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19 UNITED STATES DISTRICT COURT
20 FOR THE CENTRAL DISTRICT OF CALIFORNIA
21 WESTERN DIVISION

22 UNITED STATES OF AMERICA,) CASE NO. _____
Plaintiff,)
23)
vs.)
24) CONSENT JUDGMENT
STATE OF CALIFORNIA; THE)
25 HONORABLE ARNOLD SCHWARZENEGGER,)
Governor of the State of)
26 California, in his official)
capacity only; STEPHEN W. MAYBERG,)
27 Director of the California)
Department of Mental Health, in)
28 his official capacity only;)

1 SHARON SMITH NEVINS, Executive)
Director of Metropolitan)
2 State Hospital, in her)
official capacity only; and DAVE)
3 GRAZIANI, Executive Director of)
Napa State Hospital, in his)
4 official capacity only,)
Defendants.)
5)

6 Simultaneously herewith, Plaintiff, the United States of
7 America filed a Complaint under the provisions of 42 U.S.C.
8 § 1997 against the Defendants, seeking to remedy an alleged
9 pattern or practice of conduct that was alleged to deprive
10 patients of Metropolitan State Hospital, in Norwalk, California,
11 and Napa State Hospital, in Napa, California (collectively, and
12 including any facility that supplements or replaces them, the
13 "State Hospitals") of rights, privileges, and immunities secured
14 or protected by the Constitution or laws of the United States.
15 On the same date, the Parties in this matter filed a Stipulation
16 for Consent Judgment and Agreement ("Stipulation").

17 Noting the general principle that settlements are to be
18 encouraged, particularly settlements between governmental
19 entities, and having considered the Stipulation and the terms of
20 the measures, set forth herein, that the Defendants agree to
21 undertake to improve conditions at the State Hospitals, it is
22 ORDERED, ADJUDGED AND DECREED that pursuant to the Stipulation,
23 and good and reasonable cause appearing therefore, Judgment shall
24 be entered in this matter pursuant to the following terms and
25 conditions:

PART I

ENHANCEMENT PLAN

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1 A. Definitions

2 1. Effective Date

3 The Effective Date will be considered the first day of
4 the month following the date of execution of the agreement
5 by all parties. Unless otherwise specified, implementation
6 of each provision of this Plan shall begin no later than 12
7 months after the Effective Date.

8 2. Consistent With Generally Accepted Professional
9 Standards of Care

10 A decision by a qualified professional that is
11 substantially aligned with contemporary, accepted
12 professional judgment, practice, or standards as to
13 demonstrate that the person responsible based the decision
14 on such accepted professional judgment.

15 B. Introduction

16 Each State Hospital shall use a Recovery philosophy of care
17 and a Psychiatric Rehabilitation model of service delivery.
18 Therapeutic and rehabilitative services provided by each State
19 Hospital shall be based on evidence-based practices and
20 practice-based evidence, shall be age-appropriate, and shall be
21 designed to: strengthen and support individuals' recovery,
22 rehabilitation, and habilitation; enable individuals to grow and
23 develop in ways benefitting their mental health, physical health,
24 and well being; and ensure individuals' reasonable safety,
25 security, and freedom from undue bodily restraint. Relationships
26 between each State Hospital's staff and the individuals whom they
27 serve shall be positive, therapeutic, and respectful.

28

1 Each individual served by each State Hospital shall be
2 encouraged to participate in identifying his or her needs and
3 goals, and in selecting appropriate treatment options.

4 Therapeutic and rehabilitation services shall be designed to
5 address each individual's needs and to assist individuals in
6 meeting their specific recovery and wellness goals, consistent
7 with generally accepted professional standards of care. Each
8 State Hospital shall ensure clinical and administrative
9 oversight, education, and support of its staff in planning and
10 providing care and treatment consistent with these standards.

11 C. Integrated Therapeutic and Rehabilitation Services Planning

12 Each State Hospital shall provide coordinated,
13 comprehensive, individualized protections, services, supports,
14 and treatments (collectively "therapeutic and rehabilitation
15 services") for the individuals it serves, consistent with
16 generally accepted professional standards of care. In addition
17 to implementing the therapeutic and rehabilitation planning
18 provisions set forth below, each State Hospital shall establish
19 and implement standards, policies, and practices to ensure that
20 therapeutic and rehabilitation service determinations are
21 consistently made by an interdisciplinary team through integrated
22 therapeutic and rehabilitation service planning and embodied in a
23 single, integrated therapeutic and rehabilitation service plan.

24 1. Interdisciplinary Teams

25 The interdisciplinary team's membership shall be
26 dictated by the particular needs and strengths of the
27 individual in the team's care. At a minimum, each State
28

1 Hospital shall ensure that the team shall:

- 2 a. Have as its primary objective the provision of
3 individualized, integrated therapeutic and
4 rehabilitation services that optimize the
5 individual's recovery and ability to sustain
6 himself/herself in the most integrated,
7 appropriate setting based on the individual's
8 strengths and functional and legal status and
9 support the individual's ability to exercise
10 his/her liberty interests, including the interests
11 of self determination and independence;
- 12 b. Be led by a clinical professional who is involved
13 in the care of the individual;
- 14 c. Function in an interdisciplinary fashion;
- 15 d. Assume primary responsibility for the individual's
16 therapeutic and rehabilitation services, and
17 ensure the provision of competent, necessary, and
18 appropriate psychiatric and medical care;
- 19 e. Ensure that each member of the team participates
20 appropriately, by competently and knowledgeably
21 assessing the individual on an ongoing basis and
22 by developing, monitoring, and, as necessary,
23 revising the therapeutic and rehabilitation
24 services;
- 25 f. Ensure that assessment results and, as clinically
26 relevant, consultation results, are communicated
27 to the team members, along with the implications
28

1 of those results for diagnosis, therapy and
2 rehabilitation by no later than the next review;

3 g. Be responsible for the scheduling and coordination
4 of assessments and team meetings, the drafting of
5 integrated treatment plans, and the scheduling and
6 coordination of necessary progress reviews;

7 h. Consist of a stable core of members, including at
8 least the individual served; the treating
9 psychiatrist; the treating psychologist; the
10 treating rehabilitation therapist; the treating
11 social worker; the registered nurse and
12 psychiatric technician who know the individual
13 best; one of the individual's teachers (for
14 school-age individuals); and, as appropriate, the
15 individual's family, guardian, advocates,
16 attorneys, and the pharmacist and other staff;

17 i. Not include any core treatment team members with a
18 case load exceeding 1:15 in admission teams (new
19 admissions of 90 days or less) and, on average,
20 1:25 in all other teams at any point in time; and

21 j. Not include staff that is not verifiably competent
22 in the development and implementation of
23 interdisciplinary treatment plans.

24 2. Integrated Therapeutic and Rehabilitation Service
25 Planning.

26 Each State Hospital shall develop and implement
27 policies and protocols regarding the development of
28 therapeutic and rehabilitation service plans, referred to as

1 "Wellness and Recovery Plans" ("WRP") consistent with
2 generally accepted professional standards of care, to ensure
3 that:

- 4 a. Individuals have substantive input into the
5 therapeutic and rehabilitation service planning
6 process, including but not limited to input as to
7 small groups and therapies appropriate to their
8 WRP.
- 9 b. Therapeutic and rehabilitation service planning
10 provides timely attention to the needs of each
11 individual, in particular:
 - 12 i. initial therapeutic and rehabilitation
13 service plans (Admission Wellness and
14 Recovery Plan ("A-WRP")) are completed within
15 24 hours of admission;
 - 16 ii. master therapeutic and rehabilitation service
17 plans (WRP) are completed within 7 days of
18 admission; and
 - 19 iii. therapeutic and rehabilitation service plan
20 reviews are performed every 14 days during
21 the first 60 days of hospitalization and
22 every 30 days thereafter. The third monthly
23 review is a quarterly review and the 12th
24 monthly review is the annual review.
- 25 c. Treatment, rehabilitation, and enrichment services
26 are goal-directed, individualized, and informed by
27 a thorough knowledge of the individual's
28

1 psychiatric, medical, and psychosocial history and
2 previous response to such services.

3 d. Therapeutic and rehabilitation service planning is
4 based on a comprehensive case formulation for each
5 individual that emanates from interdisciplinary
6 assessments of the individual consistent with
7 generally accepted professional standards of care.
8 Specifically, the case formulation shall:

9 i. be derived from analyses of the information
10 gathered from interdisciplinary assessments,
11 including diagnosis and differential
12 diagnosis;

13 ii. include a review of: pertinent history;
14 predisposing, precipitating and perpetuating
15 factors; previous treatment history; and
16 present status;

17 iii. consider biomedical, psychosocial, and
18 psychoeducational factors, as clinically
19 appropriate, for each category in § C.2.d.ii
20 above;

21 iv. consider such factors as age, gender,
22 culture, treatment adherence, and medication
23 issues that may affect the outcomes of
24 treatment and rehabilitation interventions;

25 v. support the diagnosis by diagnostic
26 formulation, differential diagnosis, and
27 Diagnostic and Statistical Manual-IV-TR (or
28 the most current edition) checklists; and

1 vi. enable the interdisciplinary team to reach
2 sound determinations about each individual's
3 treatment, rehabilitation, enrichment and
4 wellness needs, the type of setting to which
5 the individual should be discharged, and the
6 changes that will be necessary to achieve
7 discharge.

8 e. The therapeutic and rehabilitation service plan
9 specifies the individual's focus of
10 hospitalization (goals), assessed needs
11 (objectives), and how the staff will assist the
12 individual to achieve his or her goals/objectives
13 (interventions).

14 f. Therapeutic and rehabilitation service planning is
15 driven by individualized needs, is strengths-based
16 (i.e., builds on an individual's current
17 strengths), addresses the individual's motivation
18 for engaging in wellness activities, and leads to
19 improvement in the individual's mental health,
20 physical health, and well being, consistent with
21 generally accepted professional standards of care.
22 Specifically, the interdisciplinary team shall:

23 i. develop and prioritize reasonable and
24 attainable goals/objectives (e.g., at the
25 level of each individual's functioning) that
26 build on the individual's strengths and
27 address the individual's identified needs
28

1 and, if any identified need is not addressed,
2 provide a rationale for not addressing the
3 need;

4 ii. ensure that the objectives/interventions
5 address treatment (e.g., for a disease or
6 disorder), rehabilitation (e.g.,
7 skills/supports, motivation and readiness),
8 and enrichment (e.g., quality of life
9 activities);

10 iii. write the objectives in behavioral,
11 observable, and/or measurable terms;

12 iv. include all objectives from the individual's
13 current stage of change, or readiness for
14 rehabilitation, to the maintenance stage for
15 each focus of hospitalization, as clinically
16 appropriate;

17 v. ensure that there are interventions that
18 relate to each objective, specifying who will
19 do what, within what time frame, to assist
20 the individual to meet his/her needs as
21 specified in the objective;

22 vi. implement interventions appropriately
23 throughout the individual's day, with a
24 minimum of 20 hours of active treatment per
25 week. Individual or group therapy included
26 in the individual's WRP shall be provided as
27 part of the 20 hours of active treatment per
28 week;

1 vii. maximize, consistent with the individual's
2 treatment needs and legal status,
3 opportunities for treatment, programming,
4 schooling, and other activities in the most
5 appropriate integrated, non-institutional
6 settings, as clinically appropriate; and
7 viii. ensure that each therapeutic and
8 rehabilitation service plan integrates and
9 coordinates all services, supports, and
10 treatments provided by or through the State
11 Hospital for the individual in a manner
12 specifically responsive to the plan's
13 therapeutic and rehabilitation goals. This
14 requirement includes, but is not limited to,
15 ensuring that individuals are assigned to
16 small groups that link directly to the
17 objectives of the individual's treatment plan
18 and needs;

19 g. Therapeutic and rehabilitation service plans are
20 revised as appropriate to ensure that planning is
21 based on the individual's progress, or lack
22 thereof, as determined by the scheduled monitoring
23 of identified criteria or target variables,
24 consistent with generally accepted professional
25 standards of care. Specifically, the
26 interdisciplinary team shall:

27 i. revise the focus of hospitalization
28 objectives, as needed, to reflect the

1 individual's changing needs and develop new
2 interventions to facilitate attainment of new
3 objectives when old objectives are achieved
4 or when the individual fails to make progress
5 toward achieving these objectives;

6 ii. review the focus of hospitalization, needs,
7 objectives, and interventions more frequently
8 if there are changes in the individual's
9 functional status or risk factors (i.e.,
10 behavioral, medical, and/or psychiatric risk
11 factors);

12 iii. ensure that the review process includes an
13 assessment of progress related to discharge
14 to the most integrated setting appropriate to
15 meet the individual's assessed needs,
16 consistent with his/her legal status; and

17 iv. base progress reviews and revision
18 recommendations on data collected as
19 specified in the therapeutic and
20 rehabilitation service plan.

