



MR-WI-001-003

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IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,
Plaintiff,

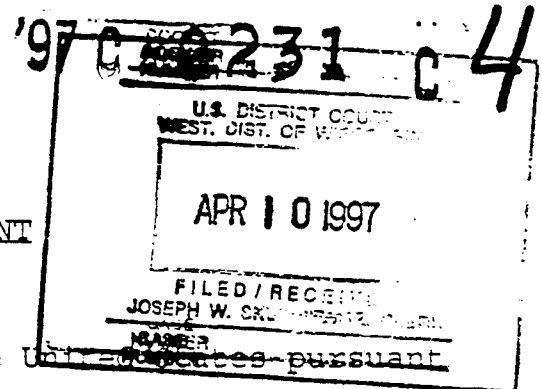
v.

THE STATE OF WISCONSIN, et al.,
Defendants.

A TRUE COPY
APR 10 1997
Clerk of Court

Joseph W. Skupniowitz, Clerk
U. S. District Court
Western District of Wisconsin

By J. Lowe
Civil Action No. 97-000231-C-4

SETTLEMENT AGREEMENTI. INTRODUCTION

A. This case was instituted by the United States pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997.

B. This Court has jurisdiction over these actions pursuant to 28 U.S.C. § 1345.

C. Venue is appropriate pursuant to 28 U.S.C. §§ 1391 and 1392.

D. The United States is authorized to institute this civil action by 42 U.S.C. § 1997a and has met all the prerequisites for the institution of this civil action prescribed by the statute.

E. The plaintiff is the United States of America.

F. The defendants include: the State of Wisconsin; Joseph S. Leraan, Secretary of the Department of Health & Family Services; James Hutchison, Superintendent of the Southern

Copy of this document has been provided to:

AUSA Cameli and AAG Victor this 10th day of April, 1997.

By:

J. Lowe

Deputy Clerk

Wisconsin Center for the Developmentally Disabled ("SWC"), in Union Grove, WI; and Steve Watters, Acting Superintendent of the Central Wisconsin Center for the Developmentally Disabled ("CWC"), in Madison, WI.

G. The individual defendants who are officers of the Executive Branch of the State of Wisconsin have authority and responsibility for the operation of SWC and CWC ("the Centers") and are sued in their respective official capacities.

H. The parties agree that the care, conditions and training of the developmentally disabled citizens residing at the Centers ("the residents") implicate rights that are secured and protected by the laws and Constitution of the United States. The parties entering into this Settlement Agreement recognize these statutory and constitutional interests, and for the purpose of avoiding protracted and adversarial litigation, agree to the provisions set forth herein.

I. In entering into this Settlement Agreement, defendants do not admit any violation of law and this Settlement Agreement may not be used as evidence of a violation of law in any other civil proceeding. The defendants maintain that the care, treatment and services provided at the Centers meet or exceed all applicable legal standards, and far exceed the constitutional minimums at issue in legal actions of this nature. The United States maintains that the care, treatment and services provided at the Centers continue to violate the constitutional and federal statutory rights of the individuals residing in these

institutions. The defendants contend that they are currently adhering to some of the policies and practices required by this Agreement. The fact that a particular policy or practice is included as a requirement in this Agreement is not to be construed for any purpose by any person or forum as evidence that the defendants are or are not currently following that policy or practice. This Settlement Agreement is enforceable only by the parties hereto, and only in the manner herein provided.

J. The provisions of this Settlement Agreement are a lawful, fair and appropriate resolution of this case.

K. In all cases, the defendants agree to provide adequate care, treatment and services consistent with the requirements of Youngberg v. Romeo, 457 U.S. 307 (1982). To the extent any provision of this Agreement relating to the provision of care, treatment or services requires that any action be taken or thing be done to a level of quality or in an amount that is not otherwise specified or quantified in the Agreement, that provision shall be interpreted consistent with the "professional judgement" standard enunciated in Youngberg. In particular, all qualifying terms used in this Agreement, including but not limited to "medically indicated," "adequate" or "timely" shall be interpreted to mean that level, quality, amount or timeliness of care, treatment or services that is consistent with the "professional judgment" standard enunciated in Youngberg. However, the "professional judgment" standard enunciated in Youngberg in no way relieves the defendants of any obligation to

meet specific requirements of federal law, including but not limited to regulations of the Health Care Financing Administration governing Intermediate Care Facilities for the Mentally Retarded.

L. This Settlement Agreement, voluntarily entered into, shall be filed by the United States with the United States District Court for the Western District of Wisconsin at the same time as the summons and complaint in this matter are filed, and shall be entered by the Court and shall be enforceable as an order of this Court pursuant to the procedures provided herein. The parties acknowledge that venue is proper in this Court and that this Court retains jurisdiction over the Centers to the extent and pursuant to the procedures provided in this Settlement Agreement. This Settlement Agreement is legally binding on and judicially enforceable by the parties pursuant to the procedures provided herein and it shall be applicable to and binding upon all of the parties, their officers, agents, employees, assigns, and successors.

II. MEDICAL CARE

- A. Defendants will ensure that the Centers' residents receive adequate preventive, chronic, routine, acute, and emergency medical care. To this end, at a minimum, the Centers will continue to maintain a full time equivalent ("FTE") primary care physician to resident ratio of at least 1:120 commencing no later than April 1, 1997. For the purpose of calculating this ratio, each Center Medical Director shall be considered to work

at that proportion of one FTE that his or her primary care patient case load bears to the average patient case load of a FTE primary care physician at the Center. Within 120 days from the entry of this Settlement Agreement, the Centers' primary care physicians will:

1. Conduct annual comprehensive evaluations of all residents who are due for their regular annual evaluations;
2. Determine what specialized medical services are required for the residents for whom they are responsible and timely provide or arrange for such services whenever necessary to evaluate or treat the individual's medical problems;
3. Participate in the development of an integrated medical plan of care for each resident to address any chronic medical problems of that individual, as part of the annual comprehensive medical evaluation of that individual;
4. Adequately review each resident's medical status and progress in response to his or her medical plan of care as often as is medically indicated given the resident's particular medical condition and needs;
5. Review and adequately respond to all recommendations of outside medical specialists, including regular consultants, and laboratory findings, if medically indicated, documenting what action has been taken and the reasons therefor, including, if action is recommended by a physician specialist within his or her field of expertise and is not taken, the reason(s) for not acting upon the recommendations or findings, or seeking a second opinion;
6. Maintain formal relationships to coordinate care with medical personnel at acute care hospitals and to review the care residents receive at these hospitals; implement a protocol requiring staff at the Centers to obtain from the hospitals a timely, adequate record of the diagnosis, course of treatment at the hospitals, and prescribed treatment; perform a re-admission assessment and write orders specifying the individual's follow-up care after an individual is returned from the hospital; record in the individual's medical record any treatment rendered or recommendations made by hospital staff during the individual's hospital stay; and
7. Implement peer review at each facility to review a random sample of not less than 10% of all residents' medical

charts annually, in order to evaluate and make recommendations regarding the medical care provided these residents.

