § 483 Subpart B (Medicare & Medicaid regulations). This Agreement was entered to ensure the State's compliance with generally accepted professional standards of care consistent with federal law.

3. Nothing in this Agreement is intended to serve as a waiver or exemption from standards identified in the above-referenced federal statutes, implementing regulations, and associated surveyor guidance. RWSC shall be required to continue fully complying with these federal standards.

4. Nothing in this Agreement shall preclude the United States Department of Health and Human Services (HHS), the Centers

for Medicare and Medicaid Services (CMS), or relevant state agencies, from separately enforcing relevant nursing home standards. Any findings by these or other government agencies may be considered as relevant evidence, but shall not be determinative as to RWSC's compliance or non-compliance with this Agreement. The State's submission of plans of correction to, or certification for receipt of federal funds by, the Centers for Medicare and Medicaid Services do not, in themselves, constitute compliance with this Agreement.

5. Except where otherwise indicated, "qualified staff" shall refer to an individual or individuals qualified to render the requisite and appropriate care, treatment, judgment, training and service, based on credentials recognized in the specific field.

B. Assessment and Treatment Planning

1. RWSC shall provide adequate safety, medical care, and nursing care to RWSC residents. To that end, RWSC shall develop and implement policies and procedures to ensure timely and professionally appropriate assessment and treatment of RWSC residents.

2. Initial assessments and re-assessments shall be conducted as required by generally accepted professional standards.

3. RWSC shall assess whether each resident may be at risk for, or have a present need for, care to address the following types of issues and problems commonly found in a geriatric population:

a. Pressure sores, skin damage, and necrosis.

b. Restraint use.

c. Elopement.

d. Falls and unexplained injuries.

e. Loss of physical and mental function, including development of contractures, communication deficiencies, and cognitive impairment.

f. Adaptive care and disability accommodation needs.

g. Nutrition, hydration, and mealtime assistance needs.

h. Mental health care requirements and behavioral

issues.

i. Rehabilitative and restorative care needs.

j. Chronic disease.

k. Pain.

4. When a resident experiences a significant change in condition, a professionally appropriate re-assessment shall be conducted. Significant changes in condition include:

a. Development of pressure sores, unexplained skin wounds, skin deterioration or necrosis.

b. Deterioration in a resident's mental or physical function, including the development of contractures.

c. Incidents of elopement, falls, or injury.

d. Significant changes in weight or dehydration.

e. A resident's transfer from another long-term care facility or a resident's return to RWSC after hospitalization at an outside medical facility.

f. Behavioral symptoms, increased depression, or appearance of other serious mental illness.

5. Assessments and re-assessments shall be incorporated into resident treatment plans. Treatment plans shall meet generally accepted professional standards.

6. Treatment planning shall include the following elements:

a. A treatment planning process that is conducted in an interdisciplinary manner by qualified direct care,

nursing, and physician staff.

b. Active participation by physicians, psychiatrists, and psychologists in treatment planning meetings.

c. Active participation by social workers to ensure that residents' psychosocial needs are addressed.

d. Objective, comprehensive, data-based evaluation of resident needs including careful incorporation of resident assessments into any treatment plan.

e. Professionally appropriate evaluation and consideration of reasonable, alternative care options.

f. Periodic update and review of treatment plans by qualified staff to ensure that care remains individualized and appropriate.

g. Professionally appropriate consideration and monitoring of factors that commonly contribute to the health and well-being of geriatric residents over the course of treatment, including:

i) Restraint use,

ii) Restorative or rehabilitative care needs,

iii) Pain management needs,

iv) Medication regimens,

v) Availability of adaptive devices, adaptive equipment, hospital furniture, and appropriate housing environment,

vi) Nutrition and hydration requirements

7. Direct care staff shall be trained on the individual needs and treatment plans for the residents in their care.

8. Assessments and treatment plans shall be implemented and incorporated into actual resident care. All medical and mental health treatment, therapeutic activities, and other resident care shall be designed to ensure that each resident attains or maintains the highest practicable physical, mental, and psychosocial well-being in accordance with each resident's individualized assessments and treatment plans.