21 h. Individuals in need of positive behavior supports
22 in school or other settings receive such supports
23 consistent with generally accepted professional
24 standards of care.

25 i. Adequate active psychosocial rehabilitation is
26 provided, consistent with generally accepted
27
28

1 professional standards of care, that:

- 2 i. is based on the individual's assessed needs
3 and is directed toward increasing the
4 individual's ability to engage in more
5 independent life functions;
- 6 ii. has documented objectives, measurable
7 outcomes, and standardized methodology;
- 8 iii. is aligned with the individual's objectives
9 that are identified in the individual's WRP;
- 10 iv. utilizes the individual's strengths,
11 preferences, and interests;
- 12 v. focuses on the individual's vulnerabilities
13 to mental illness, substance abuse, and
14 readmission due to relapse, where
15 appropriate;
- 16 vi. is provided in a manner consistent with each
17 individual's cognitive strengths and
18 limitations;
- 19 vii. provides progress reports for review by the
20 Interdisciplinary Team as part of the WRP
21 review process;
- 22 viii. is provided 5 days a week, for a minimum of 4
23 hours a day (i.e., 2 hours in the morning and
24 2 hours in the afternoon each weekday), for
25 each individual or 2 hours a day when the
26 individual is in school, except days falling
27 on state holidays;
- 28

- 1 ix. is provided to individuals in bed-bound
2 status in a manner and for a period that is
3 commensurate with their medical status;
4 x. routinely takes place as scheduled;
5 xi. includes, in the evenings and weekends,
6 additional activities that enhance the
7 individual's quality of life; and
8 xii. is consistently reinforced by staff on the
9 therapeutic milieu, including living units.

10 j. Adequate individualized and group exercise and
11 recreational options are provided, consistent with
12 generally accepted professional standards of care.

13 k. Individuals who have an assessed need for family
14 therapy services receive such services in their
15 primary language, as feasible, consistent with
16 generally accepted professional standards of care
17 and that these services, and their effectiveness
18 for addressing the indicated problem, are
19 comprehensively documented in each individual's
20 chart.

21 l. Each individual's therapeutic and rehabilitation
22 service plan identifies general medical diagnoses,
23 the treatments to be employed, the related symptoms
24 to be monitored by nursing staff (i.e., registered
25 nurses ("RNs"), licensed vocational nurses
26 ("LVNs"), and psychiatric technicians) and the
27 means and frequency by which such staff shall
28

1 monitor such symptoms, consistent with generally
2 accepted professional standards of care.

3 m. Children and adolescents receive, consistent with
4 generally accepted professional standards of care:

5 i. therapy relating to traumatic family and
6 other traumatic experiences, as clinically
7 indicated; and

8 ii. reasonable, clinically appropriate
9 opportunities to involve their families in
10 treatment and treatment decisions.

11 n. Policies and procedures are developed and
12 implemented consistent with generally accepted
13 professional standards of care to ensure
14 appropriate screening for substance abuse, as
15 clinically indicated.

16 o. Individuals who require treatment for substance
17 abuse are provided appropriate therapeutic and
18 rehabilitation services consistent with generally
19 accepted professional standards of care.

20 p. Group facilitators and therapists providing
21 therapeutic and rehabilitation services (in groups
22 or individual therapy) are verifiably competent
23 regarding selection and implementation of
24 appropriate approaches and interventions to address
25 therapeutic and rehabilitation service objectives,
26 are verifiably competent in monitoring individuals'
27 responses to therapy and rehabilitation, and
28 receive regular, competent supervision.

- 1 q. Group facilitators and therapists providing
2 therapeutic and rehabilitation services in the
3 field of substance abuse should be certified
4 substance abuse counselors.
- 5 r. Transportation and staffing issues do not preclude
6 individuals from attending appointments.
- 7 s. Adequate oversight to treatment, rehabilitation,
8 and enrichment groups is provided to ensure that
9 individuals are assigned to groups that are
10 appropriate to their assessed needs, that groups
11 are provided consistently and with appropriate
12 frequency, and that issues particularly relevant
13 for this population, including the use of
14 psychotropic medications and substance abuse, are
15 appropriately addressed, consistent with generally
16 accepted professional standards of care.
- 17 t. Treatment, rehabilitation, and enrichment services
18 are monitored appropriately against rational,
19 operationally-defined target variables and revised
20 as appropriate in light of significant
21 developments, and the individual's progress, or
22 lack thereof.
- 23 u. Individuals are educated regarding the purposes of
24 their treatment, rehabilitation, and enrichment
25 services. They will be provided a copy of their
26 WRP when appropriate based on clinical judgment.
- 27 v. Staff educate individuals about their medications,
28 the expected results, and the potential common

1 and/or serious side effects of medications, and
2 staff regularly ask individuals about common and/or
3 serious side effects they may experience.

4 w. Interdisciplinary teams review, assess, and develop
5 positive clinical strategies to overcome
6 individual's barriers to participation in
7 therapeutic and rehabilitation services.

8 D. Integrated Assessments

9 Each State Hospital shall ensure that, consistent with
10 generally accepted professional standards of care, each
11 individual shall receive, promptly after admission to the State
12 Hospital, an accurate and comprehensive assessment of the
13 conditions responsible for the individual's admission, to the
14 degree possible given the obtainable information at the time of
15 admission. Thereafter, each individual shall receive an accurate
16 and comprehensive reassessment of the reasons for the
17 individual's continued hospitalization whenever there has been a
18 significant change in the individual's status, or a lack of
19 expected improvement resulting from clinically indicated
20 treatment. The individual's interdisciplinary team shall be
21 responsible for investigating the past and present medical,
22 nursing, psychiatric, and psychosocial factors bearing on the
23 individual's condition, and, when necessary, for revising
24 assessments and therapeutic and rehabilitation plans in
25 accordance with new information that comes to light. Each State
26 Hospital shall monitor and promptly address deficiencies in the
27 quality and timeliness of such assessments.

1 1. Psychiatric Assessments and Diagnoses

2 Each State Hospital shall provide all of the
3 individuals it serves with routine and emergency psychiatric
4 assessments and reassessments consistent with generally
5 accepted professional standards of care; and:

6 a. Each State Hospital shall use the diagnostic
7 criteria in the most current Diagnostic and
8 Statistical Manual of Mental Disorders ("DSM") for
9 reaching the most accurate psychiatric diagnoses.

10 b. Each State Hospital shall ensure that all
11 psychiatrists responsible for performing or
12 reviewing psychiatric assessments:

13 i. are certified by the American Board of
14 Psychiatry and Neurology ("ABPN") or have
15 successfully completed at least three years
16 of psychiatric residency training in a
17 Accreditation Counsel for Graduate Medical
18 Education accredited program; and

19 ii. are verifiably competent (as defined by
20 privileging at initial appointment and
21 thereafter by reprivileging for continued
22 appointment) in performing psychiatric
23 assessments consistent with the State
24 Hospital's standard diagnostic protocols.

25 c. Each State Hospital shall ensure that:

26 i. within 24 hours of an individual's admission
27 to the State Hospital, the individual
28

1 receives an Admission Medical Assessment that
2 includes:

- 3 1) a review of systems;
- 4 2) medical history;
- 5 3) physical examination;
- 6 4) diagnostic impressions; and
- 7 5) management of acute medical conditions.

8 ii. within 24 hours of an individual's admission
9 to the State Hospital, the individual
10 receives an Admission Psychiatric Evaluation
11 that includes:

- 12 1) psychiatric history, including a review
13 of presenting symptoms;
- 14 2) complete mental status examination;
- 15 3) admission diagnoses;
- 16 4) completed AIMS;
- 17 5) laboratory tests ordered; and
- 18 6) consultations ordered.

19 iii. Within 7 days of an individual's admission to
20 the State Hospital, the individual receives
21 an Integrated Psychiatric Assessment that
22 includes:

- 23 1) psychiatric history, including a review
24 of present and past history;
- 25 2) psychosocial history;
- 26 3) mental status examination;
- 27 4) strengths;
- 28 5) psychiatric risk factors;

- 1 6) diagnostic formulation;
- 2 7) differential diagnosis;
- 3 8) current psychiatric diagnoses;
- 4 9) psychopharmacology treatment plan; and
- 5 10) management of identified risks.

6 d. Each State Hospital shall ensure that:

7 i. clinically justifiable diagnoses are provided
8 for each individual, and all diagnoses that
9 cannot be clinically justified for an
10 individual are discontinued no later than the
11 next review;

12 ii. the documented justification of the diagnoses
13 is in accord with the criteria contained in
14 the most current DSM (as per DSM-IV-TR
15 Checklist);

16 iii. differential diagnoses, "deferred," or
17 "rule-out" diagnoses, and diagnoses listed as
18 "NOS" ("Not Otherwise Specified") are timely
19 addressed (i.e., within 60 days), through
20 clinically appropriate assessments, and
21 resolved in a clinically justifiable manner;
22 and

23 iv. "no diagnosis" is clinically justified and
24 documented.

25 e. Each State Hospital shall ensure that psychiatric
26 reassessments are conducted at a frequency that
27 reflects the individual's clinical needs. At a
28 minimum the reassessments are completed weekly for

1 the first 60 days on the admissions units and
2 monthly on other units.

3 f. Each State Hospital shall ensure that psychiatric
4 reassessments are documented in progress notes that
5 address the following:

6 i. significant developments in the individual's
7 clinical status and appropriate psychiatric
8 follow up;

9 ii. timely and justifiable updates of diagnosis
10 and treatment, as clinically appropriate;

11 iii. analyses of risks and benefits of chosen
12 treatment interventions;

13 iv. assessment of, and attention to, high-risk
14 behaviors (e.g., assaults, self-harm, falls)
15 including appropriate and timely monitoring
16 of individuals and interventions to reduce
17 risks;

18 v. responses to and side effects of prescribed
19 medications, with particular attention to
20 risks associated with the use of
21 benzodiazepines, anticholinergic medications,
22 polypharmacy (use of multiple drugs to
23 address the same condition), and conventional
24 and atypical antipsychotic medications;

25 vi. timely review of the use of "pro re nata" or
26 "as-needed" ("PRN") and "Stat" (i.e.,
27 emergency psychoactive) medications and
28

1 adjustment of regular treatment, as
2 indicated, based on such use; and
3 vii. verification, in a clinically justifiable
4 manner, that psychiatric and behavioral
5 treatments are properly integrated. The
6 psychiatrist shall review the positive
7 behavior support plan prior to implementation
8 to ensure consistency with psychiatric
9 formulation, document evidence of regular
10 exchange of data or information with
11 psychologists regarding differentiation of
12 learned behaviors and behaviors targeted for
13 psychopharmacological treatments, and
14 document evidence of integration of
15 treatments.