B. Emergency care - Defendants shall provide all staff physicians, registered nurses ("RNs"), licensed practical nurses ("LPNs"), supervisors, and direct care employees who regularly provide services on-grounds at the Center, with annual training in procedures for seeking assistance in case of emergency; and shall provide systematic, periodic training in emergency procedures, including the proper way to administer cardio-pulmonary resuscitation, to a number of staff sufficient to ensure that these services are always readily available to all residents. Thereafter, defendants shall evaluate, through the use of emergency drills held at least annually on each unit and for each shift, the competence of all participating staff to perform adequately, document such evaluations and provide such additional training as the evaluations indicate are necessary to ensure staff competence in emergency procedures. Defendants will ensure necessary medication and equipment to be used in case of emergency are easily accessible to qualified staff in each residential unit. Within 30 days of each medical emergency, the Medical Director shall select a quality assurance committee with a membership that is appropriate to the nature of each emergency to review the emergency to assess whether the actual response was timely and adequate, and make and disseminate any recommendations for improving the emergency response. The Medical Director shall develop and oversee the implementation of a protocol or written guidelines for conducting such reviews and

making recommendations. The medical director, a staff physician, and a nurse at each Center shall be members of that Center's committee, along with any other individuals deemed appropriate by the Centers. An "emergency," within the meaning of this section, includes status epilepticus, respiratory arrest or any other sudden, life-threatening event or condition.

The CWC Short Term Care Unit, formerly used as an inpatient hospital unit, will no longer be used for these purposes. This unit may be used for evaluation services for community residents with developmental disabilities, rehabilitation for CWC residents returning from surgery or other hospitalization, short-term services such as continuous oxygen for respiratory ailments or fluid therapy for mild dehydration for CWC residents when the attending physician concludes that hospitalization is not medically necessary, or hospice care for CWC residents with terminal conditions where such care cannot be provided on the resident's living unit. Inpatient hospital treatment of CWC residents shall be provided at a local hospital.

C. Training for medical staff - Upon the entry of this Settlement Agreement, defendants shall, periodically but not less than once annually, obtain the services of expert medical specialists of the Centers' choice who shall train the Center's primary care physicians and registered nurses in the assessment, diagnosis, treatment and monitoring of medical problems typically associated with persons with developmental disabilities. Topics covered within the first year following the entry of this

Settlement Agreement shall include: (1) neurologic disorders, including seizures and specifically the prescription of medication to control seizures; (2) orthopedic and physiatric conditions; (3) gastroenterologic disorders, and physical and nutritional management; and, (4) behavioral and psychiatric disorders, including the psychopharmacologic treatment of such disorders, and side effects of behavior modifying medication. Thereafter, topics covered shall be at the discretion of the medical director. Defendants shall document that such training occurred, including maintaining a list of those in attendance as well as clinical areas covered.

In addition, all newly hired medical staff shall attend an orientation course which covers, at a minimum, the four topic areas listed above. Again, defendants shall document that such training occurred. The trainers for this orientation course may include qualified Center medical staff.

D. Neurology consultations and seizure management - Defendants will provide adequate neurology care, including routine, chronic, and emergency seizure management to all individuals with epilepsy at the Centers. The defendants shall, within 120 days from the entry of this Settlement Agreement, implement and ensure the following:

1. A board certified neurologist(s) shall perform a comprehensive assessment for each resident receiving anticonvulsant medication as often as is medically indicated given the medical condition of the resident to determine whether the medication treatment is justified; defendants shall maintain the number of hours of neurology care provided by board certified neurologists at the Centers and request outside neurology consults as needed;

2. The neurologist(s) at the Centers shall timely evaluate, diagnose and recommend treatment for residents who are referred to them by primary care physicians, and examine and recommend treatment, as often as is medically indicated for residents receiving anticonvulsant medications;

3. In performing these duties, the neurologist(s) shall confer with the referring primary care physician and, if medically indicated, with the assigned psychiatrist, and timely record notes in the resident's medical records that reflect the neurological assessment, diagnosis, recommended course of treatment, and results;

4. For each individual currently receiving anticonvulsant medication, the neurologist(s), in concert with the Center's medical professionals, shall evaluate whether the type of medication is appropriate and effective for the type of seizure and is consistent with the principles of monotherapy or rational polypharmacy, representing the fewest number of medications medically indicated for effective seizure management. It is understood between the parties that adherence to these principles does not necessarily rule out use of some newer anti-convulsants that are intended as add-on medications. The neurologist shall ensure that residents are not kept on anti-convulsants that serve no therapeutic purpose and are not maintained on supertherapeutic or subtherapeutic levels of anti-convulsants for prolonged periods without adequate documentation of the neurologist's professional judgment that such level is medically indicated;

5. The Centers will employ systems for the recording of every seizure of each resident including information on: (a) the date and time of the onset of the seizure; (b) the duration of the seizure; (c) a description of the seizure; (d) an indication as to whether or not the individual is conscious or unconscious, and the duration of any period(s) of unconsciousness; (e) any medical or other steps taken to control the seizure; and (f) the individual's response to the intervention;

6. The Centers will provide training programs to ensure that all staff, including nursing and direct care staff, shall be trained in how to recognize a seizure, describe the seizure and length of time it lasts and record that information in the resident's record; and

7. Defendants will utilize a quality assurance process to ensure that all seizures are being appropriately documented and evaluated.

