

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NEW JERSEY,

Defendant.

Civil Action No.

**[PROPOSED] CONSENT DECREE**

**I. INTRODUCTION**

1. On October 27, 2020, the United States notified the State of New Jersey of its intent to investigate conditions at the New Jersey Veterans Memorial Homes at Menlo Park and Paramus (together, the “Veterans Homes”) pursuant to the Civil Rights of Institutionalized Persons Act (“CRIPA”), 42 U.S.C. § 1997.
2. The United States’ CRIPA investigation focused on whether the State of New Jersey harms the Residents of the Veterans Homes and places them at risk of harm by failing to provide adequate medical care or to implement adequate infection control protocols and practices.
3. The United States toured the Veterans Homes with expert consultants in the fields of geriatric nursing. The United States has received assistance from the State in coordinating the tours of the Veterans Homes and certain witness interviews.
4. On September 7, 2023, the United States issued a CRIPA Notice to the State pursuant to 42 U.S.C. § 1997b(a)(1). The CRIPA Notice concluded that the United States had reasonable cause to believe that the State of New Jersey violates the federal constitutional rights of the Residents of the Veterans Homes by its failure to implement adequate infection control procedures and its failure provide adequate medical care. The Notice set forth the minimum measures to remedy those conditions. The State of New Jersey disputes the conclusions in the CRIPA Notice.
5. The United States recognizes the State of New Jersey’s cooperation in resolving this matter without the need for contested litigation. To serve the interests of the Residents of the Veterans Homes, and to avoid the burdens, uncertainties, and expenses of protected and adversarial litigation, the United States and the State of New Jersey (hereafter, the

“Parties”) enter into this agreement and propose this consent decree (“Consent Decree”). This Consent Decree resolves the United States’ investigation of the alleged constitutional violations at the Veterans Homes. Entrance of this Consent Decree does not constitute an admission of liability by the State of New Jersey.

6. This Consent Decree is enforceable only by the Parties and the Court. No person or entity is intended to be a third-party beneficiary of the provisions of this Consent Decree for purposes of any civil, criminal, or administrative action. Accordingly, no person or entity may assert any claim or right as a beneficiary or protected person under this Consent Decree.

## II. DEFINITIONS

7. **Appropriate or appropriately**, as used in Section III and Paragraph 126 in the context of medical standard of care, refers to the level of service required for compliance with applicable state and federal laws, regulations, and codes, and with current, generally accepted standards of care. It shall not include novel, experimental, or otherwise extraordinary care or protocols.
8. **Agreement Coordinator** is the administrator at DMAVA (as defined in paragraph 13) responsible for coordination with the Parties and the Monitor regarding implementation of this Consent Decree as set forth in Sections III and IV.
9. **Care plan** refers to a written plan of treatment and activities that includes the instructions needed to provide appropriate, effective, and person-centered care to the Resident that meets generally accepted standards of care.
10. **Competency-based training** is the provision of knowledge and skills sufficient to enable the trained person to meet specified standards of performance as validated through that person’s demonstration of such knowledge or skills in a context similar to one in which such knowledge or skills would be required.
11. **Compliance Officer** refers to the individual within each Veterans Home and to the individual at DMAVA designated to coordinate the development, and ensure implementation, of internal controls, policies, and procedures at the Veterans Homes to promote adherence to statutes, regulations, and standards applicable to long term care facilities in general and to the Veterans Homes in particular.
12. **COVID** refers to COVID-19, a disease caused by the SARS-CoV-2 virus.
13. **DMAVA** refers to the agency responsible for the Veterans Homes. At the date of this Consent Decree’s submission, the agency responsible for the Veterans Home is New Jersey’s Department of Military and Veterans Affairs including, but not limited to, the Division of Veterans Healthcare Services personnel and other agency employees, primarily located in the agency’s central office in Lawrenceville, New Jersey, with responsibility over the Veterans Homes.

14. **DOJ or the Department** refers to the United States Department of Justice, the Civil Rights Division, and the U.S. Attorney's Office for the District of New Jersey, which represent the United States in this matter.
15. **Effective Date** is the date the Court enters this Consent Decree as an order of the Court.
16. **Facility or Facilities** refers to either or both Veterans Homes, and any other facility that is built to replace or supplement one or both of the Veterans Homes.
17. **Facility Assessment** refers to the facility-wide assessment of facility needs to determine what resources are necessary to care for Veterans Homes Residents during daily operations and emergencies as required by 42 CFR 783.70(e).
18. **Infection prevention and control** refers to evidenced-based practices and procedures that, when applied consistently in health care settings, can prevent or significantly reduce the risk of transmission of microorganisms to Residents, clients, patients, health care providers, and visitors.
19. **Monitor** refers to The Hibiscus Group or any person the Court appoints to serve as the monitor pursuant to Section V of this Consent Decree.
20. **Not Compliant or Non-compliance** indicates that most or all of the components of a provision of this Consent Decree are not met.
21. **Partially Compliant or Partial-compliance** indicates that the State has made tangible progress in achieving substantial compliance with key components of a provision in this Consent Decree, but significant work remains.
22. **Pressure injury or Pressure injuries**, also known as decubitus ulcers, pressure ulcers, pressure wound, pressure sores, or bedsores, refer to wounds to the skin or underlying tissue resulting from prolonged pressure on the skin.
23. **Quality Assurance and Performance Improvement (QAPI)** is a formalized quality assurance and continuous quality improvement system that ensures that all clinical care and services of the Residents are of good quality, meet Residents' nursing and medical needs, ensure Resident safety, and ensure that appropriate services are available and accessible. A quality assurance and performance improvement system includes the determination of policies and procedures regarding quality management, and the creation and implementation of quality planning and assurance, and quality control and quality improvement activities.
24. **Resident or Residents** refers to one or more individuals who reside at the Veterans Homes.
25. **Vascular wounds** refer to wounds to the skin or underlying tissue caused by damage to veins in the leg affecting blood circulation.
26. **State** refers to the State of New Jersey.

27. **Substantial compliance** means the State has met or achieved all or effectively all the components of a particular provision of this Consent Decree.
28. **Veterans Home** or **Veterans Homes** refers collectively to the Veterans Memorial Homes at Menlo Park and Paramus, or to either individual Facility, and any other facility that is built to replace or supplement either or both Facilities.
29. **Veteran Homes Management** refers to the leadership of both facilities, including but not limited to the CEO, the Assistant CEOs, the Director of Nursing, the Assistant Directors of Nursing, the Medical Director, and other personnel who oversee clinical care on a facility-wide basis.

