IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

ANTONIO LEATHERWOOD, ERIC HOWARD, JERRY SANFORD, JOHN LEVINS, MICHAEL PATRICK, and, individually and on behalf of all present and future HIV-positive inmates in the Limestone Correctional Facility in Capshaw, Alabama, Plaintiffs, v. DONAL CAMPBELL, Commissioner of the Alabama Department of Corrections, RONALD CAVANAUGH, Director of Treatment Alabama Department of Corrections, NAPHCARE, INC, healthcare provider for the Alabama Department of Corrections, JAMES FRANCIS DELONG, Medical Director of NaphCare, Inc., BILLY MITCHEM, Warden of Limestone Correctional Facility, DAVID WISE, Deputy Warden, Defendants.	CIVIL ACTION No. CV-02-BE-2812-W CLASS ACTION

SECOND AMENDED COMPLAINT

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I. INTRODUCTION

1. In this civil rights action, plaintiffs consist of a class of HIV-positive male inmates, who are now or will be incarcerated in the future at Limestone Correctional Facility ("Limestone") in Capshaw, Alabama. Plaintiffs challenge the inhumane and unconstitutional medical treatment and inhumane living conditions. Due to inadequate medical treatment and deplorable living conditions, the Limestone HIV-positive inmates are exposed and are more susceptible to various illnesses and infections. These illnesses and infections cause needless pain and suffering. Indeed, these illnesses and infections are potentially life threatening to an HIV-positive person.

2. The Defendants - the Commissioner of the Alabama Department of Corrections, the Director of Treatment for the Alabama Department of Corrections, the Limestone Security and Medical Staff, and NaphCare, Inc. - have demonstrated deliberate indifference toward the medical care of HIV-positive inmates at Limestone. In fact, the Defendants have failed to provide even a minimal level of acceptable medical treatment and living conditions that would limit exposure to serious illnesses and infections, including: (1) failing to provide a safe medical and living environment which has fostered a disproportionate number of deaths; (2) failing to adequately document the causes of deaths among the HIV-positive inmate population; (3) failing to provide adequate medical treatment in chronic care situations; (4) failing to properly dispense medication; (5) failing to provide a competent nursing staff that monitors and can provide a prompt response to address and treat HIV-related emergencies; and (6) failing to provide a

reasonably safe and healthy living environment for HIV-positive inmates.[1]

3. Since the filing of the original complaint, Roger Childers, Jacqueline Moore and Larry Mendel -- representing a private company called Moore and Associates -- conducted an audit addressing the HIV/AIDS medical treatment at Limestone. Pursuant to the contract between the Alabama Department of Corrections and NaphCare, Inc., the audit assessed the performance of NaphCare. *See* Attachment 1, § 7.6, pg. 51. ("To evaluate and assess that all standards are being met and that Contractor is in full compliance with the contract, DOC may employ, at its own expense, the services of a Contract Monitor.") Consistent with the Department of Corrections and NaphCare contract, Moore and Associates act under the auspices of and are "accountable" to the Alabama Department of Corrections. Id. Therefore, Moore and Associates acts independently of NaphCare. *See* Attachment 1, § 7.6(I); pg. 52. ("Contract Monitor shall operate independently of Contractor and shall be directly accountable to DOC.") Upon completion of the audit, Moore and Mendel issued a written audit evaluating NaphCare's provision of medical treatment to HIV-positive inmates at Limestone. The audit report confirmed the factual allegations expressed in the initial complaint and concluded that: "The failure, or perceived failure to provide access to sufficient care for this population will invite further controversy and potential litigation." *See* Attachment 2, Audit Report II, pg. 3.

4. The denial of adequate medical treatment and adequate living conditions violates the rights of Limestone HIV-positive inmates under the Eighth and Fourteenth Amendments to the United States Constitution. On behalf of themselves and all other HIV-positive inmates confined

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[1]All HIV-positive male inmates confined in the Alabama Department of Corrections, have been segregated to Dorm 16, specified cells in Dorm 7, and specific areas of the Health Care Unit at Limestone.

to Limestone in the future, the Plaintiffs seek preliminary and permanent injunctive relief and declaratory relief.

II. JURISDICTION

5. This Court has jurisdiction over plaintiffs' claims pursuant to 28 U.S.C. §1331 and §1343(a)(3), and the United States Constitution.

6. This court is authorized to grant declaratory and injunctive relief under 28 U.S.C. § 2201 and § 2202.

III. VENUE

7. The Northern District of Alabama is an appropriate venue for this action under 28 U.S.C. § 1391(b)(1) because the defendants in their official capacity reside in the district. The Northern District of Alabama is also an appropriate venue under 28 U.S.C. § 1391(b)(2) because the events giving rise to plaintiffs' claims have occurred and are occurring in the District.

IV. PARTIES

A. Plaintiffs

8. Plaintiff Antonio Leatherwood is HIV-positive. Currently, Leatherwood is incarcerated at Limestone. During his incarceration at Limestone, Leatherwood has not received adequate medical treatment and has been denied adequate living conditions.

9. Plaintiff Eric Howard is HIV-positive. Currently, Howard is incarcerated at Limestone. During his incarceration at Limestone, Howard has not received adequate medical treatment and has been denied adequate living conditions.

10. Plaintiff Jerry Sanford is HIV-positive. Currently, Sanford is incarcerated at Limestone. During his incarceration at Limestone, Sanford has not received adequate medical

treatment and has been denied adequate living conditions.

11. Plaintiff John Levins is HIV-positive. Currently, Levins is incarcerated at Limestone. During his incarceration at Limestone, Levins has not received adequate medical treatment and has been denied adequate living conditions.

12. Plaintiff Michael Patrick is HIV-positive. Currently, Patrick is incarcerated at Limestone. During his incarceration at Limestone, Patrick has not received adequate medical treatment and has been denied adequate living conditions.

B. Defendants

13. Defendant Donal Campbell is the Commissioner of the Alabama Department of Corrections. As Commissioner, Campbell is responsible for the daily functioning and administration of the entire Alabama Department of Corrections. Campbell is being sued in his official capacity as the Commissioner of the Alabama Department of Corrections.

14. Defendant Ronald Cavanaugh is the Director of Treatment for the Alabama Department of Corrections. As Director of Treatment, Cavanaugh is responsible for administering health and safety inspections of correctional facilities in the Alabama Department of Corrections and addressing health and safety issues that arise in the Department of Corrections. Cavanaugh is being sued in his official capacity as Director of Treatment for the Alabama Department of Corrections.

15. Defendant NaphCare, Inc. is a private company. NaphCare, Inc. has contracted with the State of Alabama to provide all necessary medical and mental health care services for all persons incarcerated in the Alabama Department of Corrections.

16. Defendant James Francis DeLong is the Medical Director for NaphCare, Inc. As

Medical Director of NaphCare, Inc., DeLong is responsible for establishing medical procedures and policies for NaphCare, ensuring the quality of the services provided by NaphCare and its employees, and overseeing the day-to-day administration of NaphCare.

17. Defendant Billy Mitchem is the Warden of Limestone Correctional Facility. As Warden, Mitchem is responsible for the daily operations of the Limestone Correctional Facility. Mitchem is also responsible for establishing policies and procedures and ensuring that the Limestone correctional staff adheres to such policies and procedures. Mitchem is being sued in his official capacity as Warden of Limestone Correctional Facility.

18. Defendant David Wise is the Deputy Warden of Limestone Correctional Facility. As Deputy Warden, Wise is responsible for the daily operations of Limestone Correctional Facility. Wise is being sued in his official capacity as Deputy Warden of Limestone Correctional Facility.

19. Since the filing of the original complaint, Plaintiff's medical expert has toured Limestone and reviewed numerous HIV-positive inmate medical files. Through this process, Collette Simon -- the Medical Director at the Limestone Correctional Facility -- has been deemed a well-qualified physician for the treatment of HIV-positive and AIDS patients. This determination was later confirmed in Audit Report II of the Limestone Correctional Facility conducted on November 8, 2002 by Jacqueline Moore and Larry Mendel of Moore and Associates. *See* Attachment 2, Audit Report II, pg. 4. ("Dr. Simon is very well qualified to fill this position [the site medical director].") Therefore, the Plaintiffs have dismissed Dr. Simon as a defendant in this lawsuit.