E. Psychiatric care and treatment - The defendants will provide adequate routine and emergency psychiatric and mental health services to residents who need such services. Psychotropic medication shall not be used as punishment, in lieu of a training program, for behavior control, in lieu of a psychiatric or neuropsychiatric diagnosis, or for the convenience of staff. To these ends, defendants shall within 180 days from the entry of this Settlement Agreement, unless otherwise noted:

1. Continue to employ and utilize a board certified or board eligible consulting psychiatrist(s) with experience treating developmentally disabled individuals at SWC at least 40 hours per week, and at CWC at least 24 hours per week; ensure that the consulting psychiatrist(s), among other responsibilities, is involved in the coordination of mental health services in the facility, and is responsible for ensuring that residents with mental health concerns receive an initial comprehensive psychiatric assessment, diagnosis, treatment plan, quarterly treatment plan update, and psychotropic review at least quarterly in connection with the regular quarterly evaluation of care of each resident; ensure that the psychiatrist(s) formulate and sign a diagnosis or diagnoses, considering differential diagnoses where appropriate, and employing DSM-IV criteria and terminology;

2. The psychiatrists shall, upon request of the inter-disciplinary team ("IDT") or at the psychiatrists' own request, serve on the IDT of any resident whose individual plan of service includes the use of behavior modifying medication or for whom such has been recommended;

3. Ensure that the psychiatrist(s) adequately review the current medication regimen of each individual to determine whether the type and dosage of the medication is indicated by the resident's needs, and recommend any changes in the medication regimen; ensure that the psychiatrist(s) consults with the assigned psychologist to determine whether the existing behavior management program is indicated by the resident's needs and whether different programs or interventions could be developed to address the resident's target behaviors and/or symptoms so as to reduce or eliminate the need for psychotropic medications; ensure that the psychiatrist(s) consults with the resident's primary care physician, psychologist, nurse, and other appropriate members of the resident's IDT, to determine whether the harmful effects of the resident's mental illness outweigh the possible

harmful side effects of the psychotropic medication and whether all reasonable alternate treatment strategies are likely to be less effective or potentially more dangerous than the medication, and require that the psychiatrist document his or her evaluation results and conclusions. This review, consultation and documentation shall be performed in connection with the regular quarterly review of each resident, or more often if indicated by the resident's needs;

4. Ensure that the psychiatrist(s) develop and sign as part of each resident's quarterly review process (or more often if indicated by the resident's needs) an overall treatment plan for each resident with a diagnosis of mental illness with a description of clear, objective and measurable short-term, intermediate and long range goals and objectives for each resident including time frames for the achievement of each;

5. Develop and implement a system that requires the psychiatrist(s), when prescribing a psychotropic medication for behavior modification, to specify in the medical record the behavior(s) that initiate(s) the use of the behavior-modifying medication, and that requires the psychologist and the treatment team (including the psychiatrist) to specify in the medical record, where appropriate, the behavior(s) to be taught to the resident to replace the behavior(s) that initiate(s) the use of the medication or other programs to be used to reduce or eliminate the use of the medication; utilize psychotropic medications for behavioral control purposes only in the context of a treatment plan for a mental illness or psychiatric disorder that is based upon data that is sufficiently reliable to meet the treatment needs of the residents; avoid use of psychotropic medication unless specific justification exists and is documented in the individual's medical record; and

6. Ensure that each resident is receiving benefit from the treatment once it has begun, by adequately monitoring the treatment, conducting quarterly reviews of each resident's working diagnosis, ensuring that the psychiatrist participates in such reviews, ensuring that decisions about the efficacy of treatment are based on objective data and by documenting the results of such reviews in the resident's medical chart.

F. Defendants have organized and will continue to convene a committee ("the Psychotropic Medication Review Committee"), the purpose of which is ensure that psychotropic medications are used appropriately in the Centers and the members of which are appropriate to achieve this purpose.

G. Medication - Within 180 days from the entry of this Settlement Agreement, defendants shall take all reasonable measures to ensure that prescription medications are adequately prescribed for and administered to residents, including that such medications not be used as punishment, in lieu of a habilitation program, or for the convenience of staff. The defendants will:

1. Administer prescription medication only upon order of a physician and behavior modifying medication only upon order of a physician after consultation with a psychiatrist, except in the case of any psychiatric emergency in which the resident's behavior escalates to the point where the resident or others are put at risk, in which case consultation must be had with the Center's psychiatrist no later than the psychiatrist's next regularly scheduled work day, but in no event more than 72 hours after the order;

2. Establish procedures to review the drug regimen of each resident every 30 days, except in cases where the prescribing physician has adequately justified in the resident's medical record that less frequent review is adequate, require that no prescription is valid for more than 90 days;

3. Utilize an adequate system for detecting, reporting and responding to any medication side effects, and medication errors; and

4. Develop and implement a quality assurance procedure whereby every six months a pharmacist performs a comprehensive review of anticonvulsant and psychotropic medications used for each resident; a copy of the review will be included in each resident's medical record and shall include at least the following information: the current and prior prescriptions, dosage and dates of prescription changes; any recent and prior lab results testing therapeutic blood levels for each medication; for residents on anticonvulsant(s), each resident's seizure history, and for residents on psychotropic(s), the current -- and, if different, prior -- psychiatric diagnosis or diagnoses justifying use of the psychotropic(s); any relevant recommendations or plans by medical personnel or consultants contained in the record relating to prescription of the medication(s); observations of side-effects contained in the record; and relevant observations or recommendations of the reviewer, if any. To the extent the required information consists of historical information for each resident, such information shall be recorded for that period of time for which

it would be useful for purposes of medical diagnosis and treatment of the particular resident.

