

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
DIVISION OF COMMUNITY CORRECTIONS**

**BACKGROUND**

1. This Memorandum of Agreement (the “Agreement”) is made between the Lexington-Fayette Urban County Government, Division of Community Corrections (“Fayette County”) and the United States of America (“United States”) (collectively the “Parties”).

2. The United States Department of Justice, through the United States Attorney’s Office for the Eastern District of Kentucky, opened a compliance review into Fayette County’s policy related to treatment of inmates with opioid use disorder (“OUD”) and access to medications prescribed under supervision by a licensed health care professional, including medication prescribed for OUD, the denial of which the Department of Justice contends violates Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131-12134, and Title II’s implementing regulation, 28 C.F.R. pt. 35. Title II provides, amongst other things, that no qualified individual shall, on the basis of disability, be excluded from participation in or be denied the benefits<sup>1</sup> of the services, programs, or activities of a public entity. 42 U.S.C. § 12132, 28 C.F.R. § 35.130(a).

3. The Parties agree it is in their best interests, and the United States believes it is in the public interest, to resolve this dispute through collaboration. Therefore, the Parties voluntarily enter into the following agreement:

**TITLE II COVERAGE AND DETERMINATIONS**

4. The United States of America, through the United States Department of Justice, United States Attorney’s Office, Eastern District of Kentucky has the duty to enforce Title II of the ADA, 42 U.S.C. §§ 12131-12134, and the regulations implementing Title II, 28 C.F.R. pt. 35.

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<sup>1</sup> Throughout this Agreement, terms such as “enjoyment,” “benefit,” or “seek” that in other contexts might imply the voluntary and willing participation of a member of the public in Fayette County programs, services, or activities, shall also refer to a member of the public’s involuntary participation in Fayette County’s programs, services, and activities, such as detention or incarceration. *See* 28 C.F.R. § 35.152.

5. Fayette County is a “public entity” within the meaning of the ADA, 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104, and is therefore subject to Title II of the ADA, 42 U.S.C. §§ 12131-12134, and its implementing regulation 28 C.F.R. pt. 35.

6. Under the ADA, no qualified individual with a disability shall be excluded from participation in, be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity on the basis of disability. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a).

7. OUD is a physical or mental impairment that substantially limits one or more major life activities, which includes the operation of major bodily functions. 28 C.F.R. § 35.108(b)(2) (defining physical or mental impairment to include “drug addiction”). OUD substantially limits major life activities, such as caring for oneself, learning, concentrating, thinking, and communicating. 42 U.S.C. § 12102(2)(A); 28 C.F.R. § 35.108(c)(1)(i). OUD also limits the operation of major bodily functions, such as neurological and brain functions. 42 U.S.C. § 12102(2)(B); 28 C.F.R. § 35.108(c)(1)(ii). The determination whether an impairment substantially limits a major life activity is made without regard to the effect that ameliorating measures – including medication – may have on the impairment. 42 U.S.C. § 12102(4)(E)(i); 28 C.F.R. § 35.108(d)(1)(viii).

8. The term “individual with a disability” excludes individuals “currently engaged in the illegal use of drugs, when the covered entity acts on the basis of such use.” 42 U.S.C. § 12210(a); 28 C.F.R. §§ 35.104; 35.131(a). This exclusion does not apply to individuals who are no longer using illegal drugs and who have (1) successfully completed drug rehabilitation, (2) are participating in a supervised rehabilitation program, or (3) are erroneously regarded as using illegal drugs. 42 U.S.C. § 12210(b); 28 C.F.R. § 35.131(a)(2).

9. Notwithstanding Paragraph 8, a public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual’s current illegal use of drugs, if the individual is otherwise entitled to such services. 42 U.S.C. § 12210(c); 28 C.F.R. § 35.131(b)(1).

10. Fayette County provides health care services to inmates housed in its facility. These services include medical care and mental health care. One of the services provided is distribution of medication to inmates under supervision by a licensed health care professional.

