U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 3, 2004

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

Re: Laguna Honda Hospital and Rehabilitation Center, San Francisco, California

Dear Governor Schwarzenegger:

I am writing to report another set of findings arising out of the Civil Rights Division's investigation of Laguna Honda Hospital and Rehabilitation Center in San Francisco. This latest probe, which is part of our broader investigation of Laguna Honda under the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997, focused on whether the State of California contributes to the unnecessary segregation of residents at this nursing facility.

Laguna Honda is one of the largest publicly-operated nursing homes in the country, providing about one-third of the skilled nursing beds in San Francisco. It is a Medicare- and Medicaid-certified nursing facility that is owned and operated by the City and County of San Francisco. Laguna Honda's 1,200 skilled nursing and 20 general acute care beds are located on a single, 64-acre site with an average daily census of 1,041 residents in FY 2002-2003. Laguna Honda employs approximately 1,500 full-time equivalent employees.

Laguna Honda has a diverse resident population, comprised of residents with a variety of diagnoses and functional limitations, including a significant number of residents restricted by substantial physical impairments, mental illness, and developmental disabilities. The residents range in age from the early twenties to over 100. For a nursing home, Laguna Honda serves an unusually high number of younger

residents under the age of 55 — approximately 22 percent of the total. In fact, this segment of the Laguna Honda population tripled from 1990 to 2000, and continues to increase.

In May 1998 and April 2003, we notified the City of San Francisco that it was violating Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12131, and its implementing regulations, including 28 C.F.R. § 35.130(d) (the "integration regulation"), by failing to provide services in the most integrated setting. On April 23, 2003, we also notified the State that we were broadening our investigation of the ADA violations at Laguna Honda to determine whether the State itself contributes to the unnecessary institutionalization of Laguna Honda residents.

Having completed our thorough investigation, it is our judgment that the State has impeded qualified Laguna Honda residents from being served in the most integrated setting appropriate to meet their needs, as required by Title II of the ADA.[1] The State's contribution to the unnecessary isolation of facility residents is evidenced by its: (i) failure to ensure that residents are adequately and timely assessed for placement in non-institutional settings upon admission and regularly thereafter; (ii) failure to adequately inform residents of home- and community-based options and alternatives; and (iii) failure to provide sufficient meaningful community options to reasonably accommodate

---

[1] By virtue of their assessed conditions and placement at the facility, the residents of Laguna Honda are qualified individuals with a disability pursuant to the ADA. Title II of the ADA defines a "qualified individual with a disability" as: an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity. 42 U.S.C. § 12131(2). Title II of the ADA defines "disability" with respect to an individual as "a physical or mental impairment that substantially limits one or more major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment." 42 U.S.C. § 12102(2).

qualified residents who need appropriate placements in non-institutional settings along with the supports and services they need to live in those settings. Consistent with our statutory obligations, we set forth our findings in greater detail below, along with the minimum remedial measures necessary to address outstanding concerns.

Before outlining our findings, however, we wish to acknowledge and express our appreciation for the cooperation and assistance of all of the State officials who facilitated our review. We found the State officials who worked with us and participated in our interviews to be knowledgeable and committed individuals. Your own office also has shown great leadership in this matter for which we are most grateful. We hope to be able to build on this positive and collaborative relationship as we work with the State in the future to address our outstanding concerns at Laguna Honda. Indeed, we recently met with counsel for the State and certainly appreciate the initial positive response to our overture to provide technical assistance to facilitate needed remedial efforts.

I. BACKGROUND

On May 6, 1998, we first notified then-San Francisco Mayor Willie Brown that the City was violating the ADA and the rights of Laguna Honda residents by not providing adequate resident assessments to determine whether the nursing facility was the most integrated setting to meet residents' needs.[2] In 2001 and 2002, in a joint review with the Office for Civil Rights at the United States Department of Health and Human Services ("HHS"), we conducted a comprehensive evaluation of Laguna Honda's assessment and discharge planning process, as well as the City's capacity to provide community-based supports and services to the residents. On April 1, 2003, we found -- jointly with HHS -- that the City continued to violate Title II of the ADA ("2003 Findings Letter"). We discuss some of those 2003 findings in greater detail below.

---

[2] Our findings letter addressed additional legal violations relating to conditions of care and treatment of Laguna Honda residents, including the City's failure to ensure residents' reasonable safety, failure to provide adequate health care services, and failure to provide an adequate living environment.

Our focused review of the City's admission and discharge practices and policies revealed credible allegations that the State may be contributing to the unnecessary isolation of certain Laguna Honda residents through its administration of Medicaid programs and waivers, as well as other long-term care programs and services. As a result, on April 23, 2003, we notified then-Governor Gray Davis that we were broadening our ongoing investigation of the City of San Francisco to determine whether the State similarly contributes to the unnecessary institutionalization of qualified residents at Laguna Honda.

In August 2003, as part of our investigation of the State, we interviewed State officials from various departments in California's Health and Human Services Agency, including staff from the Departments of Health Services, Mental Health, Developmental Services, Social Services, and Aging. Each department is charged with administering and/or providing programmatic oversight of long-term care or related programs and services in San Francisco and at other locations in California, including those which provide home- and community-based alternatives to institutional-based care. In addition, we reviewed documents and materials provided by the State.

II. LEGAL FRAMEWORK

With the passage of the ADA, Congress intended to provide a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).[3] In Title II of the ADA, Congress set forth specific prohibitions against discrimination in public services furnished by governmental

---

[3] Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem. ... [D]iscrimination against individuals with disabilities persists in such critical areas as ... institutionalization. ... [I]ndividuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, ... failure to make modifications to existing facilities and practices, ... [and] segregation." 42 U.S.C. § 12101(a)(2), (3), (5).

entities. Specifically, the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The regulations promulgated pursuant to the ADA provide that "[a] public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). The preamble to the regulations defines "the most integrated setting" to mean a setting "that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." 28 C.F.R. pt. 35, App. A at 450.

In construing the anti-discrimination provision contained within the public services portion (Title II) of the ADA, the Supreme Court held that "[u]njustified [institutional] isolation ... is properly regarded as discrimination based on disability." Olmstead v. L.C., 527 U.S. 581, 597, 600 (1999). The Court explained that "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." Id. at 600. The Court added that "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." Id. at 601. The Court established a three-prong test to determine when jurisdictions are required to provide community-based treatment for persons with mental disabilities. The Court held that jurisdictions are required to provide such services when: (A) "an individual 'meets the essential eligibility requirements'" for protections, supports and services in a community-based program, based upon reasonable assessments of the individual's treating professionals; (B) "the affected persons do not oppose such treatment"; (C) and, the placement can be "reasonably accommodated," taking into account the resources available to the jurisdiction and the needs of others who are similarly situated. Id. at 602, 607. See also Townsend v. Quasim, 328 F.3d 511 (9th Cir. 2003) (applying the Supreme Court's Olmstead analysis in reversing grant of summary judgment in favor of the State).

