

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

|                            |   |                 |
|----------------------------|---|-----------------|
| UNITED STATES OF AMERICA,  | ) |                 |
|                            | ) |                 |
| PLAINTIFF,                 | ) |                 |
|                            | ) |                 |
| v.                         | ) |                 |
|                            | ) | Civil No. _____ |
| MARION COUNTY NURSING HOME | ) |                 |
| DISTRICT d/b/a MAPLE LAWN  | ) |                 |
| NURSING HOME,              | ) |                 |
|                            | ) |                 |
| DEFENDANT.                 | ) |                 |
| _____                      | ) |                 |

**SETTLEMENT AGREEMENT**

**I. PARTIES**

This Settlement Agreement (“Agreement”) is entered among and between the United States of America, acting through the United States Department of Justice (“DOJ”), and the Marion County Nursing Home District d/b/a Maple Law Nursing Home (“Maple Lawn” or “Defendant”).

**II. INTRODUCTION**

1. The purpose of this agreement is to remedy the constitutional and federal statutory violations identified in the findings letter issued by the United States on January 25, 2011. Through the provisions of this agreement, the parties seek to ensure that individuals at risk of institutionalization at Maple Lawn and individuals living at Maple Lawn are served in the most integrated setting appropriate to their needs and that those individuals living at Maple Lawn receive necessary care, protections, supports, and services.
2. Plaintiff is the United States.
3. Defendant is the Marion County Nursing Home District d/b/a Maple Lawn Nursing Home. The Defendant shall ensure that Maple Lawn will take all action necessary to comply with the provisions of this Agreement.

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1345; 42 U.S.C. § 1997; and 42 U.S.C. §§ 12131-12132. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).
5. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any other 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. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the Defendant or its officials, employees, or agents for their conduct. This Agreement does not alter legal standards governing any such claims, including those standards established by Missouri law.

### **III. DEFINITIONS**

1. “Adequate” or “appropriate” shall mean that level of service required for compliance with all applicable federal laws, regulations, and codes, and with generally accepted professional standards and principles.
2. “Care plan” shall mean a formal written individualized plan of treatment and activities, based upon comprehensive assessments performed by an appropriately-comprised interdisciplinary team of qualified professionals that: a) identifies the goals and wishes of the individual; b) describes the medical, nursing, and psychosocial needs of each individual consistent with the individual’s stated goals and wishes; c) describes how such needs will be met; d) sets timetables for meeting those needs in order that each individual attains or maintains the highest practicable physical, mental, and psychosocial well-being; and e) is periodically reviewed and revised as appropriate.
3. “CNA” shall mean Certified Nursing Assistant.
4. Consistent with, or in accordance with, the term “generally accepted professional standards” shall mean a decision by a qualified medical or mental health professional that substantially complies with contemporary, accepted professional judgment, practice, or standards.
5. “Dietitian” shall mean a person licensed as a dietitian and registered by the American Dietetic Association qualified to supervise the nutritional care of individuals, including meal planning, dietary counseling, monitoring of health changes related to nutrition, including weight loss, decubitus ulcers, and nutritional care for individuals with special needs such as tube-feeding, diabetes, and other health needs requiring therapeutic diets.

6. “DOJ” shall refer to the United States Department of Justice, Civil Rights Division, which represents the United States in this matter.
7. “Effective date” shall mean the date the Agreement is entered as a court order.
8. “Fall” shall mean an uncontrolled, unintentional, downward displacement of the body to the ground or other object.
9. “Individual” shall mean any person admitted to or residing at Maple Lawn during the operation of the Agreement.
10. “Incident” shall mean any unusual or unexplained occurrence that results in actual or potential harm, pain, or mental anguish to an individual; any unknown, alleged, or suspected event of abuse, neglect, or exploitation of an individual; or any unexpected death of an individual.
11. “Include” or “including” shall mean “include, but not be limited to” or “including, but not limited to.”
12. “Interdisciplinary Team” shall refer to a team consisting of treatment staff from various disciplines, including medical, nursing, dietary, pharmacy, and mental health.
13. “LPN” shall mean individuals licensed as Licensed Practical Nurses by the State of Missouri.
14. “Maple Lawn” or “the Facility” shall refer to the 140-bed skilled nursing facility owned and operated by Marion County, Missouri, which is responsible for providing health care services and health facilities for the benefit of the individuals of Missouri.
15. “Monitor” shall mean an individual jointly selected by both Parties to oversee implementation of the Agreement.
16. “Most Integrated Setting” shall mean the most integrated setting appropriate to an individual’s needs in accordance with the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 *et seq.* and 28 C.F.R. § 35.130(d).
17. “PASRR Screening” or “PASRR Process” refers to the Preadmission Screening and Resident Review (“PASRR”) screening process of all persons prior to admission to identify individuals with or suspected to have serious mental illness, intellectual disability, or other related condition, conducted

pursuant to 42 U.S.C. §§ 1396r(b)(3)(f)(i) & (ii), 1396r(e)(7)(A) & (B), and 42 C.F.R. § 483.128.

18. “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.
19. “Qualified Medical Professional” shall mean a licensed physician, licensed physician assistant, or a licensed nurse practitioner, who is currently licensed by the State of Missouri to deliver those health care services he or she has undertaken to provide.
20. “Qualified Medical Staff” shall refer to Qualified Medical Professionals and Qualified Nursing Staff.
21. “Qualified Mental Health Professional” shall mean a licensed psychiatrist, or licensed psychologist, who is currently licensed by the State of Missouri to deliver those mental health services he or she has undertaken to provide.
22. “Qualified Mental Health Staff” shall refer to individuals with a minimum of masters-level education and training in psychiatry, psychology, counseling, social work or psychiatric nursing; or individuals with a minimum of a bachelor’s degree and two years of experience providing mental health services.
23. “Qualified Nursing Staff” means registered nurses and licensed practical nurses currently licensed by the State of Missouri to deliver those health care services he or she has undertaken to provide.
24. “Significant change of condition” means a major deviation from a resident’s most recent evaluation that affects multiple areas of functioning or health. Examples of significant change of condition include, but are not limited to: development of pressure sores, unexplained skin wounds, skin deterioration or necrosis; changes to two or more activities of daily living (“ADLs”); incidents of elopement, falls, or injury; unplanned changes in weight of 5% in 1 month, 7.5% in 3 months, or 10% in 6 months; return to Maple Lawn after hospitalization at an outside medical facility; and behavioral symptoms, increased depression, or appearance of other serious mental illness, as defined by 42 U.S.C. § 1396r and 42 C.F.R. § 483.128, or otherwise as required by 42 C.F.R. § 483.20.
25. Throughout this Agreement, the following terms are used when discussing compliance: substantial compliance, partial compliance, and non-compliance. “Substantial Compliance” indicates that Defendant has