III. PSYCHOLOGICAL SERVICES, TRAINING PROGRAMS AND RESTRAINTS

A. The defendants will provide at the Centers individualized habilitative services and training programs, which are developed by qualified professionals, to facilitate the growth, development, and independence of every resident, and to reduce or eliminate risks to personal safety, provide protection from harm, reduce or eliminate undue use of restraint, and prevent regression. To this end, defendants shall, within 12 months from the entry of this Settlement Agreement, unless otherwise provided herein:

1. Employ sufficient FTE psychologists to meet the needs of the residents, and to that end maintain a ratio at each Center of at least one FTE psychologist to 25 residents requiring behavior management programs (provided that nothing in this paragraph may be construed to prohibit psychologists from treating additional residents not requiring behavior management programs);

2. Consult with a nationally recognized consultant in psychological services for persons with severe developmental disabilities to develop and help implement behavior data collection systems that maximize reliability of data collection in a clinical setting and that measure relevant information about challenging and other behavior(s) and the conditions under which they occur, including, where appropriate, the frequency, intensity, severity, and duration of the behavior(s);

3. Conduct an adequate inter-disciplinary assessment of each resident to determine the individual's need for training; to that end, a psychologist shall:

- a. Conduct an adequate descriptive analysis of the individual's challenging behavior(s) using rating scale instruments that are in general use in the professional field; such descriptive analysis shall be written, adequately documented and data-based;

- b. Develop an hypothesis regarding the cause of the challenging behavior(s) that is individualized for the particular client; such an hypothesis shall be written, adequately documented and data-based;

c. Conduct a functional analysis, or functional assessment provided a professional shall adequately document why a functional analysis is unnecessary, in the individual's natural settings so as to best tailor an adequate intervention for each of the individual's challenging behavior(s); such an analysis shall be written, adequately documented and data-based; and

d. Document the rationale and reasons for the development and implementation of a particular training program;

4. Have a qualified professional develop a professionally based, individualized training program for each resident based on the findings of the individual's assessment, ensure that the training program is implemented over time and revised when necessary, and provide each resident with an adequate number of hours of training to enable the resident to develop behavior(s) designed to reduce risks to personal safety, afford protection from harm, provide freedom from restraints that are not necessary to protect the resident or others from harm, prevent regression or deterioration of skills, facilitate growth, development and independence, and teach functional, adaptive skills; ensure that adequate programs are maintained and generalized across settings, that training programs that seek to teach skills are taught in functional settings and under conditions that skills are to be used, and that behavior reduction programs and skills training programs are integrated and written in conjunction with one another;

5. Develop and implement training programs that contain the following:

a. Training objectives developed by an appropriately constituted IDT and based upon assessments and evaluations required above; for those individuals identified as exhibiting maladaptive behavior(s), a behavior management component which identifies the specific behavior(s) to increase and decrease, procedures for staff to follow to decrease the occurrence of the problem behavior(s), the alternative behavior(s) that will be taught, and environmental changes to promote the development of positive, adaptive behavior(s);

b. Instructional methods to be utilized by those with responsibility for implementing the program; such methods shall emphasize positive approaches and behavioral interventions which promote functional skill development and socially accepted behaviors in the individual;

c. An adequate training schedule to be followed to reach the identified objective(s) of the training program; identification of the persons responsible for the consistent implementation of the program; and

d. Procedures to be utilized for data collection to evaluate the effectiveness of the training program or any part thereof and to monitor the implementation of the training program and ensure its modification, as necessary;

6. Provide competency-based training for all staff responsible for implementing the training programs to enable them to implement the programs consistently and collect data which is sufficiently reliable to meet the treatment needs of the residents; thereafter, prior to implementing any program or program change, such training shall be provided to each person implementing the program or program change;

7. Implement systems for verifying that the recorded data are sufficiently reliable to meet the treatment needs of the residents and ensure that qualified professionals review and adequately modify any individual's training program where the individual has exhibited no measurable progress for a reasonable period of time;

8. Require the IDT to meet on at least a quarterly basis, or more frequently if critical issues arise which the IDT determines need to be addressed in more frequent meetings, to review the individual's progress in training programs; provide that the IDT bases its review of the efficacy of the training programs on the data collected as well as the occurrence of incidents and use of restraints, and, if the IDT identifies the need to revise the training program, it shall be revised and implemented within a reasonable time period identified by the IDT, taking into account the severity of the behavior and the harm it poses;

9. Develop and implement programs, including the use of augmentive devices as determined to be indicated based upon an IDT evaluation, for each resident with communication deficits, including deaf or hearing impaired residents, to teach communication skills using methods adequate to meet the resident's needs, including sign language, communications boards and electronic devices; and

10. Within 90 days from the entry of this Settlement Agreement, defendants shall meet all of the requirements in Section A for those residents who in the past year have had emergency restraint (other than a medical restraint utilized pursuant to a written physician's order) or emergency psychotropic medication. Within 120 days from the entry of this Settlement Agreement, defendants shall meet all of the requirements in Section A for those residents who in the past year have had long-term or chronic restraint, and for those residents who are determined to exhibit self-injurious, aggressive, or pica behavior that is reasonably likely to result in significant illness or injury, or to have other seriously maladaptive behavior(s).

B. The parties understand that one of the goals of providing residents with adequate programming and psychological

services is to eliminate, to the extent practicable, constraints on the residents' personal freedom and human potential that may be caused by the use of restraints. The defendants shall ensure that restraints, including emergency chemical restraints, unplanned physical or mechanical restraints, time out, and any form of planned restraint, are never used as punishment, in lieu of training programs, or for the convenience of staff. The defendants shall, within sixty days from the entry of this Settlement Agreement:

1. Ensure that each resident who in the past year has been subjected to significant emergency restraint (other than a medical restraint utilized pursuant to written physician's order), or to any form of long-term or chronic restraint, has been provided with a formal, written, interdisciplinary assessment and analysis as outlined above;

2. Ensure that the use of restraint as part of a training program shall be prohibited except in those situations where there is written confirmation in the individual's record that other, less restrictive techniques have been tried and implemented in a professionally designed training program and data have demonstrated such techniques to be ineffective;

3. Ensure that any use of restraint shall be the least restrictive form of restraint that has proven effective in addressing the individual resident's behavior;

4. For those individuals who continue to be restrained,

- a. develop individualized training programs, specifying:

- (1) The behavior(s) to be eliminated, the function of the behavior(s) to be eliminated, and the specific behavior(s), clearly and objectively defined, which trigger the use of the restraint;

- (2) Behavior(s) to be taught to the individual to replace the behavior that initiates the use of the restraint and other programs to reduce or eliminate the use of such restraint;