With the New Freedom Initiative, President George W. Bush announced that one of the top priorities for this Administration was to tear down barriers to equality and to expand opportunities available to Americans living with disabilities. As one step in implementing the New Freedom Initiative, the President, on June 18, 2001, signed Executive Order No. 13217, entitled "Community-Based Alternatives for Individuals with Disabilities." In that Order, the President emphasized that unjustified isolation or segregation of qualified individuals with disabilities in institutions is a form of prohibited discrimination, that the United States is committed to community-based alternatives for individuals with disabilities, and that the United States seeks to ensure that America's community-based programs effectively foster independence and participation in the community for Americans with disabilities. Exec. Order No. 13217, §§ 1(a)-(c), 66 Fed. Reg. 33155 (June 18, 2001). The President directed the Attorney General to "fully enforce" Title II of the ADA, especially for the victims of unjustified institutionalization. Id. at § 2(c). The Executive Order directed federal agencies to identify and remove barriers that impede opportunities for community placement. In response, federal agencies have undertaken several initiatives, including clarifying federal statutes and regulations to assist in the transition of institutionalized individuals into more integrated settings, increasing federal funding for programs and projects aimed at expanding opportunities for community living, and ensuring full and comprehensive enforcement of Title II of the ADA. See U.S. Dep't of Health & Human Serv., Delivering on the Promise: Compilation of Individual Federal Agency Reports to Eliminate Barriers and Promote Community Integration (2002).

III. FACTUAL CONTEXT

On April 1, 2003, we informed the City that Laguna Honda fails to provide meaningful, adequate, and periodic assessments of qualified residents' potential for placement in the most integrated community setting in violation of the ADA. See 2003 Findings Letter at 8-15. For your convenience, our 2003 Findings Letter is attached. Specifically, we found many Laguna Honda residents who were not appropriate for admission and/or ongoing placement at the nursing home, yet seemed to languish there due to inadequate assessments or a failure to implement existing assessments. For example:

- We found a resident who had remained at Laguna Honda for over a decade even though she was assessed as having no skilled nursing or medical needs and required no assistance in her activities of daily living. Her discharge assessment had long included notes that she was ready for discharge and she had long expressed a strong desire to leave.

- We found individuals admitted to and residing at Laguna Honda for years simply because their *caregivers* needed the skilled nursing care provided at Laguna Honda. In fact, the individuals themselves did not have an assessed need for nursing home services.

- We found several residents with mental illness who were not identified as having mental illness upon admission to Laguna Honda. These individuals were not given a complete Preadmission Screening and Resident Review ("PASRR") evaluation, as is required by federal law, to help determine proper residential placement and treatment for individuals with mental disabilities. As a result, these persons may have been improperly admitted to the facility based on these inadequate assessments.

- We found that some residents who wanted to move to the community did not have a short- or a long-term discharge plan with proper assessments in their records.

- We found many individuals who had remained at Laguna Honda too long simply because discharge assessment and planning is not an integral component of service delivery at the nursing home, either at the time of admission or thereafter. We found individuals who did not require or no longer required skilled nursing care yet who remained at the facility for months and, in some instances, even years.

- We found many individuals who had remained at Laguna Honda because of limited community capacity or the perception of limited community capacity, not because of their skilled nursing needs. These individuals often travel to and interact in the community, returning to the nursing home each night simply because they have not been provided with appropriate community supports.

We further found that Laguna Honda residents become and/or remain unnecessarily isolated at the facility, in violation of the ADA. Overall, we found that the assessment and discharge process at Laguna Honda is substantially flawed in that not only does it admit some people to the facility who do not need restrictive care, but it is unduly cumbersome and prolonged, resulting in many residents remaining in the facility long after their level of medical acuity would dictate transfer to a more integrated setting. Given our in-depth review of facility practices over several years, we found that the problems were systemic, a gross departure from generally accepted practices and legal standards, and were likely to continue in the future absent implementation of remedial measures.

The unnecessary segregation issue at Laguna Honda is even more pressing now given recent events at the facility. Laguna Honda's Administrator recently confirmed to us that the facility has continued to accept younger residents, many of whom have significant mental health and behavioral issues. In fact, in light of this situation, the facility apparently has added two secure units since our last tour of the facility. We understand that even the physicians at Laguna Honda have expressed serious concerns about recent changes in the facility's admissions policies, which enable the admission of patients who could compromise resident safety by introducing individuals whose needs staff may simply be ill-equipped to handle.

We note that the State's own surveys conducted earlier this year in February and May pursuant to the State's ongoing participation in the Medicaid program on behalf of the federal Centers for Medicare and Medicaid Services ("CMS") revealed a number of significant concerns, including:

- A resident reported that he witnessed a female staff person hit a male resident when that resident accidently knocked his denture cup under the bed. Laguna Honda's investigation report indicated that abuse was not substantiated because the resident eyewitness of the alleged abuse declined to stand by his statement for fear of having to "testify in court."

- A resident suffered a broken hip after a Laguna Honda nurse attempted to insert a rectal suppository while the resident was standing up. The resident ran away from the

nurse and slipped and fell. This resident had diagnoses of osteoarthritis and advanced osteoporosis, placing him at high risk for fractures, and had been identified by his team as an elopement risk. Seven months after the fall, when State surveyors visited Laguna Honda, the resident still had not recovered fully. Prior to the fall, he had walked independently. At the time the surveyors visited him, he required "extensive assistance" in activities such as bed mobility and transfers, and was using a walker for ambulation.

- Another resident, whom Laguna Honda staff had identified as needing supervision when ambulating and assistance with activities of daily living, fell on three different occasions. The first time, he was unsupervised and a nurse's aide found him lying on the floor in the back of the ward. The resident sustained an impacted fracture of his upper right arm. Approximately three months after the initial fall, the resident appears to have fallen again, sustaining a fracture of his upper left arm. An assessment completed after the third fall indicated that the resident had decreased range of motion in both upper extremities with declines in his activities of daily living such as transfers, eating, dressing, and ambulation.