C. Restraints

1. RWSC residents shall not be subjected to unreasonable restraints. RWSC shall meet generally accepted professional standards identified in federal statutes and regulations governing the use of restraints.

2. In order to minimize and decrease the use of mechanical and chemical restraints, RWSC shall:

a. Develop and implement meaningful alternatives to restraints including providing residents with restorative care, therapeutic activities, and changes to the living environment.

b. Ensure that restraints, including chemical and medication restraints, are not incorporated into a resident's treatment plan or used on a resident unless there has been a thorough assessment of the need for restraint use, the harm associated with restraint use, and alternatives to restraint use.

c. When restraints are recommended by staff to prevent falls, RWSC shall ensure that there has been an appropriate evaluation of the reasons for the falls and alternatives to restraints. RWSC shall assess whether addressing a resident's need for alternative seating, strength building exercises, adapted communication, assistance with toileting, pain management, or treatment for

anxiety may be a more appropriate solution than restraints.

d. Where restraints are determined initially to be appropriate, RWSC staff shall periodically re-assess the perceived need for such restraints and attempt alternative approaches, as indicated.

e. Ensure that the use of devices such as bedrails and "lap buddies" are covered by facility policies and procedures governing use of restraints.

3. Residents placed in restraints shall be carefully supervised and provided food, water, and restroom breaks as required by professional standards.

4. RWSC shall evaluate restraint use as part of RWSC's quality assurance and improvement process. Clinical outcomes associated with restraint use, such as weight loss and trauma, shall be evaluated as part of this process. Data and trends regarding restraint use should be identified for both individual residents and the RWSC system as a whole. Based on the data and trends identified by the quality assurance and improvement process, RWSC shall make professionally appropriate systemic and operational changes to facility restraint practices and procedures.

D. Mealtime Assistance and Nutrition

1. RWSC shall provide all residents with adequate nutrition, hydration, and mealtime assistance consistent with generally accepted professional standards.

2. Facility nurses shall participate in the coordination and oversight of staff response to residents' significant weight changes.

3. RWSC shall train facility nurses in conducting appropriate weight evaluations.

4. RWSC shall ensure that nurses and direct care staff are supervised by facility management and physician staff to ensure appropriate follow-through when significant weight changes are identified.

5. For residents who need mealtime assistance or who are losing, or at risk of losing, their ability to feed themselves, RWSC shall provide professionally appropriate assistive devices and seating. Such assistance shall be part of the resident's treatment plan and be based on the individual resident's assessments.

E. Therapeutic Activities, Rehabilitation, and Restorative Care

1. As part of the assessment and treatment process, all RWSC residents shall be assessed for loss of physical or mental function and their corresponding need for therapeutic activities, rehabilitation, and restorative care. RWSC shall ensure that residents have professionally appropriate rehabilitation and restorative care plans. Resident mobility and self-care skills, including the ability to bathe, toilet, communicate, and self-feed, shall be specifically addressed in those plans. The activity, rehabilitation, and restorative care plans shall be periodically reviewed and updated to ensure continued individualization and compliance with generally accepted professional standards.

2. RWSC shall develop and implement therapeutic activity programs for residents with limited physical or cognitive function, including those residents with dementia, depression, aphasia, visual impairments, or hearing loss.

F. Mental Health Care

1. RWSC shall provide adequate and appropriate mental health services in accordance with generally accepted professional standards.

2. Psycho-pharmacological medications shall not be given unless clinically necessary and approved by qualified medical staff pursuant to generally accepted professional standards. If polypharmacy is required, the justifications for this practice must be properly documented and clinically supportable pursuant to generally accepted professional standards.

3. RWSC shall carefully monitor residents for medication side-effects. Staff shall be trained on identifying such side-effects in geriatric residents whose limited function and medical problems can sometimes obscure the existence of such side-effects.

4. Physicians and psychiatrists shall include in resident medical records:

a. Resident symptomatology and functioning;

b. Mental status exam;

c. Assessments, formulations, and treatment plans; and

d. Any identified medication side-effects and laboratory testing results.