16 g. When individuals are transferred between treatment
17 teams, a psychiatric transfer note shall be
18 completed addressing: review of medical and
19 psychiatric course of hospitalization, including
20 medication trials; current target symptoms;
21 psychiatric risk assessment; current barriers to
22 discharge; and anticipated benefits of transfer.

23 2. Psychological Assessments

24 a. Each State Hospital shall develop and implement
25 standard psychological assessment protocols,
26 consistent with generally accepted professional
27 standards of care. These protocols shall address,
28 at a minimum, diagnostic neuropsychological

1 assessments, cognitive assessments, and
2 I.Q./achievement assessments, to guide
3 psychoeducational (e.g., instruction regarding the
4 illness or disorder, and the purpose or objectives
5 of treatments for the same, including medications),
6 educational, rehabilitation, and habilitation
7 interventions, and behavioral assessments
8 (including functional assessment of behavior in
9 schools and other settings), and personality
10 assessments, to inform positive behavior support
11 plans and psychiatric diagnoses.

12 b. Each State Hospital shall require the completion of
13 cognitive and academic assessments within 30 days
14 of admission of all school-age and other
15 individuals, as required by law, unless comparable
16 testing has been performed within one year of
17 admission and is available to the interdisciplinary
18 team.

19 c. Each State Hospital shall ensure that all
20 clinicians responsible for performing or reviewing
21 psychological assessments and evaluations are
22 verifiably competent in the methodology required to
23 conduct the assessment.

24 d. Each State Hospital shall ensure that all
25 psychological assessments, consistent with
26 generally accepted professional standards of care,
27 shall:

- i. expressly state the clinical question(s) for the assessment;
- ii. include findings specifically addressing the clinical question(s), but not limited to diagnoses and treatment recommendations;
- iii. specify whether the individual would benefit from individual therapy or group therapy in addition to attendance at mall groups;
- iv. be based on current, accurate, and complete data;
- v. determine whether behavioral supports or interventions (e.g., behavior guidelines or mini-behavior plans) are warranted or whether a full positive behavior support plan is required;
- vi. include the implications of the findings for interventions;
- vii. identify any unresolved issues encompassed by the assessment and, where appropriate, specify further observations, records review, interviews, or re-evaluations that should be performed or considered to resolve such issues; and
- viii. Use assessment tools and techniques appropriate for the individuals assessed and in accordance with the American Psychological Association Ethical Standards and Guidelines for testing.

1 e. Each State Hospital shall ensure that all
2 psychological assessments of all individuals
3 residing at the State Hospital who were admitted
4 there before the Effective Date hereof shall be
5 reviewed by qualified clinicians with demonstrated
6 current competency in psychological testing and, as
7 indicated, revised to meet the criteria in
8 § D.2.a & d, above.

9 f. Each State Hospital shall ensure that all
10 appropriate psychological assessments shall be
11 provided in a timely manner whenever clinically
12 indicated, consistent with generally accepted
13 professional standards of care, including whenever
14 there has been a significant change in condition, a
15 lack of expected improvement resulting from
16 treatment, or an individual's behavior poses a
17 significant barrier to treatment, therapeutic
18 programming, safety to self or others, or school
19 programming, and, in particular:

20 i. before an individual's therapeutic and
21 rehabilitation service plan is developed, a
22 psychological assessment of the individual
23 shall be performed that will:

- 24 1) address the nature of the individual's
25 impairments to inform the psychiatric
26 diagnosis; and
- 27 2) provide an accurate evaluation of the
28 individual's psychological functioning

1 to inform the therapeutic and
2 rehabilitation service planning process;

3 ii. if behavioral interventions are indicated, a
4 structural and functional assessment shall be
5 performed, consistent with generally accepted
6 professional standards of care, by a
7 professional having demonstrated competency
8 in positive behavior supports; and

9 iii. additional psychological assessments shall be
10 performed, as appropriate, where clinical
11 information is otherwise insufficient, and to
12 address unresolved clinical or diagnostic
13 questions, including differential diagnosis,
14 "rule-out," "deferred," "no-diagnosis" and
15 "NOS" diagnoses.

16 g. For individuals whose primary language is not
17 English, each State Hospital shall endeavor to
18 assess them in their own language; if this is not
19 possible, each State Hospital will develop and
20 implement a plan to meet the individual's
21 assessment needs, including, but not limited to the
22 use of interpreters in the individual's primary
23 language and dialect, if feasible.

24 3. Nursing Assessments

25 a. Each State Hospital shall develop standard nursing
26 assessment protocols, consistent with generally
27 accepted professional standards of care. These
28 protocols shall address, at a minimum:

- i. a description of presenting conditions;
- ii. current prescribed medications;
- iii. vital signs;
- iv. allergies;
- v. pain;
- vi. use of assistive devices;
- vii. activities of daily living;
- viii. immediate alerts (e.g., escape risk, physical assault, choking risk, suicidal risk, homicide risk, fall risk, sexual assault, self-injurious behavior, arson, or fire setting); and
- ix. conditions needing immediate nursing interventions.

b. Nursing may use a systems model (e.g., Johnson Behavioral System Model) for the nursing evaluation.

c. Each State Hospital shall ensure that all nurses responsible for performing or reviewing nursing assessments are verifiably competent in performing the assessments for which they are responsible. All nurses who are employed at Metropolitan State Hospital shall have graduated from an approved nursing program, shall have passed the NCLEX-RN and shall have a license to practice in the state of California.

1 d. Each State Hospital shall ensure that nursing
2 assessments are undertaken on a timely basis, and
3 in particular, that:

4 i. initial nursing assessments are completed
5 within 24 hours of the individual's
6 admission;

7 ii. Further nursing assessments are completed and
8 integrated into the individual's therapeutic
9 and rehabilitation service plan within 7 days
10 of admission; and

11 iii. nursing assessments are reviewed every 14
12 days during the first 60 days of admission
13 and every 30 days thereafter and updated as
14 appropriate. The 3rd monthly review shall be
15 a quarterly review and the 12th monthly
16 review shall be the annual review.

17 4. Rehabilitation Therapy Assessments

18 a. Each State Hospital shall develop standard
19 rehabilitation therapy assessment protocols,
20 consistent with generally accepted professional
21 standards of care, for satisfying the necessary
22 components of a comprehensive rehabilitation
23 therapy assessment.

24 b. Each State Hospital shall ensure that each
25 individual served shall have a rehabilitation
26 assessment that, consistent with generally accepted
27 professional standards of care:

- i. is accurate and comprehensive as to the individual's functional abilities;
- ii. identifies the individual's current functional status and the skills and supports needed to facilitate transfer to the next level of care; and
- iii. identifies the individual's life goals, strengths, and motivation for engaging in wellness activities.

c. Each State Hospital shall ensure that all clinicians responsible for performing or reviewing rehabilitation therapy assessments are verifiably competent in performing the assessments for which they are responsible.

d. Each State Hospital shall ensure that all rehabilitation therapy assessments of all individuals who were admitted to the State Hospital before the Effective Date hereof shall be reviewed by qualified clinicians and, as indicated, revised to meet the criteria in § D.4.b, above.

5. Nutrition Assessments

Each State Hospital shall provide nutrition assessments, reassessments, and interventions consistent with generally accepted professional standards of care. A comprehensive nutrition assessment will include the following:

- a. For new admissions with high risk referral (e.g., type I diabetes mellitus, enteral/parenteral

1 feeding, dysphagia/recent choking episode), or upon
2 request by physician, a comprehensive Admission
3 Nutrition Assessment will be completed within 24
4 hours of notification to the dietitian.

5 b. For new admissions directly into the
6 medical-surgical unit, a comprehensive Admission
7 Nutrition Assessment will be completed within 3
8 days of admission.

9 c. For new admissions directly into the skilled
10 nursing facility unit, a comprehensive Admission
11 Nutrition Assessment will be completed within 7
12 days of admission.

13 d. For new admissions with identified nutritional
14 triggers from Nursing Admission Assessment or
15 physician's consult (e.g., for severe food
16 allergies, tube feeding, extensive dental problems
17 or dental surgery, NPO/clear liquid diet for more
18 than three days, uncontrolled diarrhea/vomiting
19 more than 24 hours, and MAOI, as clinically
20 indicated), a comprehensive Admission Nutrition
21 Assessment will be completed within 7 days of
22 admission.

23 e. For new admissions with therapeutic diet orders for
24 medical reasons, a comprehensive Admission
25 Nutrition Assessment will be completed within 7
26 days of admission.

27 f. For individuals with therapeutic diet orders for
28 medical reason after admission, a comprehensive

1 Admission Nutrition Assessment will be completed
2 within 7 days of the therapeutic diet order but no
3 later than 30 days of admission.

4 g. For all other individuals, a comprehensive
5 Admission Nutrition Assessment will be completed
6 within 30 days of admission.

7 h. Acuity level of an individual at nutritional risk
8 will be determined by Nutritional Status Type
9 ("NST") which defines minimum services provided by
10 a registered dietitian.

11 i. The frequency of a comprehensive Nutrition
12 Assessment Update will be determined by the NST.
13 Updates should include, but not be limited to:
14 subjective data, weight, body-mass index ("BMI"),
15 waist circumference, appropriate weight range, diet
16 order, changes in pertinent medication, changes in
17 pertinent medical/psychiatric problems, changes in
18 nutritional problem(s), progress toward
19 goals/objectives, effectiveness of interventions,
20 changes in goals/plan, recommendations, and
21 follow-up as needed.

22 j. Every individual will be assessed annually. In
23 addition, individuals will be reassessed when there
24 is a significant change in condition.

25 6. Social History Assessments

26 Each State Hospital shall ensure that each individual
27 has a social history evaluation that, consistent with
28 generally accepted professional standards of care:

- 1 a. Is, to the extent reasonably possible, accurate,
2 current and comprehensive;
- 3 b. Expressly identifies factual inconsistencies among
4 sources, resolves or attempts to resolve
5 inconsistencies, and explains the rationale for the
6 resolution offered;
- 7 c. Is included in the 7-day integrated assessment and
8 fully documented by the 30th day of an individual's
9 admission; and
- 10 d. Reliably informs the individual's interdisciplinary
11 team about the individual's relevant social factors
12 and educational status.

13 7. Court Assessments

- 14 a. Each State Hospital shall develop and implement
15 policies and procedures to ensure an
16 interdisciplinary approach to the development of
17 court submissions for individuals adjudicated "not
18 guilty by reason of insanity" ("NGI") pursuant to
19 Penal Code Section 1026, based on accurate
20 information and individualized risk assessments.
21 The forensic reports should include the following,
22 as clinically indicated:
- 23 i. clinical progress and achievement of
24 stabilization of signs and symptoms of mental
25 illness that were the cause, or contributing
26 factor in the commission of the crime (i.e.,
27 instant offense);
- 28

- 1 ii. acts of both verbal and physical aggression
2 and property destruction during the past year
3 of hospitalization and, if relevant, past
4 acts of aggression and dangerous criminal
5 behavior;
- 6 iii. understanding of potential for danger and
7 precursors of dangerous/criminal behavior,
8 including instant offense;
- 9 iv. acceptance of mental illness and
10 understanding of the need for treatment, both
11 psychosocial and biological, and the need to
12 adhere to treatment;
- 13 v. development of relapse prevention plan (i.e.,
14 Personal Wellness Recovery Plan or Wellness
15 Recovery Action Plan) for mental illness
16 symptoms, including the individual's
17 recognition of precursors and warning signs
18 and symptoms and precursors for dangerous
19 acts;
- 20 vi. willingness to achieve understanding of
21 substance abuse issues and to develop an
22 effective relapse prevention plan (as defined
23 above);
- 24 vii. previous community releases, if the
25 individual has had previous CONREP
26 revocations;
- 27 viii. social support, financial resources, family
28 conflicts, cultural marginalization, and

1 history of sexual and emotional abuse, if
2 applicable; and

3 ix. relevant medical issues, all self-harm
4 behaviors, risks for self harm and risk of
5 harm to others, to inform the courts and the
6 facility where the individual will be housed
7 after discharge.

