IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA, Plaintiff, SONYA FRYER, et al., Plaintiff-Intervenors, v. STATE OF OREGON, et al., Defendants.	Civil No. 86-961-MA CONSENT DECREE

I. INTRODUCTION

A. On May 13, 1983, the Attorney General of the United States, by and through the Assistant Attorney General, Civil Rights Division, Wm. Bradford Reynolds, ("United States"), notified the Governor and the Attorney General of the State of Oregon, and the Superintendent of Fairview Training Center ("Fairview"), of his intention to commence an investigation of alleged unlawful conditions at Fairview, pursuant to the Civil

Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997 et.seq.

B. Following an investigation pursuant to CRIPA, the United States notified the State that it had reasonable cause to believe that persons residing in Fairview were being subjected to egregious or flagrant conditions that deprived them of their rights, privileges, and immunities secured by the United States Constitution and the Education of the Handicapped Act ("EHA"), 20 U.S.C. § 1400 et.seq.

C. On July 28, 1986, the United States instituted this action pursuant to CRIPA. The United States is authorized to institute this civil action by 42 U.S.C. § 1997a and has met all prerequisites for the institution of this civil action prescribed by CRIPA.

D. This Court has jurisdiction of the CRIPA action pursuant to 28 U.S.C. § 1345.

E. Venue is appropriate pursuant to 28 U.S.C. section 1391(b).

F. The State and the United States have determined that the interest of all Fairview residents, as well as the interests of all other citizens of the State of Oregon, can best be served by entering into this Consent Decree ("Decree"), rather than by engaging in protracted, expensive litigation. All parties are committed to working together to improve conditions at Fairview rather than expending limited public resources on divisive litigation.

G. All parties recognize that the State has invested significant resources in Fairview. Further improvements in the quality of care to Fairview residents can be achieved by transferring significant numbers of residents to community-based residential programs. Resources currently appear adequate to implement this Decree. In entering into this Decree, State officials do not admit any violation of law. This Decree may not be used as evidence of liability in any other proceeding.

H. The parties agree that the care and training of residents of Fairview implicate rights secured and protected by the United States Constitution and the EHA.

I. The provisions of this Decree are a fair and appropriate resolution of this case. It is intended by the parties to assure, inter alia, that conditions at Fairview meet constitutional standards and requirements of the EHA.

J. The Decree is legally binding and judicially enforceable by the parties hereto. This Decree shall be applicable to and binding upon all the parties; their officers, agents and employees, and their successors; and those persons in active concert or participation with them who receive actual notice of this Decree.

II. GOALS AND OBJECTIVES

A. The parties recognize that services provided at Fairview are but one component of a broader array of services provided to persons in Oregon with mental retardation or other developmental disabilities. The parties also recognize that care

and training required by the Constitution and the EHA do not cover the full range of services that a facility such as Fairview can provide. The Plan developed as part of this Decree is intended to include services and care required by the Constitution and laws of the United States. Some of the Plan's provisions also are intended to address (1) the deficiencies the Health Care Financing Administration ("HCFA") identified with Fairview's compliance with Title XIX standards for intermediate care facilities for the mentally retarded and (2) the desires of Fairview and other State professionals to provide the best care possible to all Fairview residents. The parties also recognize that overall improvement in the provision of such services is a long-term process. The goal of the State is not only to improve services but also to provide optimal services.

B. In entering into this Decree, the parties intend to ensure that the State does not deprive Fairview residents of their rights and privileges secured to them by the Constitution and the laws of the United States, by ensuring that conditions at Fairview will satisfy the following objectives:

1. To ensure that professionally designed training programs directed at the elimination of unreasonable risks to personal safety or unreasonable use of bodily restraints are provided to all residents, who, in the professional judgment of qualified professionals, are in need of such programs in order to eliminate such unreasonable risks;

2. To ensure that all residents receive that degree of care which is sufficient to protect them from unreasonable risks to their personal safety and from unreasonable use of bodily restraint;

3. To ensure that all residents receive adequate, timely medical care pursuant to the exercise of professional judgment by a qualified professional;

4. To ensure that all medications are prescribed and administered to residents only pursuant to the exercise of professional judgment by a qualified professional;

5. To ensure that the physical environment and sanitation practices at Fairview pose no unreasonable risks to the personal safety and health of residents; and

6. To ensure that State officials fully comply with the EHA rights of Fairview residents.

These purposes and objectives shall be achieved at Fairview by implementing the requirements set forth in sections IV and V.

III. DEFINITIONS

A. Parties

1. Plaintiff is the United States of America.

2. Defendants are the State of Oregon ("the State"); Neil Goldschmidt, the Governor of the State of Oregon; Oregon Department of Human Resources; Kevin Concannon, Director of the Department of Human Resources; Oregon Mental Health Division; Richard Lippincott, Assistant Director of the Department of Human

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Resources and Administrator of the Mental Health Division; Oregon Department of Education; Verne A. Duncan, Superintendent of Public Instruction; and Michael S. Lincicum, Acting Superintendent, Fairview Training Center. Each of the named State officials is sued in his or her official capacity.

3. As used in this decree, "party" means the State or the United States.

B. Terms

As used in this Consent Decree and the Plan required pursuant to Section V, the following definitions apply.

1. "Physician": A medical doctor lawfully entitled to practice medicine.

2. "Psychiatrist": A physician who either is certified by or is eligible for certification by the American Board of Psychiatry and Neurology or who has successfully completed an approved residency program in psychiatry and upon completion of post-residency requirements will become eligible for examination for such certification.

3. "Psychologist": A person who has attained at least a master's degree in the field of psychology.

4. "Direct Care Worker": Staff immediately responsible for implementing training programs and providing care to residents.

5. "Qualified Professional": A person who is competent, whether by education, training, or experience, to make the particular decision at issue.

6. "Bodily Restraints": "restraints," "seclusion," and "time out," as defined herein.