- (3) The type of restraint authorized, including the maximum duration and other limitations, when employed;

(4) The professional responsible for the program and the staff authorized to implement it;

(5) The frequency and manner in which behavioral data are to be recorded by direct care staff;

b. specify in the individualized training program the expected duration of a restraint or the date of next review of a restraint; and

5. Ensure that the individual's psychologist or other qualified professional shall begin, on the next day that the psychologist or other qualified professional is scheduled to work, the process of reviewing, each use of restraint and ascertain the circumstances under which such restraint was used; on a daily, weekly and/or monthly basis, the individual's psychologist shall review any regular use of restraint on an individual to ensure that restraint will be continued in individual's program only if data that is sufficiently reliable to meet the treatment needs of the individual supports the efficacy of their continued use; the psychologist shall be responsible for ensuring that the individual's behavior program continues to be appropriate and/or is revised to meet the individual's needs in the least restrictive manner.

C. The defendants shall ensure that for each resident with a psychiatric disorder, there is communication between the resident's psychologist, attending physician and psychiatrist that is adequate to support the exercise of professional judgment in treating the resident. In combining and integrating behavioral programming and psychotropic medication for a particular individual, the psychologist, physician and psychiatrist shall coordinate their efforts to reinforce the ultimate treatment objective(s).

IV. RECORDKEEPING

The defendants shall, within 120 days from the entry of this Settlement Agreement, maintain an adequate record for each resident that shall include current information with respect to his/her care, medical treatment, and training and shall require

staff to utilize such records in making care, medical treatment and training decisions. Entries made by physicians, nurses and medical consultants in resident records shall: 1) include the time, when pertinent, and the date, and name and title of the professional making the entry; 2) be timely, legible and accurate; and 3) describe the resident's physical condition and course of treatment. Resident records should contain, in a prominent and visible location, a document identifying the resident's primary treatment and training issues in all areas. Physicians must write summaries in resident charts which contain treatment goals, goal progress, and plans for future treatment.

V. STAFFING AND STAFF TRAINING

A. Defendants shall employ and deploy a sufficient number of professional and non-professional staff to adequately supervise residents and adequately protect them from harm, and to otherwise meet the residents' needs and the terms of this Settlement Agreement. To that end, Defendants shall maintain current direct care staffing ratios.

B. Within 180 days from the entry of this Settlement Agreement, unless otherwise specified herein, the defendants shall ensure that all appropriate staff, including physicians and nurses, who provide services to residents are adequately trained to implement the requirements of this Settlement Agreement and are thereafter provided with competency-based in-service training on a regular basis. The training should at least include the following topic areas: mental retardation; mental illness and

psychiatric disorders and treatment; psychopharmacology; particular medical and nursing needs of the developmentally disabled; emergency medical response and procedures; physical and nutritional management; recognition of seizures and seizure management, including recordkeeping for seizures; behavior management techniques; implementation of individualized treatment and training programs; and use of bodily restraint and time out, including recordkeeping for such procedures. Defendants shall keep a record that such training occurred, and maintain a list of those in attendance as well as clinical areas covered.

VI. COMMUNITY SERVICES

A. The defendants shall operate under policies that provide services to individuals with developmental disabilities in the least restrictive, and most integrated and normalized setting consistent with their individual treatment, habilitation and safety needs. To this end, defendants shall:

1. Evaluate all residents to determine their appropriateness for community-based placements and/or programs; residents with outstanding community placement recommendations shall only be re-evaluated for the purpose of determining need for community placement in circumstances where the needs of or facts relevant to the individual change; such evaluation shall include where possible involved parents, guardians, advocates, the responsible placement agency and appropriate professionals, including professionals who are reflective of the kinds of services and support needed by the resident in the community; the

resident shall be involved in the planning process to the maximum extent practicable and shall be given the opportunity to express a choice regarding placement; no individual shall be excluded from consideration for community placement based on his or her level of disability;

2. Based on the written evaluations of individuals identified as appropriate for community placement, assist the responsible placement agency to identify the required residences, day programs, including vocational opportunities, specialized services, including medical care and related services, and other supports needed to serve these individuals in the community;

3. Within a reasonable period of time, assist responsible placement agencies to establish or directly establish such community-based supports consistent with the requirements of Paragraph VI.A.2., first, for children under the age of 18; second, for those individuals identified as appropriate for in need of community placement as of the date of this order; and, third, for those individuals identified pursuant to Paragraph VI.A.1.;

4. Accept no admissions that are intended to be permanent; only admit or readmit individuals into the Centers temporarily when no other services are available which are adequate to meet the individual's needs;

5. Working with the responsible placement agency, develop and implement a transition plan for each resident who is

identified pursuant to Paragraph VI.A.1 that reflects the supports identified in Paragraph VI.A.2;

6. Assist responsible placement agencies to place all individuals residing at the Centers who are appropriate for community-based programs, as determined by an adequate assessment of their individual needs, into residential placements or other community-based programs; place no individual residing at one of the Centers into a program which does not meet his or her individual needs; operate a system to adequately monitor community-based programs pursuant to the defendants' Medicaid (MA) Community Waivers Manual, sections 4.04 and 7.05 (attached) to help ensure that they meet residents' needs and protect them from harm;

7. Identify within the Department of Health and Family Services an employee whose responsibility it is to coordinate and otherwise assist in the development and expansion of specialized services needed to provide necessary medical and medically related services in community services throughout Wisconsin;

8. Review all federal financial assistance presently received by defendants in support of services for persons with developmental disabilities and ensure that application has been made for all funding, including waiver programs, available to support community based services of persons with developmental disabilities;

9. Assist in the development and expansion of community-based programs with appropriate county officials, and

10. Help ensure that individuals residing at the Centers who are appropriate for community-based programs will be returned to the community through the following immediate or near term changes in operational and budget policy:

a. A community services plan will be developed for all residents of the Centers as part of each resident's annual review. All such plans will be completed within 12 months of entry of this Settlement Agreement. The cost of community services for each individual will be developed as part of this community services plan;

b. The Department's SFY 1997-1999 budget request includes an increase in the CIP 1A funding used to fund individuals return to the community effective July 1, 1997;

c. The Department will explore pooling all long term care institutional and community funding, providing that funding to an entity (county or alternative managed care organization), and charging the county or organization the full daily rate for any resident remaining in a Center.