- According to the State surveyors, a resident who entered the facility without pressure sores[4] developed an avoidable pressure sore that Laguna Honda staff only assessed and began treating once it had reached a very advanced stage. Another resident was assessed upon admission to Laguna Honda in October 2003 as having a significant pressure sore on his tailbone, but the facility failed to develop a treatment plan to address the existing pressure sore or to prevent new ones from forming.

---

[4] Pressure sores, also called decubitus ulcers or bed sores, are painful lesions caused by unrelieved pressure resulting in damage of underlying tissue. They are usually located over bony prominences and are graded or staged to classify the degree of tissue damage observed. Neglected or improperly treated pressure sores can lead to skin and tissue loss and bone, tendon and/or muscle damage.

In light of these and other recent and troubling events, there is an even more compelling need to address systemic problems associated with placement of residents in the most integrated setting, as an inappropriate and unduly protracted stay at Laguna Honda may imperil residents' health, safety, and welfare.

IV. FINDINGS

A. THE STATE CONTRIBUTES TO THE UNNECESSARY SEGREGATION OF LAGUNA HONDA RESIDENTS BY NOT REQUIRING ADEQUATE ASSESSMENTS WHEN AUTHORIZING PLACEMENTS AT LAGUNA HONDA

Federal law requires States to ensure that Medicaid funds are paid only for medically necessary services. 42 U.S.C. § 1396a(a)(30). Pursuant to its participation in the Medicaid program, California requires authorization from the State before facilities like Laguna Honda may provide reimbursable skilled nursing services to covered individuals.[5] The authorization is to be premised on a meaningful State review of a person's individualized needs and functioning capacity throughout his or her stay in the nursing home. Nursing facilities are to obtain prior authorization from the State initially, as well as State re-authorization for continued stays upon expiration of initial approval periods.

In addition, the State is to ensure that there are adequate assessments of individuals' eligibility for community care. For example, each resident of a nursing facility must be provided with a comprehensive assessment of his/her needs and functional capacity, including potential for discharge to the community. 42 U.S.C. § 1396r; 42 C.F.R. § 483.20. Such comprehensive assessments are required upon admission and periodically thereafter. 42 C.F.R. § 483.20(b)(2)(i) (within 14 days of admission); 42 C.F.R. § 483.20(b)(2)(iii) (ongoing reviews at least annually). These requirements are consistent with the Olmstead opinion in which the Supreme Court held that the ADA requires jurisdictions to provide community-based treatment "when the State's treatment professionals determine that such placement is appropriate . . . ." Olmstead, 527

---

[5] California's authorization is obtained when a nursing facility like Laguna Honda submits a Long Term Care Treatment Authorization Request ("LTC TAR") form to the State for approval.

U.S. at 607. The Court explained that jurisdictions may rely "on the reasonable assessments of its own professionals in determining whether an individual 'meets the essential eligibility requirements'" for a community-based program. Id. at 602.

The State of California, however, regularly fails to provide adequate review of facility assessments to ensure that Laguna Honda residents are served in the most integrated setting consistent with federal law. In fact, the State's authorization process does not require nursing homes to supply information critical to ensure an informed authorization decision. Specifically, the State does not require institutional providers like Laguna Honda to provide detailed information on appropriate alternative placements to the nursing home, the person's previous status in the community, or possible resources that might be available to facilitate community placement in the future. Without this, the State does not possess all necessary information to enable it to make an informed authorization decision. As a result, many Laguna Honda residents are now, or ultimately will become, isolated in a restrictive and segregated setting at the nursing home and excluded from participating in and benefitting from community-based alternatives provided or administered by the City and State.

This institutionalization is especially troubling given that the State routinely approves Laguna Honda's authorization requests for periods of up to two years - the maximum allowed by the State - without requiring that Laguna Honda determine whether residents are appropriate for community placement. During these often prolonged periods, the State provides little further review or analysis of the appropriateness of the nursing home placement.[6] State sanction of such prolonged

---

[6] The State's authorization process may simply not provide sufficient time and opportunity for meaningful oversight and review of individuals' needs given the large volume of authorization requests the State must process. For example, in July 2003, the State office responsible for reviewing authorization requests from nursing facilities received a total of 17,000 authorization requests for a variety of Medicaid services, including 9,000 initial authorization and 3,000 re-authorization requests for long-term care. This large volume of requests had to be reviewed

stays serves as a disincentive for nursing home personnel to find other more appropriate integrated placements. The unsurprising consequence is that a significant number of Laguna Honda residents remain at the nursing home long after their condition improves and they become eligible for community placement.

As is evident, the State's inadequate review process allows an institutional provider like Laguna Honda to play a nearly exclusive role in determining whether or not an individual has meaningful access to home- and community-based services. Indeed, the nursing home may even have a conflicted perspective in assuming this role. A nursing home may have a financial disincentive to place residents into the community where, as with Laguna Honda, the nursing home receives enhanced funding from both the Federal government and the State to provide services in the nursing home. As we noted in our earlier findings letter, as of two years ago, the United States and the State of California collectively pay $236.00 per resident per day for services at Laguna Honda. The United States likely pays (or is about to pay) additional monies for each day of nursing home care at Laguna Honda associated with other atypical expenses.

Under the current system, a Laguna Honda resident must depend on the nursing facility's discharge planners to coordinate and monitor all of the supports and services necessary for discharge. If the discharge process is unduly cumbersome and prolonged, staffed with overburdened personnel

---

and adjudicated by only 34.5 staff members (32 full-time nurses, 2 full-time doctors, and one part-time doctor). This volume may explain why State authorization decisions are based primarily on a paper review and not on independent, in-person physical assessments. Moreover, according to State officials, authorization requests are rarely referred to a physician for even a paper review; nearly all are adjudicated by nurse consultants. As a result, the State routinely approves the requests that facilities like Laguna Honda submit to it. In fact, it appears that the State did not deny <u>any</u> of the Laguna Honda authorization requests from January 2000 through February 2002, and denied only four - or less than one-half of one percent - of the more than 1,200 authorization requests submitted by Laguna Honda from June 1, 2002 through July 16, 2003.

with little ability to develop and implement a coordinated network of community services for the dozens of individuals on their caseloads, the residents are likely to remain in the institutional setting for a prolonged period of time.

The State appears to have recognized the limitations of the current situation. In 2001, the State established a workgroup to draft a revised assessment tool to assist in identifying nursing facility residents clinically appropriate for, and interested in, transitioning to a community setting. In 2002, CMS awarded a $600,000 "Systems Change" grant to the State to assist in these efforts, but the State ultimately refused the grant money. In a letter to CMS, the State cited budgetary constraints as the reason for not accepting the grant. At the time of our interviews, State officials were uncertain whether future funding would be allocated to finalize and implement a revised assessment tool.