### III. SUBSTANTIVE REMEDIAL MEASURES

#### A. General Medical and Nursing Care

30. The Veterans Homes shall provide their residents with appropriate clinical care including, but not limited to, the medical and nursing care standards specifically set forth in this Consent Decree.
31. The Veterans Homes shall ensure that all contractors and outside providers who provide clinical care within the Veterans Homes to Residents provide Residents with appropriate medical and nursing care including, but not limited to, the medical and nursing care standards specifically set forth in this Consent Decree.
32. The Veterans Homes shall provide to Veterans Homes Residents appropriate specialized medical, nursing, and other clinical services, including but not limited to, Pressure injury care, Vascular wound care, occupational therapy, and physical therapy.
33. The Veterans Homes Residents shall be appropriately assessed, diagnosed, treated, monitored, and reassessed. This process shall be documented in a manner to withstand clinical scrutiny and provide a basis for quality assurance and performance improvement. The State will make available such documentation to the Agreement Coordinator, the Monitor, and the Department with appropriate safeguards to protect confidentiality while enabling the unimpeded review of records and information.
34. DMAVA and the Veterans Homes shall establish and implement uniform clinical care policies and procedures to ensure the consistent provision of appropriate nursing and medical care.
35. The State and the Agreement Coordinator shall review the Veterans Homes and DMAVA's existing policies to ensure they conform to the requirements of this Consent Decree. The State shall update policies as needed, with review and input by pertinent staff members; the Agreement Coordinator shall review and have input into the approval of all new policies, and any amendments to existing policies.

36. The Veterans Homes shall conduct, and both the Agreement Coordinator and the Monitor shall review, a Facility Assessment at least annually, as well as whenever there is any change to the services provided that would require a substantial modification to any part of the assessment. The Facility Assessment shall adhere to the requirements set forth in 42 CFR 483.70(e) and shall, among other regulatory requirements, address the needs of the Resident population, resident care required, staff competencies, and services provided, such as physical therapy and restorative care.
37. The Veterans Homes shall implement and maintain appropriate electronic resident medical and clinical care records in an organized, readily accessible manner.
38. Resident assessments shall be conducted by staff who have the skills and qualifications to assess relevant care areas and who are knowledgeable about the Resident's status, needs, strengths and areas of decline.

#### **B. Changes in Condition**

39. The Veterans Homes shall appropriately monitor their Residents for acute changes in condition.
40. To identify changes in condition, nurses shall:
  - a. Perform comprehensive nursing assessments routinely and as necessitated by a change in Resident condition;
  - b. Identify acute health conditions or problems;
  - c. Timely communicate with relevant clinical staff regarding health conditions or problems and changes in health status (including across and within nursing shifts);
  - d. Plan, implement, and evaluate the effectiveness of nursing care; and
  - e. Keep necessary records of Residents' health care status and plan of care, sufficient to readily identify changes in condition and Residents' response to treatment.
41. Nurses shall routinely assess Residents at heightened risk of infection, including but not limited to COVID, for material changes in presenting symptoms or changing conditions indicative of possible or worsening infection. When a particular infection is suspected to be present in the Veterans Homes, nurses shall note and report to infection control and other necessary staff any symptom, regardless of how minor, of that infection, even if a test for that infection is negative or inconclusive.
42. Nurses shall routinely assess Residents for symptoms of pain, both in response to changes in client condition when one would reasonably expect pain to result, and when other relevant staff, Residents, or visitors communicate the suspicion of Resident pain in the event the resident is not able to verbalize pain. In those circumstances, and when a Resident communicates either verbally or nonverbally that they are in pain, the nurse shall attend to and treat the Residents' pain in a timely manner, communicating with the primary care

physician or on-call provider as needed, and continue to assess and treat the Resident to ensure the pain is effectively managed.

### **C. Resident Care Plans**

43. The Veterans Homes shall create and maintain appropriate, functional, coherent, person-centered, and individualized care plans for each Resident. Each care plan will:
  - a. Describe the medical, nursing, and psychosocial needs of each individual Resident;
  - b. Contain individualized and aligned interventions to address the specific medical, nursing, and psychosocial needs of each individual Resident; and
  - c. Set forth time frames for meeting those needs to ensure that each Resident attains or maintains the highest practicable physical, mental, and psychosocial well-being given the Resident's circumstances.
44. Each care plan will contain assessments sufficient to address the requirements described in Paragraph 45.
45. Each care plan will, at a minimum, address:
  - a. Medically defined conditions and prior history;
  - b. Risk of infection;
  - c. Physical and mental functional status, including risk of falls;
  - d. Sensory and physical impairments;
  - e. Nutritional status;
  - f. Psychosocial wellbeing;
  - g. Interest in discharge and discharge plans;
  - h. Activities potential;
  - i. Cognitive status; and
  - j. Medications.
46. Within twenty-four hours of a material change in health status or an incident presenting or indicating a significant health risk, and on an as-needed basis thereafter, the Veterans Homes will conduct a nursing assessment and will revise the Kardex (the documentation system used by DMAVA to track key Resident information) and twenty-four-hour report, and within two business days the Resident care plans, with individualized interventions based on the nursing assessment that respond to the root cause of the change in health status or health risk.

47. Care plans will be readily available to the staff and, during shift changes, updates will be noted to all staff (including but not limited to nurses, CNAs, and restorative and physical therapy staff) responsible for care plan implementation.
48. Care plans will be written and organized in a manner that is readily understandable and accessible to the staff responsible for implementing them.

#### **D. Vascular Wounds and Pressure Injuries**

49. The Veterans Homes shall provide their Residents with appropriate medical and nursing care of vascular wounds and pressure injuries, including but not limited to:
  - a. Ensuring that Residents maintain or attain maximum skin integrity;
  - b. Providing appropriate oversight of any third-party contractors or providers who provide pressure injury or vascular wound care;
  - c. Ensuring that all clinical staff responsible for Resident care are competent in pressure injury and vascular wound prevention and identification;
  - d. Ensuring that at least one clinical staff member on each unit during each shift:
    - i. Can perform wound assessments addressing all relevant characteristics of the vascular wound or pressure injury, including:
      1. Location;
      2. Size (length, width, and depth);
      3. Wound type (e.g., pressure ulcer, vascular ulcer, trauma, or surgical)
      4. Tunneling/undermining;
      5. Surrounding tissue (e.g., light pink, deep red, purple, etc.)
      6. Wound base, including granulation, necrotic/eschar tissue, slough, epithelial;
      7. Drainage, including amount, color/consistency, and odor;
      8. Pain; and
      9. Presence or absence of change in the wound condition.
    - ii. Provides an appropriate assessment of any new, worsening, or potentially worsening pressure injuries or vascular wounds to the attending physician or wound care specialist using an appropriate clinical tool or checklist so that the physician or wound care specialist may order all necessary interventions by the end of the shift when the new, worsening, or potentially worsening pressure injury or vascular wound is discovered, including any necessary palliative care.