V. CLASS ALLEGATIONS

20. The Plaintiffs bring this class action on behalf of themselves and others similarly

situated pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The members of the class will consist of HIV-positive inmates who are or will be incarcerated at Limestone and have been or will be denied adequate medical treatment and confined in deplorable living conditions.

21. At any given time, there are approximately 240 HIV-positive inmates confined in Dorm 16, the Health Care Unit ("HCU"), and Dorm 7 at Limestone. This large group of inmates is constantly changing in size, composition, and location in Limestone. Thus, joinder of all Limestone HIV-positive inmates is impracticable.

22. In addition, there are questions of law and fact that are common to the class members, including but not limited to: (1) first, a lack of minimal end-of-life treatment to dying HIV-positive inmates; (2) second, the inadequate and untimely response to HIV medical emergencies that arise in Dorm 16; (3) third, inadequate and inhumane living conditions; and (4) fourth, the failure to provide Limestone HIV-positive inmates with access to competent medical specialists. A detailed discussion of these and other unconstitutional conditions at Limestone will follow.

23. The claims of the Plaintiff representatives are typical of the claims of the class as a whole.

24. Plaintiffs can and will fairly and adequately protect the interests of the class members.

25. Plaintiffs are represented by counsel who are familiar with the applicable law and are experienced in class action litigation addressing prison conditions.

26. Pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), class certification is

warranted because the Defendants have acted or failed to act in a manner applicable to the class as a whole. Thus, final injunctive relief addressing the class as a whole is appropriate.

VI. FACTUAL ALLEGATIONS

A. Audit Report II of Limestone Correctional Facility Conducted by Roger Childers, Jacqueline Moore and Larry Mendel of Moore and Associates Confirms the Factual Allegations of Plaintiffs' Claims.

27. On November 8, 2002, an audit inspection was conducted by Moore and Associates addressing the medical treatment provided to HIV-positive inmates confined at Limestone. The audit report was completed consistent with "[t]he Department of Health and Human Services guidelines were used to judge the appropriateness of care. Outcomes were compared with the values developed by the Infectious Disease Society of America." *See* Attachment 2, Audit Report II, pg. 3-4. In addition, the auditors consulted the standards devised by the National Commission of Correctional Healthcare and other well-accepted community healthcare standards.

28. After the inspection was performed, a written audit report was prepared. This audit report was a **striking confirmation** of the factual allegations detailed in the original complaint.

B. The Complexity of the HIV Virus Requires Complex Medical Treatment and Care.

29. HIV is a retro-virus. The virus debilitates a person's immune system. A person with a compromised immune system becomes much more susceptible to various illnesses, infections and diseases, particularly when confined in an unsanitary living environment. These illnesses and diseases are referred to as opportunistic infections, which ordinarily do not cause illnesses in

someone with a healthy immune system. Frequently, illnesses and diseases - opportunistic infections - are life-threatening to an HIV-positive person. Thus, survival of an HIV-positive person is dependent upon the careful medical monitoring and effective treatment of opportunistic infections.

30. The complexity of care, monitoring, and dispensing of medication requires the attention of competent medical specialists. In addition, an adequate and quick response mechanism must be in place to effectively address and treat HIV-related medical emergencies. During medical emergencies, the failure to provide prompt access to medical treatment can cause death.

31. The US Department of Health and Human Services ("DHHS"), the Henry J. Kaiser Family Foundation, the United States Public Health Services ("USPHS"), the Infectious Diseases Society of America ("IDSA"), the Centers for Disease Control ("CDC"), and the National Commission on Correctional Health Care ("NCCHC") have developed guidelines for the treatment and prevention of opportunistic infections in persons with HIV. These guidelines are frequently updated and are generally recognized by the medical community as a standard for providing a minimum level of medical care for HIV-positive patients. Both NaphCare, Inc. and the Limestone correctional staff have failed to meet these guidelines or otherwise provide an acceptable, minimum level of medical care and living conditions for the HIV-positive inmates confined at Limestone.

C. NaphCare, Inc. has Failed to Provide a Minimal Level of Medical Treatment for HIV-positive Inmates at Limestone.

32. The State of Alabama has contracted with NaphCare, Inc. to provide medical care at

Limestone. NaphCare's medical treatment of HIV-positive inmates at Limestone is grossly inadequate. Indeed, the medical treatment provided to HIV-positive inmates at Limestone fails to satisfy the constitutionally minimal and accepted medical community standards for the treatment of such patients. A discussion of each of the areas of non-conformity with minimum standards of HIV medical treatment follows.

33. Due to the inadequate medical treatment and deplorable living conditions, an extremely high and constitutionally unacceptable number of AIDS-related inmate deaths occur at Limestone. The November 8, 2002 audit report stated:

> Based on the information available, it appears that six deaths this year are attributable to AIDS and three were caused by liver disease. This calculates to a rate of .23 deaths per thousand. This rate is **more than twice** the AIDS death rate from the 2001 ACA ("American Correctional Association") statistics and is also about twice the expected number using statistics from "The Correctional Yearbook".
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> **The number of AIDS deaths is remarkably high** when one compares averages reported by other DOC systems. The Medical Advisory Committee provides only a cursory mortality review. It is recommended that mortality reviews be conducted as a part of the monitoring process and that the results of these reviews be reported to the Medical Advisory Committee.

(emphasis added) *See* Attachment 2, Audit Report II, pg. 9. NaphCare is responsible for reporting inmate deaths at Limestone -- including HIV and AIDS-related deaths -- to the Medical Advisory Committee. However, "[I]t should be noted that the Medical Advisory Committee is a year behind in reviewing mortalities that have occurred at the DOC facilities." Id. Thus, any census addressing the number of HIV and AIDS-related deaths at Limestone is inaccurate.

34. In addition, some of the narrative summaries addressing cause of death of HIV and AIDS-related inmate deaths **contradict** the entries on a listing of inmate deaths at Limestone. The November 8, 2002 audit report describes:

> A listing of deaths for 2002 through November 5 was provided along with very brief summaries of ten of the fourteen deaths. . .Two of the ten narrative summaries reveal a cause of death that contradicts the entry in the list. These include J.C. who was listed as a cardiac arrest, while the summary shows that he had pneumonia and diabetic ketoacidosis. The other case was also listed as a cardiac arrest, while the direct cause was gastrointestinal bleeding because of end stage liver disease.

See Attachment 2, Audit Report II, pg. 9.

35. The Defendants fail to conduct timely reviews of HIV-positive and AIDS inmate deaths. This failure prevents the gleaning of valuable information concerning causes of death, failure of medical treatment and the failure of the medical system to prevent a death which could be used to prevent similar inmate deaths. The November 8, 2002 audit report recommended:

> Statistics should accurately reflect the cause of death and provide a useful source of statistical information. The reviews also provide a window into multiple aspects of the delivery system. Charts should be reviewed to see whether appropriate preventive measures such as vaccinations and TB testing are working properly. Records should also be evaluated from the time that symptoms first began and to track diagnostic and therapeutic interventions.

See Attachment 2, Audit Report II, pg. 10. The audit report continues:

> It is **strongly** recommended that the DOC review all deaths that occur at Limestone. One fifth of the summaries provided showed a cause of death that **contradicted** the listed cause on the facility roster. Statistics should accurately reflect the cause of death and provide a useful source of statistical information.

(emphasis added) *See* Attachment 2, Audit Report II, pg. 10.

36. Many HIV-positive inmates have filed "sick-call" slips to receive medical treatment. A sick HIV-positive inmate can be forced to wait from several days to several weeks to see a nurse or a doctor. Some sick-call slips are not answered at all. The November 8, 2002 audit report addressed this issue:

> The HSA and other nurses reported that sick call request are triaged only 5 days a week instead of "daily screening" that is required by the NCCHC standards.

See Attachment 2, Audit Report II, pg. 5.