B. The parties agree that the goal of the defendants shall be to serve as many individuals in community-based programs as appropriate to the individuals' needs.

VII. FEDERAL STATUTORY COMPLIANCE

A. In the operation and management of the Centers and in providing services to residents, the defendants shall fully comply with all applicable federal statutes and regulations, including: the Americans with Disabilities Act of 1990,

42 U.S.C. §§ 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq.; and all the regulations promulgated pursuant to the statutes cited above. This provision is not intended to impose any additional responsibilities or confer any additional authority upon the parties than otherwise already exists under these statutes and regulations and other federal law.

VIII. MONITORING BY JOINT EXPERTS

A. Defendants' compliance with the provisions of this Settlement Agreement shall be monitored by a panel of experts, one each in the fields of psychology/habilitation, developmental medicine (with expertise in neurology), and psychiatry, all of whom have been jointly selected and agreed upon by the parties (hereafter the "Joint Experts"). The Joint Experts are as follows:

Psychology/Habilitation: Dr. William I. Gardner
Medicine: Dr. Steven J. Parker
Psychiatry: Dr. Ludwig S. Szymanski

B. As part of the Joint Experts' monitoring function, each expert shall evaluate the care, treatment and services provided by defendants to determine whether defendants are complying with those provisions of the Settlement Agreement relating to the expert's area of expertise. This evaluation shall include:

(a) on-site inspection of the Centers; (b) interviews with staff, contractors and residents; (c) detailed review by each expert of no fewer than 30 resident records to be chosen by the Joint

Expert; and, (d) review of facility documents as determined by each Joint Expert to be relevant to his/her evaluation under this Settlement Agreement. The parties shall be permitted to have counsel or other representatives present at any inspection conducted at the Centers by the Joint Experts. Matters inquired into during any such inspection, interview or review of records or other documents shall be limited to matters directly addressed in this Settlement Agreement.

C. The first such evaluation by the Joint Experts shall occur between 90-120 days after the filing of this Settlement Agreement with the Court. This initial "base-line" evaluation is intended to inform the parties of the status of conditions at the Centers and the United States agrees that it will not bring an enforcement action based upon the results of this evaluation unless emergency conditions exist at either Center that place residents at risk of serious and imminent harm. Defendants may move pursuant to Paragraph IX.C. that the case be closed and dismissed with prejudice based on the Joint Experts' findings after the first evaluation. Subsequent evaluations shall take place annually thereafter within thirty days of the year anniversary of the filing of this Agreement with the Court. The on-site inspections shall be arranged on dates and at times mutually agreeable to the parties and the Joint Experts.

D. As part of each evaluation, each Joint Expert shall present his/her evaluation, findings and, where appropriate, recommendations in a written report, which shall be provided to

the parties. In these reports, each Joint Expert shall make specific findings with respect to each provision of the Settlement Agreement for which he/she is responsible. To execute these duties under this Agreement, each Joint Expert shall utilize forms that contain the exact provisions from this Agreement that are relevant to each Expert's area of review. If an expert determines that the defendants are not in compliance with a provision, the expert shall so state and provide the factual bases for the findings, including, whenever possible, identification of all residents involved and all dates and times of all incidents and/or care, treatment or services at issue. If an Expert determines that the defendants are in compliance with a provision, the Expert shall so state and provide a summary specifying the documents and records the Expert reviewed and the interviews the Expert conducted that support the Expert's determination for that particular provision. Each Joint Expert shall provide his/her report within 45 days of the completion of each on-site tour.

E. Prior to and during any monitoring inspection, each Joint Expert shall be permitted to request copies of relevant documents and records he/she determines to be relevant to the expert's review under applicable provisions of this Settlement Agreement. If the request is submitted prior to the inspection, defendants shall provide the documents to the requesting Joint Expert and the United States within 15 days of the request, which shall be in writing. If the request is made during the

inspection, defendants shall provide copies as soon as practicable. The parties may recommend to each Joint Expert documents they deem relevant to the Joint Expert's review. In addition, defendants shall provide timely notice to the Joint Experts of all resident deaths, and shall forward copies of any completed autopsies and death summaries, as well as all investigations completed on or after the effective date of this Settlement Agreement of alleged neglect or abuse. The United States may request that the Joint Experts forward them copies of any documents obtained from the defendants and the parties may have ex parte contacts with the Joint Experts at any time.

F. In the event that any of the Joint Experts identified in Paragraph VIII.A. above is unable to serve or continue serving as a Joint Expert, or in the event the parties for any reason jointly agree to discontinue the use of any Joint Expert, the parties shall meet or otherwise confer within 15 days of being notified of the incapacity or the decision to discontinue use of the Joint Expert to agree upon an alternate Joint Expert. The parties shall jointly select an alternate expert, except that if the parties are unable to agree within 15 days of their first meeting or conference as to this selection, they shall immediately and jointly petition the Court to make the selection. In this petition, each party will be permitted to propose two alternate Joint Experts in the field of expertise. The procedure described in this paragraph shall apply to the selection of all successor Joint Experts.

G. Defendants shall bear the reasonable costs of the Joint Experts' monitoring fees and expenses.

IX. ENFORCEMENT AND TERMINATION OF DECREE

A. This Agreement will terminate (if it has not already been terminated based on defendants' or the parties' joint motion) after the third annual inspection tour of the Joint Experts (excluding the initial base-line tour), if the Experts determine, based upon the third annual inspection tour, that defendants are in compliance. If all of the experts conclude upon the third annual inspection tour that defendants are in compliance, the burden will be upon the United States to prove that defendants are not in compliance such that the Agreement should not terminate. At all other times, the burden remains with the defendants to prove compliance.

B. The Court shall retain jurisdiction of this action for all purposes under this Settlement Agreement and resolving disputes under this Settlement Agreement pursuant to the procedure set forth herein until this Agreement is terminated.