7. "Restraints": (1) Any devices or hold techniques used to restrict the physical movement or actions of a resident or the physical movement, actions, or normal function of any portion of a resident's body, excluding those mechanical supports approved by a physician used solely to achieve proper body position or balance and devices used for specific medical and surgical (as distinguished from behavioral) treatment; and (2) chemical substances, including behavior modifying medications as defined herein, used solely to restrict the movement of a resident.

8. "Seclusion": Placement of an individual in a locked room, or a room from which the resident is physically prevented from egress.

9. "Time Out": A behavior management technique whereby a resident is isolated from other residents.

10. "PRN": A treatment modality ordered on a pro re nata or "as needed" basis.

11. "Behavior Modifying Medications": Drugs which are prescribed or administered for the purpose of modifying behavior. Included are the neuroleptics, the major and minor tranquilizers, and antidepressants. Excluded are drugs that may have behavior modifying effects but that are not prescribed or administered for that purpose.

12. "Pica": the ingestion of inedible objects.

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13. "Training Program": A program of steps and activities, including behavior management and the teaching of basic self-care skills, determined by a qualified professional consistent with professional judgment to be necessary to protect a resident from unreasonable risks to personal safety and to facilitate his or her ability to function free from undue bodily restraint.

14. "Dysphagia": Impaired ability to swallow liquids or food.

15. "Feeding Program": An individual treatment program for a dysphagic resident or any resident nutritionally at risk, determined by a qualified professional consistent with professional judgment to be necessary to protect a resident from unreasonable risks to personal safety.

16. "Professional Judgment": A decision by a qualified professional that is not such a substantial departure from accepted professional opinion, practice, or standards as to demonstrate that the person responsible did not base the decision on such professional opinion, practice, or standards.

17. "The State": The Executive Branch of the Government of the State of Oregon, specifically including the Governor of the State of Oregon, the Oregon Department of Human Resources, the Oregon State Board of Education, the administration of the Fairview Training Center; and any and all of their officials, agents, employees, or assigns, and the successors in office of such officials, agents, employees, or assigns.

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18. The "Advisory Panel" is the group described in Section VIII of this Decree.

IV. STAFFING

A. The State agrees consistently to maintain the ratios of physicians, psychologists, licensed practical nurses in the cottages, registered nurses in the hospital and direct care workers as of the date of the signing of this Decree. Such ratios shall be fully set forth in the Plan required by this Consent Decree pursuant to Section V, paragraph B(1).

B. The State agrees to attain and consistently maintain adequate registered nurses assigned to cottages and licensed practical nursing staff for the hospital at Fairview at ratios agreed to by the parties at the time of the signing of this Decree. Such ratios shall be fully set forth in the Plan required by this Consent Decree pursuant to Section V, paragraph B(1).

C. The State shall ensure sufficient consultation or otherwise provide services at Fairview Training Center by such medical specialists as may be needed to provide adequate routine and emergency medical care to each resident including, but not limited to, neurologists, psychiatrists, internists, physiatrists, ophthalmologists, and dentists. Such services shall be fully set forth in the Plan required by this Consent Decree pursuant to Section V, paragraph B(1).

D. The State shall ensure sufficient consultation or otherwise provide services at Fairview Training Center by such

qualified professionals as may be needed to provide adequate care to each resident with a physical disability to prevent and/or treat contractures, physical degeneration, inappropriate body growth or deformity, dysphagia, and any other conditions that constitute threats to the physical health of residents. Such services shall be fully set forth in the Plan required by this Consent Decree pursuant to Section V, paragraph B(1).

E. The State shall take all reasonable steps and exert all possible efforts to obtain adequate funding and position authority from the Oregon Legislature to implement all the provisions of the Decree and the Plan developed pursuant to Section V. Nothing in this paragraph shall relieve the State of its independent obligation to implement all other terms and conditions in this Decree and the Plan developed pursuant to the Decree to the extent that they implicate the constitutional rights of Fairview residents.

V. STATE PLAN

In order to comply with this Consent Decree, and to fulfill the goals and objectives described in Section II, the State shall design a plan no later than 60 days after entry of this Consent Decree as an order of this Court.

A. Priority measures.

Immediately upon entry of this Decree and during preparation of the Plan, the State agrees to continue implementation of the following priority remedial measures. These measures will be

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included in the Plan and will continue for the duration of the Consent Decree.

1. Implementing on a consistent basis training programs developed consistent with professional judgment for those residents identified by a qualified professional pursuant to the exercise of professional judgment, exhibiting life threatening pica behavior, frequent self-injurious conduct, or frequent aggressive conduct;

2. Deploying 1:1 staffing when necessary according to professional judgment to protect residents from unreasonable risks of injury to self or others. Such professional judgment shall be exercised by appropriate Fairview professional staff and will, in all cases, be based strictly upon the needs of individual residents and not upon the availability of staff;

3. Comprehensively evaluating pursuant to an evaluation process developed consistent with professional judgment all residents at risk of aspiration of liquids or food or at risk of injury due to active seizures and insuring that steps are taken pursuant to professional judgment to reduce or eliminate such risks;

4. Evaluating residents receiving psychotropic or anti-convulsant medications and making any necessary changes in diagnosis, and type, dose, and combinations of medications pursuant to professional judgment of appropriate Fairview professional staff;

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5. Insuring that medical emergencies are responded to by qualified professionals in a timely manner and that sufficient emergency equipment is available.

B. Plan provisions

The Plan shall set forth the items specified in paragraphs 1 through 19 below.

1. Identification of staff to resident ratios of physicians, psychologists, registered nurses in the hospital, licensed practical nurses in the cottages, and direct care workers to be consistently maintained during the duration of the Consent Decree; identification of the ratios for registered nurses assigned to cottages and licensed practical nurses for the hospital, the steps to be taken to achieve such ratios, the date such ratios will be met, and identification of the services set out in Section IV, paragraphs C and D. If any ratio is to be met by reducing the resident population of Fairview, the State agrees that the determination as to which residents shall be discharged will be made on the basis of professional judgment exercised by professional staff qualified to make such decisions.