G. Treatment in the Most Integrated Setting Appropriate to Individualized Needs

1. RWSC residents shall be provided services in the most integrated setting appropriate to their individualized needs.

2. Consistent with Olmstead, the ADA, and ADA regulations, RWSC shall ensure that the facility's treatment professionals periodically and reliably assess its residents to determine whether community placement is appropriate for any of them. If the treating professionals determine that a community placement is appropriate, the resident does not oppose such placement, and placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with disabilities, RWSC will accommodate such request.

3. Prior to discharging a resident pursuant to § G.2, above, RWSC shall prepare a discharge plan specifying the needs of the resident and how those needs will be met at the most integrated setting. For purposes of this Agreement, "discharge" shall mean the point at which an individual's active involvement with RWSC is terminated and RWSC no longer maintains active responsibility for the care of the individual.

4. The State shall discharge residents to placements according to the requirements set out in the discharge plan. RWSC and the State shall provide the United States with copies of all final discharge plans.

5. Discharge planning shall meet generally accepted

professional standards. As part of the facility's quality assurance system, RWSC shall monitor the quality of discharge plans, case management, and service coordination between RWSC and outside placement providers. Additionally, RWSC shall designate points-of-contact for communicating and coordinating with other State agencies to identify barriers to community placement, available community resources, and problems with outside placement providers.

6. To ensure compliance with ADA requirements, RWSC shall ensure that the facility's therapy, restorative, and rehabilitative care programs are developed by qualified professionals with training and experience in implementing such programs for residents with limited mental or physical function.

7. In addition to the other requirements of this Agreement, RWSC shall:

a. Develop and implement an equipment management program to ensure that adaptive equipment is in good functioning order.

b. Evaluate whether the use of wheelchairs or staff mealtime assistance practices are resulting in the unnecessary deterioration of resident self-care skills.

c. Develop and implement a policy for discharge planning that includes consideration of hospice care or transfer to other most integrated community settings.

d. Modify the resident assessment and treatment planning process so that it includes assessment of the appropriateness of placement at RWSC. The process shall also include the identification of treatment options, therapeutic activities, rehabilitation, and restorative care that may be necessary to ensure that residents receive treatment in the most integrated setting appropriate to their individual needs.

H. Management, Oversight, and Training

1. RWSC shall ensure that RWSC is operated and managed in a manner consistent with generally accepted professional standards.

2. RWSC shall develop and implement a gerontologic core training program that meets generally accepted professional standards. This training shall include competency evaluations of staff to ensure that staff are proficient to implement their training. RWSC shall ensure that the facility training program:

a. Trains staff on relevant federal regulations regarding nursing homes, the nursing home guidelines set forth in federal law, and generally accepted professional standards;

b. Provides appropriate RWSC staff with educational instruction on methods of evaluation, diagnosis, and treatment of residents with psychiatric and/or behavioral problems;

c. Provides continuing medical education on age-related mental health issues;

d. Educates all appropriate staff on generally accepted professional approaches to promoting improved function, resident safety, health, hydration, and nutrition. The approaches addressed by such training shall include, but not be limited to - using adaptive devices to avoid more restrictive restraint or mealtime

practices, modifying living conditions to allow greater resident independence, and providing appropriate therapy and activities;

e. Educates staff on "restraint-free" treatment approaches and alternatives to restraints;

f. Educates staff on their roles in the interdisciplinary treatment planning process and the individualization of resident assessments and treatment;

g. Educates staff on medication side effects;

h. Educates staff on the psychosocial needs of geriatric residents;

i. Trains staff on therapeutic activities, restorative care, and rehabilitation programs;

j. Trains staff on medical issues specifically related to the aging process.