The aforementioned assessment and State review deficiencies impact negatively particular Laguna Honda residents who often do not appear to require the restrictive level of care provided at a nursing home. The following serve as illustrative examples of the larger systemic problems:

- The State approved a two-year nursing care authorization for Laguna Honda resident Shanika R. from December 1, 2002 through December 1, 2004, even though she had no skilled nursing needs at the time of our review. Moreover, although Shanika has indicated a preference to live in the community, there is no description of what efforts Laguna Honda has made to place her in a more integrated setting.

- The State had approved a two-year nursing care authorization for 46-year-old Laguna Honda resident Charles M., from June 1, 2002 through June 1, 2004, even though his team had already identified him as appropriate for community placement. Charles had wanted to leave the nursing home for some time, but a viable community placement was not identified for him until July 2003. Lack of viable community options appears to be a systemic problem at Laguna Honda. For example, the facility's authorization requests to the State from June 1, 2002 through July 16, 2003 reveal that while community options were discussed for about two-thirds of the residents,

none of the requests listed that community options were actually available.

- The State approved a two-year nursing care authorization for Laguna Honda resident Helen A. from August 1, 2002 through August 1, 2004, even though Helen had routinely been attending day programming in the community for some time. There was no indication in her record that her interdisciplinary team had explored appropriate community alternatives for her. Helen died in March 2003 without ever finding an appropriate community residence. She had lived at the nursing home for over 20 years, with the State providing authorization approvals throughout the course of her stay.

- Former Laguna Honda resident June M. died in July 2003, also without ever finding an appropriate community home. June was an elderly woman with congenital blindness. For over 10 years, the State had approved nursing services at Laguna Honda for her in spite of the fact that she routinely left the nursing home during the day to visit friends. She took public transportation, reportedly needed little, if any, assistance from Laguna Honda staff. Indeed, Laguna Honda documents indicate that she required no assistance in her activities of daily living. Her annual medical review reported that "[s]he has no skilled nursing needs." Moreover, she indicated a strong preference to return to the community. Nonetheless, at the time of our last visit, her most recent discharge note coded her discharge potential as uncertain. June clearly wanted to reside in the community and could have done so if provided assistance with cooking, housekeeping, and transportation. Towards the end of her life, it appears that the State finally came to recognize through its authorization review process that Laguna Honda needed to pursue community placement for June. On a few occasions prior to her death, when the facility requested two-year extensions for her continued stay, the State approved a reduced time period.

- The State approved a two-year nursing care authorization at Laguna Honda for resident Brian Y.[7] from June 1, 2003

---

[7] In order to protect the confidentiality of the Laguna Honda residents referenced in this letter, we have substituted

through June 1, 2005, even though he is very independent and requires little, if any, assistance from nursing home staff. Brian is about 50 years old and entered Laguna Honda from a hospital after a traffic accident that left him mobility impaired. He leaves the nursing home daily to work and attend community meetings and social events outside of the facility. He takes public transportation without any assistance from nursing home staff. Nonetheless, it is unclear what steps Laguna Honda has taken to identify a current community placement for Brian. It is also unclear what steps the nursing home has taken to provide him with counseling and/or other supports he needs to overcome any apprehension he may have acquired in his many years at the nursing home with regard to his possibly living in the community. The State has authorized this restrictive nursing home placement for Brian for over a decade.

B. ASSESSMENTS FAIL TO SCREEN ADEQUATELY THOSE INDIVIDUALS WITH MENTAL ILLNESS AND/OR DEVELOPMENTAL DISABILITIES, CONTRIBUTING TO IMPROPER PLACEMENTS AT LAGUNA HONDA

Federal law provides for heightened review and screening for persons with mental illness or developmental disabilities who are admitted to a nursing home.[8] The purpose of the

---

pseudonyms for their real names. We have kept the pseudonyms consistent with those used in our earlier correspondence in this matter.

[8] The Social Security Act prohibits Medicaid-certified nursing facilities from admitting any individual with a mental illness or developmental disability unless the State mental health or developmental disability authority determines that the individual requires the level of services provided by the nursing facility based on an independent physical and mental evaluation. 42 U.S.C. § 1396r(B)(3)(F). In addition, the State mental health or developmental disability authority must determine whether an individual requires "specialized services" to address his or her mental illness or developmental disability needs. 42 U.S.C. §§ 1396r(e)(7)(B)(i)(II), (ii)(II). In order to identify individuals who may have a serious mental illness or developmental disability, all nursing home applicants must be given a preadmission screening and resident review ("PASRR").

federal law is to prevent the unnecessary admission and confinement of these persons in a nursing home that may not be tailored to meet their unique needs. Accordingly, through the Preadmission Screening and Resident Review ("PASRR") process, the State must ensure that residents who are suspected of having a serious mental illness or a developmental disability are adequately assessed to determine, among other things, the need for nursing facility services and the appropriateness of community care.[9] The mere fact that an individual has mental

---

See 42 C.F.R. § 483 Subpart C (Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals). The screening used to identify an individual's mental illness or developmental disability is known as a "PASRR Level I Screen" and is completed by the nursing facility or an acute hospital discharge planner. The State is responsible for conducting independent physical and mental evaluations, known as "PASRR Level II Evaluations" for individuals identified as having a serious mental illness or developmental disability by the PASRR Level I Screen. Federal regulations require that a State's Medicaid agency maintain written agreements with State mental health and mental retardation authorities to ensure compliance with federal PASRR requirements, including ensuring that PASRR screening and evaluations are performed in a timely manner and that State mental health and mental retardation authorities use evaluation criteria as outlined in federal regulations. 42 C.F.R. § 483.128. If an individual with a mental illness or developmental disability is admitted into a nursing facility, the nursing facility is required to notify the State if there is a "significant change" in the individual's physical or mental condition. 42 U.S.C. § 1396r(e)(7)(B)(iii).

[9] "For each applicant for admission to a nursing facility and each nursing facility resident who has mental illness or mental retardation, the evaluator must assess whether: (1) the individual's total needs are such that his or her needs can be met in an appropriate community setting; (2) the individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required;" and whether the nursing facility is an appropriate institutional setting. 42 C.F.R. § 483.132.

disabilities does not mean that individual belongs in a nursing facility. Indeed, many persons with many disabilities live and work in the community throughout the country.