- e. Ensuring that the attending physician or wound care specialist has assessed in person and staged any new, worsening, or potentially worsening pressure injuries or vascular wounds the next business day following discovery or within seventy-two (72) hours, whichever is earlier;
- f. Ensuring that each Veterans Home's medical director generally coordinates and oversees the Veterans Homes' wound programs; that the medical director and director of nursing are familiar with the facilities' wound programs, statistics, and trends; and that the medical director and director of nursing respond appropriately to wound trends;
- g. Ensuring that Residents with pressure injuries are positioned and repositioned appropriately;
- h. Identifying upon admission and on an ongoing basis thereafter Residents at risk of pressure injury and implementing care plans responsive to such risks;
- i. Ensuring that interventions and preventative measures for wound healing are documented, appropriate, monitored, evaluated, and modified as necessary;
- j. Ensuring that each Resident receives a thorough skin assessment promptly on admission, and that Residents who have limited ability to reposition their body, weight loss, nutritional compromise, incontinence, health conditions limiting blood flow, or other conditions creating a heightened risk for pressure injuries receive a thorough skin check weekly, and more often as warranted by the individual's condition;
- k. Ensuring that, in the course of ongoing care for and interactions with the Resident, Veterans Homes staff routinely monitor and assess skin integrity and identify and report early signs of pressure injury;
- l. Ensuring that Residents receiving debridement or other potentially painful wound treatments receive appropriate pain management care; and
- m. Ensuring that a facility-wide system tracks pressure injuries and vascular wounds and contains accurate and timely wound statistics.

**E. Medication Administration**

50. The Veterans Homes shall administer medications to their Residents in a manner that is appropriate by:
- a. Ensuring the safe dispensation and administration of medications by sufficiently trained and competent staff;
  - b. Establishing and implementing a system to accurately track variances in the administration of medications;



- c. Ensuring that Residents receive their medications and treatments as prescribed, including but not limited to receiving the correct dosage within the correct time frame;
- d. Ensuring accurate, effective, and timely documentation, reporting, investigation, analyses of averted and actual medication variances, and appropriate remedial action;
- e. Establishing and maintaining a Medication Variance Committee to review averted and actual medication variances. The Committee shall include at least one staff member from the Home's QAPI Committee and a nurse involved in day-to-day medication administration (i.e., passes medications). All Committee members shall have received training in quality assurance and performance improvement;
- f. Ensuring that the Medication Variance Committee addresses averted and actual medication variances using a continuous quality improvement model;
- g. Monitoring all medications for efficacy, side effects and continued appropriateness; and modify medication usage as monitoring warrants; and
- h. Ensuring that the Veterans Homes' pharmacist, pharmacy consultant, and physicians communicate directly and regularly regarding the suitability of medications used, alone or in combination, on facility Residents, and regarding developments in medications.

**F. Falls**

51. The Veterans Homes shall create, implement, and maintain appropriate measures to prevent Resident falls by:
- a. Assessing Residents upon admission, quarterly, and as needed (e.g., when a fall occurs) using a standardized risk assessment tool, for fall risks.
  - b. Developing and implementing, on a timely basis, the use of appropriate, individualized interventions, incorporated into the Resident's care plan, for Residents at risk of falls and in response to fall incidents;
  - c. Ensuring that interventions in response to fall incidents address the root cause of the fall to minimize their future occurrence;
  - d. Providing Residents with appropriate supervision and monitoring to prevent accidents and falls;
  - e. Ensuring that Residents receive appropriate assistive devices to prevent accidents and falls;
  - f. Using appropriate safety devices to help prevent accidents and falls;

- g. Ensuring that Resident rooms and common areas remain as free of accident hazards as possible;
- h. Assessing fall-related trends on a Resident, unit, and facility-wide basis; and
- i. Identifying and implementing appropriate corrective actions to minimize fall risks.

**G. Oversight and Management of Medical Care**

- 52. The State shall ensure consistent, appropriate, and competent supervision and management of clinical services by individuals with appropriate training and credentials.
- 53. The State shall retain well-qualified, licensed, and credentialed medical director(s) who shall be responsible for maintaining a consistent level of appropriate medical care throughout the Veterans Homes.
- 54. DMAVA and Veterans Homes Management will create a system of sufficient oversight to ensure that each facility's medical director:
  - a. Dedicates sufficient time to the facility, including time on site, to provide adequate oversight and management of medical care at the facility;
  - b. Performs and documents chart reviews and quality assurance reviews, as indicated, of medical documentation, including trends in Residents' care needs and health outcomes, and in the facility's clinical services;
  - c. Performs an oversight role in staff education regarding critical issues such as infection control and prevention, pressure injuries, medication administration, and general nursing care, including the annual review of educational plans and goals, and participation in training materials when the medical director's expertise is needed;
  - d. Identifies and communicates appropriate performance expectations for other physicians and health care practitioners and monitors their performance; and
  - e. Performs and documents peer review over other medical providers and is subject to external peer review when providing direct care, at least every six months.

**H. Infection Prevention, Detection, and Control**

- 55. The Veterans Homes shall create, implement, and maintain appropriate infection prevention, detection, and control practices including the maintenance of written infection control policies that are consistent with applicable federal and state guidelines.
- 56. The Veterans Homes shall create, implement, and maintain an appropriate infection control program by:

- a. Assigning one or more individuals with training in infection prevention and control to provide full-time, on-site management of the infection prevention and control program;
  - b. Ensuring the proper use, handling, and implementation of personal protective equipment;
  - c. Creating, implementing, and maintaining adequate infectious disease testing protocols;
  - d. Creating, implementing, and maintaining an adequate protocol to isolate as indicated by applicable policies and guidelines Residents who have not tested positive but are symptomatic of COVID or another infectious disease;
  - e. Creating and maintaining space in each facility to isolate as indicated by applicable policies and guidelines and care for Residents with communicable infections, and a space to isolate and care for Residents who have symptoms of such diseases or been in close contact with someone known to be infected by such diseases;
  - f. Requiring healthcare personnel to perform hand hygiene in accordance with the Centers for Disease Control and Prevention recommendations;
  - g. Ensuring proper cleaning and disinfecting of the facility consistent with prevailing industry guidelines, including guidance issued by applicable public health regulators; and
  - h. Developing and rehearsing the activation of a robust outbreak response plan.
57. The Veterans Homes shall create, implement, and maintain a reliable system to ensure competency and compliance with infection prevention, detection, and control practices by staff, volunteers, and third-party contractors.