37. Dying HIV-positive and AIDS inmates fail to receive adequate end-of-life medical treatment. Bed sores and other manifestations of inadequate end-of-life medical treatment are endured by dying HIV-positive and AIDS inmates. This failure to provide adequate end-of-life treatment causes needless pain and suffering.

38. When responding to medical emergencies in Dorm 16, NaphCare's medical staff response has been extremely slow and completely inadequate. No medical emergency buttons exist in Dorm 16. In the HCU, which houses inmates with very serious illnesses, the emergency buttons are often turned off. In addition, the nurse's station in Dorm 16 is only occupied by a nurse during pill call - three times per day. During all other times of the day, the nurse station in the Dorm 16 is unattended. Thus, when a medical emergency arises, HIV-positive inmates must pursue a dangerously slow emergency response system. This system includes: (1) first, HIV-positive inmates report the medical emergency to the correctional staff; (2) second, the correctional staff person relays the emergency to the "shift officer;" (3) third, the shift officer - a member of the correctional staff, not a medical person - decides if the emergency warrants transferring the HIV-positive inmate with the medical emergency to the Limestone HCU; (4) fourth, if the shift officer decides that the inmate should be brought to the HCU, the prison must be locked-down[2]; (5) fifth, once the prison is locked-down, then the HIV-positive inmate with the medical emergency can be transferred from Dorm 16 to the HCU. Dorm 16 is located on the

[2]"Locked-down" refers to when general population inmates are moved out of the common yard areas of the correctional facility. The general population inmates are then locked inside their Dorms so that the HIV-positive inmates can be moved through the common yards without coming in contact with general population inmates.

opposite side of the prison complex from the HCU. (6) Sixth, the inmate, assisted by other HIV-positive inmates, is transported through three security gates to the HCU; (7) seventh, if the NaphCare doctor is not present at the HCU when the emergency is occurring, then the nursing staff must contact the doctor by telephone to receive the doctor's permission to call "911" or an ambulance. This slow and needlessly burdensome system is dangerously deficient for addressing and treating medical emergencies experienced by HIV-positive inmates. The slow response to medical emergencies has contributed to the death of several HIV-positive inmates. More deaths will occur in the future if the process is not addressed and changed.

39. NaphCare medical staff fail to provide basic medical assistance to HIV-positive inmates. Often, HIV-positive inmates are responsible for providing medical treatment to each other. HIV-positive inmates provide medication to each other, carry each other to the HCU on stretchers, provide end-of-life treatment to dying HIV-positive inmates, and provide CPR to each other. In fact, the November 8, 2002 audit report described a similar instance that occurred in the infirmary:

> One inmate runner was observed providing nourishment/fluid to one inmate that was admitted to the health care unit. Holding a cup while another inmate consumes nourishment or medication should **only** be performed by licensed health care providers and inmate "runners" should provide only custodial services.

(emphasis added) *See* Attachment 2, Audit Report II, pg. 6-7. The audit report also addressed the inadequate training of the Limestone nursing staff:

> Current licensure was on file for all staff. CPR training for all health providers was not current. Twenty-three per cent of Naphcare employees had no documentation of current CPR training. The HSA reported that "training for these employees including herself would be done soon". The Deputy warden reported that notification of CPR training, on site, for these employees had been provided to Naphcare, on numerous

occasions, however, Naphcare employees did **not** attend.

> There was documented in-service training for **only** 14% of the health staff health care staff. Eighty-six per cent of the health acre staff did not have proper documentation of continuing education on file. A planned agenda for training for the next several months was undeveloped [sic] but was unavailable for review.

(emphasis added) *See* Attachment 2, Audit Report II, pg. 8.

40. NaphCare also fails to meet the basic medical needs of amputee HIV-positive inmates. Upon entering Limestone, some amputee HIV-positive inmates experience weight changes - either a loss or gain in weight. These weight changes affect the fitting of prosthetic limbs. Often, a re-fitting and new prosthesis are necessary. However, NaphCare has refused to address this problem. Instead, the amputee HIV-positive inmates must endure their confinement without the assistance of their prosthesis. One amputee HIV-positive inmate, Eric Stephens, does not have a leg. Stephens gained weight when he entered Limestone and his prosthetic leg no longer fits properly. Therefore, he could no longer use his prosthetic leg. Stephens has been confined to a wheelchair, in an environment that is not equipped to address the needs of the handicapped. Without the use of his prosthetic leg, Stephens must wheel the chair to the shower area and hop - with the use of his good leg - into the shower. On two occasions, he tripped in the shower area, fell, and was injured. Because Dorm 16 is located on the opposite side of the prison complex from the Health Care Unit, Stephens did not receive timely medical treatment.

41. Many HIV-positive inmates have co-occurring chronic diseases. For example, some HIV-positive inmates suffer from seizure disorders. Dilantin sometimes is prescribed to treat the seizures. Often, the NaphCare medical staff fails to adequately monitor Dilantin levels in the inmates. For example, Plaintiff Michael Patrick was informed by the medical staff that he was

being administered dangerous levels of Dilantin. While receiving the high doses of Dilantin, Patrick experienced severe side-effects and extreme pain. In addition, some HIV-positive inmates who have experienced seizures are assigned to top bunks. Being assigned a top bunk creates a serious risk of personal injury for seizure-prone inmates. If the inmate experiences a seizure while on the top bunk, he can fall from the bunk and be injured. While lying on his top bunk, Patrick experienced a seizure. The seizure caused him to fall out of the top bunk and hit his head on the floor. He has been told by the NaphCare medical staff that the fall caused him serious head injuries. The serious medical situation endured by Mr. Patrick is consistent with the November 8, 2002 audit report findings:

> A review of chronic care charts indicated that problem lists were inconsistently completed. Out of twenty records reviewed eight lacked an updated problem list. Therapeutic blood levels were present for seizure patients. Two of the four levels reviewed were subtheapetic [sic] yet there was no change in the medication prescribed. Documentation on the Medication Administration Record showed **inconsistent** documentation of medication.

(emphasis added) *See* Attachment 2, Audit Report II, pg. 2-3.

42. The chronic care treatment is extremely dire for HIV-positive diabetic inmates. Larry Talley - an HIV-positive diabetic inmate confined at Limestone - endures various health complications caused by the failed medical management of his diabetic condition. The November 8, 2002 audit report confirmed consistent mismanagement by medical staff of HIV-positive diabetic inmate conditions:

> The facility [Limestone] has recently stated to perform Hemoglobin AIC's on diabetics but does not provide routine testing of blood sugars daily on insulin dependent diabetics. Staff indicate that Naph Care's policy is to only perform monthly accuchecks. This policy is contrary to community standards of care and since at least one death at his facility during the past year was due to ketoacidosis, it is recommended that the facility review clinical guidelines published by the American Diabetic Association and the

National Commission on Correctional Health Care and adjust their policy accordingly. (changes to original) *See* Attachment 2, Audit Report II, pg. 3. Failure to adequately manage HIV-positive inmates' diabetic conditions causes needless pain and suffering and possible death.

43. Similarly, some HIV-positive inmates need dialysis. Limestone is equipped with only one dialysis machine. Often, the dialysis machine is malfunctioning or inoperative. The dialysis machine mechanic is not located near the prison. If the dialysis machine breaks down and the mechanic is unable to travel to the prison, then the NaphCare staff may try to transport the inmate to an outside hospital for dialysis treatment. However, if the medical staff cannot transport the inmate to an outside hospital, then the NaphCare medical staff informs the inmate that he will have to wait an extra day before receiving his dialysis. Carl Simmons - an HIV-positive inmate on dialysis - has been told on numerous occasions that he must wait an extra day to receive his dialysis treatment, because the dialysis machine is broken and cannot be repaired until the next day. Waiting an extra day to receive dialysis causes Simmons needless pain and suffering.

44. Numerous HIV-positive inmates, in need of surgery or other specialized care and treatment, have endured excessive delays in receiving treatment. For example, since arriving at Limestone in 1997, Johnnie Creech - an HIV-positive inmate - has developed genital warts. The genital warts have become extremely painful and bleed. For months, Creech has been asking Dr. Simon about surgery to treat his genital warts. Creech has not received surgery for the genital warts. Creech continues to endure needless pain and suffering.