2. Procedures (a) to provide regular, periodic professional evaluations of each resident in order to identify those in need of training programs and (b) to provide a sufficient number of training program hours to each resident for whom such training program is necessary.

3. Policies and procedures to reasonably ensure that there is consultation and communication of relevant information between

and among personnel regarding residents' care, training needs and priorities, and medical needs and priorities, and that such information is communicated to staff who provide care for that resident.

4. Procedures to ensure that professional and direct care staff are adequately deployed and supervised and that such staff exercises professional judgment through such measures as staff training.

5. Recordkeeping systems and administrative procedures with respect to each resident's care, medical treatment, and required training that shall be utilized to maintain and make available in each resident's record such information as is professionally necessary to permit the exercise of professional judgment in that resident's care, medical treatment, and training.

6. Policies and procedures to ensure the provision of adequate and timely routine and emergency medical and dental care.

7. Policies and procedures to ensure the identification and evaluation of residents with physical disabilities and the provision of appropriate services to prevent and/or treat contractures, physical degeneration, inappropriate body growth or deformity, dysphagia, and any other conditions that constitute threats to the physical health of residents.

8. Policies and procedures to ensure the evaluation, diagnosis, and treatment of residents with mental illness

consistent with professional judgment.

9. Policies and procedures to ensure that residents receive adequate daily physical care, including feeding, toileting, bathing, and dressing.

10. Policies and procedures to govern the use of drugs, particularly anti-convulsants and behavior modifying medications, including policies and procedures concerning the administration of drugs, monitoring and review of whether the drugs prescribed for and administered to each resident are appropriate for the needs of that resident, drug side effects, drug dosage levels, use of two or more anti-convulsants and behavior modifying medications, stat orders and PRN prescriptions, and utilization of drugs with a behavior modification program.

11. Policies and procedures to provide that bodily restraints: (a) are administered only pursuant to the judgment of a qualified professional; and (b) are not to be used as punishment, in lieu of training programs prescribed by a qualified professional, or for the convenience of staff. Any decision to place a resident in bodily restraint shall be recorded promptly and shall be reviewed by a qualified professional at specified reasonable intervals to determine whether or not the continuation of such bodily restraint is professionally justified.

12. Procedures to provide that residents shall be protected from unreasonable risks of bodily harm to their

personal safety by the conduct of staff or other residents, including adequate staff supervision of residents and requirements to report alleged incidents of bodily harm or unreasonable risk of bodily harm, investigations of such allegations, disciplinary rules and procedures, and sanctions to be followed upon any finding of bodily harm or unreasonable risk of bodily harm.

13. Enforcement mechanisms, including disciplinary measures and sanctions where appropriate, to provide for staff compliance with all policies, rules, and standards of job performance and behavior.

14. Measures to ensure that the physical environment and sanitation practices at Fairview Training Center do not pose an unreasonable risk to the personal safety and health of residents.

15. Procedures to ensure that the appropriateness of placement of residents at Fairview Training Center is regularly evaluated by qualified professionals.

16. Measures to ensure that each resident under the age of twenty-one is afforded a free, appropriate education pursuant to the Education of the Handicapped Act, 20 U.S.C. §1400 et seq.

17. Measures to ensure that the Fairview staff are qualified to engage in the physical management of physically handicapped residents and to implement specialized behavior training and feeding programs for residents.

18. Measures to ensure that all medical and direct care staff are qualified to render first aid and emergency aid.

19. Measures to insure that all residents with seizures receive comprehensive neurological evaluation and treatment.

C. Plan Procedures

1. The State will fully implement the entire Plan not later than June 30, 1991.

2. The parties agree that a plan which addresses the items specified in Attachment A will constitute an acceptable plan, provided the plan reflects the professional judgments of appropriate and qualified professionals.

3. In developing the Plan, the State may consult with the Advisory Panel. Prior to consulting with the Advisory Panel, the State shall inform the United States of the pending consultation. The United States may participate in the consultation.

4. The Plan will state in specific terms and reasonable detail the actions to be taken by the State, the dates of such actions, and the substance of the policies, procedures, regulations, or protocols promulgated and issued by the State.

5. After completion of the Plan, the State will submit the Plan to the United States. The United States shall submit to the State any comments or recommendations within 45 days after receipt of the Plan. If the United States does not submit any comments or recommendations, the Plan will be final, and the State shall file the final Plan with the Advisory Panel and the Court.

6. In the event that the United States submits any comments or recommendations, the State will consider the comments and

recommendations and may consult with the Advisory Panel regarding them. Prior to consulting with the Advisory Panel, the State shall inform the United States of the pending consultation. The United States may participate in the consultation. If the State decides not to adopt any recommendation or comment, the parties shall confer.

7. After conferring, and within 30 days of the State's receipt of the United States' recommendations or comments, the State shall file its Plan with the Advisory Panel and provide copies of the Plan to the United States. The State shall notify the United States of any comments or recommendations that were not included in the final Plan.

8. Within 15 days of their receipt of the Plan, the United States shall file with the Advisory Panel any objections to the Plan. The Advisory Panel shall consider those objections as provided in Section VIII of this Decree.

9. Any party may seek judicial review of the Advisory Panel's decision within ten days. If no review is sought, the State shall file the final Plan with the Court.

VI. MODIFICATION OF THE PLAN

A. The State will submit any proposed modification of the Plan to the United States. No modifications shall be submitted until 60 days following approval of the Plan.

B. The United States may provide the State with comments or recommendations regarding the proposed Plan modification within 30 days of receipt of the proposed modification.

C. If the United States does not submit any comments or recommendations, the Plan modification will be final, and the State shall file the Plan modification with the Advisory Panel and submit the Plan to the Court.

D. In the event that the United States submits any comments or recommendations, the State will consider the comments and recommendations within 30 days, and may consult with the Advisory Panel regarding them. Prior to consulting with the Advisory Panel the State shall inform the United States of the pending consultation. The United States may participate in the consultation. If the State decides not to adopt the recommendations or comments, the parties shall confer within 30 days.