8 b. Each State Hospital shall develop and implement
9 policies and procedures to ensure an
10 interdisciplinary approach to the development of
11 court submissions for individuals admitted to the
12 hospital pursuant to Penal Code Section 1370,
13 "incompetent to stand trial" ("IST"), based on
14 accurate information and individualized risk
15 assessments. Consistent with the right of an
16 individual accused of a crime to a speedy trial,
17 the focus of the IST hospitalization shall be the
18 stabilization of the symptoms of mental illness so
19 as to enable the individual to understand the legal
20 proceedings and to assist his or her attorney in
21 the preparation of the defense. The forensic
22 reports should include the following:

23 i. relevant clinical description of initial
24 presentation, if available, which caused the
25 individual to be deemed incompetent to stand
26 trial by the court;

27 ii. clinical description of the individual at the
28 time of admission to the hospital;

1 iii. course of hospital stay, describing any
2 progress or lack of progress, response to
3 treatment, current relevant mental status,
4 and reasoning to support the recommendation;
5 and

6 iv. all self-harm behaviors and relevant medical
7 issues, to inform the courts and the facility
8 where the individual will be housed after
9 discharge.

10 c. Each State Hospital shall establish a Forensic
11 Review Panel ("FRP") to serve as the internal body
12 that reviews and provides oversight of facility
13 practices and procedures regarding the forensic
14 status of all individuals admitted pursuant to
15 Penal Code 1026 and 1370. The FRP shall review and
16 approve all forensic court submissions by the
17 Wellness and Recovery teams and ensure that
18 individuals receive timely and adequate assessments
19 by the teams to evaluate changes in their
20 psychiatric condition, behavior and/or risk factors
21 that may warrant modifications in their forensic
22 status and/or level of restriction. The membership
23 of the FRP shall include the Director of Forensic
24 Psychiatry, Facility Director or designee, Medical
25 Director or designee, Chief of Psychology or
26 designee, Chief of Social Services or designee,
27 Chief of Nursing Services or designee, and Chief of
28 Rehabilitation Services or designee. The Director

1 of Forensic Psychiatry shall serve as the chair and
2 shall be a board certified forensic psychiatrist.
3 A quorum shall consist of a minimum of four FRP
4 members or their designees.

5 E. Discharge Planning and Community Integration

6 Taking into account the limitations of court-imposed
7 confinement, the State shall pursue actively the appropriate
8 discharge of individuals under the State's care at each State
9 Hospital and, subject to legal limitations on the State's control
10 of the placement process, provide services in the most
11 integrated, appropriate setting in which they reasonably can be
12 accommodated, as clinically appropriate, that is consistent with
13 each individual's needs.

- 14 1. Each State Hospital shall identify at the 7-day
15 therapeutic and rehabilitation service planning
16 conference, and address at all subsequent planning
17 conferences, the particular considerations for each
18 individual bearing on discharge, including:
 - 19 a. those factors that likely would foster successful
20 discharge, including the individual's strengths,
21 preferences, and personal life goals;
 - 22 b. the individual's level of psychosocial functioning;
 - 23 c. any barriers preventing the individual from
24 transitioning to a more integrated environment,
25 especially difficulties raised in previously
26 unsuccessful placements; and
 - 27 d. the skills and supports necessary to live in the
28 setting in which the individual will be placed.

1 2. Each State Hospital shall ensure that, beginning at the
2 time of admission and continuously throughout the
3 individual's stay, the individual is an active
4 participant in the discharge planning process, to the
5 fullest extent possible, given the individual's level
6 of functioning and legal status.

7 3. Each State Hospital shall ensure that, consistent with
8 generally accepted professional standards of care, each
9 individual has a professionally developed discharge
10 plan that is integrated within the individual's
11 therapeutic and rehabilitation service plan, that
12 addresses his or her particular discharge
13 considerations, and that includes:

- 14 a. Measurable interventions regarding these discharge
15 considerations;
- 16 b. The staff responsible for implementing the
17 interventions; and
- 18 c. The time frames for completion of the
19 interventions.

20 4. Each State Hospital shall provide transition supports
21 and services consistent with generally accepted
22 professional standards of care. In particular, each
23 State Hospital shall ensure that:

- 24 a. Individuals who have met discharge criteria are
25 discharged expeditiously, subject to the
26 availability of suitable placements; and
- 27 b. Individuals receive adequate assistance in
28 transitioning to the new setting.

1 5. For all children and adolescents it serves, each State
2 Hospital shall:

3 a. Develop and implement policies and protocols that
4 identify individuals with lengths of stay exceeding
5 six months; and

6 b. Establish a regular review forum, which includes
7 senior administration staff, to assess the children
8 and adolescents identified in § E.5.a, above, to
9 review their treatment plans, and to create an
10 individualized action plan for each such child or
11 adolescent that addresses the obstacles to
12 successful discharge to the most integrated,
13 appropriate placement as clinically and legally
14 indicated.

15 F. Specific Therapeutic and Rehabilitation Services

16 1. Psychiatric Services

17 a. Each State Hospital shall develop and implement
18 policies and procedures to ensure system-wide
19 monitoring of the safety, efficacy, and
20 appropriateness of all psychotropic medication use,
21 consistent with generally accepted professional
22 standards of care. In particular, policies and
23 procedures shall require monitoring of the use of
24 psychotropic medications to ensure that they are:
25 i. specifically matched to current, clinically
26 justified diagnoses or clinical symptoms;

- 1 ii. prescribed in therapeutic amounts, as
- 2 dictated by the needs of the individual
- 3 served;
- 4 iii. tailored to each individual's symptoms;
- 5 iv. monitored for effectiveness against clearly
- 6 identified target variables and time frames;
- 7 v. monitored appropriately for side effects;
- 8 vi. modified based on clinical rationales;
- 9 vii. not inhibiting individuals from meaningfully
- 10 participating in treatment, rehabilitation,
- 11 or enrichment and educational services as a
- 12 result of excessive sedation; and
- 13 viii. properly documented.

14 b. Each State Hospital shall monitor the use of PRN
15 and Stat medications to ensure that these
16 medications are administered in a manner that is
17 clinically justified and are not used as a
18 substitute for appropriate long-term treatment of
19 the individual's condition.

20 c. Each State Hospital shall monitor the psychiatric
21 use of benzodiazepines, anticholinergics, and
22 polypharmacy to ensure clinical justification and
23 attention to associated risks.

24 d. Each State Hospital shall ensure the monitoring of
25 the metabolic and endocrine risks associated with
26 the use of new generation antipsychotic
27 medications.

- 1 e. Each State Hospital shall ensure regular
2 monitoring, using a validated rating instrument
3 (such as AIMS or DISCUS), of tardive dyskinesia
4 ("TD"); a baseline assessment shall be performed
5 for each individual at admission with subsequent
6 monitoring of the individual every 12 months while
7 he/she is receiving antipsychotic medication, and
8 every 3 months if the test is positive, TD is
9 present, or the individual has a history of TD.
- 10 f. Each State Hospital shall ensure timely
11 identification, reporting, data analyses, and
12 follow up remedial action regarding all adverse
13 drug reactions ("ADR").
- 14 g. Each State Hospital shall ensure drug utilization
15 evaluation ("DUE") occurs in accord with
16 established, up-to-date medication guidelines that
17 shall specify indications, contraindications, and
18 screening and monitoring requirements for all
19 psychotropic medications; the guidelines shall be
20 in accord with current professional literature. A
21 verifiably competent psychopharmacology consultant
22 shall approve the guidelines and ensure adherence
23 to the guidelines.
- 24 h. Each State Hospital shall ensure documentation,
25 reporting, data analyses, and follow up remedial
26 action regarding actual and potential medication
27 variances ("MVR") consistent with generally
28 accepted professional standards of care.

- 1 i. Each State Hospital shall ensure tracking of
2 individual and group practitioner trends, including
3 data derived from monitoring of the use of PRNs,
4 Stat medications, benzodiazepines,
5 anticholinergics, and polypharmacy, and of ADRs,
6 DUE, and MVR consistent with generally accepted
7 professional standards of care.
- 8 j. Each State Hospital shall ensure feedback to the
9 practitioner and educational/corrective actions in
10 response to identified trends consistent with
11 generally accepted professional standards of care.
- 12 k. Each State Hospital shall ensure integration of
13 information derived from ADRs, DUE, MVR, and the
14 Pharmacy & Therapeutics, Therapeutics Review, and
15 Mortality and Morbidity Committees consistent with
16 generally accepted professional standards of care.
- 17 l. Each State Hospital shall ensure that all
18 physicians and clinicians are verifiably competent,
19 consistent with generally accepted professional
20 standards of care, in appropriate medication
21 management, interdisciplinary team functioning, and
22 the integration of behavioral and pharmacological
23 treatments.
- 24 m. Each State Hospital shall review and ensure the
25 appropriateness and safety of the medication
26 treatment, consistent with generally accepted
27 professional standards of care, for:
28

- 1 i. all individuals prescribed continuous
2 anticholinergic treatment for more than two
3 months;
- 4 ii. all elderly individuals and individuals with
5 cognitive disorders who are prescribed
6 continuous anticholinergic treatment
7 regardless of duration of treatment;
- 8 iii. all individuals prescribed benzodiazepines as
9 a scheduled modality for more than two
10 months;
- 11 iv. all individuals prescribed benzodiazepines
12 with diagnoses of substance abuse or
13 cognitive impairments, regardless of duration
14 of treatment;
- 15 v. all individuals with a diagnosis or
16 evidencing symptoms of tardive dyskinesia;
17 and
- 18 vi. all individuals diagnosed with dyslipidemia,
19 and/or obesity, and/or diabetes mellitus who
20 are prescribed new generation antipsychotic
21 medications.
- 22 n. Each State Hospital shall ensure that the
23 medication management of individuals with substance
24 abuse disorders is provided consistent with
25 generally accepted professional standards of care.
- 26 o. Metropolitan State Hospital shall provide a minimum
27 of 16 hours per year of psychopharmacology
28 instruction, through conferences, seminars,

1 lectures and/or videotapes. Such instruction may
2 be provided either on-site or through attendance at
3 conferences elsewhere.

4 2. Psychological Services

5 Each State Hospital shall provide adequate and
6 appropriate psychological supports and services that are
7 derived from evidence-based practice or practice-based
8 evidence and are consistent with generally accepted
9 professional standards of care, to individuals who require
10 such services; and:

11 a. Each State Hospital shall ensure that it has
12 positive behavior support teams (with 1 team for
13 each 300 individuals, consisting of 1 clinical
14 psychologist, 1 registered nurse, 2 psychiatric
15 technicians (1 of whom may be a behavior
16 specialist), and 1 data analyst (who may be a
17 behavior specialist) that have a demonstrated
18 competence, consistent with generally accepted
19 professional standards of care, in the following
20 areas:

21 i. the development and use of positive behavior
22 support plans, including methods of
23 monitoring program interventions and the
24 effectiveness of the interventions, providing
25 staff training regarding program
26 implementation, and, as appropriate, revising
27 or terminating the program; and
28

1 ii. the development and implementation of a
2 facility-wide behavioral incentive system,
3 referred to as "BY CHOICE," that encompasses
4 self-determination and choice by the
5 individuals served.

6 b. Each State Hospital shall ensure that the Chief of
7 Psychology has the clinical and administrative
8 responsibility for the Positive Behavior Support
9 Team and the BY CHOICE incentive program.