#### **I. Clinical Care Policies, Procedures, and Training**

58. DMAVA shall implement an appropriate system of oversight and accountability mechanisms within the Veterans Homes and at DMAVA sufficient to ensure that policies and practices are reliably implemented, and that staff are properly trained and supported to complete assigned responsibilities in a consistent and competent manner.
59. DMAVA shall ensure that the Veterans Homes establish and maintain systems to communicate new policies and procedures, as well as policy or procedure updates and revisions, to all staff members in a manner that ensures staff understanding.
60. Clinical staff shall receive competency-based training suitable for their position, credentials, competence, and expertise throughout their period of employment, including but not limited to timely, pertinent, and comprehensive competency-based training of all Veterans Homes staff members, contractors, and volunteers in infection prevention, detection, and control practices consistent with the written infection control policies and

suitable to the staff member, contractor, or volunteer's responsibilities and duties within the Veterans Homes.

61. Clinical staff shall demonstrate the necessary competence and expertise throughout their period of employment.

**J. Quality Assurance and Performance Improvement (QAPI)**

62. The State shall effectively identify the need for, and shall direct and monitor the implementation and effectiveness of, necessary corrective actions and performance improvement initiatives at the Veterans Homes.
63. The State shall ensure that DMAVA and the Veterans Homes develop and implement appropriate and reliable QAPI processes and procedures. Such processes shall timely and effectively detect problems with the provision of protections, services and supports; track trends regarding Resident care and health outcomes; and ensure necessary corrective steps are implemented. Specifically, the Veterans Homes shall establish and maintain a QAPI program that:
  - a. Actively collects data relating to the quality of clinical services;
  - b. Assesses these data for trends;
  - c. Initiates inquiries regarding problematic trends and possible deficiencies;
  - d. Identifies corrective action; and
  - e. Monitors to ensure that necessary remedies are achieved.
64. The State shall ensure that DMAVA and the Veterans Homes develop effective methods of gathering and incorporating feedback from direct care and clinical care staff so that input is received and the interdisciplinary team remains able to timely respond.
65. The State shall maintain a QAPI program that effectively collects and evaluates valid and reliable data sufficient to implement an effective continuous quality improvement cycle as set forth below. The QAPI program shall use this data in a continuous quality improvement cycle to:
  - a. Produce routine, valid and reliable reporting on the defined measures and related trends;
  - b. Identify significant trends, patterns, strengths, and problems at the individual and systemic levels;
  - c. Develop triggers for negative outcomes;
  - d. Implement preventative, corrective, and improvement actions to address identified trends, patterns, strengths, and problems; and

- e. Track the effectiveness of preventative, corrective, and improvement actions, and adjust such actions as needed if they do not result in expected prevention, correction, or improvement.
66. The QAPI program shall collect, report on, and analyze valid and reliable data sufficient to identify overall trends for Veterans Homes Residents. Through the QAPI program, the Veterans Homes and DMAVA shall track, with sufficient particularity, clinical outcomes, including, but not limited to:
- a. Falls;
  - b. Pressure injuries and Vascular wounds;
  - c. Medication administration and management;
  - d. Weight loss;
  - e. Facility-acquired infections, including but not limited to COVID;
  - f. Significant changes in physical and mental health status as identified by an examination of available data sources, such as the twenty-four-hour report, nursing assessments, or the SBARA Communication Form;
  - g. Emergency room admissions;
  - h. Occurrences of pneumonia;
  - i. Receipt of timely preventative, chronic, and acute healthcare interventions as identified by audits of available data sources, such as comprehensive care plans, the Kardex, activities of daily living (ADL) records, the Minimum Data Sets (MDS), or nursing assessments; and
  - j. Safety and freedom from harm (including neglect and abuse, exploitation, injuries, critical incidents, and deaths; timely reporting, investigation, and resolution of incidents, including incidents that resulted in deaths).
67. The QAPI program shall be coordinated by a quality improvement director with demonstrated competency overseeing quality management processes and shall include a Quality Improvement Committee, composed, at least, of the quality improvement director, medical director, director of nursing, nurse educator, infection control nurse, staff member tasked with overseeing the fall reduction program, wound coordinator, and other staff with managerial responsibility related to quality improvement issues. The Quality Improvement Committee in each Veterans Home shall utilize the data and information collected as set forth in this Section to track and trend measures and triggers regarding Resident outcomes, and to effectively identify, assess, and adequately respond to positive and negative outcomes at the individual and systemic levels.
68. The State will ensure that the Veterans Homes staff documents clinical care in a manner sufficient to withstand clinical scrutiny, provide a basis for quality assurance and

performance improvement, and permit review by the Monitor. The Veterans Homes will maintain all data underlying its QAPI process for the duration of this Consent Decree in a manner that is valid, reliable, and reasonably accessible to the Monitor and to the Agreement Coordinator.

69. DMAVA and Veterans Homes Management will receive and review routine, valid and reliable QAPI reporting on the clinical outcomes tracked pursuant to Paragraph 66, and related trends; notification of complaints regarding Resident well-being and staff relations, and related trends; and other relevant reporting regarding the Veterans Homes Residents.
70. DMAVA shall routinely monitor the quality and effectiveness of the QAPI program at each Veterans Home and take action to improve the QAPI program when necessary.
71. The Veterans Homes will provide comprehensive training and education for all entities responsible for implementing corrective action.
72. The Veterans Homes will monitor and document corrective action plans to ensure that they are implemented fully and in a timely manner to meet the desired outcome.
73. The Veterans Homes will modify corrective actions as necessary to ensure their effectiveness.

#### **K. Emergency Operations and Preparedness**

74. The Veterans Homes shall create, maintain, and update a comprehensive Emergency Preparedness Program that is designed to shift operations in the event of an emergency, such as disasters and public health emergencies, to meet the health, safety, and security needs of Residents and staff, to communicate effectively to staff, Residents, and family members, and to appropriately ensure the continuity of Veterans Homes operations in accordance with applicable regulations.
75. As part of the Emergency Preparedness Program, the Veterans Homes shall create, maintain, and update a comprehensive Emergency Plan, which sets forth written procedures for each facility to continue operations and provide essential services during disasters, public health emergencies, and other emergencies.
76. The Emergency Plan will ensure that the Veterans Homes are able to meet the clinical and psychosocial needs of their Residents during disasters and emergency situations, including but not limited to public health emergencies.
77. The Emergency Plan shall contain procedures for communicating with Residents, staff members, and Resident family members in a manner assuring that a family member with legal authority over a Resident's care has sufficient information to act in the Resident's best interest.
78. The Emergency Plan will contain a plan to maintain sufficient clinical staff to ensure Resident safety during an emergency, including but not limited to contingency procedures

for additional staff members and a process for shifting staff duties within the facility when necessary.