As set forth below and in our April 1, 2003 findings letter, the State's PASRR process contributes to the unnecessary institutionalization of Laguna Honda residents by failing: (i) to identify adequately residents who are suspected of having a serious mental illness or a developmental disability, which would trigger a further, in-depth and independent assessment for the appropriateness of community placement, and (ii) to assess adequately those individuals who are identified as having mental illness or a developmental disability for community placement. See 2003 Findings Letter at 10-11. We found individual Laguna Honda residents with both a clear history and present indications of mental disabilities who were not identified as having mental illness or developmental disabilities on their PASRR Level I evaluations.

The State has played an important role in the PASRR process failures. In general, the State has failed to provide appropriate oversight and monitoring of the PASRR process at Laguna Honda. For example, the State is to review all sections of PASRR Level I forms received from nursing facilities like Laguna Honda and return those that are incomplete or inconsistent with other resident information submitted as part of the approval process. Nonetheless, in spite of often compelling facts that should have prompted further and more in-depth review, the State has authorized the admission of certain individuals into Laguna Honda without requiring needed physical and mental evaluations to determine the appropriateness of nursing facility placement.

Earlier this year, the State Medicaid surveyors cited this as a problem at Laguna Honda. Specifically, the State surveyors found, as did our consultant, that the facility failed to make a referral to the State Department of Mental Health for a Level II PASRR evaluation for a resident with a long-standing diagnosis of serious mental illness and a possible developmental delay. Indeed, at one point in her life, this person had resided at the Agnews Developmental Center - a State owned and operated facility serving persons with developmental disabilities. According to the State surveyors, despite the fact that the resident's October 31, 2000 Level I screening clearly identifies her as having a

mental illness that would qualify her for a Level II evaluation, the Level I screening form indicates "no referral necessary." A later screening on September 24, 2002 similarly identified her as meeting the criteria for a Level II screening by the State Department of Mental Health, but no referral was made. This screening also identified the need for the State Department of Developmental Services to conduct an evaluation, but the surveyors were unable to identify any follow-up documents in her Laguna Honda record. The facility could not provide the State surveyors with any further documentation with regard to efforts to provide the resident with specialized services or refer her to the State Department of Mental Health for evaluation.

This person, along with persons we have identified in the past, clearly needed the more in-depth Level II evaluations of their mental illnesses, but none were conducted. As a result, it remains unclear whether these or other similarly situated individuals are appropriate for confinement in the Laguna Honda nursing home.

The State has failed to fulfill its PASRR oversight role in other ways, too. For example, State officials acknowledged that they cannot accurately track whether nursing facilities, like Laguna Honda, are notifying the State, as required, when an admitted resident experiences a significant change in health status. Under federal law, nursing facilities must promptly notify the State mental health or developmental disability authority when a nursing facility resident who has been or is to be screened through the PASRR process experiences a significant change in their physical or mental status. 42 U.S.C. § 1396r(e)(7)(B)(iii). Even the possibility of such a change requires the nursing facility to complete a new PASRR screen, notify the appropriate State field office, and immediately refer the individual for a more in-depth PASRR Level II evaluation to be completed by the State. If State officials do not take steps to ensure that they are aware of health status changes among Laguna Honda residents, they cannot screen and evaluate the residents properly for appropriate placement.

For those individuals identified through the PASRR Level I screening process at Laguna Honda as requiring a more in-depth State assessment, the State fails to ensure that its PASRR Level II evaluations adequately assess whether the individual's needs can be met in a community setting. Part of

the problem may be that the State fails to instruct its mental health evaluators to identify individuals who could be served in more integrated community settings.[10] Nor are State evaluators adequately trained on specific assessment procedures or competencies in identifying community resources for community placement, including the appropriateness of Home and Community-Based Service ("HCBS") waivers in meeting the needs of nursing facility applicants. Without sufficient training, State evaluators engaged in PASRR review are unable to recognize alternative, more integrated community options that may be more appropriate to meet the needs of nursing facility residents. Indeed, for the period between June 1, 2002 and July 15, 2003, of the 239 referrals from Laguna Honda of residents suspected of having mental illness to the State for a PASRR Level II Evaluation, only two were recommended for community placement. State officials estimate that only about three percent of the PASRR Level II Evaluations annually recommend community placement alternatives. These numbers appear to be below what is to be expected by such a review.

In addition to assessing the appropriateness of community care, PASRR Level II evaluations must determine whether the individual with mental illness or a developmental disability requires specialized services or services of lesser intensity.[11] With respect to specialized services identified by PASRR Level II evaluations, the State must provide or arrange for the provision of such services. For mental health or developmental disability services of lesser intensity, the

---

[10] The Invitation for Bid for contractors performing PASRR Level II evaluations for the State Department of Mental Health does not clearly state that the evaluator should identify individuals who could be served in more integrated community settings.

[11] "The State must provide or arrange for the provision of specialized services ... to all nursing facility residents with mental illness or mental retardation whose needs are such that continuous supervision, treatment and training by qualified mental health or mental retardation personnel is necessary ... ." 42 C.F.R. § 483.120(b). In addition, "the nursing facility must provide mental health or mental retardation services which are of lesser intensity than specialized services to all residents who need such services." 42 C.F.R. § 483.120(c).

nursing facility must provide these services. However, once residents enter a nursing facility like Laguna Honda, the State regularly fails to conduct consistent follow-up reviews to determine whether such mental health services are provided by nursing facilities as recommended by PASRR Level II evaluation reports and to assess the quality of those services.[12] In fact, we learned that due to budget and staff limitations, as of August 2003, the State Department of Mental Health had visited only seven of the approximately 1,500 Medicare- and Medicaid-certified nursing facilities in the State. Laguna Honda was not included in this list of seven. State officials were uncertain whether future funding would allow for enhanced follow-up activities.

The State's PASRR Level II evaluators often even fail to send a copy of their actual report to the resident or the nursing facility as required by federal regulations.[13] Our review of Laguna Honda resident records indicated that most of the PASRR Level II evaluation reports were unavailable. Instead, only letters written to the resident by the State Department of Mental Health or local Regional Center providing a summary of general specialty services were contained in some resident records. The summary letters that were present do not have sufficient details to determine the quality of the evaluation.

---

[12] In its form letter notifying residents of the mental health services recommended by the PASRR Level II evaluation, the State acknowledges its oversight role: "The facility administrator is responsible for the implementation of [these] mental health recommendations. The [State] Department of Mental Health will monitor the integration of these mental health services into your plan of care." See Letter from Mark Richman, Ph.D., Consulting Psychologist, PASRR Section, California Department of Mental Health, to Consuelo A., Laguna Honda resident (November 29, 2000).