10 c. Each State Hospital shall ensure that:

11 i. behavioral assessments include structural and
12 functional assessments, and, as necessary,
13 functional analysis;

14 ii. hypotheses on the maladaptive behavior are
15 based on structural and functional
16 assessments;

17 iii. there is documentation of previous behavioral
18 interventions and their effects;

19 iv. behavioral interventions, which shall include
20 positive behavior support plans, are based on
21 a positive behavior supports model and do not
22 include the use of aversive or punishment
23 contingencies;

24 v. behavioral interventions are consistently
25 implemented across all settings, including
26 school settings;

27 vi. triggers for instituting individualized
28 behavioral interventions are specified and

1 utilized, and that these triggers include
2 excessive use of seclusion, restraint, or
3 psychiatric PRN and Stat medication for
4 behavior control;

5 vii. positive behavior support teams and team
6 psychologists integrate their therapies with
7 other treatment modalities, including drug
8 therapy;

9 viii. all positive behavior support plans are
10 specified in the objectives and interventions
11 sections of the individual's WRP;

12 ix. all positive behavior support plans are
13 updated as indicated by outcome data and
14 reported at least quarterly in the present
15 status section of the case formulation in the
16 individual's WRP;

17 x. all staff has received competency-based
18 training on implementing the specific
19 behavioral interventions for which they are
20 responsible, and performance improvement
21 measures are in place for monitoring the
22 implementation of such interventions;

23 xi. all positive behavior support team members
24 shall have as their primary responsibility
25 the provision of behavioral interventions;
26 and

27 xii. the BY CHOICE point allocation is updated
28 monthly in the individual's WRP.

1
2 d. Each State Hospital shall ensure that it has at
3 least one developmental and cognitive abilities
4 team (consisting of 1 clinical psychologist, 1
5 registered nurse, 1 social worker, 1 psychiatric
6 technician, and 1 data analyst (who may be a
7 behavior specialist)) who have a demonstrated
8 competence, consistent with generally accepted
9 professional standards of care, in: assessing
10 individuals with cognitive challenges/disorders;
11 developing therapeutic interventions (including
12 positive behavior supports); advising therapy and
13 rehabilitation providers on the implementation of
14 interventions at the cognitive level of the
15 individuals; and managing discharge processes for
16 individuals with developmental disabilities and
17 cognitive challenges/disorders. This team shall
18 assume some of the functions of the positive
19 behavior support teams if the individuals they
20 serve also need positive behavior supports.

21 e. Each State Hospital shall develop and implement a
22 Behavioral Consultation Committee, chaired by the
23 Chief of Psychology, and co-chaired by the Chief of
24 Psychiatry, to review the WRP and maladaptive
25 behavior(s) of individuals who have not made timely
26 progress on positive behavior support plans. The
27 Chief of Psychology is responsible for the
28 functions of this committee, together with members

1 of the positive behavior support team (in functions
2 of the committee that relate to individuals under
3 the care of those team members). The committee
4 membership shall include all clinical discipline
5 heads, including the medical director, as well as
6 the clinical administrator of the facility.

7 f. Each State Hospital shall ensure that it has
8 sufficient neuropsychological services for the
9 provision of adequate neuropsychological assessment
10 of individuals with persistent mental illness.

11 g. All clinical psychologists with privileges at any
12 State Hospital shall have the authority to write
13 orders for the implementation of positive behavior
14 support plans, consultation for educational or
15 other testing, and behavior plan updates.

16 3. Nursing Services

17 Each State Hospital shall provide adequate and
18 appropriate nursing care and services consistent with
19 generally accepted professional standards of care to
20 individuals who require such services.

21 a. Each State Hospital shall develop and implement
22 policies and protocols regarding the administration
23 of medication, including pro re nata ("PRN") and
24 "Stat" medication (i.e., emergency use of
25 psychoactive medication), consistent with generally
26 accepted professional standards of care, to ensure:
27 i. safe administration of PRN medications and
28 Stat medications;

1 ii. documentation of the circumstances requiring
2 PRN and Stat administration of medications;
3 and

4 iii. documentation of the individual's response to
5 PRN and Stat medication.

6 b. Each State Hospital shall ensure that all failures
7 to properly sign the Medication and Treatment
8 Record ("MTR") or the controlled medication log are
9 treated as medication variances, and that
10 appropriate follow-up occurs to prevent recurrence
11 of such variances.

12 c. Each State Hospital shall ensure that all nursing
13 interventions are fully integrated into the
14 therapeutic and rehabilitation service plan and
15 that nursing interventions are written in a manner
16 aligned with the rest of the interventions in the
17 therapeutic and rehabilitation service plan, in
18 particular, in observable, behavioral, and/or
19 measurable terms. No nursing care plans other than
20 the nursing interventions integrated in the
21 therapeutic and rehabilitation service plan are
22 required. No nursing diagnoses other than as
23 specified in the therapeutic and rehabilitation
24 service plan, in terms of the current DSM criteria,
25 are required.

26 d. All nursing staff working with an individual shall
27 be familiar with the goals, objectives, and
28 interventions for that individual.

1 e. Each State Hospital shall ensure that nursing staff
2 timely monitor, document and report the status of
3 symptoms, target variables, health, and mental
4 health status of individuals in a manner that
5 enables interdisciplinary teams to assess each
6 individual's status and respond to interventions,
7 and to modify, as appropriate, individuals'
8 therapeutic and rehabilitation service plans. Each
9 State Hospital shall ensure that all nursing shift
10 changes include a review of changes in status of
11 individuals on the unit.

12 f. Each State Hospital shall develop and implement a
13 system to monitor nursing staff while administering
14 medication to ensure that:

- 15 i. nursing staff are knowledgeable regarding
- 16 each individual's prescribed medications;
- 17 ii. education is provided to individuals during
- 18 medication administration;
- 19 iii. nursing staff are following the appropriate
- 20 medication administration protocol; and
- 21 iv. medication administration is documented in
- 22 accordance with the appropriate medication
- 23 administration protocol.

24 g. Each State Hospital shall ensure that individuals
25 remain in a "bed-bound" status only for clinically
26 justified reasons.

27 h. Each State Hospital shall ensure that, before they
28 work directly with individuals, all nursing and

1 psychiatric technicians have successfully completed
2 competency-based training regarding:

3 i. mental health diagnoses, related symptoms,
4 psychotropic medications and their side
5 effects, monitoring of symptoms and target
6 variables, and documenting and reporting of
7 the individual's status;

8 ii. the provision of a therapeutic milieu on the
9 units and proactive, positive interventions
10 to prevent and de-escalate crises; and

11 iii. positive behavior support principles.

12 i. Each State Hospital shall ensure that, prior to
13 assuming their duties and on a regular basis
14 thereafter, all staff responsible for the
15 administration of medication have successfully
16 completed competency-based training on the
17 completion of the MTR and the controlled medication
18 log.

19 4. Rehabilitation Therapy Services

20 Each State Hospital shall provide adequate,
21 appropriate, and timely rehabilitation therapy services to
22 each individual in need of such services, consistent with
23 generally accepted professional standards of care.

24 a. Each State Hospital shall develop and implement
25 policies and procedures, consistent with generally
26 accepted professional standards of care, related to
27 the provision of rehabilitation therapy services
28 that address, at a minimum:

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- i. the provision of direct services by rehabilitation therapy services staff; and
- ii. the oversight by rehabilitation therapists of individualized physical therapy programs implemented by nursing staff.

b. Each State Hospital shall provide competency-based training to nursing staff, as appropriate, on the use and care of adaptive equipment, transferring, and positioning, as well as the need to promote individuals' independence.

c. Each State Hospital shall ensure that individuals are provided with timely and adequate rehabilitation therapy services.

d. Each State Hospital, consistent with generally accepted professional standards of care, shall ensure that each individual who requires adaptive equipment is provided with equipment that meets his/her assessed needs and promotes his/her independence, and shall provide individuals with training and support to use such equipment.

5. Nutrition Services

Each State Hospital shall provide the individuals it serves, particularly those experiencing weight-related problems, adequate and appropriate dietary services consistent with generally accepted professional standards of care.

1 a. Each State Hospital shall modify policies and
2 procedures to require that the therapeutic and
3 rehabilitation service plans of individuals who
4 experience weight problems and/or related health
5 concerns include adequate strategies and
6 methodologies to address the identified problems
7 and that such strategies and methodologies are
8 implemented in a timely manner, monitored
9 appropriately, and revised, as warranted,
10 consistent with generally accepted professional
11 standards of care.

12 b. Each State Hospital shall ensure that one or more
13 treatment team members demonstrate competence in
14 the dietary and nutritional issues affecting the
15 individuals they serve and the development and
16 implementation of strategies and methodologies to
17 address such issues.

18 c. Each State Hospital shall develop and implement
19 policies and procedures to address the needs of
20 individuals who are at risk for aspiration or
21 dysphagia, including but not limited to, the
22 development and implementation of assessments and
23 interventions for mealtimes and other activities
24 involving swallowing.

25 d. Each State Hospital shall ensure that staff with
26 responsibilities for assessments and interventions
27 regarding aspiration and dysphagia have
28

1 successfully completed competency-based training
2 commensurate with their responsibilities.

3 e. Each State Hospital shall develop and implement
4 policies and procedures requiring treatment of the
5 underlying causes for tube feeding placement, and
6 ongoing assessment of the individuals for whom
7 these treatment options are utilized, to determine
8 the feasibility of returning them to oral intake
9 status.

10 6. Pharmacy Services

11 Each State Hospital shall provide adequate and
12 appropriate pharmacy services consistent with generally
13 accepted professional standards of care. Each State
14 Hospital shall develop and implement policies and procedures
15 that require:

16 a. Upon the prescription of a new medication,
17 pharmacists to conduct reviews of each individual's
18 medication regimen and, as appropriate, make
19 recommendations to the prescribing physician about
20 possible drug-to-drug interactions, side effects,
21 and needs for laboratory work and testing; and

22 b. Physicians to consider pharmacists'
23 recommendations, and for any recommendations not
24 followed, document in the individual's medical
25 record an adequate clinical justification.

26 7. General Medical Services

27 a. Each State Hospital shall provide adequate,
28 appropriate, and timely preventive, routine,

1 specialized, and emergency medical care to all
2 individuals in need of such services, consistent
3 with generally accepted professional standards of
4 care. Each State Hospital shall ensure that
5 individuals with medical problems are promptly
6 identified, assessed, diagnosed, treated, monitored
7 and, as monitoring indicates is necessary,
8 reassessed, diagnosed, and treated, consistent with
9 generally accepted professional standards of care.

10 b. Each State Hospital shall develop and implement
11 protocols and procedures, consistent with generally
12 accepted professional standards of care, that:

13 i. require the timely provision of initial and
14 ongoing assessments relating to medical care,
15 including but not limited to, vision care,
16 dental care, and laboratory and consultation
17 services;

18 ii. require the timely provision of medical care,
19 including but not limited to, vision care,
20 dental care, and laboratory and consultation
21 services; timely and appropriate
22 communication between nursing staff and
23 physicians regarding changes in an
24 individual's physical status; and the
25 integration of each individual's mental
26 health and medical care;

27 iii. define the duties and responsibilities of
28 primary care (non-psychiatric) physicians;

1 iv. ensure a system of after-hours coverage by
2 primary care physicians with formal
3 psychiatric training (i.e., privileging and
4 proctorship) and psychiatric backup support
5 after hours; and

6 v. endeavor to obtain, on a consistent and
7 timely basis, an individual's medical records
8 after the individual is treated in another
9 medical facility.

10 c. Each State Hospital shall ensure that physicians
11 monitor each individual's health status indicators
12 in accordance with generally accepted professional
13 standards of care, and, whenever appropriate,
14 modify their therapeutic and rehabilitation service
15 plans to address any problematic changes in health
16 status indicators.