79. DMAVA shall routinely, meaning at least once each year and more frequently as needed, review and update the Veterans Homes' Emergency Plans in accordance with applicable federal and state laws and guidelines.
80. DMAVA shall ensure that Veterans Homes Management are familiar with the requirements and provisions of the Emergency Preparedness Program and that staff are trained on the program in a manner suitable to their position at least annually, including but not limited to regular practice exercises.

#### **L. Staffing**

81. DMAVA shall employ suitable numbers of clinical staff with adequate, competency-based training, credentials, competence, and expertise to provide appropriate clinical services to a reasonable caseload of Veterans Homes Residents.
82. The Veterans Homes shall ensure that they:
  - a. Assign sufficient clinical staff, meaning staff providing direct care, to address patient acuity, to satisfy regulatory staffing requirements, and ensure Resident safety, during each shift.
  - b. Assign demonstrably competent, appropriately trained and credentialed, supervisory staff and facility leadership in sufficient numbers to ensure Resident safety and well-being and to comply with the mandates of this Consent Decree, Veterans Homes and DMAVA policies and procedures, and the provision of appropriate care;
  - c. Adequately allocate staff responsibilities and workloads, and assure that staff assigned to specialized duties and responsibilities, such as restorative care, are not regularly reassigned to provide direct clinical care instead; and
  - d. Maintain an emergency staffing plan that permits the Veterans Homes to maintain Resident safety during emergencies.

#### **M. Organizational Accountability**

83. The State shall establish reliable measures to evaluate DMAVA and the Veterans Homes' organizational accountability for Resident well-being, and shall ensure regular reporting, analysis and, when necessary, corrective actions by DMAVA and the Veterans Homes.
84. Within sixty (60) days of the Effective Date, the State shall define the role and responsibility of an administrative position in DMAVA, the Agreement Coordinator. The Agreement Coordinator will have authority to coordinate with the Monitor regarding all aspects of Veterans Homes, including policy development and implementation, program design, personnel actions, and quality assurance and performance improvement, and shall

be supported by staff members with the competence and resources to conduct this oversight function.

85. The parties agree that the role of Agreement Coordinator shall be filled by DMAVA Deputy Commissioner of Veterans Affairs Vincent Solomeno. In the event Mr. Solomeno is no longer able to fill that role, and during any subsequent transitions, the State shall, within ten (10) days of the Agreement Coordinator's departure, submit to the United States the replacement for the role of Agreement Coordinator for the United States' review and input. The State will consider in good faith any comments from the United States concerning the State's choice of Agreement Coordinator. If the Parties agree on the State's selection, the State will submit the name of the new Agreement Coordinator to the Court and note the United States' non-objection. If the Parties are unable to agree on an Agreement Coordinator, the State will submit its proposed replacement to the Court and the United States will submit its objection. The Court will then accept or reject the State's replacement for Agreement Coordinator.
86. The State shall conduct the oversight necessary to ensure compliance with each provision of this Consent Decree and with DMAVA and Veterans Homes' policies. Specifically, the State, through DMAVA and the Agreement Coordinator, shall supervise and monitor Veterans Homes clinical care, services, staff, and Residents; ensure full and accurate reporting of relevant trends and concerns; and ensure the identification and resolution of necessary corrective actions. The Agreement Coordinator shall be ultimately responsible for ensuring that the Veterans Homes accurately collect data on clinical care outcomes on a consistent basis for purposes of coordinating implementation of the Consent Decree, and for regularly receiving and reviewing that data.
87. Early on and throughout the planning and implementation process, the State shall engage with stakeholders (including staff, Residents, guardians and family members, veterans groups, and other stakeholders) to identify their goals, concerns, and recommendations regarding implementation of this Consent Decree. This shall include establishing mechanisms for regularly sharing with, and receiving information from, these stakeholders.
88. The Agreement Coordinator will conduct regular, in-person visits to the Veterans Homes to engage with the Residents, including members of the Residents Council as described in Paragraph 93, guardians, family members, and staff at various levels within the organization, with the goal of establishing multiple points of contact and sources of information.
89. The State shall designate three Compliance Officers, one at each facility and another at DMAVA, who will be responsible for the implementation and enforcement of an effective compliance program at the individual Veterans Homes and at DMAVA. Among other initiatives, this compliance program shall include: (i) overseeing the implementation of written policies, procedures, and other applicable requirements and standards of conduct (collectively, the "Standards"); (ii) ensuring completion of regular and effective training and education on Standards; (iii) conducting internal monitoring and auditing on adherence



to Standards; (iv) receiving input from staff regarding adherence to Standards; and (v) identifying deficiencies in adherence to Standards, or in the Standards themselves, and ensuring the development and implementation of corrective action.

90. The State shall develop and communicate to staff effective reporting policies and procedures, including at least one anonymous mechanism, that enable staff to report concerns without retaliation.
91. The State shall timely and effectively review, and investigate if warranted, all concerns reported through established complaint and grievance channels that relate to Resident care and safety. The results of the investigations shall be provided to the Agreement Coordinator, the Director of Veterans Healthcare Services, and the Commissioner of DMAVA.
92. The State shall ensure that any adverse employment actions for any Veterans Homes employee is taken in accordance with all written policies, including any progressive discipline policy, and not for any improper purpose, such as retaliation for cooperating with the DOJ's investigation, the Monitor, or any other overseer. If a Veterans Homes employee maintains that he or she was the subject of an unlawful or improper adverse employment action, he or she shall be able to avail himself or herself of all applicable protections under any state or federal law. The Monitor shall not have the authority to decide any such grievances alleged by a Veterans Homes employee but may report to the Court the status of the State's compliance with any provision of this Consent Decree, including those that relate to employment actions taken by DMAVA or the State.
93. The State shall maintain a Resident Council in each Veterans Home to enable Residents to make recommendations and provide information to the CEO of the Veterans Home, the Agreement Coordinator, and the Director of Veterans Healthcare services regarding any topic the Council chooses to elevate. The Agreement Coordinator will meet quarterly with a representative of the Residents Council in each facility. The State shall keep minutes of the Resident Council and provide those minutes to the Quality Improvement Committee for the identification of necessary action steps.
94. DMAVA shall publish the Monitor's reports on its website.