11. As part of its investigation, the United States has determined:

- a. Although Fayette County provides medications that treat OUD to pregnant persons with OUD at its facility, Fayette County prohibits methadone and buprenorphine from being used to treat all other persons with OUD as a matter of policy and allows for no individualized medical determination to assess whether any person’s situation requires deviation from this policy.

- b. Methadone and buprenorphine are medications used for the treatment of OUD.
- c. Individuals with OUD who are incarcerated at Fayette County facilities and who have been prescribed methadone or buprenorphine under the supervision of a licensed health care professional to treat their OUD must undergo forced withdrawal under medical supervision.
- d. The United States determined that Fayette County's policies do not provide an individualized determination of whether persons with OUD who have been treated with either methadone or buprenorphine should be maintained on these medications and, thus, excludes these individuals from participating in or benefiting from Fayette County's health care services in violation of 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130(a) and 35.131(b)(1). This determination is an allegation only and has not been proven in a court of law.

12. Nothing in this agreement is intended to be an admission by Fayette County that any health treatment provided by Fayette County is inappropriate or inadequate.

#### **ACTIONS TO BE TAKEN BY FAYETTE COUNTY**

13. Within 60 days of the effective date of this agreement, Fayette County will submit a draft policy regarding its health services for individuals with OUD to the United States for its review and approval, which provides for the following:

- a. Fayette County will not change or discontinue a particular medication used to treat OUD except upon an individualized determination made by a qualified medical specialist that the treatment is no longer appropriate based on the person's current condition.
- b. Fayette County will not use incentives, rewards, or punishments to encourage or discourage a person to receive any particular medication used to treat OUD while in the facility's custody.
- c. Fayette County will not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise eligible for such services.

14. Within six months of approval by the United States, Fayette County will implement the policy set forth in paragraph 13. If any issues arise affecting any anticipated effective dates set forth in paragraph 13, Fayette County will immediately notify the United States and the parties will attempt to resolve those issues in good faith.

## OTHER PROVISIONS

15. In consideration for entering into this memorandum of agreement, the United States will close its compliance review of USAO# 2022V00174 and DJ# 204-30-102 and will not institute a civil action based on the allegations set forth in paragraph 11. The United States may review Fayette County's compliance with this agreement or Title II of the ADA at any time and take appropriate action.

16. Failure by the United States to enforce any provision of this agreement is not a waiver of its right to enforce any provision of this agreement.

17. If any term of this agreement is determined by any court to be unenforceable, the other terms of this agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States and Fayette County shall engage in good faith negotiations to adopt mutually agreeable amendments to this agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

18. The signatory for Fayette County represents that he or she is authorized to bind Fayette County to this agreement.

19. This agreement constitutes the entire agreement between the United States and Fayette County on the matters raised herein, and no prior or contemporaneous statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written agreement, including any attachments, is enforceable. This agreement can only be modified by mutual written agreement of the parties.

20. This agreement does not constitute a finding by the United States regarding Fayette County's compliance with the ADA. This agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this agreement, including any other potential claims regarding discrimination on the basis of disability. Nothing in this agreement relieves Fayette County of its obligation to comply with the requirements of the ADA.

21. Fayette County shall not discriminate or retaliate against any person because of his or her participation in this matter.

22. The effective date will be the date of the most recent signature below, and it will last for 12 months.

**Agreed and Consented to:**

Lexington, KY

Nov 4, 2022

CARLTON S. SHIER, IV  
United States Attorney for the Eastern  
District of Kentucky

By: \_\_\_\_\_ /s/  
CARRIE B. POND  
Assistant United States Attorney  
260 W. Vine Street, Suite 300  
Lexington, KY 40507-1612

Lexington, KY

FOR FAYETTE COUNTY

11/1, 2022

By: \_\_\_\_\_ /s/  
KENNETH ARMSTRONG  
Commissioner of Public Safety  
200 E. Main Street  
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