achieved compliance with most or all components of the relevant provision of the Agreement. “Partial Compliance” indicates that compliance has been achieved on some of the components of the relevant provision of the Agreement, but significant work remains. “Non-compliance” indicates that most or all of the components of the Agreement provision have not yet been met.

#### **IV. SUBSTANTIVE PROVISIONS**

Defendant shall take all actions necessary to comply with the substantive provisions of this Agreement listed below. The intent and purpose of this Agreement is to ensure that individuals at Maple Lawn are served in the most integrated setting available and are provided the necessary care and services to allow individuals to attain or maintain their highest practicable physical, mental, and psychological well-being.

##### **A. PLACEMENT IN THE MOST INTEGRATED SETTING**

In accordance with Title II of the ADA, 42 U.S.C. § 12132, and implementing regulation, 28 CFR § 35.130(d), Defendant shall ensure that individuals at Maple Lawn are served in the most integrated setting appropriate to their needs.

##### **1. Pre-Admission Diversion**

In order to ensure that individuals are not inappropriately placed in a nursing facility, Maple Lawn shall:

- a. Conduct or arrange for evaluations of all individuals prior to admission to determine whether the individual could be served in a more integrated setting. Where the admission is made on an emergency or urgent basis due to the clinical needs of the resident, the evaluation shall be conducted within 24 hours of admission.
- b. Provide each individual, and, if applicable, the individual’s legal guardian, attorney-in-fact, or other legally recognized representative, with information regarding community alternatives prior to admission;
- c. Provide linkages and referrals to community services and providers for each individual, and, if applicable, the individual’s legal guardian, attorney-in-fact, or other legally recognized representative, who could and do not oppose being served in more integrated settings; and
- d. As set forth in 42 U.S.C. §§ 1396r(b)(3)(f)(i) & (ii), 1396r(e)(7)(A) & (B), and 42 C.F.R. § 483.128:

- (1) ensure that adequate PASRR screenings are completed, including regular individual reviews, to examine whether individuals could be served in a more integrated setting; and
- (2) ensure that that the PASRR process: identifies and assesses individuals who may be appropriate for placement in a community-based setting; identifies community-based services that would facilitate that placement; refers and links individuals to community services and providers; and ensures admissions to Maple Lawn are only made if Maple Lawn provides treatment consistent with the requirements of PASRR and the goal of transition to a community-based setting.

## 2. Discharge and Transition Process

Maple Lawn shall implement a discharge and transition process that ensures that individuals who could be served in more integrated settings are identified and that appropriate plans are developed and implemented. Specifically:

- a. Maple Lawn will provide each individual, now in or later admitted to Maple Lawn, with effective discharge planning and a written discharge plan.
- b. Discharge planning will be conducted by transition teams that include:
  - (1) persons knowledgeable about resources and opportunities in the community, including, where appropriate, community service providers;
  - (2) professionals with subject matter expertise with regard to accessing needed community health care, including, as appropriate, physical health care, mental health care, therapeutic services, nursing services, communication services, social work services, and other necessary services and supports to ensure a safe and successful transition to community living;
  - (3) persons who have the linguistic and cultural competence to serve the individual; and
  - (4) upon the individual's consent, persons whose involvement is relevant to identifying the strengths, needs, preferences,

capabilities, and interests of the individual and to devising ways to meet them in an integrated community setting.

c. Discharge planning will:

- (1) be based on the principle that with sufficient services and supports, individuals can live in an integrated community setting, and that if an individual is admitted at Maple Lawn, it is only intended as a short-term admission, to the extent that a short-term admission is appropriate for the resident's needs;
- (2) assist the individual and, if applicable, the individual's legal guardian, attorney-in-fact, or other legally recognized representative, in developing an effective written plan to enable the individual to live independently in an integrated community setting;
- (3) be developed and implemented through a person-centered planning process in which the individual has a primary role and is based on the principle of self-determination;
- (4) be based on each individual's needs and not on the availability, perceived or actual, of current community resources and capacity;
- (5) not exclude any individual from consideration for community placement based on his or her level of disability; and
- (6) where consistent with the individual's desires, attempt to locate community settings in regions based upon the presence of persons significant to the individual, including spouses, children, siblings, other relatives, or close friends.

d. The discharge planning will result in a written discharge plan that:

- (1) sets forth in reasonable detail the particular types of services and supports, including their scope, frequency, and duration, that each individual will or may need in order to safely and successfully transition to and live in an integrated community setting whether or not a suitable community placement is currently available; such services and supports may include housing, transportation, staffing, mental health care, medical and nursing care services, specialty health care services,

communication and mobility supports, assistance with activities of daily living, and other professional services;