45. The NaphCare pill dispensing nurses fail to dispense necessary antiretroviral medication - medication for the treatment of HIV - at proper times. Immediately before meals,

medication is dispensed. Upon being provided antiretroviral medication, HIV-positive inmates are instructed by personnel to immediately take the medication. If the HIV-positive inmate refuses to immediately take the medication, he is denied the medication. Some antiretroviral medication must be taken at specific times - before or after meals. These specified times have been adopted and approved by the Federal Drug Administration ("FDA"). Failure to take the medication at prescribed times can decrease the effectiveness of the medication or increase the toxicity of the medication. Thus, NaphCare's failure to provide antiretroviral medication at proper times exposes the HIV-positive inmate to possible HIV medication failure and premature death.

46. In addition, NaphCare nurses dispense medication outside Dorm 16. Because the medication is dispensed outside Dorm 16, HIV-positive inmates are required to stand in intense heat, cold, or rain in the outdoors for long periods of time to receive their medication. In fact, one of these "pill lines" is conducted at 3:15 a.m. If sick HIV-positive inmates are physically able to stand outside in the "pill line", then the inmate is exposed to conditions which threaten their health, safety and lives. Yet, if the HIV-positive inmate is too sick to stand outside, they do **not** receive their medication.

47. Some HIV-positive inmates experience gaps in their medication administration. The November 8, 2002 audit report described numerous medication administration gaps:

> Medication records showed gaps in the medication administration process on consecutive days in several patients. Most of the gaps corresponded to weekends. In response to an inquiry, I was advised that the facility had a **very** high turnover rate in its nursing staff and a persistent problem with position vacancies.

(emphasis added) *See* Attachment 2, Audit Report II, pg. 4. In fact, medication gaps of several

weeks occur when an HIV-positive inmate is first transferred from Kilby Correctional Facility to Limestone.[3] Constant gaps in medication administration exposes an HIV-positive inmate to possible medication failure and premature death.

48. In addition, medication and immunization distribution to HIV-positive inmates has been erratic. Since the filing of the original complaint, proper distribution of medication and immunizations could have prevented several HIV-positive inmate deaths. In fact, several inmates -- including Michael Headon and Russell Batiste -- contracted pneumocystis carinii pneumonia ("PCP) and died. PCP can easily be prevented by providing an HIV-positive person with a single, inexpensive pill every day. The November 8, 2002 audit report recommended that Bactrim be administered to HIV-positive inmates:

> The cost to the system of opportunistic infections [HIV and AIDS-related illnesses] can be prohibitive, while the expense of preventive medications is minimal. Bactrim therapy for pneumocystis pneumonia (PCP) prevention is an excellent example. This infection is highly lethal and extremely incapacitating. Hospitalization costs usually exceed $10,000, while the cost of prevention runs about $2 a week. PCP prevention should be strongly encouraged even if patients refuse other treatment.

(changes to original) *See* Attachment 2, Audit Report II, pg. 10. The November 8, 2002 audit report also addressed the medical staffs' failure of providing necessary medication and immunizations to HIV-positive inmates:

> Although some charts showed evidence of immunizations, less than a third of the records had evidence of flu vaccinations and only one fifth had documentation of a pneumonia vaccine. None of these records showed that prevention for hepatitis A or B was given even though many of the patients reviewed had been diagnosed with hepatitis C, and three of the deaths this year were because of liver disease, including acute hepatitis.

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[3]Kilby Correctional Facility is the receiving institution for all inmates processed in the Alabama Department of Corrections.

See Attachment 2, Audit Report II, pg. 4. In fact, the medical staff provides inadequate diagnosis and medical treatment addressing Hepatitis C. Proper medication and immunization distribution can prevent needless pain, suffering, and death.

49. HIV-positive inmates are assessed medical treatment fees an excessive number of times. To receive medical treatment, HIV-positive inmates must pay $3.00. No HIV-positive inmate has been denied medical treatment because they have been unable to pay $3.00. However, often HIV-positive inmates must pay $3.00 for any type of encounter with medical staff. Some inmates are even charged $3.00 for follow-up visits addressing the same, unresolved medical condition. Recently, Antonio Leatherwood - an HIV-positive inmate - has requested to visit the doctor to receive medical treatment for various ailments. Before visiting the doctor, Leatherwood is required to arrange th doctor appointment with a nurse. Since raising his medical condition with the nurse, Leatherwood has not been brought to see the doctor. However, each time that he visits the nurse to inquire about the scheduling of his doctor appointment, Leatherwood has been charged $3.00. Therefore, despite not visiting the doctor and receiving medical treatment, Leatherwood has still been charged $3.00 each time he sees the nurse. The **excessive** charging of a $3.00 payment for medical services, which are often not even provided, discourages many inmates from seeking essential medical treatment.

50. HIV-positive inmates are not provided special food diets. Some HIV-positive inmates - for example, diabetic inmates - are not provided special food diets to address their medical conditions. Not providing special food diets exposes an HIV-positive inmate to needless pain and suffering.

D. The State of Alabama has Failed to Provide Adequate and Safe Housing for HIV-positive Inmates at Limestone.

51. Dorm 16 - euphemistically labeled an "infirmary" - is completely inadequate to house HIV-positive inmates. In fact, Dorm 16 is nothing more than an open warehouse formerly used to store prison supplies. The November 8, 2002 audit report describes the living conditions for HIV-positive inmates confined in Dorm 16:

> The building was an old warehouse that was converted to a dorm that was initially used to house the chain gang and later converted to an AIDS dorm. The ceilings are high and the **close proximity of the beds fosters infections among this population**. Interviews with officers and inmates indicated that extremes in temperatures are prevalent as the dorm leaks in the winter and is extremely hot in the summer.

See Attachment 2, Audit Report II, pg. 1. The inadequacy of the conditions in the Dorm threatens the safety and welfare of the HIV-positive inmates. Indeed, the Dorm is inadequate to house any human-being. It is crucial to assess the effect of specific living conditions on the health, safety and lives of HIV-positive inmates.

52. Numerous brown spiders, rats, and birds infest Dorm 16. Many HIV-positive inmates have been bitten by brown spiders that live in the Dorm. Often, while the inmates are eating, rats take the inmates' food. At night, rats climb into the inmates' beds. Also, birds have entered Dorm 16. Exposure to bird droppings can cause opportunistic infections in HIV-positive patients. For example, exposure to bird droppings can cause cryptococcal meningitis. While incarcerated in Dorm 16 at Limestone, Emmitt Robinson, an HIV-positive inmate, developed cryptococcal meningitis, likely due to his exposure to pigeon droppings in the poorly ventilated dormitory. Meningitis is a crippling illness that can cause death if untreated. The numerous insects and vermin inside Dorm 16 pose a substantial threat to the health and lives of the HIV-

positive inmates.

53. In addition, Dorm 16 is structurally unsound. During rainstorms, rain leaks through the Dorm's roof and soaks the inside of the Dorm. Standing water can provide a breeding ground for disease, mosquitos, and mold. In the ceiling, exposed pipes and electrical wiring pose a substantial danger of fire and electrocution to the prisoners.

54. Dorm 16 is inadequately ventilated, heated, and air conditioned. Without adequate heat, the Dorm is very cold in the winter. Without adequate air conditioning, the Dorm is very hot in the summer. During the summer, the HIV-positive inmates are provided some fans. These fans do not circulate enough air to cool the Dorm in the summer. These fans often blow dust, dirt and airborne contaminants around the Dorm.

55. Despite being labeled an "infirmary", Dorm 16 does not make adequate provisions for disabled HIV-positive inmates. No facilities for the disabled are provided in the shower and bathroom area of the Dorm. The lack of handicapped facilities in the Dorm caused one handicapped HIV-positive inmate, Eric Stephens, to trip on two occasions while trying to access the shower. The falls caused Stephens to injure his back and foot. Yet, because Dorm 16 is located on the opposite side of the prison complex from the HCU, Stephens did not receive medical treatment for approximately thirty minutes.