17 d. Each State Hospital shall monitor, on a continuous
18 basis, outcome indicators to identify trends and
19 patterns in individuals' health status, assess the
20 performance of medical systems, and provide
21 corrective follow-up measures to improve outcomes.

22 8. Infection Control

23 Each State Hospital shall develop and implement
24 infection control policies and procedures to prevent the
25 spread of infections or communicable diseases, consistent
26 with generally accepted professional standards of care.

27 a. Each State Hospital shall establish an effective
28 infection control program that:

- i. actively collects data regarding infections and communicable diseases;
- ii. assesses these data for trends;
- iii. initiates inquiries regarding problematic trends;
- iv. identifies necessary corrective action;
- v. monitors to ensure that appropriate remedies are achieved; and
- vi. integrates this information into the State Hospital's quality assurance review.

9. Dental Services

Each State Hospital shall provide individuals with adequate, appropriate and timely routine and emergency dental care and treatment, consistent with generally accepted professional standards of care.

- a. Each State Hospital shall retain or contract with an adequate number of qualified dentists to provide timely and appropriate dental care and treatment to all individuals it serves;
- b. Each State Hospital shall develop and implement policies and procedures that require:
 - i. comprehensive and timely provision of dental services;
 - ii. documentation of dental services, including but not limited to, findings, descriptions of any treatment provided, and the plans of care;

1 iii. use of preventive and restorative care
2 whenever possible; and
3 iv. tooth extractions be used as a treatment of
4 last resort, which, when performed, shall be
5 justified in a manner subject to clinical
6 review.

7 c. Each State Hospital shall ensure that dentists
8 demonstrate, in a documented fashion, an accurate
9 understanding of individuals' physical health,
10 medications, allergies, and current dental status
11 and complaints.

12 d. Each State Hospital shall ensure that
13 transportation and staffing issues do not preclude
14 individuals from attending dental appointments, and
15 individuals' refusals are addressed to facilitate
16 compliance.

17 e. Each State Hospital shall ensure that
18 interdisciplinary teams review, assess, and develop
19 strategies to overcome individuals' refusals to
20 participate in dental appointments.

21 10. Special Education

22 Each State Hospital shall provide the school-age and
23 other residents, as required by law, who qualify for special
24 education ("students"), individualized educational programs
25 that are reasonably calculated to enable these students to
26 receive educational benefits, as defined by applicable law.

27 a. Each State Hospital shall develop and implement
28 uniform systems for assessing students' individual

1 educational needs and monitoring their individual
2 progress.

3 b. Each State Hospital shall ensure that all
4 Individual Education Plans ("IEPs") are developed
5 and implemented consistent with the Individuals
6 with Disabilities Education Act, 20 U.S.C. § 1400
7 et seq. (2002) ("IDEA").

8 c. Each State Hospital shall ensure that teachers
9 providing instruction to students at the State
10 Hospital have completed competency-based training
11 regarding teaching and academic instruction,
12 behavioral interventions, monitoring of academic
13 and behavioral progress, and incident management
14 and reporting.

15 d. Each State Hospital shall ensure that students
16 receive instruction and behavioral supports
17 appropriate to their learning abilities and needs,
18 consistent with generally accepted professional
19 standards of care.

20 e. Each State Hospital shall provide appropriate
21 literacy instruction, consistent with generally
22 accepted professional standards of care, for
23 students who show deficits in one or more common
24 areas of reading (e.g., decoding or comprehending).

25 f. Each State Hospital shall, on admission and as
26 statutorily required thereafter, assess each
27 student's capacity to participate, with appropriate
28 supports and services, in an integrated, non-

1 institutional, education environment, and provide
2 access to an integrated education environment for
3 those students who can participate in one with
4 appropriate supports and services. Each State
5 Hospital shall ensure that all students receive
6 their education in the least restrictive setting
7 pursuant to the requirements of the IDEA,
8 consistent with their legal and clinical status.

9 G. Documentation

10 Each State Hospital shall ensure that an individual's
11 records accurately reflect the individual's response to all
12 treatment, rehabilitation and enrichment activities identified in
13 the individual's therapeutic and rehabilitation service plan,
14 including for children and adolescents, their education plan,
15 consistent with generally accepted professional standards of
16 care. Each State Hospital shall develop and implement policies
17 and procedures setting forth clear standards regarding the
18 content and timeliness of progress notes, transfer notes, school
19 progress notes, and discharge notes, including, but not limited
20 to, an expectation that such records include meaningful,
21 accurate, and coherent assessments of the individual's progress
22 relating to treatment plans and treatment goals, and that
23 clinically relevant information remains readily accessible.

24 H. Restraints, Seclusion, and PRN and Stat Medications

25 Each State Hospital shall ensure that restraints, seclusion,
26 psychiatric PRN medications, and Stat medications are used
27 consistent with generally accepted professional standards of
28 care.

1 1. Each State Hospital shall revise, as appropriate, and
2 implement policies and procedures regarding the use of
3 seclusion, restraints, psychiatric PRN medications, and
4 Stat medications consistent with generally accepted
5 professional standards of care. In particular, the
6 policies and procedures shall expressly prohibit the
7 use of prone restraints, prone containment and prone
8 transportation and shall list the types of restraints
9 that are acceptable for use.

10 2. Each State Hospital shall ensure that restraints and
11 seclusion:

- 12 a. Are used in a documented manner and only when
13 individuals pose an imminent danger to self or
14 others and after a hierarchy of less restrictive
15 measures has been considered in a clinically
16 justifiable manner or exhausted;
- 17 b. Are not used in the absence of, or as an
18 alternative to, active treatment, as punishment, or
19 for the convenience of staff;
- 20 c. Are not used as part of a behavioral intervention;
21 and
- 22 d. Are terminated as soon as the individual is no
23 longer an imminent danger to self or others.

24 3. Each State Hospital shall comply with 42 C.F.R.
25 § 483.360(f), requiring assessments by a physician or
26 licensed clinical professional of any individual placed
27 in seclusion or restraints within 1 hour. Each State
28 Hospital shall also ensure that any individual placed

1 in seclusion or restraints is continuously monitored by
2 a staff person who has successfully completed
3 competency-based training on the administration of
4 seclusion and restraints.

5 4. Each State Hospital shall ensure the accuracy of data
6 regarding the use of restraints, seclusion, psychiatric
7 PRN medications, or Stat medications.

8 5. Each State Hospital shall revise, as appropriate, and
9 implement policies and procedures to require the review
10 within 3 business days of individuals' therapeutic and
11 rehabilitation service plans for any individuals placed
12 in seclusion or restraints more than 3 times in any
13 4-week period, and modification of therapeutic and
14 rehabilitation service plans, as appropriate.

15 6. Each State Hospital shall develop and implement
16 policies and procedures consistent with generally
17 accepted professional standards of care governing the
18 use of psychiatric PRN medication and Stat medication,
19 requiring that:

20 a. Such medications are used in a manner that is
21 clinically justified and are not used as a
22 substitute for adequate treatment of the underlying
23 cause of the individual's distress; and

24 b. PRN medications, other than for analgesia, are
25 prescribed for specified and individualized
26 behaviors;

27 c. PRN medications are appropriately time-limited;

1 d. Nursing staff assess the individual within 1 hour
2 of the administration of the psychiatric PRN
3 medication and Stat medication and documents the
4 individual's response; and A psychiatrist conducts
5 a face-to-face assessment of the individual within
6 24 hours of the administration of a Stat
7 medication. The assessment shall address the
8 reason for the Stat administration, the
9 individual's response, and, as appropriate,
10 appropriateness of adjustment to current treatment
11 and/or diagnosis.

12 7. Each State Hospital shall ensure that all staff whose
13 responsibilities include the implementation or
14 assessment of seclusion, restraints, psychiatric PRN
15 medications, or Stat medications successfully complete
16 competency-based training regarding implementation of
17 all such policies and the use of less restrictive
18 interventions.

19 8. Each State Hospital shall:

20 a. Develop and implement a plan to reduce the use of
21 side rails as restraints in a systematic and
22 gradual way to ensure individuals' safety; and

23 b. Ensure that, as to individuals who need side rails,
24 their therapeutic and rehabilitation service plans
25 expressly address the use of side rails, including
26 identification of the medical symptoms that warrant
27 the use of side rails, methods to address the
28 underlying causes of such medical symptoms, and

1 strategies to reduce the use of side rails, if
2 appropriate.

3 I. Protection From Harm

4 Each State Hospital shall provide the individuals it serves
5 with a safe and humane environment and ensure that these
6 individuals are protected from harm.

7 1. Incident Management

8 Each State Hospital shall develop and implement across
9 all settings, including school settings, an integrated
10 incident management system that is consistent with generally
11 accepted professional standards of care.

12 a. Each State Hospital shall review, revise, as
13 appropriate, and implement incident management
14 policies, procedures and practices that are
15 consistent with generally accepted professional
16 standards of care. Such policies, procedures and
17 practices shall require:

18 i. that the State Hospital not tolerate abuse or
19 neglect of individuals and that staff are
20 required to report abuse or neglect of
21 individuals;

22 ii. identification of the categories and
23 definitions of incidents to be reported and
24 investigated; immediate reporting by staff to
25 supervisory personnel and the State
26 Hospital's executive director (or that
27 official's designee) of serious incidents,
28

1 including but not limited to, death, abuse,
2 neglect, and serious injury, using
3 standardized reporting across all settings,
4 including school settings;

5 iii. mechanisms to ensure that when serious
6 incidents such as allegations of abuse,
7 neglect, and/or serious injury occur, staff
8 take immediate and appropriate action to
9 protect the individuals involved, including
10 removing alleged perpetrators from direct
11 contact with the involved individuals pending
12 the outcome of the facility's investigation;

13 iv. adequate competency-based training for all
14 staff on recognizing and reporting potential
15 signs and symptoms of abuse or neglect,
16 including the precursors that may lead to
17 abuse;

18 v. notification of all staff when commencing
19 employment and adequate training thereafter
20 of their obligation to report abuse or
21 neglect to the State Hospital and state
22 officials. All staff persons who are
23 mandatory reporters of abuse or neglect shall
24 sign a statement that shall be kept with
25 their personnel records evidencing their
26 recognition of their reporting obligations.
27 Each State Hospital shall not tolerate any
28

1 mandatory reporter's failure to report abuse
2 or neglect;

3 vi. mechanisms to inform individuals and their
4 conservators how to identify and report
5 suspected abuse or neglect;

6 vii. posting in each living unit and day program
7 site a brief and easily understood statement
8 of individuals' rights, including information
9 about how to pursue such rights and how to
10 report violations of such rights;

11 viii. procedures for referring, as appropriate,
12 allegations of abuse or neglect to law
13 enforcement; and

14 ix. mechanisms to ensure that any staff person,
15 individual, family member or visitor who in
16 good faith reports an allegation of abuse or
17 neglect is not subject to retaliatory action,
18 including but not limited to reprimands,
19 discipline, harassment, threats or censure,
20 except for appropriate counseling, reprimands
21 or discipline because of an employee's
22 failure to report an incident in an
23 appropriate or timely manner.