E. If the parties reach agreement about the Plan modification, the State shall file the final modification with the Advisory Panel. If the parties do not reach agreement, the State shall file the proposed Plan modification with the Advisory Panel and provide copies of it to the other parties. The Panel shall consider any written materials provided within 14 days by the parties regarding the proposed modification as provided in Section VIII.

F. Any party dissatisfied with the Panel's decision may seek review by the court as provided in Section IX within ten days notice of the Panel's decision.

G. If the State determines that immediate modification of a Plan provision is necessary, upon telephonic notice to the

United States, the State may seek relief from the Court.

VII. MONITORING THE PLAN

A. The State intends to fully implement the Plan in accordance with the terms of this Decree. The Plan shall be enforceable against the State to the fullest extent necessary to satisfy constitutional standards and requirements of the EHA.

B. Reports

1. Beginning the first quarter after entering this Consent Decree, the State shall provide the Advisory Panel and the United States with quarterly reports describing Fairview's progress with implementing the Plan. The reports shall be filed quarterly, no later than fifteen (15) days after the end of each quarter, and continue until such time as this Consent Decree is terminated.

2. Beginning 30 days after this Decree is entered, the State shall provide the Advisory Panel and the United States on a monthly basis the following information routinely collected and summarized: (a) statistics on use of personal hold and restraint; (b) incident report analyses; (c) statistics on staffing; (d) a list of residents who died and cause of death; (e) monthly hospital admission log; and (f) abuse investigation reports.

C. Monitoring by United States

The United States and its attorneys, consultants, and agents shall have reasonable access to the facilities, records, residents, and employees of the Fairview Training Center upon reasonable notice to the State for the purpose of ascertaining

compliance with the Decree. The United States and the State shall engage in good faith efforts to determine the time and manner of such tours. Absent agreement, any party may seek relief from the Court. No tours will be conducted during on-site surveys by HCFA or the state survey agency without prior consent of the State.

2. Following tours by the United States, the United States will provide a written report to the State regarding Fairview's implementation of the Plan.

3. The State shall have 30 days to review the report of the United States and to notify the United States of what actions, if any, the State proposes to take in response to the report. If the United States is dissatisfied with the State's response, it shall have 30 days to refer the matter to the Advisory Panel and will advise the State of any decision to do so.

4. Upon referral to the Advisory Panel on a compliance matter, the Advisory Panel shall promptly deliberate and reach its decision regarding compliance no later than 30 days after the referral. The Advisory Panel, accompanied by such consultants as they deem necessary, may conduct such site visits to Fairview as the Panel deems necessary to ascertain whether the State is in compliance or noncompliance as determined by the United States.

5. Upon reaching a decision as to the State's compliance with the Consent Decree or Plan, the Panel will issue its report and make a finding regarding the status of compliance. The Panel will identify those recommendations by the United

States which the Panel believes the State must take to achieve compliance.

6. The Advisory Panel shall provide a unanimous, unsigned decision to the parties in writing.

7. In the event the United States determines that emergency measures are necessary, upon telephonic notice to the State, the United States may seek relief from the Court.

VIII. THE ADVISORY PANEL

A. Composition of the Advisory Panel

1. The Panel shall consist of three members.

2. The parties shall meet in an attempt to agree to the composition of the Panel.

3. If the parties are unable to agree, one member shall be appointed by the United States and one shall be appointed by defendants. The two members who are chosen shall select a third member, with both the United States and the State retaining a right to veto the third person chosen.

4. If a vacancy occurs due to the death or resignation of a person, the parties shall meet in an attempt to agree upon a successor. If the parties are unable to agree, the two incumbent members shall choose a successor with each party retaining the right to veto the incumbents' selection.

5. The Chairperson shall be jointly selected by the parties to preside over the Panel. If the parties are unable to agree, the Chairperson shall be selected by the Court. The Chairperson shall call meetings, establish procedures for resolving disputes

between the parties under this Decree, administer the budget, and authorize expenditures.

B. Budget

1. The State shall deposit $200,000 in an interest bearing account.

2. The funds shall be used to pay fees of the Panel members and such consultants and other expenses as the Panel deems necessary.

3. The State shall make space available to the Panel members upon request.

4. Travel by the Panel members and any consultants the Panel employs shall be reimbursed at a rate not in excess of that provided pursuant to federal guidelines.

C. Standards

1. In reaching decisions regarding disagreements over provisions of the proposed plan or proposed modifications to the final plan which are required to implement the purposes and objectives set forth in Section II(B) of this decree, the Advisory Panel shall determine whether the provision or modification represents a substantial departure from accepted professional judgment.

2. In reaching decisions regarding recommendations submitted by the United States regarding compliance with provisions of the plan which are required to implement the purposes and objectives set forth in Section II(B) of this Decree, the Panel shall determine whether the State is in

compliance or noncompliance.

3. If, at any time, any party believes that an action expressly required by HCFA at Fairview conflicts with any provision of this Decree or the plan required by Section V, the parties agree to meet promptly to resolve the matter.

IX. JUDICIAL REVIEW

1. Any party may seek review by the Court of a decision by the Advisory Panel. Prior to seeking judicial review, the parties shall confer in a good faith effort to resolve differences, and shall provide written assurance to the Court that they have conferred.

2. In reviewing a decision of the Advisory Panel, the Court shall apply the standards set out at Section VIII, Paragraph C. The decision of the Advisory Panel shall be entitled to a rebuttable presumption of correctness.

3. The parties anticipate that judicial review shall occur on an expedited basis. The Court may consider whether it is appropriate to conduct a hearing. If a party desires discovery and the parties cannot agree, the Court shall conduct a discovery conference to determine whether discovery may be had.

4. Nothing in this Decree limits the right of appeal of any party.

X. TERMINATION OF DECREE

1. The parties contemplate that the defendants shall have fully and faithfully implemented all provisions of this Consent Decree and the Plan on June 30, 1991, provided the Plan required

by this Consent Decree is completed and approved no later than six months after entry of this Consent Decree.