[13] "The [PASRR Level II] evaluator must send a copy of the evaluation report to the: (1) individual or resident and his or her legal representative; (2) appropriate State authority...; (3) admitting or retaining nursing facility; (4) individual's attending physician; and (5) discharging hospital if the individual is seeking nursing facility admission from a hospital." 42 C.F.R. § 483.128(l).

The failure of the State and City to adequately screen, identify, and evaluate individuals with mental illness or developmental disabilities admitted to and residing at Laguna Honda is particularly troubling given the significant number of residents with such needs. The significant number of new admissions to Laguna Honda of younger persons with mental illness and related behavior problems just exacerbates the problem. While nursing facilities provide a valuable health care resource, they are not typically staffed to provide rehabilitation services needed to treat symptoms of mental illness or to provide the habilitation services for individuals with developmental disabilities.

Persons with developmental disabilities are afforded special status in California and are entitled to placement in integrated community settings.[14] We understand that there are approximately four dozen persons with a developmental disability currently residing at Laguna Honda. One of these residents, Shelly W., has a diagnosis of profound mental retardation. She already attends programming in the community four days a week yet there is no description of what efforts Laguna Honda has made to place Shelly in the community. When Laguna Honda submitted an authorization form requesting a two-year extension of Shelly's stay at the segregated nursing home from June 1, 2002 through June 1, 2004, the State quickly approved it.

Shelly W.'s case is hardly unique. Leona M. has cerebral palsy and severe mental retardation. She is only 35-years-old. Until her discharge in October 2003, Leona lived at Laguna Honda. At the nursing home, she received no special services for her developmental disabilities. Her discharge plan did not list any barriers to discharge from the nursing home, yet Laguna Honda staff failed to find a viable community option for her until after we issued our 2003 Findings Letter. Prior to that time, there had been no description of what

---

[14] Under California law, individuals with developmental disabilities are entitled to services to meet their needs regardless of age. See Lanterman Developmental Disabilities Services Act ("Lanterman Act"), Cal. Welf. & Inst. Code § 4500 et seq. The Lanterman Act directs the State Department of Developmental Services to ensure that individuals with developmental disabilities live in the least restrictive setting appropriate to their needs.

efforts Laguna Honda had made to place Leona in the community other than a notation that was crossed out on the authorization request form that reads: "Need copy of DDS letter - referral made." Confronted with these compelling facts, the State nonetheless approved the facility's request for a two-year extension of her stay at the nursing home from July 1, 2002 through July 1, 2004. This situation was highly inappropriate given that Leona only came to live at Laguna Honda at the request of her family so that she could be closer to her mother who was a resident at the nursing home at the time. Her mother has since passed away.

Prioritization of the development and implementation of needed protections, services, and supports in integrated settings, especially for this relatively small group of persons with developmental disabilities at Laguna Honda, should be feasible given the State's vast and well-established community system of residential and other supports for persons with developmental disabilities in the State.

C. THE STATE FAILS TO ENABLE INFORMED DECISION-MAKING BY LAGUNA HONDA RESIDENTS WITH REGARD TO COMMUNITY OPTIONS

Community placement may not be imposed on those nursing home residents who oppose it. Olmstead, 527 U.S. at 607; id. at 602 (there is no "federal requirement that community-based treatment be imposed on patients who do not desire it"). In the course of our investigation, we found a significant number of qualified Laguna Honda residents who expressed a clear preference for placement in the community with appropriate supports and services. We also encountered some individuals listed as opposing community placement efforts. While there is no requirement that community placement be imposed on Laguna Honda residents who oppose it, it is not clear how many, if any, Laguna Honda residents in the latter group are provided with sufficient information to enable them to make an informed decision in this regard.[15]

Providing insufficient information largely stems from the fact that, as discussed above, residents requesting nursing facility services are not adequately assessed for community

---

[15] Laguna Honda does not maintain aggregate data for all residents regarding their discharge potential or preference to return to the community.

alternatives upon admission to Laguna Honda or regularly thereafter either through the State's authorization review process or the PASRR process. Very few resident records, therefore, document effective discharge planning efforts to locate appropriate and specific community alternatives to meet residents' needs. Without these necessary details about potential community placements, Laguna Honda residents are effectively unable to make an informed decision.

Moreover, residents' records and other supporting documents do not identify what, if any, specific alternatives to nursing home placement were explored. The State's authorization request form only seeks information about whether community options were generally explored or available, but does not require information about which specific alternatives were considered. Similarly, the PASRR forms for Laguna Honda residents do not identify what community alternatives to nursing home placement were considered or offered. The State also does not require PASRR Level II evaluators to document in their reports whether, and if so what particular, community options are communicated to residents with mental illness or developmental disabilities when assessing the appropriateness of community placement.

The State's role here is especially important with regard to the supports and services offered under the State's many community waiver programs. In fact, federal law requires States to assure that individuals who are adjudged likely to require the level of care provided in a nursing facility are informed of the feasible alternatives to such a facility, if available under the HCBS waiver programs offered pursuant to the Medicaid program. 42 U.S.C. § 1396n(c)(2)(C).[16]

State officials informed us, however, that the State has adopted a passive information system, informing an individual about HCBS waivers only after the individual, or someone on his or her behalf, self-refers to the State's Department of Health Services' In-Home Operations Section. This presents a

---

[16] The State administers six HCBS waivers under its Medicaid program that target specific populations, including individuals with physical disabilities requiring nursing facility care, individuals aged 65 or older, individuals with mental illness, and individuals with developmental disabilities.

significant barrier for individuals who cannot self-refer or are not specifically assessed for more integrated care upon admission or after continued stays at Laguna Honda. As a result, because potential recipients are not informed of alternatives, many individual Laguna Honda residents who might otherwise choose to participate in the HCBS waiver are instead segregated in the nursing home.

D. STATE PROGRAMS AND WAIVERS MAY PROVIDE MEANINGFUL COMMUNITY OPTIONS TO REASONABLY ACCOMMODATE LAGUNA HONDA RESIDENTS IMPROPERLY SEGREGATED AT THE NURSING HOME

To avoid discrimination on the basis of disability, a public entity is required to make reasonable modifications in policies, practices, or procedures that do not "fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7). In our April 1, 2003 findings letter, we notified the City that a wide array of community services was available in San Francisco and California that could, if modified, meet the needs of many of the individuals currently housed at Laguna Honda. This includes access to housing alternatives in San Francisco that play a critical role in successfully diverting and transitioning Laguna Honda residents into more integrated settings. Many home- and community-based programs and services are administered by the State through its Medicaid program as either optional or waiver services in California's State Plan under Medicaid.[17] The waiver program allows states to provide a wide array of community-based options for individuals who meet the states' functional eligibility criteria for institutional placement.