- (2) sets forth which kinds of persons and/or organizations have responsibility for delivering needed services and supports before, during, and after the transition;
  - (3) sets forth the date the transition can be expected to occur, as well as the timeframes for completion of needed steps to effect the transition;
  - (4) prompts the development and implementation of needed actions to occur before, during, and after the transition; and
  - (5) sets forth any barriers to transition to an integrated community setting and how to overcome them.
- e. The written discharge plan will be completed at or near the time of admission, but no later than 14 days after admission to Maple Lawn.
  - f. If any individual currently at Maple Lawn does not have such a discharge plan, he or she shall be provided one within 90 days of the Effective Date of this Agreement.
  - g. Maple Lawn shall convene a meeting, not less than one week prior to discharge, which shall include the individual being discharged, if applicable, the individual's legal guardian, attorney-in-fact, or other legally recognized representative, and community providers who will be providing services to the individual upon discharge, to confirm that needed services will be in place at time of discharge. If consistent with the individual's desires, the individual's family and/or supporting individuals will be invited to this transition meeting. Where the resident is being discharged on less than one week's notice, the meeting shall be held as far in advance of the discharge date as is practical.
  - h. Maple Lawn will re-assess individuals who remain in its facility for discharge to an integrated community setting at least once every four months, or more frequently upon request by the resident or, if applicable, the individual's legal guardian, attorney-in-fact, or other legally recognized representative, or when there is a significant change in condition; Maple Lawn will update the written discharge plans as needed based on new information and/or developments.

- i. Maple Lawn will create a specialized transition team consisting of one or more individuals responsible for developing and implementing measures to address and overcome any of the identified barriers to transition to an integrated community setting raised during discharge planning and/or set forth in the discharge plans; the member(s) of the specialized team will be agreed upon by the Parties and will include personnel with experience and expertise in how to successfully resolve outstanding issues associated with discharge planning and implementation, including medical professionals, social workers, case managers, and supported housing providers.
- j. If an individual or, if applicable, the individual's legal guardian, attorney-in-fact, or other legally recognized representative, opposes community placement, Maple Lawn will document the steps taken to ensure that any objection is an informed one; Maple Lawn will create and implement individualized strategies to address concerns and objections to placement in an integrated community setting; throughout the process, Maple Lawn will educate the objecting individuals about the community and the various community options open as part of the initial assessment or re-assessment described in paragraphs (e) and (h) of this section. Any written materials or presentations shall be easy for individuals to understand. Maple Lawn shall provide each individual with several viable placement alternatives to consider whenever possible.
- k. In-Reach to individuals at Maple Lawn
  - (1) Maple Lawn will ensure frequent and effective in-reach, by community service providers, to individuals residing at Maple Lawn to actively support them in moving to more integrated settings.
  - (2) In-reach may include on-site and overnight visits to supported housing units, addressing concerns of any residents who are ambivalent or unsure about moving to a more integrated setting and reviewing housing preferences with reasonable regularity.
- l. In cases where an individual is re-admitted to Maple Lawn after placement in a more integrated setting, Maple Lawn shall document the reasons for readmission and, where appropriate, take steps to address the factors requiring the re-admission.

### 3. Implementation of the Discharge and Transition Process

- a. Within 60 days of the effective date of the agreement, Maple Lawn will make operational the team described in Section 2(b).
- b. Within 60 days of the effective date of the agreement, Maple Lawn will make operational the team described in Section 2(i).
- c. Maple Lawn will have as its goal that when it is determined that: (1) an individual can be served in an integrated community setting, (2) the individual **or, if applicable, the individual's legal guardian, attorney-in-fact, or other legally recognized representative**, do not oppose such placement, and (3) a suitable community setting can be identified that is acceptable to the individual or, if applicable, the individual's legal guardian, attorney-in-fact, or other legally recognized representative, the individual is discharged to the integrated community setting within 30 days consistent with the discharge planning and discharge plan provisions set forth above. From the effective date of this Agreement until June 30, 2014, Maple lawn will meet this goal for at least 80 percent of the individuals transitioning from Maple Lawn. Between July 1, 2014, and December 31, 2016, Maple Lawn will meet this goal for at least 90 percent of the people transitioning from Maple Lawn.

### 4. Quality Assurance

- a. Maple Lawn shall work with the Monitor to create, revise, and implement a quality assurance or utilization review process to oversee the discharge and transition process. This process shall collect, aggregate, and analyze data related to discharge and transition efforts, including:
  - (1) information related to the quality and effectiveness of the pre-admission diversion process, including data related to the number of individuals admitted and not admitted to Maple Lawn as a result of this process and a review of PASRR screening forms;
  - (2) information related to the quality and effectiveness of discharge planning, including a verification that the discharge and planning process adheres to the provisions of subsection IV(A)(2), including an evaluation of the composition and effectiveness of the transition teams and a verification that the

written discharge plans contain the information and documentation required;

- (3) information related to successful placement rates and re-admission rates;
- (4) barriers to placing individuals in the most integrated and appropriate setting, including an evaluation of the composition and effectiveness of the specialized transition team and an evaluation of data related to insufficient: housing, community resources, health care, financial supports, and other services;
- (5) information related to any gaps in community services identified; and
- (6) implementation of the discharge and transition process in accordance with the timeline set forth in subsection IV(A)(3).

The Monitor will suggest and approve the data points for collection and Maple Lawn shall revise its program as necessary.

- b. Maple Lawn shall review this information on at least a quarterly basis and develop and implement strategies to overcome the barriers identified in the findings letter issued by the United States on January 25, 2011, including diverting individuals who could and do not oppose being served in more integrated settings from being admitted to the nursing home in the first place, providing adequate transition and discharge planning for individuals it identifies as ready for discharge, and having in place an adequate process to identify individuals who could be served in more integrated settings instead of remaining at Maple Lawn. This review shall be documented and reported to the Monitor and the United States.
- c. Maple Lawn shall utilize information gathered through the quality assurance process and provide feedback and training to staff as frequently as needed to ensure that 90% of written discharge plans contain the information required in subsection IV(A)(2)(d). This review and compliance rate shall be documented and reported to the Monitor and the United States.
- d. On an annual basis, Maple Lawn shall create a report summarizing its quality assurance activities, findings, and recommendations, and evaluating whether it has been effective in addressing the barriers preventing individuals from receiving services and supports in the

most integrated, appropriate settings. Maple Lawn shall provide this report to the Monitor and the United States.

- e. If the annual report shows that the Agreement's intended outcome of increased integration is not occurring, Maple Lawn shall convene a team including the Monitor and representatives of the United States, to consider modifications to Maple Lawn's discharge process.