2. The Court shall retain jurisdiction of this action for all purposes under this Consent Decree until the defendants shall have fully and faithfully implemented all provisions of the Consent Decree and the Plan and until the judgment be discharged.

3. On or after the date on which the State shall have fully and faithfully implemented all provisions of this Consent Decree and the Plan, the State may move that the injunctions entered herein be dissolved, the judgment discharged, jurisdiction terminated, and the case closed and dismissed with prejudice on grounds that the State has fully and faithfully implemented and maintained all provisions of this Consent Decree and the Plan submitted pursuant thereto.

4. Dismissal shall be granted unless, within 60 days after receipt of the State's motion, the United States objects to the motion. If such an objection is made with particularity, the Court shall hold a hearing on the motion and the burden shall be on the United States to demonstrate that the defendants have not fully and faithfully implemented all provisions of this Consent Decree or the Plan or any part of the Plan and, if objection is based upon failure to implement any part of the Plan, that such part of the Plan is essential to the achievement of one or more of the goals and objectives set forth in Section II.B of this Consent Decree. If the United States fails to meet this burden, the injunctions shall be dissolved, this judgment

shall be discharged, jurisdiction shall be terminated forthwith, and the case shall be closed and dismissed with prejudice.

The parties agree to entry of this Consent Decree as a judgment of the Court pursuant to the agreed form.

CONSENTED TO:

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Approved as to form:

WILLIAM F. GARY
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ATTACHMENT A

Attachment A is a list of specific items to be addressed in the Plan. The United States believes each matter identified in Attachment A is constitutionally or statutorily required. The State does not agree that every matter discussed in Attachment A is constitutionally or statutorily required nor that a plan must address every item in the manner specified in Attachment A to be an acceptable plan under the Decree.

I. BEHAVIOR MANAGEMENT AND PROGRAMMING

A. Process for continual identification of residents with "at risk" behavior; operational criteria for "risk indicators."

B. Timely comprehensive behavior assessments of residents to identify maladaptive behaviors with specificity and their antecedent, consequential, and motivational factors.

C. Development of timely individualized behavior programs, including communication programs and skills training programs to increase tolerance and coping, with appropriate data collection systems to address each resident's behaviors with the least restrictive intervention in a proactive manner that comports with accepted professional standards.

D. Timely peer review process of behavior programs to evaluate whether they comport with accepted

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professional standards; professional staff identification of programs for peer review.

E. Implementation of behavior programs of sufficient duration with consistency across settings and staff.

F. Regularly scheduled training to instruct staff in how to implement individualized behavior programs of residents within their care; monitoring to ensure consistent implementation of programs; professional on-site supervision of staff.

G. Regular professional data-based evaluations of efficacy of behavior programs; appropriate and timely modifications made when necessary.

H. Adequate supervision of residents by staff to ensure that residents do not suffer harm and are not at risk of harm; adequate deployment of staff, particularly during breaks.

I. Rigorous comprehensive quality assurance system with procedural reliability checks to ensure that components A-H, above are consistently implemented and accomplishing intended purposes.

J. Adequate client ratios of psychologists.

II. <u>RESTRAINTS</u>

A. Unified recordkeeping system to record use of all restraints (i.e. consistent from cottage to cottage).

B. Computerized system to record on a monthly basis use of all restraints.

C. System to ensure review by cottage IDT, Quality Assurance, and Psychology Department of use of restraints; system to ensure that frequent use of restraints or prolonged period of restraints is identified, evaluated, and timely changes in behavior prescriptions are made when necessary.

D. System to ensure that in use of restraints:

1. Attempts are made to decrease use of restraints through behavior programs and active treatment; and that program is reevaluated on a timely basis.

2. Staff are adequately trained; restraints are used for least amount of time necessary; appropriate restraints are used only as a last resort after documentation that all professionally appropriate approaches absent restraints have been consistently and appropriately implemented.

3. Use of restraints is part of a behavior program except in an emergency (in which case appropriate safeguards are in place to ensure that professional discretion is exercised).

III. MEDICAL CARE

A. System to ensure adequate and timely detection and treatment of injury and illness: (a) method of communicating information among direct care, CMA, nursing, and physician staff; (b) appropriate and timely response to injuries, particularly falls;

(c) method to communicate information between on-call physicians and regular cottage physicians; (d) method to ensure follow-up by cottage physician of specialist recommendations, particularly neurologists and psychiatrists; (e) method to ensure that decisions to transfer residents from Fairview Training Center Hospital to general hospital are made in a timely fashion.

B. Coordination between health care professionals:

1. Between dietitians (particularly special diets and nutritional assessments) and nurses and physicians.

2. Between specialists (particularly neurologists and psychiatrists) and cottage physicians.

3. Between health care staff and psychologists.

4. Between Occupational Therapists, Physical Therapists, Respiratory Therapists and nurses and physicians.

C. Emergency medical care.

1. 24-hour on-site availability of physician.

2. System to ensure emergency equipment is available 24 hours a day seven days a week and is in working order.

3. Evaluation of emergency equipment in residential and program areas to determine whether additional on-site equipment is necessary.

4. System for regular emergency (Code 99) drills with feedback on necessary corrective actions. (Reinstitute regular meetings of Code 99 Committee.)

5. Policy on providing decision making regarding no code or termination of resuscitation efforts.

6. ACLS certification by physicians on Code 99 Team.

D. Dental Care

1. Sufficient number of dentists, dental hygienists, and dental assistants.

2. Behavior programs developed and implemented to reduce need for IV sedation and general anesthetic.

3. Cottage programs for improved oral hygiene and teaching oral hygiene skills.

4. Comprehensive timely annual dental evaluations for all residents.

5. System to identify and treat residents at dental risk because of medication usage.

E. Hospital Care

1. Protocol to ensure standardization and adequacy of hospital admit orders, including diagnosis, vital signs, special precautions, and indications for immediate notification of MD.

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2. Policy to ensure adequate consultation by specialists.