3. RWSC shall obtain the services of a full-time physician to serve as medical director. If the medical director is not board qualified in geriatrics, RWSC shall ensure that the quality of medical care provided by physicians at RWSC is evaluated by the medical director with the assistance of an independent consultant with adequate expertise in geriatrics. If the medical director is board qualified in geriatrics, then such assistance from an outside medical consultant shall not be required, but

will be permitted under this Agreement. RWSC shall also obtain the services of a qualified pharmacist or psycho-pharmacologist to review facility medication practices. In conjunction with facility management and as part of a facility-wide quality oversight process, the medical director and as appropriate, the pharmacist (or psycho-pharmacologist), shall:

a. Review resident charts and medication practices to ensure that there is no professionally inappropriate polypharmacy or unnecessary drug and restraint use;

b. Review resident charts to ensure that physicians and staff are properly recording their treatment decisions and resident health evaluations;

c. Monitor staff to ensure appropriate supervision of residents;

d. Ensure that the care provided at RWSC is designed to pro-actively improve resident quality of life and prevent declines in resident function; and

e. Ensure that medication practices comport with generally accepted professional standards and that the use of medications is professionally justified, carefully monitored, documented, and reviewed by qualified staff.

4. RWSC shall develop and implement professionally appropriate quality assurance and staff oversight policies.

These policies shall include:

a. Mortality and peer reviews;

b. Objective, reliable, verifiable data collection to identify problem trends or issues;

c. Professionally appropriate corrective action in response to any identified problem trends or issues (e.g. facility, shift, resident, or housing unit patterns of resident abuse; injuries; pressure sores; falls; restraint use; infections; communicable disease outbreaks; psychotropic medication use; incontinence; or loss of function).

5. RWSC shall develop and implement policies and procedures to ensure adequate clinical supervision of all staff, including physicians and psychiatrists.

6. RWSC shall not permit medical staff to prescribe placebos without adequate professional justification and documentation.

7. RWSC shall ensure that physician and psychiatrist staff provide adequate on-site coverage at the facility and participate meaningfully in the assessment and treatment plan process. To achieve these ends, RWSC intends to assign a full-time (40 hours/week) physician to the facility. Psychiatric coverage will be sufficient to meet the needs of the residents. In order to ensure the adequacy of this arrangement, RWSC shall monitor and

evaluate the adequacy of physician and psychiatrist coverage pursuant to its quality assurance procedure.

8. RWSC shall train and monitor staff on obtaining informed consent as required by generally accepted professional standards.

I. Monitoring and Technical Assistance

1. The United States and its attorneys, consultants, and agents shall have access to RWSC, RWSC residents, RWSC residents discharged after entry of this Agreement, RWSC staff, and documents as reasonably necessary to assess compliance with this Agreement. The United States, its attorneys, consultants, and agents, shall have the right to - request, inspect, review and copy facility records, resident charts and other documents; conduct interviews with residents outside the presence of State lawyers and staff; conduct interviews with staff outside the presence of supervisory staff; and observe activities normally conducted at RWSC to assess compliance with this Agreement. The United States agrees to provide the State with reasonable notice before seeking access to documents, staff, residents, and facilities.

2. Nothing in this Agreement shall preclude the parties from exercising their right to conduct discovery pursuant to the Federal Rules of Civil Procedure; nor shall this Agreement be construed as a waiver of any legal or equitable rights, remedies, defenses or privileges.

3. To evaluate the State's compliance with § G above, the United States may visit alternative placement settings. The State will work with the United States to facilitate visits to such setting but shall not be responsible if such visits cannot

take place for reasons outside of the State's control.

4. RWSC shall submit quarterly compliance reports to the United States, the first of which shall be submitted within 45 days after entry of this Agreement. The reports shall describe the actions RWSC has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented. RWSC shall make available records or other documents to verify that they have taken such actions as described in their compliance reports (e.g., census summaries, staffing summaries, contracts, bills, incident reports), and will provide copies of all documents reasonably requested by the United States. As part of the compliance report, information provided shall include, but not be limited to:

a. Summaries of all mortality or serious incident reviews or investigations (e.g. for elopements, emergency hospitalizations, fires, staff-on-resident abuse, communicable disease outbreaks, serious resident injuries);

b. Health department surveys;

c. Summaries of quality assurance reports generated during the reporting period;

d. Staffing vacancy reports, staffing rosters, and any staffing needs assessments;

e. Resident population report and roster; and

f. Summaries of resident complaints, grievances, or investigation notices, and the investigation reports completed in response to any of these items.