56. During medical emergencies, Limestone correctional staff do not provide assistance to HIV-positive inmates. HIV-positive inmates must carry each other on stretchers. In fact, some HIV-positive inmates have been forced to provide CPR to each other. This practice is unsafe. Indeed, this practice violates well-established standards for correctional medicine and well-accepted public health guidelines.

57. When HIV-positive inmates file Medical Complaint Forms or Medical Grievance Forms, correctional staff read the forms, question the inmates about their medical treatment and sometimes berate the inmates for filing the medical complaints and grievances. This practice discourages HIV-positive inmates from filing necessary medical complaint and grievance forms. Indeed, questioning by correctional staff addressing inmate medical care issues discourages inmates from seeking essential medical treatment.

58. Some specific conditions in the Dorm 16 kitchen and eating area threaten the health of the HIV-positive inmates. As the November 8, 2002 audit report describes:

> Tables where the inmates consume nourishment were noted to be rusty. Seventeen half-gallon jugs with ice were found on the floor of one freezer. These containers were reported to be used as ice for the work squads. These should be stored off the floor. Cabbage, peanut butter and mayonnaise were found to be uncovered. The DOC officer in the HIV dorm reported that the kitchen area in that sector had a leak in the roof. Annual inspections by the health department would be prudent.

See Attachment 2, Audit Report II, pg. 8. These conditions contribute to HIV-positive inmates' needless pain and suffering.

59. There is no classification system for the HIV-positive inmates confined at Limestone. The Alabama Department of Corrections HIV/AIDS inmate segregation policy confines all HIV-positive and AIDS inmates primarily in one housing facility - Dorm 16 at Limestone. Because all of the HIV-positive inmates are confined in one Dorm, classifying serious crime and less serious crime inmates does not exist. Instead, regardless of the crime committed by the inmate, all of the HIV-positive inmates are forced to co-exist in an open-dorm type environment. This environment fosters dangerous and hostile living conditions which threaten the health, safety and lives of HIV-positive inmates.

60. Many dying HIV-positive and AIDS inmates have been unable to receive timely "compassionate release" prior to their deaths. Thus, many HIV-positive and AIDS inmates die at Limestone absent the presence of family members.

61. HIV-positive inmates are denied access to Supervised Intensive Restitution programs ("SIR"), work release programs, and vocational programs. HIV-positive inmates are segregated from the Limestone general population. This segregation policy prevents contact between the HIV-positive inmates and general population inmates at Limestone. HIV-positive inmates are prevented from participating in the same or similar supervised release, education and training programs that are provided to general population inmates. In fact, HIV-positive inmates are only permitted access to a very limited number of facility programs that are provided to general population inmates. Thus, HIV-positive inmates - unlike general population inmates - are forced to endure the **full** duration of their sentences, with no ability to obtain an early release, in an extraordinary environment of idleness, without access to job or other training programs which are provided to non-HIV-positive inmates. This environment of extraordinary idleness, threatens the health and safety of HIV-positive inmates.

E. Defendants Have Acted and Continue to Act with Deliberate Indifference Toward the Medical and Housing Needs of HIV-positive Inmates at Limestone.

62. The Southern Center for Human Rights contacted Ronald Cavanaugh, the Medical Director of the Alabama Department of Corrections about the egregious medical and living conditions detailed above. *See* Attachment 3. In addition, the Southern Center for Human Rights informed Francis Henderson, the former Medical Director of NaphCare, Inc., about the outbreak of boils infecting the HIV-positive inmates at Limestone only to be told that the boils

were simply mosquito bites and there was nothing to worry about. The Alabama Department of Corrections and NaphCare, Inc. have **not** responded.

63. Numerous complaints by HIV-positive inmates, both formal and informal, written and oral, have not been addressed or have been inadequately addressed. The continued pursuit of the present policies of the Alabama Department of Corrections and NaphCare, Inc's are causing and will continue to cause unnecessary suffering to the HIV-positive inmates at Limestone. Absent intervention by the Court, unnecessary and preventable deaths are inevitable.

64. Plaintiffs have exhausted all administrative remedies available. NaphCare has adopted a procedure for inmates to file grievances concerning medical treatment. *See* Attachment 4. The procedure provides: (1) the inmate must obtain and file a NaphCare Medical Complaint Form ("complaint"); and (2) if the complaint is not resolved, then the inmate may file a NaphCare Medical Grievance Form ("grievance"). (Id.) Plaintiffs have exhausted the NaphCare grievance procedure. Many HIV-positive inmates at Limestone have actively asked and sought complaint and grievance forms. Often, the NaphCare medical staff refuses to provide any HIV-positive inmates with complaint forms. The NaphCare medical staff has never provided HIV-positive inmates at Limestone with grievance forms. Because NaphCare's medical staff has refused to provide complaint and grievance forms to inmates upon request, plaintiff's counsel has had to provide such forms to HIV-positive inmates. HIV-positive inmates rarely receive copies of the grievances they file.

65. Responses from NaphCare, Inc. - either written or oral - to complaints are rare. Responses to grievances have been even rarer. The grievance process has failed to address and resolve the continued egregious practices of the NaphCare medical staff.

66. The Alabama Department of Corrections does not provide a grievance process. Thus, Plaintiffs have been unable to resolve problems relating to their living conditions through a grievance process.

67. Despite the attempts of prisoners to resolve problems through NaphCare and the Alabama Department of Corrections, an environment of needless suffering and premature death for the HIV-positive inmates at Limestone persists.

VII. CLAIMS FOR RELIEF

68. Plaintiffs support the following claims by reference to the previous paragraphs in the *Complaint*:

Count I

69. The Defendants have been deliberately indifferent to the serious medical needs of HIV-positive inmates at Limestone, which rises to the level of cruel and unusual punishment in violation of the Plaintiffs' rights under the Eighth Amendment and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Count II

70. The conditions of confinement for HIV-positive inmates at Limestone and the Defendants' deliberate indifference to those conditions, as well as their policies and practices in administering and overseeing Limestone , considered both discretely and in their totality, constitute cruel and unusual punishment in violation of the Plaintiffs' rights under the Eighth Amendment and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. § 1983.

Prayer for Relief

1. Plaintiffs respectfully pray that this Court:

2. Assume jurisdiction of this case.

3. Order that this case may be maintained as a class action pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

4. Declare unconstitutional and unlawful the medical treatment and living conditions of HIV-positive inmates incarcerated at the Limestone Correctional Facility.

5. Enter preliminary and permanent injunctions ordering defendants, their successors, agents, employees, and all other persons acting in concert with them to immediately provide HIV-positive inmates at Limestone Correctional Facility with access to competent medical specialists, adequate and appropriate emergency care, adequate end-of-life treatment, and adequate diagnosis, culturing and medical treatment for opportunistic infections.

6. Enter preliminary and permanent injunctions ordering defendants to permit an third-party infectious disease specialist to enter to the prison, culture, diagnose, and treat the opportunistic infections that continue to plague the HIV-positive inmates at Limestone incarcerated in Dorm 16.

7. Grant Plaintiffs a full trial and discovery addressing the issues raised in this *Complaint*.

8. Rule that the acts and inactions of the Defendants violate the HIV-positive inmates' rights under the Eighth and Fourteenth Amendments of the United States Constitution and 42 U.S.C. § 1983.

9. Order that the Defendants comply with the Constitution and 42 U.S.C. § 1983 and

enjoin the Defendants from continued violations of the Plaintiffs rights.

10. Award plaintiffs the costs of this lawsuit and reasonable attorneys' fees.

11. Order such additional relief as the Court deems just and proper.

Respectfully submitted, this 25 day of March, 2003.

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EXHIBIT 1

HEALTHCARE SERVICES AGREEMENT

BY AND BETWEEN

THE ALABAMA DEPARTMENT OF CORRECTIONS

AND

NAPHCARE, INC.

FEBRUARY 13, 2001

7.4 Existing Records. DOC shall make available to Contractor all available Inmate medical records as provided in 3.8 above.

7.5 Orientation Training. DOC shall provide sixteen (16) hours of orientation training for Contractor's new employees, with emphasis on Administrative Regulations and Institutional Security. The content, scheduling, and methodology of said training shall be determined by the DOC and reasonably acceptable to Contractor.