## **B. CONDITIONS OF CARE AND TREATMENT**

Consistent with federal, constitutional, and statutory rights, as well as applicable federal nursing home regulations, Defendant shall provide individuals at Maple Lawn with adequate and appropriate protections, treatment, supports, and services to meet the individualized needs of the individuals and that are consistent with generally accepted professional standards.

### **1. Health Care Assessments and Care Plans**

Maple Lawn shall ensure that individuals receive accurate, complete, and timely assessment, consistent with generally accepted professional standards. More specifically, Maple Lawn shall:

- a. Conduct comprehensive health care assessments of all individuals, and repeat annually unless required more frequently by each individual's condition. The assessments shall be sufficient to enable the physician to reach a reliable diagnosis, if applicable, for each individual. For each individual assessed as having a health care concern or concerns, a physician shall document a clinically justifiable health care diagnosis for each of the individual's conditions.
- b. Develop and implement a system to ensure that referrals and testing procedures are completed and results are placed in the individual's medical record within 30 days.
- c. Based on the comprehensive health care assessment, ensure that a physician develops for each individual an integrated health care plan to address any healthcare condition identified through the assessment process. Ensure that each individual's health care plan is implemented properly, day-to-day, to meet each individual's individualized health care needs.
- d. Ensure that assessments, diagnosis/determination, and care plans are developed by an appropriately comprised interdisciplinary team of qualified professionals who are guided by generally accepted

professional standards. Each care plan shall describe the medical, nursing, and psychological needs of the individual and how such needs will be met.

- e. Identify individuals, on an on-going basis, who are at-risk or present at-risk conditions to ensure that individuals' health statuses are monitored accurately, and that individuals who experience a significant change of status are evaluated and treated.
- f. Ensure when an individual experiences a significant change of status, a re-assessment shall be conducted.
- g. Ensure that there are trained staff, particularly RNs, LPNs, and CNAs, to provide routine, preventative, and restorative care, and to respond to individuals' needs.
- h. Implement monthly quality assurance mechanisms to track and analyze patterns and trends to monitor the delivery of medical, nursing, and all other health care services to individuals. Each month a report shall be created that includes:
  - (1) relevant aggregate data;
  - (2) specific actions that have been or will be undertaken in response to the underlying conditions that may have contributed to problematic patterns or trends;
  - (3) status reports on the effectiveness of interventions undertaken in response to identified trends from previous months; and
  - (4) staff counseled or disciplined for violating healthcare assessment and care plan policies.
- i. Review these monthly reports on at least a quarterly basis and develop and implement strategies to overcome the barriers identified in the findings letter issued by the United States on January 25, 2011, including inaccurate, inadequate, and inconsistent health care assessments and boiler-plate care plans that did not contain measurable outcomes and failed to address individuals' needs. This review shall be documented and reported to the Monitor.
- j. Utilize information gathered throughout the quality assurance process and provide feedback and training to staff as frequently as needed to ensure that at least 90% of healthcare assessments and care plans meet the requirements of subsection B1. Such review and compliance rate shall be documented and reported to the Monitor.

## 2. Infection Control Program

In order to provide adequate treatment to individuals with infections and communicable diseases, Maple Lawn shall, at a minimum:

- a. Within six months from the effective date of this Agreement, create or revise, as appropriate, and implement policies and procedures regarding infection control and infection surveillance and tracking.
- b. Establish an effective infection control program to minimize the spread of infections or communicable diseases. The infection control program shall:
  - (1) Actively collect data with regard to infections and communicable diseases;
  - (2) Analyze these data for trends;
  - (3) Initiate inquiries regarding undesirable trends;
  - (4) Identify necessary corrective action;
  - (5) Monitor and determine whether remedies are achieved consistent with generally accepted professional standards;
  - (6) Integrate this information into the facility quality control system; and
  - (7) Require that nursing staff participate in the infection control program.
- c. Review this information on at least a quarterly basis and develop and implement strategies to overcome the barriers identified in the findings letter issued by the United States on January 25, 2011, including inadequate assessment, management, and treatment of communicable diseases. This review shall be documented and reported to the Monitor.
- d. Provide annually, or more often as needed, structured and ongoing competency-based training to professional, direct care, and supervisory staff on how to adequately assess, manage, and treat infections or communicable diseases.
- e. Utilize information gathered from the infection control program and provide feedback to staff as frequently as needed to ensure a 90% compliance rate in a given quarter for the requirements of this subsection. Such review and compliance rate shall be documented to the Monitor.

## 3. Nutrition and Hydration Care

Maple Lawn shall provide sufficient nutrition and hydration services and aspiration prevention care to ensure that individuals' nutritional needs are met in a safe manner. More specifically, Maple Lawn shall:

- a. Within six months from the effective date of this Agreement, create or revise, as appropriate, and implement policies and procedures that ensure that individuals receive adequate nutrition and hydration care and are protected from risks of aspiration.
- b. Conduct adequate individual nutrition and hydration assessments, by staff adequately trained to perform assessments, and develop and implement appropriate interventions, which shall be reviewed and updated as needed. In accordance with these assessments, Maple Lawn shall ensure that care plans are developed and monitored that meet the individual's daily nutritional, hydration, and special dietary needs.
- c. Ensure that a dietitian, with experience in providing services to the elderly, oversees dietary services at the Facility and provides appropriate training to staff in dietary services. The dietitian shall also be responsible for assessing and monitoring individuals' nutritional needs, both initially and on an on-going basis.
- d. Ensure that individuals who require assistance in eating are assisted by adequately trained staff. Staff shall ensure that adequate fluids are available and accessible to individuals at all times.
- e. Within six months from the effective date of this Agreement, ensure that all staff members receive competency-based training in how to properly implement feeding and positioning plans, and develop and implement a system to regularly monitor the progress of individuals who are at risk of aspirating to ensure that staff are adequately assessing, diagnosing, supervising, and treating individuals.
- f. Within six months from the effective date of this Agreement, develop a comprehensive quality management program for aspiration and dehydration. Under this program, Maple Lawn will:
  - (1) Conduct monthly reviews of each case where a individual has suffered from aspiration, or dehydration that requires medical intervention;