24 b. Each State Hospital shall review, revise, as
25 appropriate, and implement policies and procedures
26 to ensure the timely and thorough performance of
27 investigations, consistent with generally accepted
28 professional standards of care. Such policies and

1 procedures shall:

2 i. require investigations of all deaths, as well
3 as allegations of abuse, neglect, serious
4 injury, and theft. The investigations shall
5 be conducted by qualified investigators who
6 have no reporting obligations to the program
7 or elements of the facility associated with
8 the allegation and have expertise in
9 conducting investigations and working with
10 persons with mental disorders;

11 ii. ensure that only the State Hospital staff who
12 have successfully completed competency-based
13 training on the conduct of investigations be
14 allowed to conduct investigations of
15 allegations of petty theft and all other
16 unusual incidents;

17 iii. for investigations required by paragraph
18 I.1.b.i, above, provide for the safeguarding
19 of evidence; and

20 iv. for investigations required by paragraph
21 I.1.b.i, above, require the development and
22 implementation of standardized procedures and
23 protocols for the conduct of investigations
24 that are consistent with generally accepted
25 professional standards. Such procedures and
26 protocols shall require that:

- 1) investigations commence within 24 hours or sooner, if necessary, of the incident being reported;
- 2) investigations be completed within 30 business days of the incident being reported, except that investigations where material evidence is unavailable to the investigator, despite best efforts, may be completed within 5 business days of its availability;
- 3) each investigation result in a written report, including a summary of the investigation, findings and, as appropriate, recommendations for corrective action. The report's contents shall be sufficient to provide a clear basis for its conclusion. The report shall set forth explicitly and separately:
 - (i) each allegation of wrongdoing investigated;
 - (ii) the names of all witnesses;
 - (iii) the names of all alleged victims and perpetrators;
 - (iv) the names of all persons interviewed during the investigation;
 - (v) a summary of each interview;

1 (vi) a list of all documents reviewed
2 during the investigation;

3 (vii) sources of evidence considered,
4 including previous investigations
5 and their results, involving the
6 alleged victim(s) and
7 perpetrator(s);

8 (viii) the investigator's findings,
9 including findings related to the
10 substantiation of the allegations
11 as well as findings about staff's
12 adherence to programmatic
13 requirements; and

14 (ix) the investigator's reasons for
15 his/her conclusions, including a
16 summary indicating how potentially
17 conflicting evidence was
18 reconciled; and

19 4) staff supervising investigations review
20 the written report, together with any
21 other relevant documentation, to ensure
22 that the investigation is thorough and
23 complete and that the report is accurate,
24 complete, and coherent. Any deficiencies
25 or areas of further inquiry in the
26 investigation and/or report shall be
27 addressed promptly. As necessary, staff
28 responsible for investigations shall be

1 provided with additional training and/or
2 technical assistance to ensure the
3 completion of investigations and
4 investigation reports consistent with
5 generally accepted professional standards
6 of care.

7 c. Each State Hospital shall ensure that whenever
8 disciplinary or programmatic action is necessary to
9 correct a situation or prevent reoccurrence, each
10 State Hospital shall implement such action promptly
11 and thoroughly, and track and document such actions
12 and the corresponding outcomes.

13 d. Each State Hospital shall have a system to allow
14 the tracking and trending of investigation results.
15 Trends shall be tracked by at least the following
16 categories:

- 17 i. type of incident;
- 18 ii. staff involved and staff present;
- 19 iii. individuals directly and indirectly involved;
- 20 iv. location of incident;
- 21 v. date and time of incident;
- 22 vi. cause(s) of incident; and
- 23 vii. outcome of investigation.

24 e. Each State Hospital shall ensure that before
25 permitting a staff person to work directly with any
26 individual, the State Hospital shall investigate
27 the criminal history and other relevant background
28 factors of that staff person, whether full-time or

1 part-time, temporary or permanent, or a person who
2 volunteers on a regular basis. Facility staff
3 shall directly supervise volunteers for whom an
4 investigation has not been completed when they are
5 working directly with individuals living at the
6 facility. The facility shall ensure that a staff
7 person or volunteer may not interact with
8 individuals at the State Hospital in instances
9 where the investigation indicates that the staff
10 person or volunteer may pose a risk of harm to such
11 individuals.

12 2. Performance Improvement

13 Each State Hospital shall develop, revise as
14 appropriate, and implement performance improvement
15 mechanisms that enable it to comply fully with this Plan, to
16 detect timely and adequately problems with the provision of
17 protections, treatment, rehabilitation, services and
18 supports, and to ensure that appropriate corrective steps
19 are implemented. Each State Hospital shall establish a risk
20 management process to improve the identification of
21 individuals at risk and the provision of timely
22 interventions and other corrective actions commensurate with
23 the level of risk. The performance improvement mechanisms
24 shall be consistent with generally accepted professional
25 standards of care and shall include:

- 26 a. Mechanisms for the proper and timely identification
27 of high-risk situations of an immediate nature as
28 well as long-term systemic problems. These

1 mechanisms shall include, but not be limited to:

2 i. data collection tools and centralized
3 databases to capture and provide information
4 on various categories of high-risk
5 situations;

6 ii. establishment of triggers and thresholds that
7 address different levels of risk, as set
8 forth in Appendix A of this Plan; and

9 iii. identification of systemic trends and
10 patterns of high risk situations;

11 b. Mechanisms for timely interventions and other
12 corrective actions by teams and disciplines to
13 prevent or minimize risk of harm to individuals.
14 These mechanisms shall include, but not be limited
15 to:

16 i. a hierarchy of interventions by clinical
17 teams that correspond to triggers and
18 thresholds;

19 ii. timely corrective actions by teams and/or
20 disciplines to address systemic trends and
21 patterns;

22 iii. formalized systems for the notification of
23 teams and needed disciplines to support
24 appropriate interventions and other
25 corrective actions;

26 iv. formalized systems for feedback from teams
27 and disciplines to the standards compliance
28 department regarding completed actions; and

1 v. monitoring and oversight systems to support
2 timely implementation of interventions and
3 corrective actions and appropriate follow up;
4 and

5 c. Utilize, on an ongoing basis, appropriate
6 performance improvement mechanisms to assess and
7 address the facility's compliance with its
8 identified service goals.

9 3. Environmental Conditions

10 Each State Hospital shall develop and implement a
11 system to review regularly all units and areas of the
12 hospital to which individuals being served have access to
13 identify any potential environmental safety hazards and to
14 develop and implement a plan to remedy any identified
15 issues, consistent with generally accepted professional
16 standards of care. Such a system shall require that:

- 17 a. Potential suicide hazards are identified and
18 prioritized for systematic corrective action, and
19 that such action is implemented on a priority basis
20 as promptly as feasible;
- 21 b. All areas of the hospital that are occupied by
22 individuals being served have adequate temperature
23 control and deviations shall be promptly corrected;
- 24 c. Each State Hospital reviews, revises, as
25 appropriate, and implements procedures and
26 practices so that individuals who are incontinent
27 are assisted to change in a timely manner;
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1 d. Each State Hospital thoroughly reviews and revises,
2 as appropriate, its policy and practice regarding
3 sexual contact among individuals served at the
4 hospital. Each State Hospital shall establish
5 clear guidelines regarding staff response to
6 reports of sexual contact and monitor staff
7 response to incidents. Each State Hospital
8 documents comprehensively therapeutic interventions
9 in the individual's charts in response to instances
10 of sexual contact;

11 e. Each State Hospital develops and implements clear
12 guidelines stating the circumstances under which it
13 is appropriate to utilize staff who are not trained
14 to provide mental health services in addressing
15 incidents involving individuals. Each State
16 Hospital ensures that persons who are likely to
17 intervene in incidents are properly trained to work
18 with individuals with mental health concerns; and

19 f. Metropolitan State Hospital will institute roving
20 patrols of treatment units, except for the skilled
21 nursing facility, by Hospital Police Officers on a
22 schedule and frequency to be determined by the
23 hospital administration.

24 J. First Amendment and Due Process

25 Each State Hospital unconditionally permits individuals to
26 exercise their constitutional rights of free speech, including
27 the right to petition the government for redress of grievances
28 without state monitoring and provides them due process.

ENHANCEMENT PLAN - APPENDIX A

<u>Trigger</u>	<u>Thresholds</u>
Aggressive Act to Self	1.1 Any aggression to self resulting in major injury* 1.2 2 or more aggressive acts to self in 7 consecutive days 1.3 4 or more aggressive acts to self in 30 consecutive days
Aggressive Act to Others	2.1 Any peer-to-peer aggression resulting in major injury 2.2 Any aggression to staff resulting in major injury 2.3 2 or more aggressive acts to others in 7 consecutive days 2.4 4 or more aggressive acts to others in 30
Alleged Abuse/ Neglect/Exploitation	3.1 Any alleged abuse/neglect/exploitation if minor** or major injury

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2 Body Weight

- 3 4.1 Body Mass Index (BMI) of 18.5 or
4 less (underweight)
5 4.2 Body Mass Index (BMI) between 25
6 and 29.9 (overweight)
7 4.3 Body Mass Index (BMI) between 30
8 and 34.9 (Obesity-Grade I)
9 4.4 Body Mass Index (BMI) between 35
10 and 39.9 (Obesity-Grade II)
11 4.5 Body Mass Index (BMI) 40 or above
12 (Obesity-Grade III)
13 4.6 Weight Change \pm 5% in 1 month
14 4.7 Weight Change \pm 7.5% in 3 months
15 4.8 Weight Change \pm 10% in 6 months
16 4.9 Waist Circumference over 35" for
17 females or over 40" for males

18 Combined Pharmacotherapy

- 19 5.1 More than 2 intra-class
20 psychotropic medications for
21 psychiatric reasons
22 5.2 More than 3 inter-class
23 psychotropic medications for
24 psychiatric reasons

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Escape/AWOL	6.1 Any escape attempt/unauthorized absence within facility
	6.2 Any escape attempt/unauthorized absence outside of facility

Falls	7.1 Any fall resulting in major injury
	7.2 Three or more falls in 30 consecutive days

Illicit Substances	8.1 Any incident of an individual testing positive for illicit substance (street drug) use
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Medication Variance (Error)	9.1 Any medication error that results in major injury or exacerbation of a disease or disorder (i.e., prescribing, transcribing, ordering/procurement, dispensing/storage, administration, and documentation)
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Mortality	10.1 Expected deaths 10.2 Unexpected deaths
Non-Adherence to Wellness and Recovery Plan (WRP)	11.1 Non-adherence to WRP for more than 20% of the interventions in 7 consecutive days (Note: For children and adolescents: include non-attendance at school for more than 20% of the time in 7 consecutive days)
One-to-One Observations	12.1 1:1 for psychiatric/behavioral reasons over 24 hours in 7 consecutive days 12.2 Any 2:1 for psychiatric/behavioral reasons
PRN Medications	13.1 2 PRNs in 24 hours (for psychiatric/behavioral reasons) 13.2 3 PRNs in 7 consecutive days 13.3 15 PRNs in 30 consecutive days

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Restraint

- 14.1 Restraint for more than 4 hours for adults (Note: more than 4 hours for adolescents and 2 hours for children)
- 14.2 More than 3 episodes of restraint in 7 consecutive days
- 14.3 More than 5 episodes of restraint in 30 consecutive days

Seclusion

- 15.1 Seclusion for more than 4 hours for adults (Note: more than 4 hours for adolescents and 2 hours for children)
- 15.2 More than 3 episodes of seclusion in 7 consecutive days
- 15.3 More than 5 episodes of seclusion in 30 consecutive days

Stat Medications

- 16.1 2 Stat medications in 24 hours
- 16.2 3 Stat medications in 7 consecutive days
- 16.3 15 Stat med in 30 consecutive days

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Suicide Attempt	17.1 Any suicide attempt
	17.2 Any suicide threat or ideations

* A major injury is an injury that requires treatment of more than basic first aid by medical personnel or any injury resulting from alleged or suspected abuse or any injury judged to have potential for serious harm.

** A minor injury is any injury, other than an injury caused by alleged or suspected abuse, that requires no treatment or only minor first aid and for which the potential for serious harm is judged to have been remote.