7.6 Contract Monitor. To evaluate and assess that all standards are being met and that Contractor is in full compliance with the contract, DOC may employ, at its expense, the services of a Contract Monitor. To the extent permitted by law, Contractor shall provide the Contract Monitor ongoing, comprehensive, and expeditious access to all clinical files and all corporate files (to the extent such corporate files are related to the provision of healthcare services to inmates in Alabama) to include but not limited to personnel records of Alabama employees, payroll records, licensure certification records, employee evaluations, physician billing, hospital or other outside service invoices, or any other contract entered into by Contractor for the purposes of carrying out the requirements of the contract. The Contract Monitor shall perform, but not be limited to, the following tasks:

(a) Review of service levels, quality of care, and administrative practices as specified in the contract;

(b). Meet on a regular basis with Department representatives of Contractor and the DOC to address contract issues.

(c) Assist in the development of future change requests as needed.

(d) Review of Contractor documentation to ensure compliance with contractual obligations.

(e) Review of contract personnel work schedules, time sheets, personnel records, and wage forms to ensure compliance with staffing levels and contractual obligations.

(f) Review of files, records, and reports pertinent to the provision of inmate healthcare services.

(g) Review of medical billings to determine appropriateness to contract specifications and cost effectiveness to DOC.

(h) Review the collection of third party reimbursement of certain expenses.

(i) Conduct site visitations, interviews, and inspections as required to perform an on-going health services program. Contract Monitor shall operate independently of Contractor and shall be directly accountable to DOC. Contract Monitor shall submit a monthly report of provider services and fulfillment of contractual obligations to the DOC contact person. Upon review of said report the DOC contact person shall notify Contractor's authorized representative of the monthly findings. Discrepancies and/or deficiencies in contracted services shall be assessed and penalized accordingly. Contractor shall submit a written response within fifteen (15) calendar days to the DOC contact person detailing corrective actions. Failure to perform corrective action or meet contractual obligations within thirty (30) calendar days shall place the Contractor in default of the contract.

7.7 Security. The parties hereto understand that adequate security services are necessary for the safety of the agents, employees and/or subcontractors of Contractor, as well as for the security of Inmates. DOC agrees to provide security services mutually satisfactory to the

EXHIBIT 2

Limestone Correctional Facility

Roger Childers of Moore and Associates conducted an audit of the Limestone Correctional Facility, on October 1st, 2002 on behalf of the Alabama Department of Corrections. The audit consisted of a tour of the health care unit, HIV dorm, and dietary department. Structured interviews were conducted with the site HSA, dietary manager, day shift RN, clinic LPN, nine inmates, Deputy Warden and Warden. Informal interviews were conducted with the regional HSA, correctional officers located in the health care unit and HIV dorm, and other DOC personnel. On November 8, 2002 Jacqueline Moore RN Ph.D. CCHP-A and Larry Mendel DO, CCHP, former medical director of Ohio conducted a subsequent review of this facility.

An exit conference was conducted with the Warden, , site HSA, Regional Manger, two Naphcare corporate administrators, day shift RN, and the Department of Corrections' Director of Treatment.

Facility Information

This facility was constructed in 1983, and during the audit, had a census, of 2130 male inmates. There is one satellite facility, the Decatur work release that contains a population of 430 inmates. The HIV dorm was noted to be crowded, but generally clean. New screens had been placed on the windows this housing area, and it was reported that this dorm had recently been fumigated by "Cooks" pest control per contract with the DOC. The facility has a 21 bed infirmary. There are two six bed dorms, three camera cells and the others are single or double man cells. All of the AIDS patients are only admitted to the infirmary dorm. The medical unit consisted of an exam room which was shared by both the PA and the physician, an emergency room, dialysis room,. There are nine housing dorms throughout the complex. There is one dorm that is designated for HIV positive patients. Inmates that are assigned to this unit have all activities performed on the unit. Meals are served on the unit from the main kitchen, a substance abuse program is available as well as a small library. Inmates are allowed access to the main law library on a weekly basis. There is a GED program available, however inmates are the student teachers. The AIDS dorms is dorm style all bunks are double. The building was an old warehouse that was converted to a dorm that was initially used to house the chain gang and later converted to an AIDS dorm. The ceilings are high and the close proximity of the beds fosters infection among this population. Interviews with officers and inmates indicated that extremes in temperatures are prevalent as the dorm has leaks in the winter and is extremely hot in the summer. There is a small medical exam room located in the AIDS dorm

Transition

The medical services have transitioned from Correctional Medical Systems to Naphcare effective March 2002. The new contractor has been providing service for approximately

Out of twenty records reviewed eight lacked an updated problem list. Therapeutic blood levels were present for seizure patients. Two of the four levels reviewed were subtheapetic yet there was no change in the medication prescribed. Documentation on the Medication Administration Record showed inconsistent documentation of medication. BUN and creatine levels were not consistently found on the charts of hypertensive inmates reviewed. The facility has recently stated to perform Hemoglobin AICs on diabetics but does not provided routine testing of blood sugars daily on insulin dependent diabetics. Staff indicate that Napn Care's Policy is to only perform monthly accuchecks. This policy is contrary to community standards of care and since at least one death at this facility during the last year was due to ketoacidosisis, it is recommended that the facilty review clinical guidelines published by the American Diabetic Association and the National Commission on Correctional Health Care and adjust their policy accordingly.

HIV AIDS Care

Because of the high cost of care for inmates infected with HIV, contract vendors may be tempted to cut corners. Medication costs alone run between $8,000 and $12,000 annually, and labwork adds to the expense. Because of the complexity and severity of the illness, poor care or gaps in the delivery system will tend to be quite evident.

The quality of HIV care has added significance for Alabama because of scrutiny from outside organizations that take issue with the department's policy of segregating HIV infected inmates from the general population. Disagreement with the policy has already resulted in expensive, protracted litigation. The failure, or perceived failure to provide access to sufficient care for this population will invite further controversy and potential litigation.

In view of the substantial value of the contract for medical services, it is prudent to closely monitor the performance of the vendor. Monitoring activities should include the timeliness of access to care, vacancy rates, credentialing, and training activities. Clinical evaluations to assure that services are performed consistent with community standards are also warranted. Monitoring activities are needed not just for fiscal concerns, but also to decrease the risk of liability. In addition to the potential cost of litigation, poor care can produce other costs, such as increased hospitalization rates.

Audit Process

Charts were randomly selected from the list of HIV positive inmates. Additional records were pulled from the roster of diabetic inmates and from inmates who entered the system during the past year. The records were reviewed to track medication regimens, both antiretroviral therapy, and preventive treatment for opportunistic infection, when indicated. Labwork to measure CD4 helper cell levels and viral load was recorded sequentially. Screening for TB and protective immunizations were also noted.

The Department of Health and Human Services guidelines were used to judge appropriateness of care. Outcomes data were compared with values developed by the

19 months. There was a new health administrator that had been in her position for approximately one-month. The medical director indicated that there had been tremendous turnover of the nursing staff. It was reported to Mr. Childers during his interview with the prior HSA that 7-10 new nurses had recently been hired during the last seven months.

Staffing Vacancies and Hours of Service

Current full time staffing consists of

- 1 site HSA/RN
- 1 physician
- 1 PA
- 5 RN's
- 12 LPN's
- 2 medical record clerks
- 1 secretary
- 1 full time dental assistant
- 1 medical technician

In addition there are two part time dialysis RN's that work 24 hours a week and two dentists that provide 40 hours of dental coverage each week. Nursing vacancies consist of 1 RN and 2 LPN vacancies.

Both dentists has recently begun work in this facility The current dental staff reported that the dental backlog has been reduced to only 30 inmates on a waiting list for non-urgent care

History and Physical Exams

By policy, inmates are to receive a health assessment, by a qualified provider no later than 7 days after admission, to the DOC, with annual TB updates every year, and a full physical every three years. It was reported that some inmates continue to have delays in the initiation of medication when identified as HIV positive prior to transport from the Kilby facility. Historically, in the last six months, delays in medication therapy have been four, five, six and seven weeks.