#### **IV. IMPLEMENTATION**

95. The Agreement Coordinator will serve as a point of contact for the Parties and the Monitor.
96. The State shall create an annual Implementation Plan that describes the actions it will take to fulfill its obligations under this Consent Decree. Implementation of this Consent Decree shall be completed in phases as outlined in the Consent Decree and the Implementation Plan. Within 90 days of the Effective Date, the State shall provide the first Implementation Plan ("Implementation Plan #1") to the United States and the Monitor.
97. In its Implementation Plan, the State shall: (1) identify the issues to be addressed that year, and, for each issue: the planned actions; the persons or positions responsible; the resources

needed; the target completion date; a completion status measure; how the QAPI process will account for the issue in the future, and the expected outcome; (2) a general forecast of issues to be addressed in successive years; and (3) beginning with Implementation Plan #2, an assessment of what worked and what in the previous plan's implementation should be adjusted.

98. In Implementation Plan #1, the State shall address at least all such matters that, pursuant to paragraph 137, are to be achieved within one year of the Effective Date.
99. The United States and the Monitor shall have an opportunity to review and comment on each annual Implementation Plan before it is finalized. The United States and the Monitor may provide comments regarding the Implementation Plan (and any further Implementation Plans) within 30 days of receipt. The State shall timely revise its Implementation Plans as appropriate to address comments from the United States and the Monitor.
100. The Parties and the Monitor shall meet and consult at least monthly during the first year of this Consent Decree and at least quarterly thereafter.
101. Annually, the State, in conjunction with the United States and the Monitor, shall supplement the Implementation Plan to focus on and provide additional detail regarding implementation activities. The State shall address in its further Implementation Plans any areas of non-compliance or other recommendations identified by the Monitor in his or her reports.

## **V. MONITOR**

102. The Parties agree that The Hibiscus Group shall serve as the Monitor retained by the State to assess and report whether the provisions of the Consent Decree have been implemented.
103. Within thirty (30) days of the entry of this Consent Decree, the Parties and the Monitor will agree to a budget, invoicing, and payment schedule sufficient to allow the Monitor to carry out the responsibilities described in this Decree.
104. The Monitor shall review the protections, services, programs, and supports provided to the Residents of the Veterans Homes to determine the implementation and compliance with this Decree.
105. The Monitor may make both announced and unannounced inspections of the facilities.
106. The Monitor will have full access to persons, employees, facilities, buildings, programs, services, documents, data, records, materials, and things that are necessary to assess the Veterans Homes' progress and implementation efforts with this Consent Decree. Access will include departmental or individual medical and other records. Access will not include privileged materials, such as communications protected by the attorney-client privilege. The State shall conduct reasonable screening to ensure that privileged materials are not inadvertently provided to the Monitor.

107. The State, DMAVA, and the Veterans Homes shall direct all employees to cooperate fully with the Monitor. The Monitor shall address written communications and requests for written documentation to counsel for the Parties.
108. The Monitor will be appointed for a period of three years from the Effective Date, subject to an evaluation by the Court to determine whether to extend the Monitor's appointment until the termination of this Consent Decree as set forth below. In evaluating the Monitor, the Court will consider the Monitor's performance under this Consent Decree, including whether the Monitor is completing its work in a cost-effective manner and on budget, and is working effectively with the Parties to facilitate the State's efforts to comply with the Consent Decree's terms. The Monitor may be removed for good cause by the Court at any time, on motion by any of the Parties which shall be granted for good cause shown, or the Court's own determination.
109. The Monitor will only have the duties, responsibilities, and authority conferred by this Consent Decree. The Monitor will be subject to the supervision and orders of the Court.
110. The Monitor may provide DMAVA and the Veterans Homes with technical assistance.
111. The Monitor shall review the Veterans Homes and DMAVA's existing processes for creating and updating written policies and procedures to ensure that those policies and procedures are created, updated, or revised based upon sufficient information and with input from appropriate staff members.
112. Neither the State, DMAVA, the Veterans Homes, DOJ, nor any of their staff or agents will have any supervisory authority over the Monitor's activities, reports, findings, or recommendations to implement the Consent Decree.
113. The Monitor may contract or consult with other persons or entities to assist in the evaluation of compliance. The Monitor will pay for the services out of their budget. The Monitor is ultimately responsible for any compliance assessments made under this Consent Decree.
114. The Monitor will be permitted to engage in ex parte communications with the State, DMAVA, the Veterans Homes, DOJ, and the Court regarding this Consent Decree.
115. In the event the Monitor is no longer able to perform their functions, is removed, or is not extended, within 60 days thereof, the Parties will together select and advise the Court of the selection of a replacement Monitor, acceptable to both. If the Parties are unable to agree on a Monitor, each Party will submit the names of up to two candidates, along with the resumes and cost proposals, to the Court, and the Court will select and appoint a new Monitor from among the qualified candidates.
116. Should a Party to this Consent Decree determine that the Monitor has exceeded their authority or failed to satisfactorily perform the duties required by the Consent Decree, the Party may petition the Court for such relief as the Court deems appropriate, including replacement of the Monitor, and/or any individual members, agents, employees, or

independent contractors of the Monitor. In addition, the Court, on its own initiative and in its sole discretion, may replace the Monitor or any member of the Monitor's team for failure to adequately perform the duties required by this Consent Decree.

117. All personally identifiable and other confidential information obtained by the Monitor shall be maintained in a confidential manner. Nothing in this Paragraph shall limit the access of DMAVA or the Veterans Homes to such information.
118. The Monitoring Reports shall adhere to the following requirements:
  - a. Within sixty (60) days of the Effective Date, the Monitor will conduct a baseline site visit of the Veterans Homes to become familiar with the facilities and assess the steps necessary to achieve compliance with this Consent Decree.
  - b. The Monitor will conduct an on-site inspection and issue a Monitoring Report for the Veterans Homes six months after the baseline site visit, and then every six months thereafter. A Monitoring Report will be provided to DMAVA and DOJ in draft form for comment at least 30 days prior to its issuance. DMAVA and DOJ will provide comments, if any, to the Monitor within 15 days of the draft Report. The Monitor will consider the responses of DMAVA and DOJ and make appropriate changes, if any, before issuing the final Monitoring Report.
  - c. The Monitoring Reports will describe the steps taken by the Veterans Homes, including but not limited to the State's Implementation Plans, to implement this Consent Decree and evaluate the extent to which the Veterans Homes have complied with each substantive provision of the Consent Decree, as set forth in the numbered Paragraphs herein.
  - d. Each Monitoring Report will evaluate the status of compliance for each relevant provision of the Consent Decree using the following standards: (1) Substantial Compliance; (2) Partial Compliance; or (3) Non-compliance. In making such determinations, the Monitor shall review and consider all relevant inspection result(s) from the Centers for Medicare & Medicaid Services, the New Jersey Department of Health, or any other similar governmental entity with the responsibility to oversee and inspect the Veterans Homes but will make an independent assessment of the status of compliance based on all information available to the Monitor.
119. The Monitor will review a sufficient number of medical records and QAPI data, and interview a sufficient number of staff and Residents, to accurately assess current conditions in the Veterans Homes. The provision of documents and scheduling of interviews shall be set up through the Agreement Coordinator and/or an assistant working under his direction.
120. Each Monitoring Report will describe the steps taken by each member of the monitoring team to analyze conditions and assess compliance, including documents reviewed and individuals interviewed, and the factual basis for each of the Monitor's findings.