- (2) Analyze the monthly reviews in order to identify and eliminate the causes of aspiration, dehydration, and dehydration-related conditions;
  - (3) Implement a system that identifies and tracks patterns and trends, and recommends how staff can prevent aspiration, dehydration, or any dehydration-related condition from occurring; and
  - (4) Assess and document the effectiveness of the actions taken.
- g. Review the information gathered through the quality management program on at least a quarterly basis and develop and implement strategies to overcome the barriers identified in the findings letter issued by the United States on January 25, 2011, including documenting, monitoring, assessing, and evaluating weight changes, nutritional intake and overall nutritional status, and adequately treating individuals with significant weight loss or poor oral intake. This review shall be documented and reported to the Monitor.
- h. Utilize information gathered throughout the quality assurance process and provide feedback and training to staff as frequently as needed to ensure a 90% compliance rate in a given quarter for the requirements of this subsection. Such review and compliance rate shall be documented and reported to the Monitor.

#### 4. Psychotropic Medication

Maple Lawn shall provide adequate psychiatric and psychosocial services for an individual's treatment, including medication management and monitoring of medication side effects in accordance with generally accepted professional standards and federal regulation. More specifically, Maple Lawn shall:

- a. Ensure that there is adequate consultation from pharmacy consultants as appropriate to the individual's needs.
- b. Ensure that its pharmacy consultant notify treating physicians if he or she believes that:
  - (1) psychotropic medication use is not based only on the clinical needs of individuals or is not adequately justified in accordance with generally accepted professional standards and federal regulation;
  - (2) medications are being used in a manner that exposes individuals to undue risks to their health and safety; or

- (3) psychotropic medications are being prescribed to individuals who fall or who are at risk of falling.
- c. Ensure that individuals receiving psychotropic medication are monitored by Maple Lawn nursing staff for potential negative side-effects of such medications.
- d. Ensure that its staff notify treating physicians or mental health practitioners if they believe that individuals with mental illness, especially those with problematic behaviors, are not receiving adequate mental health services, including assessments, implementation, and development and monitoring of individualized mental health treatment plans to enable them to attain or maintain the highest practicable physical, mental, and psychosocial well-being.
- e. Ensure that for any individual who is prescribed multiple psychotropic medications, the Director of Nursing, or the Director's designee, shall refer the record(s) of the individual to the pharmacy consultant to determine whether there is clinical justification for the individual's drug regime and to implement measures to avoid polypharmacy to the extent possible.
- f. Implement monthly quality assurance mechanisms to track and analyze patterns and trends regarding psychotropic medication use. Each monthly report shall include:
  - (1) relevant aggregate data;
  - (2) specific actions that have been or will be undertaken in response to the underlying conditions that may have contributed to problematic patterns or trends;
  - (3) status reports on the effectiveness of interventions undertaken in response to identified trends from previous months; and
  - (4) staff counseled or disciplined for violating psychotropic medication policies.
- g. Review the information gathered through the quality assurance program on at least a quarterly basis and develop and implement strategies to overcome the barriers identified in the findings letter issued by the United States on January 25, 2011, including psychotropic medication use with clinical justification, and monitoring the effectiveness of the prescribed medication, the appropriateness of the dose, drug interactions, and changes in the individuals' condition. This review shall be documented and reported to the Monitor.

- h. Utilize information gathered throughout the quality assurance process and provide feedback and training to staff as frequently as needed to ensure that at least 90% of assessments and care plans meet the requirements of this subsection. Such review and compliance rate shall be documented and reported to the Monitor.

5. Pressure Sore Prevention and Treatment

In order to provide adequate treatment to individuals with or at risk for pressure sores, Maple Lawn shall, at a minimum:

- a. Develop and maintain comprehensive and contemporary policies and procedures, in accordance with generally accepted professional standards, for providing appropriate pressure sore prevention and treatment.
- b. Assess and identify individuals who are at risk of developing pressure sores.
- c. Develop and implement adequate, interdisciplinary-based and monitored skin care plans for individuals identified as at risk of developing pressure sores or with actual skin breakdown.
- d. Ensure that staff, especially staff dedicated to wound care treatment, are adequately trained in current professional standards, practices, and techniques regarding pressure sore assessment and methods of care.
- e. Ensure that appropriate pressure-relieving devices, such as pillows, mattresses, and cushions, are used for proper alignment and positioning and for preventing pressure sores.
- f. Provide annually, or more often as needed, structured and ongoing competency-based training to professional, direct care, and supervisory staff on how to properly turn and position individuals, how to assess and report changes in individuals' condition, and how to accurately document individuals' records.
- g. Ensure that individuals' medical conditions, including nutrition and hydration needs and continence status, are taken into account when addressing individuals' skin care needs.

- h. Implement monthly quality assurance mechanisms to track and analyze patterns and trends in the prevalence and type of pressure sores observed at the facility. Each monthly report shall include:
  - (1) relevant aggregate data;
  - (2) specific actions that have been or will be undertaken in response to the underlying conditions that may have contributed to problematic patterns or trends;
  - (3) status reports on the effectiveness of interventions undertaken in response to identified trends from previous months; and
  - (4) staff counseled or disciplined for violating pressure sore prevention and treatment policies.
- i. Review the information gathered through the quality assurance program on at least a quarterly basis and develop and implement strategies to overcome the barriers identified in the findings letter issued by the United States on January 25, 2011, including turning and repositioning individuals, assessing and reporting changes in individuals' conditions, and adequately documenting individuals' records, addressing deficiencies in nurse training, and ensuring multidisciplinary involvement in pressure sore treatment and prevention. This review shall be documented and reported to the Monitor.
- j. Utilize information gathered throughout the quality assurance process and provide feedback and training to staff as frequently as needed to ensure a 90% compliance rate in a given quarter for the requirements of this subsection. Such review and compliance rate shall be documented and reported to the Monitor.