5. The State, its agents, employees, contractors, and subcontractors agree not to take any retaliatory action against any individual or individuals who cooperated with the United States' investigation of RWSC, or who cooperate with the United States during the pendency of this Agreement.

J. Construction, Termination, and Enforcement of Agreement

1. This Agreement shall be applicable to and binding upon all parties, their officers, agents, employees, assigns, and their successors in office.

2. The State shall begin implementing this Agreement immediately upon the filing of the Agreement with the Court. Except where otherwise specifically indicated, the State shall complete implementation of all the provisions of this Agreement within one hundred and eighty (180) days after the filing of this Agreement with the Court. Waivers shall be granted for good cause. If the State fails to comply with the requirements of this Agreement in a timely manner, the United States has the right to seek relief from the Court.

3. On or after the date on which the State shall have implemented and maintained all provisions of this Settlement Agreement, the parties may submit a Joint Motion and proposed Order of Final Dismissal to dismiss this case with prejudice.

4. Alternatively, the State may unilaterally move that this case be dismissed on the grounds that the State has implemented and maintained all provisions of this Agreement. An Order of Final Dismissal of this case shall be granted unless, within 90 days after receipt of the State's unilateral Motion, the United States objects to the Motion. If the United States files such an objection, the Court shall hold a hearing on the State's Motion

for Final Dismissal.

5. Three years after approval of this Agreement by the Court, this Agreement will terminate and be of no further effect.

6. If Defendants attain substantial compliance with this Agreement before the deadline in J.5 above, nothing in this Agreement will preclude the parties from seeking early termination of this Agreement pursuant to the procedure noted in J.3.

7. Consistent with the rest of this Agreement and the Federal Rules of Civil Procedure, the burden of proof shall be on the movant in any adversarial hearing set by the Court.

8. All staff members and other individuals responsible for implementing this Agreement shall be apprised of the contents of this Agreement. This Agreement shall be made available promptly to residents and resident family members upon request. Notices that this Agreement has been entered shall be posted in all resident housing areas. A copy of the Agreement shall be posted on the Justice Department, Civil Rights Division, Special Litigation Section website.

9. The Court shall retain jurisdiction, for all purposes over this action, until the State has substantially implemented this Agreement. Jurisdiction shall not terminate until the Court enters an Order of Final Dismissal.

10. If the Defendants' failure to comply with the

Settlement Agreement creates a condition or practice at RWSC that rises to the level of an emergency (imminent threat to the health, safety, or life of a resident or residents); the United States reserves expressly the right to file an Emergency Motion for immediate injunctive relief from the Court.

11. The parties reserve the right to withdraw consent to this Agreement in the event that this Agreement is not approved by the Court in its entirety.

12. If any provision of this Agreement, or the application thereof to any person or circumstance, is held invalid after entry of the Agreement, the remainder of the Agreement and its application to other persons or circumstances shall not be affected thereby.

13. By entering into this Agreement, the State is not admitting to any violation of federal law.

14. Except as otherwise noted in this Agreement, all parties shall bear their own costs, including attorney fees.

Agreed to by:

COUNSEL FOR THE UNITED STATES:

Date: 11/15 2004

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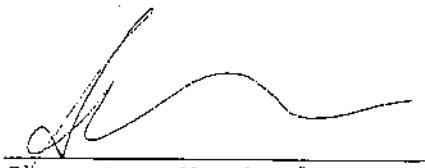

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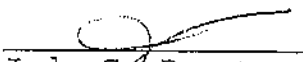

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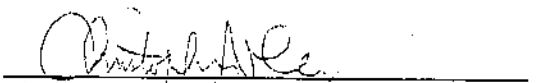

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WHEREFORE, the parties to this action having agreed to the provisions in the Agreement set forth above, and the Court being advised in the premises, this Agreement is hereby entered as the order and judgment of this Court.

It is so ordered, this _____ day of _____, 2004, at Jackson, Mississippi.

_____
United States District Judge