California's Medicaid program administers six HCBS waivers. There are three State HCBS waivers - operated directly by the State Department of Health Services - that are specifically targeted to nursing facility-eligible

---

[17] Through its waiver initiatives, the federal Medicaid program "waives" enforcement of regulations associated with providing services to Medicaid-eligible persons in more restrictive institutional settings so as to encourage placement and service of these individuals in more integrated community settings. Instead of having to comply with traditional federal regulations, the program allows jurisdictions to submit "Waiver Applications" which, when approved, then govern provision of the waiver services.

individuals. The three waivers are: the Nursing Facility ("NF") A/B waiver; the NF Subacute waiver; and the In-Home Medical Care waiver. In 2002, these three State waivers only served about 1,400 individuals statewide with program expenditures of approximately $50 million. This pales in comparison to the almost $2.5 billion spent statewide on institution-based nursing home services that served over 60,000 individuals each month.[18]

In particular, the State's NF A/B waiver is aimed at providing an array of services to assist individuals requiring nursing facility level of care to remain in community settings. The NF A/B waiver is administered directly by the State Department of Health Services and, as referenced above, individuals must self-refer regardless of current placement. Among the services provided through the NF A/B waiver are case management, private duty nursing care, certified home health aide services, environmental accessibility adaptions, and personal care services. The NF A/B waiver provides for services that many Laguna Honda residents need, including nursing and personal care services. A recent amendment to the NF A/B waiver supports transition planning 180 days prior to discharge for residents currently residing in a nursing facility. In conjunction with case management services, the NF A/B waiver would be a very effective vehicle to help meet the needs of many Laguna Honda residents.

However, the NF A/B waiver, as currently implemented by the State, fails to provide a viable alternative to nursing facility placement. As of September 16, 2003, in San Francisco, only six people were actually served pursuant to this waiver (by one provider). There are a number of outstanding implementation problems. First, eligibility for NF A/B waiver services requires a need for skilled nursing care for a minimum of 365 days. Obviously, a gap exists for individuals requiring only minimal, time-limited supports and services. This limits diversion of a significant number of potential residents from Laguna Honda who could be accommodated easily. Second, the NF A/B waiver has an

---

[18] Services offered through In-Home Support Services ("IHSS") were the second-highest expenditure in California's long-term care system in 2002 with nearly $1.7 billion in Medicaid and State-only funds and serving over 300,000 individuals each month.

inadequate number of slots to meet the needs of the identified population residing at Laguna Honda. As of 2004, there are only 670 slots available to serve everyone in the State with 320 individuals already on the waiting list. Finally, the NF A/B waiver unduly limits the choice of service providers in San Francisco to home health agencies. State officials informed us that NF A/B waiver services could be provided by many other entities, such as an individual or organization appropriately licensed and certified by the State, a clinical psychologist, or a licensed clinical social worker. There may still be regulatory hurdles to clear, however, before this can become a reality.

The State also provides the Multi-Purpose Senior Services Program ("MSSP") - managed under the State Department of Aging. This waiver targets disabled and medically-fragile Medi-Cal beneficiaries who are aged 65 and older. The program provides case management, in-home health care, personal care, skilled nursing, transportation, adult day support, meal services, and professional care assistants. Unfortunately, the program has been capped. The annual per person cap is set at just over $10,000 - too low to include many Laguna Honda residents who could benefit from the complete array of services potentially offered under this waiver program. There is also a significant gap here in that the services the State offers under this waiver are not available to persons under age 65 with physical disabilities. As noted above, the group of younger persons with service needs represents a significant portion of the total Laguna Honda population, and it has been growing in recent years.

Among California's HCBS waivers is the Developmental Disabilities ("DD") waiver, administered by the State Department of Developmental Services through an inter-agency agreement with the State Department of Health Services. The DD waiver is administered at the local level by Regional Centers which are private, non-profit community agencies that either provide or coordinate services that are needed by persons with developmental disabilities. Each Regional Center is responsible under the Lanterman Act (discussed above at fn. 15) to develop a community placement plan that establishes necessary supports and services to enable individuals to remain in the community or transition into the community from institutional settings. In addition, the DD waiver requires that each consumer be given a choice of services and living arrangements through a Consumer Choice of Services/Living

Arrangement Statement. Services provided by the waiver include nursing services and personal care services. In 2002, the DD waiver had 50,574 slots with no waiting list. As the largest of the six HCBS waivers, the DD waiver had a $678.8 million budget in 2001. In spite of this, the State has made little progress in addressing the unmet placement needs of persons with developmental disabilities who reside in Laguna Honda.

The State has also made little progress in addressing the unmet placement needs of Laguna Honda residents with mental illness. As indicated in our April 1, 2003 findings letter, the City reported that approximately 400 Laguna Honda residents have a psychiatric diagnosis in addition to their medical needs. A significant number of these residents present unique challenges with regard to placement in the most integrated setting. Mental health services for Medi-Cal beneficiaries are authorized pursuant to Section 1915(b) of the Social Security Act, known as Freedom of Choice waivers. This waiver allows California to provide services through county mental health plans that operate as managed care organizations. These mental health plans must provide the specialty mental health services that are medically necessary. In our April 2003 findings letter we notified the City that it has limited capacity to secure appropriate services and community housing for persons with mental illness and related disorders. We believe this limited capacity continues to plague the system and impact negatively those Laguna Honda residents with mental illness who need more integrated community services and supports.

Unfortunately, the current array of HCBS waivers contains gaps in available slots, eligibility requirements, services provided, and cost caps that limit Laguna Honda residents' access to integrated community living options. These gaps result in increased admissions and prolonged lengths of stay in institutional-based settings. Overcoming placement challenges and obstacles such as these becomes increasingly important in providing residents with services in home- and community-based settings given that the current authorization review and PASRR processes fail to divert inappropriate admissions into Laguna Honda in the first place.

In response to the Supreme Court's Olmstead opinion and post-opinion guidance from HHS in 2000 that States develop effectively working plans to place unduly segregated

individuals into more integrated community settings, California has developed an "Olmstead Plan." The State's Plan provides some information regarding public services for people with disabilities from each State agency charged with administering long-term care programs and services. However, it lacks data regarding institutionalized persons with benchmarks and timetables for diverting and transitioning current nursing facility residents into community settings. The Plan fails to provide estimates of residents' needs and recommends collection of this information before the creation of solutions. As a result, it holds little meaning or promise for the residents of Laguna Honda.