## 6. Pain Management

Maple Lawn shall provide adequate pain management services. More particularly, Maple Lawn shall:

- a. Provide annually, or more often as needed, structured and ongoing competency-based training to direct care and supervisory staff on how to adequately manage or assess individuals' pain.
- b. Create, revise, and implement a quality assurance or utilization review process to oversee the pain management practices. This process shall collect, aggregate, and analyze data related to medication usage and administration, pain assessments, care plan documentation, and interventions taken.

- c. Review the information gathered through the quality assurance process on at least a quarterly basis and develop and implement strategies to overcome the barriers identified in the findings letter issued by the United States on January 25, 2011, including conducting pain assessments, implementing appropriate interventions, monitoring individual pain, documenting changes in each individual's condition, and reviewing medication usage to ensure that medications are administered as needed. This review shall be documented and reported to the Monitor.
- d. Utilize information gathered throughout the quality assurance process and provide feedback and training to staff to ensure a 90% compliance rate in a given quarter for the requirements of this subsection. Such review and compliance rate shall be documented and reported to the Monitor.

## 7. Mortality Reviews

In order to ensure that all deaths are adequately reviewed, Maple Lawn shall:

- a. Ensure mortality reviews are conducted within ten days for individuals who die at Maple Lawn or who die at an acute-care facility after being transferred from Maple Lawn, subject to physician availability. For individuals who die at an acute-care facility, the review shall utilize information within Maple Lawn's control and any information that Maple Lawn is able to obtain from the acute-care facility.
- b. Ensure that mortality reviews are conducted by an interdisciplinary team, comprised of, at a minimum, the Medical Director, Director of Nursing, and Nursing Home Administrator.
- c. Ensure that all mortality reviews examine:
  - (1) Circumstances surrounding death;
  - (2) All relevant training received by staff involved;
  - (3) Pertinent medical and mental health services/reports involving the victim;
  - (4) Possible precipitating factors leading to the death;
  - (5) Recommendations, if any, for changes to policy, training, medical, or mental health services, and
  - (6) A written plan to address areas that require corrective action.

- d. Review morbidity and mortality reviews and provide feedback to staff as frequently as needed to ensure a 90% compliance rate for the requirements of this subsection. Such review and compliance rate shall be documented.

8. Annual Quality Assurance Reporting

- a. On an annual basis, Maple Lawn shall create a report summarizing its quality assurance activities, findings, and recommendations, and evaluating whether it has been effective in addressing the barriers preventing individuals from receiving adequate and appropriate protections, treatment, supports, and services to meet the individualized needs of the individuals. Maple Lawn shall provide this report to the Monitor and DOJ.
- b. If the annual report shows that the agreement's intended outcomes of:
  - (1) ensuring that individuals receive accurate, complete, and timely health care assessments and care plans;
  - (2) providing adequate treatment to individuals with infections and communicable diseases;
  - (3) ensuring that individuals' nutritional needs are met in a safe manner;
  - (4) providing adequate psychiatric and psychosocial services for an individual's treatment;
  - (5) providing adequate treatment to individuals with pressure sore or skin care needs;
  - (6) providing adequate pain management and end-of-life care services; and
  - (7) ensuring that all deaths or negative outcomes are adequately reviewed;

are not occurring, Maple Lawn shall convene a team including the Monitor and representatives of DOJ, to consider modifications to Maple Lawn's conditions of care and treatment model.

## C. PROTECTION FROM HARM

Consistent with constitutional standards, Maple Lawn shall provide individuals with a safe and secure environment and ensure that they are protected from harm.

1. Fall Prevention

So that individuals are not exposed to unreasonable risks of harm associated with falling, Maple Lawn shall:

- a. Conduct comprehensive, interdisciplinary assessments of individuals upon admission, and periodically thereafter, to determine whether individuals are at risk for falls and/or accidents. These assessments shall pay particular attention to the need for continence training and maintenance.
- b. Develop and implement a proactive, individualized, fall prevention plan for individuals identified to be at risk of falls.
- c. Provide individuals with adequate supervision to prevent falls to the extent reasonably possible.
- d. Ensure that individuals receive adequate and appropriate assistive devices to prevent falls.
- e. Ensure that individuals' environments remain as free of accident hazards as possible.

## 2. Fall Reporting

Maple Lawn shall require that all known falls or near falls are properly documented and tracked. More specifically, Maple Lawn shall:

- a. Immediately after an individual suffers a fall or near fall, ensure that individual is assessed, including performing neurological assessments, and taking any measure necessary to ensure the health and well being of the individual.
- b. Ensure that staff investigate falls or near falls and determine the possible cause(s) of the fall or near fall, with particular emphasis on the potential effects of any psychotropic medication, and identify and implement any appropriate measure to prevent similar falls or near falls from occurring.
- c. Ensure that each fall or near fall is documented in an incident report and submitted to the Director of Nursing and/or her designee. Each report should be completed by the end of each shift, but no later than 8 hours after the incident. Each report shall include, at a minimum:
  - (1) date and time of fall or near fall;
  - (2) specific cause of the fall or near fall;

- (3) nature of the individual's injury;
  - (4) location of incident;
  - (5) identity of nursing staff or staff member who witnessed fall or near fall; and
  - (6) any follow-up education recommended for staff members.
- d. Within six months of the effective date of this Agreement, develop and implement a comprehensive quality assurance program to track and analyze patterns and trends of falls, near falls, and injuries. Maple Lawn shall develop and implement prompt and effective measures to address patterns and trends that impact health, safety, and welfare of individuals, so as to minimize or eliminate their occurrence in the future.
  - e. Review the information gathered through the quality assurance program on at least a quarterly basis and develop and implement strategies to overcome the barriers identified in the findings letter issued by the United States on January 25, 2011, including mitigating known fall risks. This review shall be documented and reported to the Monitor.
  - f. Utilize information gathered throughout the quality assurance process and provide feedback and training to staff as frequently as needed to ensure a 90% compliance rate in a given quarter for the requirements of this subsection. Such review and compliance rate shall be documented and reported to the Monitor.