3. Policy to ensure adequate discharge plans and need for follow-up.

4. Policy to ensure adequate and timely discharge summaries.

F. Adaptive Equipment

1. Assessments to determine needs for eyeglasses, hearing aids, dentures.

2. Process to ensure that the above are provided on a timely basis and used (behavior programs to encourage use where necessary).

G. Functioning Medical Committees, including:

1. Peer review and credentialling.

2. Death reviews.

3. Code 99 reviews.

H. Ongoing medical quality assurance monitoring.

IV. MEDICATION ADMINISTRATION

A. System to monitor and detect medication errors and take corrective action.

B. Implementation of unit dose system on a facility- wide basis.

C. System to ensure that certified medication aides observe and report medication side effects.

D. Procedures to ensure that medication is swallowed when given and that appropriate follow-up occurs if a

resident refuses medication.

E. System to ensure continuity in assignment of CMAs, consistency in group of residents for which CMA is responsible, and familiarity with residents.

F. System to ensure adequate supervision by nursing staff and CMAs in medication and treatment administration.

G. Adequate documentation of PRN medications (initial assessment and follow-up).

V. NURSING

A. System to ensure adequate supervision by nursing staff of CMAs in medication and treatment administration; timelines for implementation of RN unit health supervisor program.

B. Timely development, implementation, and review/modification of nursing care plans.

1. Identification of health risk indicators for clients.

2. Protocols for ongoing monitoring and intervention according to level of risk.

C. Evaluation of residents to assess drug side effects.

D. System for ongoing quality assurance of nursing functions.

E. Procedure to ensure timely review and prompt response to changes in bowel flow, weight loss, daily intake of food and fluids.

F. Training of nurses: (1) new RN orientation; (2)

inservice training; (3) detection of subtle signs of aspiration and reflux and observation to evaluate whether residents are at risk of aspiration; (4) development and implementation of health risk indicators.

G. Plan and timeline to ensure adequate R.N. and L.P.N. staffing on the cottages and in the hospital during all shifts, seven days per week.

VI. SEIZURE MANAGEMENT

A. System to conduct comprehensive evaluation of all residents on anticonvulsants on an expedited basis and for annual reevaluations.

B. Policy detailing required time frames within which to obtain laboratory tests for anticonvulsant drug levels.

C. System to ensure that residents at risk of injury from seizures are identified and protected by (1)adequate supervision; (2) ordering and implementing in a timely fashion safety precautions (e.g., bed rails, padding) and communicating them to staff; (3) removing environmental hazards; (4) ensuring protective head gear is in good condition and does not contribute to injury: (a) evaluate individualized need for protective head gear; (b) design appropriate individualized head gear; (c) periodically inspect and repair problems with protective head gear.

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D. Protocols on appropriate combinations of anticonvulsants.

E. Policy to continue practice of no locked helmets for seizure clients.

F. System to ensure that critical cases are addressed by the Fairview neurologist, including (1) all seizure clients admitted to the hospital; and (2) seizure clients who experience repeated falls and/or injury.

G. System to ensure adequate follow-up on epilepsy evaluations: (1) documented follow-up on recommendations by cottage physicians; (2) close supervision during medication changes; and (3) continuity and timeliness of follow-up.

H. Neurologist's authority to write order.

I. System to ensure that consult requests for neurological evaluations are responded to in a timely fashion.

J. Adequate staffing (i.e., consultants) to ensure A-I, above.

K. System to adequately record consistent information on occurrence of seizures.

VII. PSYCHOPHARMACOLOGY

A. Continuation of practice prohibiting prn use of psychotropic medication.

B. Policy setting maximal dosages of psychotropic medications.

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C. Policy ensuring continuation of the practice of no intraclass polypharmacy.

D. System to ensure that appropriateness of continued use of psychotropics is regularly reviewed by a psychiatrist, that timely changes are made when necessary, and that use of psychotropics is continued only when authorized by a qualified professional, which may include an automatic stop order or renewal policy.

E. Laboratory monitoring for levels of psychotropic medications and protocols regarding such monitoring.

F. Policy prohibiting use of psychotropics without a behavior prescription.

G. Policy ensuring physician exam following administration of stat order.

H. System to ensure there is continuity of psychiatric care.

I. System to ensure that when changes in psychotropic medication are made: (1) direct care staff are aware of those changes; (2) direct care staff report changes in condition; and (3) close supervision is provided at the time of medication changes; and (4) adequate data on behaviors is documented.

J. System to ensure that when psychiatric recommendations are made, the cottage physicians review and implement recommendations on a timely basis or document justification for not following recommendations.

K. Psychiatrists' authority to write orders.

L. Participation by psychiatrists in the IPP process and input in quarterly health care reviews.

M. Meaningful coordination between psychiatrists and psychologists; timely modification to behavior prescriptions as changes in psychotropic medications are made.

N. System to ensure adequate monitoring of side effects of psychotropic medications and to ensure appropriate follow-up action is taken.

O. Psychiatric reevaluations of all residents on psychotropic medications; adjustments where necessary in medication regimen based on behavioral data.

P. System to ensure that all residents are on lowest effective dose of psychotropic medication.

Q. System to ensure that a specific psychiatric diagnostic formulation is made and recorded in the record with supporting rational for psychotropic drug therapy.

R. Progress notes documenting efficacy of pharmacological and behavioral treatments; drug side effects, serum levels, any medication complications or contraindications.

S. Adequate staffing (i.e., consultants) to ensure A-R, above.

VIII. PHYSICAL THERAPY

A. Comprehensive physical therapy evaluations of all

residents to identify physical therapy needs (priority given to residents in intensive care cottages and who have physical disabilities).

B. Development and implementation of individualized physical management programs by interdisciplinary process: (1) physical therapy, mobility, ambulation training (2) positioning/postural alignment across 24 hours; (3) individually designed therapeutic equipment to correct deformity (reevaluation of current equipment, particularly appropriate side-lying equipment); (4) prevention of contractures, skin breakdown; and (5) transfer techniques.