C. On or after the date on which defendants shall have complied with the provisions of this Settlement Agreement, defendants or the parties jointly may move that the case be closed and dismissed with prejudice on grounds that defendants have complied with the provisions of this Settlement Agreement. Such motion shall attach the most recent findings of each of the Joint Experts. The defendants, the United States or the parties

jointly may move for partial dismissal as to the areas of expertise of one or more of the Joint Experts.

D. Provided that no evaluation has been conducted by the Joint Experts within 90 days prior to the filing of a motion to dismiss, the Joint Experts shall conduct an evaluation within 45 days after the filing of such motion, on the same terms and conditions as followed during their monitoring tours. As before, each Joint Expert shall produce a written report containing his/her findings relating to the provisions of the Settlement Agreement for which he/she has monitoring responsibility within 45 days from the last day of his/her inspection of either Center. In the event that an evaluation was conducted by the Joint Experts within 90 days prior to the filing of the motion, no subsequent evaluation shall be required.

E. In any determination of whether or not defendants are in compliance with this Settlement Agreement, the findings of the Joint Experts shall be admissible with or without testimony of the experts and shall be accorded a presumption of correctness, which may only be rebutted by a clear and convincing showing to the contrary. The parties reserve the right, however, to request a hearing before the Court in order to present evidence to rebut the presumption of correctness accorded the findings of the Joint Experts.

F. In the event the United States disagrees as to defendants' compliance at the time that a motion to terminate is filed, the parties shall jointly move the Court for a hearing on

the motion to terminate, at which time the United States shall be permitted the opportunity to rebut the presumption of correctness accorded to the findings of the Joint Experts. At such a hearing, the parties shall be entitled to present any evidence, in addition to the testimony and reports of the Joint Experts that was gathered, developed or obtained independent of the monitoring process provided for in this Settlement Agreement, including the testimony, affidavits or reports of experts other than the Joint Experts subject to the Federal Rules of Evidence as to admissibility.

G. The United States may seek enforcement of this Settlement Agreement from the Court, at any time other than as specified in Paragraph VIII.C. above, in the event that it determines that defendants have failed to comply with this Settlement Agreement. If the Court determines that defendants are not in compliance with this Settlement Agreement, the Court will first issue an order directing defendants to comply within a period of time set by the Court and directing the appropriate Joint Experts to re-evaluate the provisions at issue within a period of time set by the Court. If the United States believes that defendants have not complied within the period of time set by the Court for re-evaluation by the Joint Experts, the United States may proceed to bring any enforcement action it deems appropriate. However, if the United States alleges and the Court finds that emergency conditions exist at either Center that place residents at risk of serious and imminent harm, the Court may

immediately issue any order the Court deems appropriate. As similarly provided above, in any enforcement proceeding, the Joint Experts' findings shall be accorded a presumption of correctness and the parties shall be entitled to present evidence to rebut this presumption, including the testimony, affidavits or reports of experts other than the Joint Experts, subject to the Federal Rules of Evidence as to admissibility.

H. 1. The United States will have reasonable access to the Centers, if it deems it necessary, during tours by the Joint Experts. During tours by the Joint Experts, access by the United States shall include the right to inspect and tour the Centers' buildings and grounds, review facility records, resident charts and other documents, conduct interviews with employees outside the presence of supervisory staff when requested by the employees, and observe activities normally conducted at the Centers. Such access shall continue until this Settlement Agreement is terminated. Matters inquired into during any such tour shall be limited to matters addressed in this Settlement Agreement.

2. In addition to the access provided under Paragraph H.1., above, the United States may have access to the Centers if and to the extent permitted as discovery pursuant to the Federal Rules of Civil Procedure. Access under this paragraph shall occur no more than once annually, unless the United States establishes to the satisfaction of the Court that conditions at a Center present an imminent and serious threat to the life or

health of the residents of the Center. In the event that the United States believes that conditions at a Center present an imminent and serious threat to the life or health of the residents, the United States will first confer with the defendants and may request access, and, if the defendants object to the United States' access, the United States shall apply for the Court's permission for access. Either party may seek relief from the Court in the event that the party believes that access is either too burdensome or too restrictive.

I. The parties reserve the right to withdraw consent to this Settlement Agreement in the event that this Agreement is not approved by the Court in its entirety.

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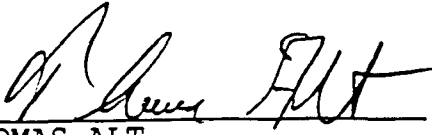
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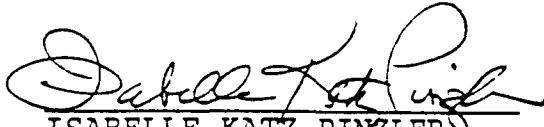
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CONSENTED TO BY THE UNDERSIGNED:
FOR THE DEFENDANTS:


THOMAS ALT
Administrator
Division of Care &
Treatment Facilities
Wisconsin Department of
Health & Family Services

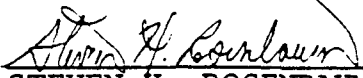

RICHARD A. VICTOR
Assistant Attorney General
Wisconsin Department
of Justice

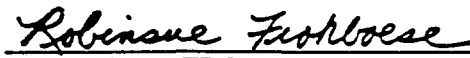
FOR THE PLAINTIFFS:


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Special Litigation Section
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P.O. Box 66400
Washington, D.C. 20035-6400

WHEREFORE, the parties to this action having agreed to the provisions in the Settlement Agreement set forth above, and the Court being advised in the premises, this Settlement Agreement is hereby entered as the ORDER and JUDGMENT of this Court.

IT IS SO ORDERED, this 8th day of April, 1997,
at Madison, Wisconsin.

Barbara B. Cross
UNITED STATES DISTRICT JUDGE

Judgment is hereby entered this 10th day of April, 1997.