### 3. Investigations

Maple Lawn shall adequately report and investigate all incidents where individuals sustain injuries. More specifically, Maple Lawn 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; or contraband.
- 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, individual injury, individual-on-individual assaults, self-injurious behavior, actual or attempted elopement from the facility, and falls, 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 individual incidents and document in the individual's medical record the rationale for changing/not changing the individual'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, unexplained injuries, actual or attempted elopement from the facility, deaths 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 nursing staff with no conflict of interest.
- e. Require all nursing staff members charged with investigative responsibilities to complete competency-based training on investigations and documentation requirements necessary in nursing home settings.
- f. Implement monthly quality assurance mechanisms to track and analyze the data on the types of incidents occurring at the Facility. Each monthly report shall include:
  - (1) relevant aggregate data;
  - (2) trends and/or patterns that appear to contribute to the incident's occurrence (e.g., time, location, individuals involved);
  - (3) specific interventions that have been or will be undertaken in response to the underlying conditions that may have contributed to the incident's occurrence;
  - (4) status reports on the effectiveness of interventions undertaken in response to identified trends from previous months; and
  - (5) staff counseled or disciplined for violating incident reporting policies.
- g. Review the information gathered through the quality assurance process on at least a quarterly basis and develop and implement strategies to overcome the barriers identified in the findings letter

issued by the United States on January 25, 2011, including investigating unexplained injuries. This review shall be documented and reported to the Monitor.

- h. Utilize information gathered throughout the quality assurance process and provide feedback and training to staff as frequently as needed to ensure that at least 90% of the incidents in a given quarter meet the requirements of this subsection. Such review and compliance rate shall be documented and reported to the Monitor.

#### 4. Annual Quality Assurance Reporting

- a. On an annual basis, Maple Lawn shall create a report summarizing its quality assurance activities, findings, and recommendations, and evaluating whether it has been effective in providing individuals a safe and secure environment and ensuring that individuals are protected from harm. Maple Lawn shall provide this report to the Monitor and DOJ.
- b. If the annual report shows that the agreement's intended outcomes of:
  - (1) ensuring that individuals are not exposed to unreasonable risks of harm associated with falling;
  - (2) requiring that all falls and accidents are properly documented and tracked; and
  - (3) adequately reporting and investigating all incidents where individuals sustain injuries;

are not occurring, Maple Lawn shall convene a team including the Monitor and representatives of DOJ, to consider modifications to Maple Lawn's fall prevention and injury investigation process.

### V. COMPLIANCE AND QUALITY IMPROVEMENT

- A. Within six months of the effective date of this Agreement, Defendant shall revise and/or develop policies, procedures, protocols, and practices to ensure that they are consistent with, incorporate, address, and implement all provisions of this Agreement. Defendant shall send newly-drafted and revised policies and procedures to the DOJ and the Monitor. The Monitor shall review and approve the policies within 15 days of receipt, absent an agreement between Defendant and the Monitor regarding an alternative time frame. Defendant shall provide initial and refresher training to all facility staff with respect to newly implemented or revised policies and

procedures. Defendant shall document employee review and training in policies and procedures.

- B. Within six months of the effective date of this Agreement, Defendant shall develop and implement written Quality Improvement policies and procedures adequate to identify deficiencies in placements in a more integrated setting, as discussed *supra* Section A(4)(m), medical and mental health care, as discussed *supra* Section B, and protection from harm, as discussed *supra* Section C, to assess and ensure compliance with the terms of this Agreement on an ongoing basis.
- C. Within one year of the effective date of this Agreement, Defendant shall develop and implement policies and procedures to address problems that are uncovered during the course of quality improvement activities.

## **VI. REPORTING REQUIREMENTS AND RIGHT OF ACCESS**

- A. Defendant shall file semiannual compliance reports with the court, the first of which shall be filed within six months of the effective date of this Agreement. Thereafter, the semiannual reports shall be filed 15 days after the end of each six-month period until the Agreement is terminated.
- B. Each compliance report shall describe the actions Defendant has taken during the reporting period to implement this Agreement and shall make specific reference to the Agreement provisions being implemented.
- C. Defendant shall notify the Monitor and the DOJ attorney of record, via email or phone, within 36 hours of the death or serious injury of any individual. Defendant shall forward to the Monitor and the DOJ any completed incident reports related to deaths or serious injuries, autopsies, and/or investigations relating to the incident.
- D. Defendant shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to DOJ within 48 hours of any request for inspection and copying. In addition, Defendant shall maintain and provide, upon request, all records or other documents to verify that they have taken such actions as described in their compliance reports (e.g., policies, procedures, protocols, investigations, and incident reports).
- E. DOJ and its attorneys, consultants, and agents shall have unrestricted access to the Facility, individuals, staff and documents as reasonably necessary to address issues affected by this Agreement.

- F. Within 30 days of receipt of written questions from DOJ concerning Defendant's compliance with the requirements of this Agreement, Defendant shall provide DOJ with written answers and any requested documents.
- G. Maple Lawn shall designate a point of contact to oversee compliance with this Agreement.