Based on the array of programs and services currently offered in California and San Francisco, the State, working together with the City, should be able to reasonably accommodate community placements for qualified residents or potential residents of Laguna Honda. We look forward to facilitating solutions in this regard with State and City officials and hope to be able to provide helpful technical assistance along the way to make our future interactions more productive.

V. REMEDIAL MEASURES

In order to remedy these deficiencies and to protect the right of Laguna Honda residents to be free from unnecessary segregation, the State should implement, at a minimum, the following remedial measures:

A. ASSESSMENT PROCESS

1. Develop and implement policies and procedures to provide meaningful review of treatment authorization requests so as to ensure that all persons admitted to Laguna Honda are assessed properly and, in fact, require skilled nursing services in a nursing facility.

2. Develop and implement policies and procedures to provide meaningful review of treatment authorization requests so as to ensure that all Laguna Honda residents, or prospective residents, are given an adequate and appropriate assessment of their appropriateness for placement in an integrated community setting. These policies and procedures

shall be developed and implemented to ensure that individuals are served in the most integrated setting appropriate to the individualized needs of each person. The policies and procedures shall provide for comprehensive, reasonable assessments by an interdisciplinary team of qualified professionals and staff using person-centered principles. The policies and procedures shall provide that such assessments shall be conducted at or near the time of admission to Laguna Honda and regularly thereafter to ensure that the person is served in the most integrated setting.

3. For those individuals identified as appropriate for transition and discharge to a more integrated community setting, develop and implement policies and procedures to document the team decision and how to implement it. The implementation plan shall be written and shall specify all of the protections, services and supports necessary for the person to remain in the integrated community setting. The policies and procedures shall provide for adequate follow-up and case management and support coordination services to ensure that the person is continually receiving the protections, services and supports he or she requires.

4. For those individuals identified as appropriate for transition and discharge to a more integrated community setting at some time in the future, develop and implement policies and procedures to document the team decision and how to implement it, setting forth timelines and goals within which to accomplish the successful transition and placement, consistent with the requirements in the preceding paragraph. Special attention should be paid to assessing the person's ability to function in the community after he or she has been in a facility for a prolonged period of time.

B. PASRR EVALUATIONS

1. For those individuals with mental disabilities, including mental illness and/or developmental disabilities, develop and implement policies and procedures to provide a meaningful PASRR screen and

assessment process to ensure that persons with such mental disabilities are not inappropriately placed in the nursing home. The screens and assessments shall be performed by qualified professionals who shall document fully the basis for their decisions, consistent with federal law. For Level I evaluations, in order to reduce errors of omission or over-inclusion, nursing facility staff need to be trained to recognize signs and symptoms of mental illness and mental retardation. Competency-based training should be required for all nursing facility staff who are assigned this duty. Level II evaluators, including Contractors and Regional Center Staff, must be trained on waivers and other community options. The policies and procedures shall place special emphasis on providing supports and services to these individuals in the most integrated setting. Where nursing facility placement is deemed appropriate, ensure that special services or services of lesser intensity are developed and implemented as appropriate to fully meet the needs of persons with mental disabilities in the nursing home. This process must periodically reassess whether or not the person with mental disabilities may be served outside the nursing home in the most integrated setting. Ensure that all persons with mental disabilities are appropriately screened and assessed. Develop and implement policies and procedures to ensure that there is proper and timely notification of any change in status that might prompt a PASRR screen and/or assessment. Ensure that such screen and/or assessment occurs after this notification and that appropriate steps are taken as a result of the screen and/or assessment. Provide training on specific assessment procedures and competencies to State PASRR evaluators. Ensure that Level II evaluations are sent to the person evaluated in a timely manner.

2. Develop and implement strategies to successfully divert, where appropriate, any person with developmental disabilities from being admitted to Laguna Honda. Develop and implement strategies to transition and discharge all residents with developmental disabilities into placements in the

most integrated setting in a timely manner. Ensure that these individuals receive all the protections, supports and services they require in the integrated settings along with adequate and appropriate follow-up, case management, and support coordination services to ensure a successful placement.

C. INFORMED DECISION-MAKING

1. Develop and implement policies and procedures to enable residents to make fully informed decisions with regard to placement decisions. Such decisions shall reflect knowledge of specific alternative placements and supports in the community.

2. Develop and implement policies and procedures to proactively inform Laguna Honda residents, as well as prospective Laguna Honda residents, of community and integrated options available pursuant to the Home and Community-Based Waiver programs offered by the State. Review/revise outreach procedures for HCBS waivers that ensure eligible individuals are informed of available options to institutional care.

3. Enhance the accessibility of eligibility information and the timeliness of eligibility determinations with regard to placement in the most integrated setting.

D. COMMUNITY CAPACITY

1. Enhance capacity within the waiver and other related programs to provide meaningful options for persons with developmental disabilities at Laguna Honda with regard to obtaining integrated services.

2. Develop and implement appropriately-trained case managers or care coordinators whose primary role is to identify individuals in Laguna Honda who qualify for specific waiver programs and to work with facility-based case managers in applying for the waivers.

3. Expand the waivers available to Laguna Honda residents that provide services for younger persons with physical disabilities as fewer waiver slots are

available to younger persons with disabilities than other populations and this group is the fastest growing segment within Laguna Honda.

*****

We hope to continue working with the State in an amicable and cooperative fashion to resolve our concerns regarding issues related to placement in the most integrated setting at Laguna Honda. Assuming that our cooperative relationship continues, we will be sending you under separate cover our consultants' evaluations. Although their reports are their work - and do not necessarily represent the official conclusions of the Department of Justice - their analyses and recommendations provide further elaboration of the issues discussed in this letter and offer practical assistance in addressing them.

The lawyers assigned to this matter will be contacting your attorney to discuss this matter in further detail. If you have any questions regarding this letter, please call Shanetta Y. Cutlar, Chief of the Civil Rights Division's Special Litigation Section, at 202-514-0195.

Sincerely,

/s/ R. Alexander Acosta

R. Alexander Acosta
Assistant Attorney General

cc: The Honorable Bill Lockyer
Attorney General
State of California

Tracy L. Salisbury, Esq.
Amy L. Hespenheide, Esq.
Counsel for the State of California
Shartsis, Friese & Ginsberg, LLP

Dennis J. Herrera, Esq.
City Attorney
City and County of San Francisco

Mr. Lawrence J. Funk
Executive Administrator
Laguna Honda Hospital and Rehabilitation Center

The Honorable Kevin V. Ryan
United States Attorney for the
Northern District of California

Richard M. Campanelli
Director
Office for Civil Rights
U.S. Department of Health and Human Services