Chronic Care

Naphcare staff reported that chronic care clinics are consistently conducted in this facility. However inmate number 145983 that is HIV positive stated" I have not seen the doctor in 7 to 8 months". Inmate #133445 that is HIV positive reported "I have not seen the doctor in three months". Inmate # 198466 that is HIV positive stated " I have not seen the doctor in 7 months". Inmate # 461886 reported that he had not seen the doctor in 6 months. Inmate # 174131 that he had turned in 5 sick call slips since February 2002 and "has yet to seen by the doctor".

A review of chronic care charts indicated that problem lists were inconsistently completed.

Infectious Disease Society of America. Brief summaries of the 2002 deaths of HIV positive inmates were provided, but only one chart was available for review.

Audit Results

Several components comprise the delivery system for HIV care at Limestone. Directing clinical care is Dr. Simon, the site medical director. Dr. Simon is very well qualified to fill this position. She is trained in infectious diseases and brings previous hospital and correctional experience. Her initial correctional experience occurred at Rikers Island in New York, a location with many complex HIV cases and a high prevalence of TB and other infectious diseases.

Dr. Simon's experience and qualifications were readily apparent in the review of her charts. Her documentation is exceptional and skill as a practitioner is apparent in promptly and decisively addressing medical problems as they are presented. Most of the patients in the charts reviewed are responding with optimal levels of viral suppression. Those with poor response all have completed resistance testing and the regimens have been adjusted to correspond with the test results. All patients who meet the DHHS guidelines for antiretroviral therapy are either receiving medication or have been offered treatment.

Six of the charts audited were for patients who met criteria for preventive treatment for opportunistic. Although all six had been offered preventive medications, only one had agreed to treatment. Two of the inmates declining medication had a history of mental illness, but it is not clear from the chart whether their condition was severe enough to impair their ability to comprehend the consequences of their refusal.

The facility staff has paid close attention to screening for tuberculosis. All of the charts reviewed had current TB skin test results completed and the readings were charted. In every case where further action was warranted, the appropriate tests were ordered. Completion of INH therapy when indicated was also documented. The results were placed in the same location in each chart and were easy to find.

Medication records showed gaps in the medication administration process on consecutive days in several patients. Most of the gaps corresponded to weekends. In response to an inquiry, I was advised that the facility had a very high turnover rate in its nursing staff and a persistent problem with position vacancies.

Although some charts showed evidence of immunizations, less than a third of the records had evidence of flu vaccinations and only one fifth had documentation of a pneumonia vaccine. None of the records showed that prevention for hepatitis A or B was given even though many of the patients reviewed had been diagnosed with hepatitis C, and three of the deaths this year were because of liver disease, including one from acute hepatitis.

None of the inmates who were newly diagnosed with HIV infection at intake were started on medication before arriving at Limestone. Although none of these cases resulted in any apparent complication, patients diagnosed with HIV infection at intake, or arriving with

known infection should be screened for the need for immediate therapy, especially to prevent opportunistic infection when indicated.

Screening for metabolic complications of HIV and medication side effects was done on a consistent basis and in each case where action was warranted, medication changes or treatment adjustments were made.

Sick Call

The HSA and other nurses reported that sick call request are triaged only 5 days a week instead of "daily screening," that is required by the NCCHC standard. Until recently the PA and physician shared the same exam room. Under this system confidentiality and privacy of care are sorely compromised. While a new exam room has been established for the PA , she was observed conducting sick call in the same exam room as the physician.

Chart review indicated that inmates were generally triaged by the nurse within two to three days of their request and were seen by a physician/PA within 7-10 days.

Inmate interviews indicated that they had not received health educational material on the medication that they were taking. There was however a large variety of health educational, material in the health care unit where chronic care clinics were being conducted.

There is a co-payment program for sick call services in effect. Awareness of co-pay program was evident among the inmates interviewed and 100% of the inmates interviewed reported that they understood that if they did not have sufficient funds, health care would still be provided.

Consultations

Off site consults continue to be approved, in a timely manner, by the contractor. Recent consults, requiring physician referrals for specialists were approved by Naphcare's utilization review process within, 24 to 48 hours, of the facility's request. A review of the medical record indicated that oftentimes consults were delayed for several months before approval was sought. For example inmate 164568 had a hernia for four months the size of a grapefruit before he was finally sent for a surgical appointment. Inmate 169383 complained of stomach pain for four months before a barium swallow was performed.

Infection Control

There were two inmates that were on prophylactic INH therapy housed at the facility. These patients had been monitored for medication compliance.

Documented infection control efforts were not well documented. There was no documentation of a quality improvement meeting held within the last 7 months. The site

HSA reported "We have not had one of those, something always comes up, but we will have one soon. In a facility of this size that houses the majority of the HIV inmates, in a system of 27,000 inmates, a QI program is "essential" to meet NCCHC standards. A lack of adequate monitoring/reporting of infection control efforts and vital statistics in regards to infectious/communicable disease is dangerous and extremely poor quality health care. A physician chaired, multidisciplinary QI meeting should be held immediately.

More recently, the new HSA indicated that nurses were starting to audit five charts each month. As of the audit there had been no physician involvement in the program and there were no CQI or infection control meetings available.

Dental Services

The facility has a four chair dental unit. Sharps and spore counts were current and well documented. There was a backlog, of 30 inmates. No routine dental cleanings are provided to inmates. The toothpaste provided by the DOC does not contain fluoride. No oral screening is completed when an inmate enters the facility.. It was reported that inmates receive dental hygiene instruction on admission to the system. A copy of this sheet was reviewed and it included the importance of brushing and flossing instructions, however dental floss is not provided to inmates as per DOC policy. A more comprehensive dental program is recommended. The Director of treatment for the DOC has begun a review of the contract requirements for dental services. Omission of routine dental cleaning, and the lack of availability of fluoride does not meet any approved community standards of cares.

Mental Health Services

Mental Health services are under the direction of a court monitor and will not be reviewed as a part of this contract.

Infirmary

There is a total capacity of 21 beds in the "infirmary" including 4 isolation cells. The unit included multiple admissions during the audit that consisted cases involving HIV, pulmonary complications, fractures and cellulitis. The infirmary area contained an operational "call light" system in this area.

There were no admission sheets found for patients admitted to the infirmary nor were there separate charts as required by the NCCHC standards.

There was no documentation of inmate "infirmary" runners had training on bloodborne pathogens, however it was reported that they processed all of the dirty "infirmary" linen, meal trays and soiled clothing on a regular basis. A laundry for the health care unit inmates is maintained in the health care unit. One inmate runner was observed providing

nourishment/fluid to one inmate that was admitted to the health care unit. Holding a cup while another inmate consumes nourishment or medications should only be performed by licensed health care providers and inmate "runners" should provide only custodial services.

Environmental Conditions in the Infirmary

All sharps were not properly accounted for in the infirmary. There was at least 6 metallic restraint cuff keys that were not routinely counted. In addition there were 7 to 9 metallic spoons and knives that were being held in a plastic bag but there was no documentation that they were ever inventoried. Failure to continue to account for knives, spoons and box cutters by health care staff is a major security risk for the DOC prison facilities. This issue has been addressed before and an example of this security problem is well documented in the Tutwiler report months ago.