## **VII. MONITORING**

- A. **Monitor Selection:** The parties have jointly selected Barbara Primm, RN, to serve as the Monitor overseeing implementation of the Agreement. The monitor is an officer of the Court and is not an agent or business associate of the Defendant. Should the monitor position become vacant and the parties cannot agree on a replacement, the parties shall recommend candidates to the Court, and the Court will appoint the Monitor from the names submitted by the parties. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations. The cost for the Monitor's fees and expenses shall be borne by Defendant. The selection of the Monitor shall be conducted solely pursuant to the procedures set forth in this Agreement, and will not be governed by any formal or legal procurement requirements. The Monitor may be terminated only for good cause, unrelated to the Monitor's findings or recommendations, and only with prior notice to, and approval of, the parties acting jointly or by Court order. Should the parties agree that the Monitor is not fulfilling his or her duties in accordance with this Agreement, the parties may petition the Court for the Monitor's removal and replacement. One party may unilaterally petition the Court for the Monitor's removal for good cause, and the other party will have the opportunity to respond to the petition.
- B. **Monitor Qualifications:** The Monitor and his or her staff shall have appropriate experience and education or training related to the subject areas covered in this Agreement.
- C. **Monitoring Team:** The Monitor may hire or consult with such additional qualified staff as necessary to fulfill the duties required by the Agreement ("Monitoring Teams"). The Monitor is ultimately responsible for the findings regarding compliance. The Monitoring Teams will be subject to all the same access rights and confidentiality limitations, listed below, as the Monitor. The parties reserve the right to object for good cause to members of the Monitoring Teams.
- D. **Monitor Access:** The Monitor shall have full and complete access to the Facility, all Facility records, individuals' medical records, staff, and

individuals. Defendant shall direct all employees to cooperate fully with the Monitor. All non-public information obtained by the Monitor shall be maintained in a confidential manner.

- E. **Monitor Ex Parte Communications:** The Monitor shall be permitted to initiate and receive ex parte communications with all parties and stakeholders.
- F. **Limitations on Public Disclosures by Monitor:** Except as required or authorized by the terms of this Agreement or the parties acting together, the Monitor shall not: make any public statements (at a conference or otherwise) or issue findings, except as authorized by this Agreement, with regard to any act or omission of Defendant or its agents, representatives or employees, or disclose nonpublic information provided to the Monitor pursuant to this Agreement. Any press statement made by the Monitor regarding the monitoring of this Agreement or his or her employment as Monitor must first be approved in writing by all parties. The Monitor shall not testify in any other litigation or proceeding with regard to any act or omission of Defendant or any of its agents, representatives, or employees related to this Agreement, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Agreement. Reports issued by the Monitor shall not be admissible against Defendant in any proceeding other than a proceeding related to the enforcement of this Agreement by Defendant or DOJ. Unless such conflict is waived by the parties, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against Defendant, its departments, officers, agents or employees. The Monitor is not a State/County or local agency or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Agreement shall be liable for any claim, lawsuit or demand arising out of the Monitor's performance pursuant to this Agreement. This provision does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.
- G. **Monitor's Reports:** The Monitor shall file with the Court and provide the parties with reports describing the steps taken by Defendant to implement this Agreement and evaluate the extent to which Defendant has complied with each substantive provision of the Agreement. The Monitor shall issue

an initial report four months after the effective date of this Agreement, and then every six months thereafter. The reports shall be provided to the parties in draft form for comment at least two weeks prior to their issuance. These reports shall be written with due regard for the privacy interests of individuals and staff and the interest of Defendant in protecting against disclosure of non-public information.

- H. **Compliance Assessments:** In the Monitor's report, the Monitor shall evaluate the status of compliance for each relevant provision of the Agreement using the following standards: (1) Substantial Compliance; (2) Partial Compliance; and (3) Non-compliance. In order to assess compliance, the Monitor shall: review a sufficient number of pertinent documents to accurately assess current conditions; interview all necessary staff; and interview a sufficient number of individuals to accurately assess current conditions. The Monitor shall be responsible for independently verifying representations from Defendant regarding progress toward compliance, and examining supporting documentation, where applicable. Each Monitor's report shall describe the steps taken to analyze conditions and assess compliance, including documents reviewed and individuals interviewed, and the factual basis for the Monitor's findings.
- I. **Monitor's Budget:** Defendant shall provide the Monitor with a budget sufficient to allow the Monitor to carry out the responsibilities described in this Agreement. The Monitor shall pay the members of the Monitoring Team out of this budget.
- J. **Technical Assistance by the Monitor:** The Monitor shall provide Defendant with technical assistance as requested by Defendant. Technical assistance should be reasonable and should not interfere with the Monitor's ability to assess compliance.

## **VIII. ENFORCEMENT**

During the period that the Agreement is in force, if the Monitor or DOJ determines that Defendant has not made material progress toward substantial compliance with a significant obligation under the Agreement, DOJ may initiate contempt or enforcement proceedings for an alleged failure to fulfill an obligation under Section IV of this Agreement in court.

## **IX. CONSTRUCTION, IMPLEMENTATION, AND TERMINATION**

- A. Defendant shall implement all reforms within their areas of responsibility, as designated within the provisions of this Agreement that are necessary to

effectuate this Agreement. The implementation of this Agreement will begin immediately upon the effective date.

- B. Except where otherwise agreed to under a specific provision of this Agreement, Defendant shall implement all provisions of this Agreement within 240 days of the effective date of this Agreement. This 240-day period shall be considered a transition period and, during it, Maple Lawn shall not be deemed out of compliance with this Agreement for failing to meet any 90% compliance rate stated in this Agreement. During the 240-day transition period, an 80% compliance rate shall be considered a benchmark for compliance.
- C. This Agreement shall terminate when Defendant has achieved substantial compliance with each provision of the Agreement and has maintained substantial compliance with the Agreement for a period of two years.
- D. 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 or provisions of this Agreement.
- E. This Agreement shall constitute the entire integrated Agreement of the parties. With the exception of DOJ's findings letter and any DOJ technical assistance recommendations, no prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in this litigation or in any other proceeding.
- F. The Agreement shall be applicable to, and binding upon, all parties, their officers, agents, employees, assigns, and their successors in office.
- G. Each party shall bear the cost of its fees and expenses incurred in connection with this cause.
- H. If any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

So ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2013

Honorable \_\_\_\_\_  
United States District Court Judge

FOR THE UNITED STATES:

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Assistant Attorney General  
Civil Rights Division

EVE L. HILL  
Senior Counselor to the Assistant Attorney  
General  
Civil Rights Division

ALISON N. BARKOFF  
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FOR THE DEFENDANT MARION COUNTY NURSING HOME DISTRICT

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Ray Carty  
Vice Chairman  
Marion County Nursing Home District