JOSEPH W. SKUPNIEWITZ
Clerk of Court

Joseph W. Skupniewitz
Clerk

4.04 State CIP IA Review Process

A. Initial Follow-along

Thirty to forty-five days after the placement date of the person, CIP IA follow-along staff and a staff person from the appropriate Center (for relocated persons) will visit each participant. (See Appendix L for CIP IA follow-along staff.) During site visit, these staff will meet with participants and observe the services they receive. Interviews will be conducted with the person, the parents and/or the guardians, the case manager and service providers. The focus of the visit is to review how the services that were planned and agreed upon in the Individual Service Plan are being implemented and how well these services meet the participant's needs. This visit constitutes an excellent opportunity to update the goals and objectives that were originally written for the participant. The CIP IA and Center staff will also attempt to assist the local service providers if they are experiencing problems in the development of home and community based services for the participant. After the visit, the CIP IA staff will provide a written report to the participant and/or guardian and the case manager.

B. Annual Review

At one year after placement and every year thereafter, CIP IA staff in conjunction with the case manager will conduct a comprehensive review of the CIP IA participant's situation. As with the initial follow-along visit, the intent of this review is to ensure a high quality of supports and services to the participant and to assist in making adjustments to the Individual Service Plan. The CIP IA staff will observe the services designed for the person including the home and educational, vocational or other day time program. As with the initial review, the person, their family, guardian, advocate and friends are a vital part of this review. CIP IA staff will provide a written report of the review to the case manager who then can share it with the appropriate individuals. As part of this review CIP IA staff are available to provide assistance in developing new services for the individual. CIP IA staff are a resource to the county and are available for consultation and technical assistance as a part of the formal review processes as well as throughout the year.

7.05 Assuring Health and Safety of Waiver Participants

Wisconsin's approved Home and Community Based Waiver Program requires that program participant's health, safety and welfare be adequately addressed as a condition of that individuals initial and continued participation in the MA Waiver program. These policies are intended to ensure that each "CIP 1 administering agency" has an adequate system to ensure waiver participants are adequately protected from physical, verbal and sexual abuse, maltreatment, neglect, financial exploitation and other violations of their rights under law.

- a. Application: The policies and requirements in this section apply to each "CIP 1 administering agency." "CIP 1 administering agency" or "agency" means the agency with primary responsibility for the oversight of MA Waiver participants participating in CIP 1A or CIP 1B. These agencies include County Departments of Community Programs or Human Services, those Department's of Aging or Social Services assigned responsibility by their county boards and, for individuals placed under the direct supervision of the department, the department.

- b. SYSTEM: Each CIP I Administering agency shall have an established system in place designed to protect the health, safety and welfare of Waiver participants and respond to situations where any of these are placed at risk of harm. Agencies have broad discretion in determining the best design of their system so long as systems are capable of "effectively responding" to situations where the health, safety or welfare of Waiver participants may be compromised or at risk because of physical or sexual abuse, maltreatment, neglect, financial exploitation or other violations of a person's rights under law. In this section, "effectively responding" means that the system is capable of achieving outcomes which remove individuals from situations where they are at risk and which prevent the reoccurrence of threats to individual health, safety and welfare or violations of the participant's client or civil rights.

Systems shall include clearly defined statement evidencing the agencies intent to promote and protect individual health, safety and welfare, include written procedures and protocols with defined time lines for responding to and investigating all allegations or reports of abuse/neglect or situations where an individual's safety may be compromised and, where risks or threats to safety are found, identify a variety of response options including emergency response options for any situation which ensure that individual's safety and welfare are adequately protected. The system shall also include policies addressing reporting of these situations to persons or agencies with an interest in the situation. All systems shall describe and involve appropriate community law enforcement resources.

- c. INVESTIGATION: For any situation where there is evidence or suspicion of any type abuse/ neglect/ exploitation, or violation of an individual's client rights, an immediate investigation by the agency or an entity authorized by the agency must be conducted. The agency shall identify required time lines for such investigations all of which shall be set locally. If the Waiver participant resides in a licensed home, the agency responsible for licensing must be notified of the alleged abuse/ neglect/ exploitation or violation of rights in a timely enough fashion to permit that agency to respond to the situation.
- d. RESPONSE OPTIONS: The health, safety and welfare of Waiver participants is the highest priority. If there is ANY evidence of immediate harm to the health, safety or welfare of the Waiver participant, the agency must take all reasonable steps necessary to assure the health, safety and well-being of the Waiver participant. Agencies, working with providers, may suspend the individual staff person(s) allegedly involved pending their investigation or remove the Waiver

participant(s) from the setting until the allegations are satisfactorily resolved. Agencies should have established procedures for terminating providers for continued noncompliance with safety requirements. It is recommended that language permitting termination be incorporated into provider agreements and contracts with providers. Included in procedures for terminating providers must be provision for assisting consumers to change providers. This option should be available to Waiver participants and/or their guardians if, as a result of incident, the consumer or guardian wish to change providers in response to mistreatment. Change of providers is a participant right under MIA freedom of choice requirements.

- e. REPORTING: Staff from provider agencies serving the waiver participant shall inform the agency of all reports of alleged abuse/neglect/exploitation involving MIA Waiver participants as soon as practical. The agency shall in turn inform the waiver participant's guardian of any report of alleged abuse/ neglect/ exploitation and the results of any investigation made by the agency of such reports. If the abuse/ neglect/ exploitation involves a crime (such as rape, assault or theft) the agency law enforcement must be notified. If the agency is a County agency, that agency shall also report all instances of alleged physical and sexual abuse, maltreatment, neglect and financial exploitation to their assigned Community Integration Specialist as soon as practical after any allegation of such mistreatment has been received. County agencies shall also report on their planned response to the report. County staff shall offer an assessment of the health, safety and welfare of the waiver participant who is the subject of the report.
- f. PROVIDER REQUIREMENTS: Providers of services funded by CIP 1A/B may not employ, contract with, or accept volunteer services from individuals who have been convicted of child abuse, neglect, or maltreatment; a violation of the Vulnerable Adult Law (S940.285 and S940.295 Wis Stats.); or a felony involving physical harm to a CIP-1 participant or other health or human service program participant. Agencies shall ensure that applicants for employment by the provider or persons currently employed by the provider do not have histories indicating violations of these laws.

Individuals or entities delivering Waiver services to participants may not being named as beneficiaries of life insurance policies purchased by or on behalf of program participants.

Agencies shall ensure that all program participants or their guardians are permitted to designate the individual or agency of their choosing to act as

representative payee administering benefits such as Social Security, Supplemental Security Income or other federal, state or private pension or related benefits.