121. Each Monitoring Report will contain the Monitor's independent verification of representations from DMAVA regarding progress toward compliance, and examination of supporting documentation.
122. Each Monitoring Report will provide specific, non-binding recommendations, if warranted, for each of the provisions in the Consent Decree outlining proposed actions for at least the next six months for DMAVA to complete toward achieving compliance with the particular provision.
123. The Monitoring Reports will be filed with the Court and will be written with due regard for the privacy interests of individual Residents and staff members and applicable regulations and statutes, including the Health Insurance Portability and Accountability Act. The Monitoring Reports will provide relevant evidence regarding compliance.
124. Nothing in this Section prohibits the Monitor from issuing interim letters or reports to DOJ, the State, DMAVA, the Veterans Homes or the Court in this case should the Monitor deem it necessary.
125. The Monitor shall adhere to the following limitations:
  - a. Except as directed by the Court, or as authorized by both the State and DOJ, acting together, the Monitor shall not make any public statements (at a press conference or otherwise) with regard to any act or omission of DMAVA, the Veterans Homes, or their agents, representatives or employees.
  - b. The Monitor shall not testify in any other litigation with regard to any act or omission of DMAVA or the Veterans Homes or any of their agents, representatives, or employees related to this Consent Decree, nor testify regarding any matter or subject that he or she may have learned as a result of his or her performance under this Consent Decree, nor serve as a non-testifying expert regarding any matter or subject that he or she may have learned as a result of his or her performance under this Consent Decree. In the absence of a valid Court order or as otherwise permitted by this Consent Decree, the Monitor shall not respond to any third-party document or information requests concerning any act or omission of DMAVA or the Veterans Homes or any of their agents, representatives, or employees related to this Consent Decree.
  - c. Unless such conflict is waived by both the State and DOJ, the Monitor shall not accept employment or provide consulting services that would present a conflict of interest with the Monitor's responsibilities under this Consent Decree, 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 DMAVA or the Veterans Homes, their departments, officers, agents or employees.
126. In the event the State or DMAVA disagrees with the Monitor over whether a particular practice, metric, or other criterion constitutes or comports with generally accepted

standards of care with which the State is required to comply to provide appropriate, evidence-based care, the Monitor shall meet with the parties in good faith and provide the basis for that standard of care thirty days prior to the State having any obligation under this Consent Decree to comply with that standard. Should the parties continue to disagree over the Monitor's determination of what constitutes the requisite standard of care, then all parties will retain their respective rights as elsewhere set forth in this agreement.

127. The Monitor and members of the monitoring team are agents of the Court and not employed by the United States, the State, or DMAVA or an agent thereof, and accordingly the records maintained by the Monitor shall not be deemed public records subject to public inspection.
128. Neither the Monitor nor any person or entity hired or otherwise retained by the Monitor to assist in furthering any provision of this Consent Decree shall be liable for any claim, lawsuit or demand arising out of the Monitor's performance pursuant to this Consent Decree, other than as specified in this Consent Decree.
129. The Monitor may convene regular conference calls with representatives of DOJ, DMAVA, and the Veterans Homes to discuss implementation of the terms of the Consent Decree, updates, and any other items that the Monitor and/or DOJ, DMAVA, or the Veterans Homes.

## **VI. ENFORCEMENT**

130. The State of New Jersey is responsible for ensuring compliance with the provisions of this Consent Decree.
131. The United States District Court for the District of New Jersey will retain jurisdiction over this matter for the purposes of enforcing this Consent Decree as an order of the Court.
132. During the period that the Consent Decree is in force, the parties will have semi-annual status conferences to update the Court on the State's compliance with this Consent Decree.
133. During the period that the Consent Decree is in force, if the United States determines that the State has not made material progress toward substantial compliance with an obligation under the Consent Decree, the United States may initiate enforcement proceedings against the State in Court for an alleged failure to fulfill its obligation under this Consent Decree.
134. Prior to taking judicial action to initiate enforcement proceedings, the United States shall give the State written notice of its intent to initiate such proceedings, and the parties will engage in good-faith discussions to resolve the dispute.
135. The State shall have thirty days from the date of such notice to cure the failure (or such additional time as is reasonable due to the nature of the issue and agreed upon by the parties) and provide the United States with sufficient proof of its cure or otherwise resolve the matter with the United States. At the end of the thirty-day period (or such additional time as is reasonable due to the nature of the issue and agreed upon by the United States), in the event that the United States determines that the failure has not been cured or that

sufficient remedial measures have not occurred, the United States will so advise the State and, if the dispute is not mutually resolved within five days, may initiate contempt proceedings without further notice. The United States commits to work in good faith with the State to avoid enforcement actions.

136. In case of an emergency posing an immediate, substantial threat to the health or safety of any Veterans Home Resident, however, the United States may omit the notice and cure requirements herein and seek enforcement of the Consent Decree.

## **VII. DURATION AND TERMINATION**

137. Except when otherwise agreed to under a specific provision of this Consent Decree, the State will have achieved:
- a. Substantial compliance with all provisions in Sections III.B (Changes in Condition), III.E (Medication Administration); III.H (Infection Prevention, Detection, and Control); III.K (Emergency Operations and Preparedness); and III.L (Staffing) of this Consent Decree within six months of the Effective Date;
  - b. Substantial compliance with all provisions in Sections III.A, Paragraphs 30-33 and 35-38 (General Medical and Nursing Care); III.C (Resident Care Plans); III.D (Vascular Wound and Pressure Injuries); III.F (Falls); III.G (Oversight and Management of Medical Care); III.I (Clinical Care Policies, Procedures, and Training); and III.J (Quality Assurance and Performance Improvement) of this Consent Decree within one year of the Effective Date; and
  - c. Substantial compliance with all provisions of this Consent Decree within two years of the Effective Date, unless an earlier date is specified above.
138. Subject to Paragraphs 139, 140, and 141, this Consent Decree shall terminate if the Parties agree and certify to the Court that the State has attained substantial compliance with all provisions and maintained that compliance for a period of one year.
139. If, five years after the Effective Date, the Parties do not certify substantial compliance, or disagree about whether the State has not attained substantial compliance with all provisions and maintained that compliance for a period of one year, the Court will schedule a hearing to determine the status of the State's compliance with this Consent Decree. At the hearing, the State may provide evidence of substantial compliance and request to be released from the decree, in whole or in part. The burden will be on the State to demonstrate that it has maintained substantial compliance with each of the provisions of this Consent Decree. The United States will have the opportunity, but is not required to, provide evidence of noncompliance.
140. If the State has not met its burden in demonstrating that it achieved substantial compliance with all provisions of this Consent Decree and maintained that compliance for a period of one year, this Consent Decree will extend, in whole or in part, for an amount of time reasonable for the State to achieve substantial compliance.