C. Training of direct care staff in how to implement individualized physical management programs, monitoring staff implementation of programs, providing feedback, and taking corrective action where necessary.

D. Periodic reevaluation of physical therapy needs and efficacy of physical management programs, making modifications where needed.

E. Quality assurance program to monitor progress, ensure timely evaluations, reevaluations, and delivery of needed services, including using necessary equipment on a continuing basis, particularly positioning devices, splints, and footrests.

F. Adequate staffing to ensure A-E, above, including use of consultants where needed.

G. Timely provision of individualized equipment, particularly wheelchairs and other vendor-purchased equipment.

IX. FEEDING

A. Priority measures for residents at risk of aspiration.

B. Identification: Process to ensure initial facility-wide identification and ongoing identification, including detection of early warning signs of:

1. Residents at nutritional risk (i.e., residents whose inability to ingest sufficient nutrients, keep them in their system, absorb them, or excrete them places them at nutritional risk).

2. Residents who need occupational therapy training in eating skills.

C. Interdisciplinary evaluation and assessment of needs of residents at nutritional risk and residents who need occupational therapy training in eating skills to determine specific programmatic needs.

D. Development of individualized interdisciplinary plans.

1. Residents at nutritional risk:

a. Plan for placement of food and liquids in mouth.

b. Positioning before, during, and after feeding.

c. Level of professional supervision needed.

d. Behavioral/environmental considerations,

including any need to limit number of different staff who feed.

2. Eating skills: Individualized occupational therapy plan to teach needed skills.

E. Implementation of Individualized Plans.

1. Residents at nutritional risk:

a. Train direct care staff in how to implement/evaluate staff for competency in implementation.

b. Deploy staff to ensure consistency in feeders.

c. Professional staff to model appropriate techniques, supervise, and evaluate direct care staff.

2. Eating skills

a. Train direct care staff in how to implement eating program.

b. Professional staff to model and evaluate for competency in implementation.

F. Development of "risk indicators" for persons nutritionally at risk and protocols for each "risk level" re: ongoing assessment, evaluation, and provision of treatment.

G. Periodic reevaluation of individualized plans by inter disciplinary team to ensure efficacy of plans; professional review of nutritional management risk

indicators data; timely revision to plans developed and implemented when necessary.

H. Adequate staff to ensure the above, e.g., OTs/COTAs, Speech therapists, Habilitative Nurses, and Physical Therapists.

I. Weight Maintenance

1. Identify all residents 10-20 percent below weight and/or at weight maintenance risk, e.g., insulin dependent.

2. Assess dietary needs of residents; order appropriate diets.

3. Monthly nutritional assessment for all residents at weight maintenance risk.

4. Evaluate diet to determine if any changes need to be made.

J. Arrangement of dining schedules for residents at nutritional risk and those on eating programs to ensure sufficient amount of time for individual attention and atmosphere conducive to eating (e.g., scheduling mealtimes for smaller groups to prevent down time while waiting to eat).

K. System to ensure that dietary evaluations are conducted and appropriate diets ordered. In particular:

1. Dietary supplements for underweight residents.

2. Fiber and bran and other dietary adjustments and

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management measures for residents with chronic constipation.

3. System to ensure that special diet orders are provided on a consistent basis.

L. Evaluation of residents to determine special equipment needed for eating/feeding, e.g., scoop spoons, straws, appropriate cups for fluids; quality assurance system to ensure that necessary special equipment is available and used during mealtimes.

M. Policy setting forth procedures to be followed when a resident refuses food or when maladaptive behaviors interrupt mealtimes.

N. Procedures outlining timely and professionally appropriate decision-making process for starting, stopping, and weaning NG-tube, G-tube and to perform Nissen fundoplication procedure.

O. Adequate staffing (i.e. consultants or otherwise) to ensure items A-N, above.

X. SANITATION AND INFECTION CONTROL

A. Systematic evaluation of critical areas, particularly those in which clients eat, treatments are given, and medications are passed to determine in which areas sinks can reasonably be installed given physical plant limitations; an effort to remove clients, especially dependent feeders, from areas without sinks as downsizing occurs; and immediate attention focused

on Wards 3 and 4 in Martin, the Snell dining room and the dining areas in Patterson.

B. Training to ensure that all staff are aware of the need for and understand appropriate techniques to assure adequate infection control.

C. System to monitor and provide feedback to staff on infection control practices.

D. Sufficient number of housekeeping staff to provide consistent sanitary environment in residential and program areas and to ensure that direct care staff are not removed from direct care duties to perform housekeeping functions.

E. System to ensure that sanitation and infection control problems are identified and remedied in a timely fashion.

F. Timelines to ensure that adequate hot water is consistently available in all residential and program areas and in the hospital.

G. Adequate precautions for hepatitis B carriers.

XI. STAFF TRAINING

Direct Care Staff:

A. Initial Training before beginning work on cottages:

1. State Certified Nursing Assistant (CNA)

2. Behavior management (developmental and behavioral needs of persons with mental retardation; appropriate interventions and management of

maladaptive behaviors; implementation of individual behavior programs).

3. Physical care (basic skills to meet health care needs, sanitation and infection control, appropriate hygiene methods, detection of signs of illness, and first aid).

4. Habilitative nursing (positioning, feeding, bathing, toileting, lifting and transferring residents with physical disabilities) to the extent commensurate with the needs of assigned clients/cottage.

5. CPR

B. Competency evaluation of skills mastered.

C. Provision of training in items A 1 - 5 above, to existing staff who can not demonstrate competency through a process for challenge.

D. Ongoing Training.

1. Behavior Management:

a. Training by professionals in the correct implementation of the individual behavior management programs for clients for whom each direct care staff person is responsible.

b. Individual periodic evaluations regarding implementation of specific behavior prescriptions and overall staff to client interaction skills.

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c. Additional individual or inservice training, as necessary.