1 **PART II**

2 **ENFORCEMENT**

3 A. Selection of Monitor

4 Mohamed El-Sabaawi, M.D. shall be appointed as the expert to
5 monitor the State's implementation of this Agreement (the
6 "Monitor"). The Monitor shall have full authority to assess,
7 review, and report independently on the Defendants'
8 implementation of and compliance with the provisions of the
9 Agreement. No Party, nor any employee or agent of any Party,
10 shall have any supervisory authority over the Monitor's
11 activities, reports, findings, or recommendations. In the event
12 that Dr. El-Sabaawi is unable to serve or continue serving as the
13 Monitor, or in the event that the Parties for any reason agree to
14 discontinue the use of Dr. El-Sabaawi, the Parties shall meet or
15 otherwise confer within thirty (30) days of being notified of the
16 incapacity or the decision to discontinue use of Dr. El-Sabaawi
17 to select a new Monitor. If the Parties are unable to agree upon
18 a selection, each Party shall submit two names, along with
19 resumes or curricula vitae and cost proposals, to the Court and
20 the Court shall appoint the Monitor from among the names
21 submitted. The procedure described in this paragraph shall apply
22 to all successor Monitors. The Parties agree that the Monitor
23 may use consultants to assist the Monitor. Any such consultants
24 shall be paid for time, services, and expenses pursuant to the
25 Monitor's existing budget. In collaboration with the Monitor,
26 the Parties shall meet or otherwise confer whenever necessary to
27 agree upon which particular consultant(s) the Monitor shall use
28 to assist the Monitor in his duties as Monitor.

1 B. Budget of the Monitor

2 The Parties and the Monitor have agreed upon the annual
3 budget for the Monitor's work.

4 C. Reimbursement and Payment Provisions

5 1. The cost of the Monitor, including the cost of any
6 consultant to assist the Monitor, shall be borne by the
7 State in this action. All reasonable expenses incurred
8 by the Monitor or any consultant, in the course of the
9 performance of the duties of the Monitor, pursuant to
10 the budget of the Monitor, shall be reimbursed by the
11 State. The United States will bear its own expenses in
12 this matter.

13 2. The Monitor shall submit monthly invoices to the
14 Defendants, with a copy to the United States, detailing
15 all expenses the Monitor incurred during the prior
16 month. These invoices shall include daily records of
17 time spent and expenses incurred, and shall include
18 copies of any supporting documentation, including
19 receipts. The Defendants agrees to pay each month's
20 invoice in full from the Monitor within thirty (30)
21 days of receipt of the monthly invoice from the
22 Monitor. If the Defendants dispute all or part of the
23 invoice, the Defendants shall notify in writing the
24 Monitor and the United States within ten days of
25 receipt of the Monitor's monthly invoice. The Monitor,
26 the Defendants and the United States will endeavor to
27 resolve any invoice disputes promptly and in good
28 faith. Where the Monitor and the Parties are unable to

1 resolve any invoice dispute, the Monitor and/or the
2 Parties may petition the Court to resolve the dispute.

3 D. Responsibilities and Powers of the Monitor

4 1. The overall duties of the Monitor shall be to observe,
5 review, report findings, and make recommendations,
6 where appropriate, with regard to the implementation of
7 the foregoing Enhancement Plan at the State Hospitals.
8 The Monitor shall regularly review the therapeutic and
9 rehabilitation services provided to individuals to
10 determine the Defendants' implementation of and
11 compliance with this Consent Judgment. During the
12 Monitor's review, the Monitor shall have full and
13 complete access to all of the State Hospitals'
14 buildings and facilities, staff, patients, patient
15 records, documentation, and information relating to the
16 issues addressed in this Consent Judgment. The State
17 Hospitals' Executive Directors shall direct all
18 employees to cooperate fully with the Monitor. The
19 Monitor shall be permitted to initiate and receive ex
20 parte communications with the Parties. The Monitor
21 shall devote such time as is necessary to fulfill the
22 purposes of the duties and responsibilities of the
23 Monitor pursuant to this Consent Judgment.

24 2. The Monitor shall consult with the Parties and shall
25 submit a written plan with regard to the methodologies
26 to be used by the Monitor to assess the Defendants'
27 compliance with and implementation of the Consent
28 Judgment. The Monitor's evaluation shall include:

1 regular on-site inspection of the State Hospitals'
2 facilities and programs for patients, interviews with
3 administrators, professional and other staff,
4 contractors, and patients, and detailed review of
5 pertinent documents and patient records. The Parties
6 envision that the Monitor may provide specific
7 recommendations to the Defendants with regard to steps
8 to be taken to come into compliance with the Consent
9 Judgment. However, the Defendants retain the
10 discretion to achieve compliance by any legal means
11 available to them, and may choose to utilize methods
12 other than those that may be proposed by the Monitor or
13 the United States. The Monitor shall not be empowered
14 to direct the Defendants to take, or to refrain from
15 taking, any specific action to achieve compliance with
16 the Consent Judgment. The Parties do not intend for
17 the Monitor to have the role of a "Special Master."
18 The Agreement is the product of two governmental
19 agencies exercising their expertise.

20 3. In any instance in which either party disagrees as to
21 compliance, the Court shall give appropriate deference
22 to the Monitor's assessment of compliance.

23 4. The Parties envision that the United States and the
24 Monitor shall conduct a "baseline" evaluation of the
25 Defendants' compliance with the terms of this Consent
26 Judgment at the State Hospitals within the first 180
27 days after the filing of this Consent Judgment. This
28 initial baseline evaluation is intended to inform the

1 Parties and the Monitor of the status of compliance
2 with this Enhancement Plan. The Monitor shall produce
3 a written report to the Parties with regard to the
4 State's compliance with particular provisions of the
5 Consent Judgment as soon as possible, but at least
6 within 60 days of each visit.

7 5. Following the baseline tour, the Monitor shall conduct
8 subsequent tours of each State Hospital at least
9 semi-annually, upon reasonable notice to the State
10 Hospital, in order to fulfill his or her obligations
11 pursuant to this Consent Judgment. In connection with
12 the baseline tours, the Parties and the Monitor shall
13 attempt to agree upon a schedule of subsequent tours
14 and reports for the upcoming year, to be repeated
15 annually thereafter.

16 6. The Monitor shall provide the Parties with a written
17 report as soon as possible, but at least within 60 days
18 of each tour and shall detail with as much specificity
19 as possible how the State is or is not in compliance
20 with particular provisions of the Consent Judgment.
21 Drafts of the Monitor's reports shall be provided to
22 the Parties for comment at least ten (10) business days
23 prior to issuance of the reports. Upon the achievement
24 of eighteen (18) months of substantial compliance with
25 any substantive paragraph(s) of this Agreement, no
26 further reporting shall be required on that paragraph.
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1 7. The Defendants shall notify the Monitor immediately
2 upon the death of any current State Hospital patient,
3 including any person who died following transfer due to
4 medical condition from a State Hospital to another
5 medical facility. The Defendants shall forward to the
6 Monitor copies of any completed incident reports
7 related to deaths, autopsies and/or death summaries of
8 residents, as well as all final reports of
9 investigations that involve State Hospital patients.
10 The Defendants shall also notify the Monitor
11 immediately if they receive a citation or threat to
12 de-certify a State Hospital from the Centers for
13 Medicaid and Medicare Services.

14 E. The United States' Access to Information and the State
15 Hospitals

16 1. The United States shall have full access to, and shall,
17 upon request, receive copies of any documents, records,
18 databases, and information relating to the
19 implementation of this Consent Judgment. The
20 Defendants shall provide any requested documents,
21 records, databases, and information to the United
22 States as soon as possible, but no later than within
23 thirty (30) business days of the request, or within a
24 time frame negotiated by the parties if the volume of
25 requested material is too great to reasonably produce
26 within thirty days. The United States, upon reasonable
27 notice, shall have full access to all of the State
28 Hospitals' buildings and facilities, staff, patients,

1 patients' records, documentation, and information
2 relating to the issues addressed in this Consent
3 Judgment. The State Hospitals' Executive Directors
4 shall direct all employees to cooperate fully with the
5 United States. The United States may receive and
6 respond to unsolicited calls or contacts from State
7 personnel outside the presence of State
8 representatives.

9 **PART III**

10 **MODIFICATION OF TERMS**

11 A. If the Parties reach a subsequent agreement that varies from
12 the Plan, the new agreement shall be reduced to writing, signed,
13 and filed with the Court for approval.

14 **PART IV**

15 **COMPLIANCE AND TERMINATION**

16 A. The purpose of this Consent Judgment is that the Defendants
17 will be able to achieve desired outcomes for and provide the
18 necessary protections, supports, and services to the
19 individuals served by the State Hospitals. All of the terms of
20 the Plan set forth in Part I hereof shall be implemented at the
21 State Hospitals within 36 months of the Enhancement Plan's
22 effective date, except that § I.3 of the Plan and all provisions
23 of the Plan having to do with suicide prevention measures shall
24 be implemented at the State Hospitals upon the effective date of
25 this Consent Judgment. This Consent Judgment will be terminated
26 and the case dismissed five (5) years after the effective date of
27 the Consent Judgment. This Consent Judgment may terminate at an
28 earlier date if the Parties agree that the Defendants are in

1 substantial compliance with each provision of the Consent
2 Judgment, and the State has maintained compliance for at least
3 eighteen (18) months ("maintained sustained compliance"). If
4 Defendants and the Monitor contend that the Defendants have
5 maintained sustained compliance and the United States disagrees,
6 Defendants may move this Court for an order terminating this
7 Consent Judgment. In any instance in which the parties disagree
8 as to compliance, the Court shall give appropriate deference to
9 the Monitor's assessment of compliance. Noncompliance with mere
10 technicalities, or temporary failure to comply during a period of
11 otherwise sustained compliance shall not constitute failure to
12 maintain substantial compliance. At the same time, temporary
13 compliance during a period of sustained noncompliance shall not
14 constitute substantial compliance.

15 B. At all times, the State shall comply with applicable federal
16 and state licensing requirements.

17 C. If the United States maintains that the Defendants have
18 failed to carry out any requirement of this Consent Judgment, the
19 United States shall notify the Defendants with specificity of any
20 instance(s) in which it maintains that the Defendants have failed
21 to carry out the requirements of this Consent Judgment.

22 D. With the exception of conditions or practices that pose an
23 immediate and serious threat to the life, health, or safety of
24 individuals served by the State Hospitals, the Defendants shall
25 have thirty (30) days from the date of a deficiency notice from
26 the United States to cure the claim of noncompliance. During
27 this period, the Parties shall coordinate and shall discuss areas
28 of disagreement and attempt to resolve outstanding differences.

1 E. Unless specified to the contrary elsewhere herein, in any
2 compliance or other adversarial hearing prior to final dismissal
3 of this action, the burden of proof will be on the Party moving
4 the Court.

5 F. All provisions of this Consent Judgment shall have ongoing
6 effect until the final dismissal of this action. The Court shall
7 retain jurisdiction for all purposes until such time as this
8 action dismissed. Independent of the foregoing, if the United
9 States and the Defendants agree that the State Hospitals have
10 achieved substantial compliance with each section of this Consent
11 Judgment, the Parties shall file a joint motion to dismiss this
12 action.

13 G. This case shall be treated administratively as inactive.
14 However, the Court retains jurisdiction to enforce the terms of
15 this Order.

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18 DATED: This 2 day of May, 2006.

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/s/

UNITED STATES DISTRICT JUDGE

1 APPROVED AS TO FORM AND CONTENT:

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/s/ Wan J. Kim

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WAN J. KIM
Assistant Attorney General

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7

/s/ Shanetta Y. Cutlar

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/s/ Benjamin O. Tayloe, Jr.
/s/ William G. Maddox
/s/ Lee R. Seltman
/s/ Matthew J. Donnelly
/s/ Anita C. Snyder
/s/ Mary R. Bohan

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/s/ Kimberly Belshe

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