Pharmacy

It may be prudent to review the accountability of the pharmaceutical floor stock in this facility and the procedure for psychotropic medications. Zyprexa, Elavil, Thorazine and artane, were not counted on a regular basis. The DOC security reported that in the recent past, artane was found in abundance in the protective custody dorm during security sweeps. Narcotic counts were correct at the time of the audit. Pharmacy inspection reports were not available during this site visit. The site HSA stated" I saw one of those things last Tuesday but I just can not find it or the other ones at this time". Two pharmacy reports were located and sent to the DOC in the next couple of days after the audit. Documentation of timely accountability for medications, including narcotics, by a pharmacist is essential to meet DEA requirements and community standards. The pharmacy reports that were faxed seemed accurate but should be stored on site and it is reasonable for them to be retrievable. Three vials of opened insulin was not dated, in the HIV dorm and pill call room. Sterile water in the main pill call room was expired. Naphcare nurses reported that they continue to use "individually ordered" inmate medication as floor stock because "sometimes we run out due to delivery delays" This is not the first report of delays or lack of medication to facilities in the Alabama system. Inmate #215180 had an earlier order for sulfa but it was found being administered as floor stock to "who ever needed it". An order for flagyl for a discharged inmate was also found in the floor stock for "general administration" to anybody that needs it. Inmate #127819 had an expired order for a psychotropic medication, Zyprexa, but it was also found in floor stock for general distribution. Nurses were administering Loritab, Phenobarbital, Morphine and Tylrenol #3 also as floor stock. This practice is illegal and should cease immediately. The administration of prescribed medication that were ordered and dispensed for other inmates or the administration of narcotics from stock containers is in violation of the DEA regulations. This same problem was identified at the St. Clair facility several weeks ago.

A review and observation of the medication system during pill call indicated that the nurses that poured the medication were frequently not the nurses who dispensed the medication. This is a violation of the Nurse Practice Act.

Professional Regulations

Current licensure was on file for all staff. CPR training for all health providers was not current. Twenty-three per cent of Naphcare employees had no documentation of current CPR training. The HSA reported that "training for these employees including herself would be done soon". The Deputy warden reported that notification of CPR training, on site. for these employees had been provided to Naphcare, on numerous occasions, however Naphcare employees did not attend.

There was documented in-service training for only14% of the health staff health care staff. Eighty -six per cent of the health care staff did not have proper documentation of continuing education on file. A planned agenda for training for the next several months was undeveloped but was unavailable for review.

Staff Administrative and Staff Meetings, CQI

Administrative meetings were held weekly with the warden and minutes were available for review. Health care meetings were not well documented in the last year. A comprehensive CQI and infection control effort was not documented in this facility. There has been no disaster drills conducted at this facility in the last twelve months. The HSA reported that there was "a problem" and it was "never done".

Grievances and complaints could not be tracked because as mentioned above there was no documentation of QI activity. National and community standards require that QI documentation should list complaints, disease statistics, therapies, and many other agenda topics, to monitor and improve health care delivery. Review of possible agenda topics are well outlined by the NCCHC standards to assist health providers in monitoring essential health activities in the facility.

Kitchen Inspection and Food Services

The food service area was found to be clean and orderly. A first-aid kit was present but poorly stocked. There were signs in the inmate bathrooms to remind inmates of hand washing. Internal thermometers for the cooler and freezers were operational and appeared to be accurate. The last inspection report by the Alabama Department of Public Health on August 15th 2001 yielded a rating of 98%. A sample tray of each meal is kept for 24 hours. Tables where the inmates consume nourishment were noted to be rusty. Seventeen half-gallon jugs with ice were found on the floor of one freezer. These containers were reported to be used as ice for the work squads. These should be stored off the floor. Cabbage, peanut butter and mayonnaise were found to be uncovered. The DOC officer in the HIV dorm reported that the kitchen area in that sector had a leak in the roof. Annual inspections by the health department would be prudent.

Critical Incidents and Mortality Reviews

Death reviews were not provided during this audit. Naphcare reported that deaths in this facility would come under review of the medical advisory committee. It should be noted that the Medical Advisory Committee is a year behind in reviewing moralities that have occurred at the DOC facilities. Current standards require an on-site mortality review within 30 days of the death. This site has reported 14 deaths within the last year.

A listing of deaths for 2002 through November 5 was provided along with very brief summaries of ten of the fourteen cases. However, only the chart for the most recent death was at the facility available for review. Two of the ten narrative summaries reveal a cause of death that contradicts the entry in the list. These include J.C. who was listed as a cardiac arrest, while the summary shows that he had pneumonia and diabetic ketoacidosis. The other case was also listed as a cardiac arrest, while the direct cause was gastrointestinal bleeding because of end stage liver disease.

Based on the information available, it appears that six deaths this year are attributable to AIDS and three were caused by liver disease. This calculates to a rate of .23 deaths per thousand. This rate is more than twice the AIDS death rate from the 2001 ACA statistics and is also about twice the expected number using statistics from "The Corrections Yearbook".

The number of AIDS deaths is remarkably high when one compares averages reported by other DOC systems. The Medical Advisory Committee provides only a cursory morality review. It is recommended that mortality reviews be conducted as a part of the monitoring process and that the results of these reviews be reported to the Medical Advisory Committee.

Summary

Efforts to provide comprehensive chronic care evaluation, in this facility, have yet to be well documented. Areas recommended for improvement include the development of policies and procedures that are site specific, to assist staff in specific facility operations. Staff participation in mandatory disaster drills, and site physician involvement in autopsy reviews should enhance QI efforts. The pharmacy practices should be fully reviewed. Delays in the provision of required pharmaceutical intervention for HIV inmates identified at the Kilby facility should be resolved. Pharmaceutical practices have been well documented as problems in other facilities, including administering medications to inmates that were dispensed and ordered for other individuals continue. This practice is illegal and could create liability for the nurses, the DOC and the contractor. All regulations by the Drug Enforcement Agency should be adhered to immediately, to enhance the safety of the prison and help enhance effective health care delivery. Removal of medication that was ordered and dispensed to inmates that are no longer in the system, due to death or end of sentence status, should cease and desist immediately. If delays are eliminated, unauthorized, and illegal, pharmaceutical practices derived by the facility staff should become unnecessary. It would be prudent to document comprehensive CQI meetings as soon as possible and continue meetings monthly to get a base line on facility activities.

Oral screenings, routine dental cleanings and fluoride should be provided. Regular inmate and employee education efforts in this facility are inadequate. Special educational efforts should be documented for inmates, with chronic care issues and for runners that may be involved in handling material that is contaminated.. When the warden report's that the site HSA displays "poor communication skills and is "a security risk for the facility" health care management adjustment's/replacements are usually prudent. Staff with less than minimum training in CPR, omission of mandatory disaster drills, lack of a current facility evacuation experience, no current practice of review of triage, and obsolete continuing health education documentation, rarely delivery health care that meets the community or national standards.

Recommendations

It is strongly recommended that the DOC review all deaths that occur at Limestone. One fifth of the summaries provided showed a cause of death that contradicted the listed cause on the facility roster. Statistics should accurately reflect the cause of death and provide a useful source of statistical information. The reviews also provide a window into multiple aspects of the delivery system. Charts should be reviewed to see whether appropriate preventive measures such as vaccinations and TB testing are working properly. Records should also be evaluated from the time that symptoms first began and to track diagnostic and therapeutic interventions.

Three of the deaths occurred as the result of liver disease. The charts should be reviewed to determine whether these patients were evaluated for medical intervention including therapy for hepatitis C and other measures to reduce the complications of liver disease.

A disproportionate number of HIV infected inmates were noted to refuse medication. Better documentation is needed to verify that these individuals are fully aware of the consequences of their actions and able to participate in an informed refusal. Mental health evaluations are probably warranted in each patient who is refusing treatment. At a minimum, if there is a history of mental illness, the mental health staff should complete an evaluation.

The cost to the system of opportunistic infections can be prohibitive, while the expense of preventive medications is very minimal. Bactrim therapy for pneumocystis pneumonia (PCP) prevention is an excellent example. This infection is highly lethal and extremely incapacitating. Hospitalization costs usually exceed $10,000, while the cost of prevention runs around $2 a week. PCP prevention should be strongly encouraged even if patients refuse other treatment.

The presence of individuals with badly impaired immune function who have become infected with opportunistic infection may put others at risk, staff and inmates. The Alabama Department of Health should be consulted regarding decontamination and other protective measures to reduce the risk of infection. Toilet decontamination procedures for Toxoplasmosis and other parasites should be evaluated in addition to testing the ventilation system to assure that it is adequate for TB prevention. The installation of ultraviolet lighting is a worthwhile consideration for the main housing unit and the

infirmary.

The DOC should monitor staff vacancies and medication administration. Interruption in treatment programs can lead to drug resistance. High rates of drug resistance will tend to increase the cost of off-site care.