2. Physical Care:

a. Training by professionals in the correct implementation of positioning, feeding, and other rehabilitation programs for clients for whom each direct care staff person is responsible.

b. Periodic evaluations regarding ability to render proper physical care to residents.

c. Additional individual or inservice training, as necessary.

3. CPR: Periodic refresher training to maintain certification.

Certified Medication Aides:

A. Initial training before commencing duties:

1. State Board of Nursing approved curriculum.

2. Behavior management.

3. Physical care.

4. Habilitative Nursing.

5. CPR

B. Competency evaluation of skills mastered.

C. Provision of training in items A 1-5, above, to existing staff who cannot demonstrate competency through a process for challenge.

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D. Ongoing

1. Periodic refresher training and in-service.

2. Training records and a tracking system to assure that initial and continuing training requirements are met.

3. Individual evaluations on a periodic basis by a registered nurse to ensure ongoing adherence to policy and procedures.

4. System of tracking medication errors by individual CMA to evaluate and implement ongoing training needs.

Professional Staff:

A. Credentials Review Committee to assure that professionals who work at Fairview have appropriate credentials and are practicing in only those areas in which they have been determined to be competent to provide services.

B. Initial training prior to assignment to duty, to familiarize the professional staff with the special needs of Fairview clients.

C. Continuing Education

1. Identification of ongoing training needs of professional staff on at least an annual basis; development and implementation of a program of regular continuing education; minimum number of

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inservices for physicians, nurses, and psychologists.

2. Tracking system to identify the training needs of each individual professional and the extent to which that individual has attended appropriate inservices.

XII. RECRUITMENT

A. Staff recruitment of registered nurses, licensed practical nurses, physical therapists, licensed physical therapy assistants, occupational therapists, certified occupational therapy assistants, and dental hygienists and assistants.

B. Evaluation and necessary adjustment of pay scales to make salaries competitive.

C. Rigorous recruitment.

D. Use of consultants and contracts where necessary to reach staffing levels.

XIII. RECORDKEEPING

System to integrate programmatic and medical services to clients.

XIV. ABUSE

A. Staff training re: actions that constitute abuse of residents.

B. System requiring complete reports of alleged staff

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abuse to be made to appropriate officials in a timely fashion.

C. Independent timely investigation and resolution of allegations of staff abuse.

D. Disciplinary rules and procedures and sanctions to be imposed upon a finding of staff abuse.

XV. EDUCATION

A. Expanded hours in school day and for homebound instruction.

B. Increased staff in classrooms and for homebound instruction.

C. Provision of homebound instruction by a certified teacher.

D. Training of teachers and other classroom staff (see section on Staff Training).

E. Improved supervision of residents during the school day to ensure their safety and well-being.

F. Appropriate IEP process, identification of individual needs, including related services, implementation of IEP objectives, monitoring and revision as necessary.

G. Coordination between residential and educational activities (e.g., consistent involvement of educational staff in IPP development and of program staff in IEP development and familiarity with and appropriate implementation of behavior prescriptions on the part of school staff).

H. Implementation of State's program to place all Fairview residents younger than 21 years of age as of June 30, 1989 into appropriate community-based residential settings where the free, appropriate education guaranteed by EHA is provided in the least restrictive educational environment.

I. Program (nature of which to be determined) for those children who will have "aged out" who were under age 21 at the time of filing the Complaint for period of time that passed between turning 21 and filing the Complaint.

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 1989, I will serve a true copy of the within Joint Motion to Enter Consent Decree, Proposed Order, and Consent Decree upon the party listed below, by hand-delivery:

Elam Lantz, Jr.
David B. Hatton
ODDAC
625 Board of Trade Building
310 SW 4th Avenue
Portland, OR 97204

GLENN KLEIN OSB #83110
Assistant Attorney General
Of Attorneys for Defendants
450 Justice Building
Salem, Oregon 97310
Telephone: 378-6313

0245T/wjp

DAVE FROHNMAYER
ATTORNEY GENERAL
STATE OF OREGON

JAMES E. MOUNTAIN, JR.
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

February 9, 1989

VIA TELEFAX

Arthur E. Peabody, Jr.
Chief, Special Litigation Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 37076
Washington, D.C. 20066

Re: United States v. Oregon, et al
Civil No. 86-961-MA

Dear Art:

This letter serves to provide you with advance notification of the staff to resident ratios of physicians, psychologists, registered nurses in the hospital, licensed practical nurses in the cottages, and direct care workers which the state shall set forth in the Plan pursuant to the Consent Decree, Section V (B)(1). The staffing ratios presented herein were agreed to by the parties during our recent settlement negotiations.

Physicians	1:100	As of date decree entered
Psychologists	1:30	As of date decree entered
Cottage RNs		
Day Shift		
Weekdays	1:40	By 7/1/89
Weekend/holidays	1:180	By 7/1/89
	1:175	By 12/1/89
Swing Shift		
7 days/week	At least 4*	As of date decree entered
	1:180	By 7/1/89
	1:175	By 12/1/89
Graveyard Shift		
7 days/week	At least 3	As of date decree entered
Cottage LPNs	1:50	As of date decree entered
Hospital RNs		
Day Shift		
7 days/week	1:10.5 + superv. RN	As of date decree entered
Swing Shift		
7 days/week	1:10.5	As of date decree entered
Graveyard Shift		
7 days/week	At least 2	By 7/1/89
Hospital LPNs	1:2 across three shifts (on average equals 1:4, 1:5, 1:10.5)	By 12/1/89
Direct Care	Overall ratio of .625:1 on duty and present for each 24-hour period, 7 days/week. (Which, on the average, equals 1:4, 1:4, 1:8.)	As of date decree entered

* The plan will reflect a minimum of 3 RNs. The fourth RN can be used on other shifts, if justified as not necessary on the swing shift to protect the health and safety of residents.

We look forward to the finalization of the Consent Decree.

Yours very truly,

PAMELA L. ABERNETHY
Special Counsel to the
Attorney General

PLA:cm
4951a

cc: The Honorable Michael Hogan
William F. Gary
Kevin Concannon
Richard C. Lippincott, M.D.