141. The State may seek termination of any substantive section of this Consent Decree by filing with the Court a motion to terminate that section. The burden will be on the State to demonstrate that it has attained and maintained its substantial compliance as to that section for at least one year, or that circumstances have made compliance with that section irrelevant.
142. Should any provision of this Consent Decree be declared or determined by any court to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions will not be affected. The Parties shall not, individually or in combination with another, seek to have any court declare or determine that any provision of this Consent Decree is invalid.
143. The Parties agree to work collaboratively to achieve the purpose of this Consent Decree. In the event of any dispute over the language, requirements or construction of this Consent Decree, the Parties agree to meet and confer in an effort to achieve a mutually agreeable resolution.
144. Any modification of this Consent Decree shall be executed in writing by the Parties, shall be filed with the Court, and shall not be effective until the Court enters a modified consent decree and retains jurisdiction to enforce it.

#### **VIII. GENERAL PROVISIONS**

145. Nothing in this Consent Decree shall be construed as limiting the New Jersey Legislature from passing, or the New Jersey Governor from signing into law, amendments to state law affecting DMAVA, the Facilities, the Veterans Homes, or Veterans Home Management, or as limiting the ability of the State to implement any such legislative amendments. In the event of any such changes to applicable New Jersey state law, the State will identify the successor agency responsible for carrying out its obligations under the Consent Decree and the DOJ and the State shall work cooperatively together to identify any impact(s) that such changes may have on the Consent Decree, addressing such issues with a goal of adhering to applicable standards of care and otherwise satisfying the spirit and intent of this Consent Decree. Should the parties disagree over any such matter concerning changes to applicable New Jersey state law in connection with this Consent Decree, the parties each retain their respective rights to petition the Court for appropriate relief.
146. Nothing in this Consent Decree shall be construed as requiring DMAVA, the Facilities, the Veterans Homes, or Veterans Home Management from taking any actions that violate applicable federal or state law concerning the operations of, or the provision of care at, long term care facilities.
147. The State shall maintain sufficient records and data to document that the requirements of this Consent Decree are being properly implemented and shall make such records available to the Monitor and the United States for inspection and copying. All requests for documents shall allow a thirty-day period for production, except where the Monitor or the United States has a reasonable belief that a Veterans Home Resident faces a risk of



immediate and serious harm. Other than to carry out the express functions as set forth herein, both the United States and the Monitor shall hold such information in strict confidence to the greatest extent possible. Nothing in this paragraph is intended, and shall not be construed, as a waiver, in litigation with third parties, of any applicable statutory or common law privilege associated with such information.

148. Interpretation of this Consent Decree shall be governed by the following rule of construction: “including” means including without limitation, unless otherwise specified.
149. The United States and the State shall each bear the cost of their own fees and expenses incurred in connection with this case.
150. The Consent Decree is binding on all successors, assignees, employees, agents, contractors, and all others working for or on behalf of the State, DMAVA, or the Veterans Homes to implement the terms of this Consent Decree.
151. This Order is enforceable only by DOJ and the State.
152. Any admission made for the purposes of this Consent Decree is not admissible if presented by third parties in another proceeding. No statement in this Consent Decree shall be intended, implied, or otherwise construed to constitute an admission of fact or law by the United States or the State of New Jersey and shall not be admissible in any other matter or proceeding involving a third party. The Parties agree that this Consent Decree does not constitute an admission by the State of New Jersey, DMAVA, or the Veterans Homes of the truth of any of the conclusions contained in the CRIPA Notice.
153. The Parties agree that, as of the Effective Date of this Consent Decree, litigation is not “reasonably foreseeable” concerning the matters described in this Consent Decree. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in this Consent Decree, the Party is no longer required to maintain such a litigation hold for this matter. Nothing in this paragraph relieves any Party of any other obligations imposed by other actions, or by other provisions of this Consent Decree, including the document creation and retention requirements described herein.
154. Consistent with all applicable federal or state employee-protection laws, the State shall not retaliate against any person because that person has filed or may file a complaint, provided assistance or information, or participated in any other manner in the United States’ investigation or the Monitor’s activities related to this Consent Decree. The State shall implement reasonable procedures to detect and prevent any acts of retaliation. The State shall timely and thoroughly investigate any allegations of retaliation in violation of this Consent Decree and take any necessary corrective actions identified through such investigations.
155. Failure by any Party to enforce this entire Consent Decree or any provision thereof with respect to any deadline or any other provision herein will not be construed as a waiver, including of its right to enforce other deadlines and provisions of this Consent Decree.

156. The Parties shall promptly notify each other of any court or administrative challenge to this Consent Decree or any portion thereof.
157. The Parties represent and acknowledge this Consent Decree is the result of extensive, thorough, and good faith negotiations. The Parties further represent and acknowledge that the terms of this Consent Decree have been voluntarily accepted, after consultation with counsel, for the purpose of making a full and final compromise and settlement of the allegations set forth in the Department of Justice’s CRIPA Notice dated September 7, 2023. Each Party to this Consent Decree represents and warrants that the person who has signed this Consent Decree on behalf of a Party is duly authorized to enter into this Consent Decree and to bind that Party to the terms and conditions of this Consent Decree.
158. This Consent Decree may be executed in counterparts, each of which will be deemed an original, and the counterparts will together constitute one and the same Consent Decree, notwithstanding that each Party is not a signatory to the original or the same counterpart.
159. The performance of this Consent Decree shall begin immediately upon the Effective Date.
160. “Notice” among the parties required by this Consent Decree shall be provided by email to the signatories below or their successors.

**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES:

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United States Attorney  
District of New Jersey

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Assistant Attorney General  
Civil Rights Division

CAROLINE SADLOWSKI  
Executive Assistant U.S. Attorney

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*s/ Susan Millenky*  
\_\_\_\_\_  
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