



MR-PA-006-005

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA;
Robert Casey, Governor of the
Commonwealth of Pennsylvania;
Karen F. Snider, Secretary,
Department of Public Welfare;
Nancy Thaler, Deputy Secretary
of Mental Retardation,
Office of Mental Retardation;
Alan M. Bellomo, Director,
Ebensburg Center;

Defendants.

Civil No. 92-33J
Hon. D. Brooks Smith

UNITED STATES' PROPOSED ORDER

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ORDER

Based upon the evidence adduced during the trial of this case, the post-trial memoranda submitted by the parties, and the entire record herein,

IT IS HEREBY ORDERED THAT Defendants, the Commonwealth of Pennsylvania, et al., shall take the following measures by the dates indicated below to correct the unconstitutional conditions of confinement at Ebensburg Center, Ebensburg, Pennsylvania.

I. PRIORITY MEASURES TO PROTECT EBENSBURG RESIDENTS FROM HARM

The Commonwealth shall immediately take steps to eliminate the risk of harm to Ebensburg residents resulting from their behaviors, the actions of other residents and staff, and/or their physical or medical condition. In order to achieve and maintain this outcome, the Commonwealth shall take the following actions within ten days of this Order:

A. Provide adequate staff supervision and intervention to protect residents when they become self-injurious or aggressive, including 1:1 staffing for residents exhibiting serious self-injurious or aggressive behaviors and any other resident who requires such staffing to ensure safety.

B. Provide adequate staff supervision and intervention to prevent residents from engaging in dangerous mealtime behaviors, including eating too rapidly or putting too much food in their mouths.

C. Cease using intramuscular medication and medication by mouth to treat status epilepticus and ensure that any resident in status receives immediate and adequate emergency assistance.

D. Ensure that a physician examines and assesses residents experiencing acute or emergency illness or injury, as opposed to treating them over the telephone.

E. Ensure that direct care staff immediately report any potential injuries to a nurse and ensure that the nurse contacts a physician who responds in a timely manner to any emergency.

6. In order to ensure consistent implementation of training programs, within 120 days of the entry of this Order, the Commonwealth shall provide adequate competency-based training for all staff responsible for implementing the programs to train staff in how to implement the programs and collect appropriate data. The Commonwealth shall thereafter conduct regular, periodic follow-up evaluations of staff competency in implementing programs and provide additional training, as necessary.

7. Within 120 days of the entry of this Order, the Commonwealth shall implement systems for verifying that the recorded data are reliable and ensuring that qualified professionals review and appropriately modify any individual's training program where the individual has exhibited no measurable progress for a reasonable period of time. In order to accomplish this, the Commonwealth shall implement, at a minimum, the following actions:

a. The individual's IDT shall evaluate the efficacy of the training programs for each individual with the following frequency:

(i) For individuals with self-injurious, aggressive, biting, or pica behavior, the IDT shall meet on at least a monthly basis, or more frequently, if necessary, to review the individual's progress in the training programs.

(ii) For individuals exhibiting deterioration or new dangerous behaviors, the IDT shall meet immediately to review the efficacy of the training programs.

(iii) For all other individuals, the IDT shall meet on at least a quarterly basis to review the individual's progress in the training programs and evaluate the efficacy of the programs. The IDT shall base its review of the efficacy of the training programs on the data collected as well as the occurrence of incidents and use of restraints. If the IDT identifies the need to revise the training program, it shall be revised and consistently implemented within 15 days.

b. Ensure that at every meeting of Ebensburg's Behavior Intervention Committee ("BIC"), there is adequate professional representation, including a psychologist, physician, psychiatrist, and pharmacist. The BIC shall review the training programs of and progress notes relating to each individual who exhibits self-injurious or aggressive behavior and/or is subject to restrictive programming, frequent behavior control procedures, or receives behavior modifying medication, to ascertain whether:

(i) there are sufficient behavioral data recorded, (ii) such data are reliable, and (iii) the continuation of the current training or treatment program is justified, or the program, including medication, should be modified. Where inadequate or unreliable data are found, or the continuation of the training or treatment program is otherwise not justified, the matter shall be referred to the appropriate IDT which shall, within 15 days from the

referral, modify the existing program and/or data collection procedure in accordance with accepted professional standards and ensure that the modifications are implemented.

8. Within 120 days of the entry of this Order, Defendants shall provide adequate hearing, vision, and communication services to residents. To this end, and at a minimum, Defendants shall:

a. Develop, and implement programs, including the use of augmentive devices as needed, for each resident with communication deficits, including deaf or hearing impaired residents, to teach appropriate communication skills, including sign language and the use of communications boards. For hearing impaired residents for whom amplification is effective, amplification devices shall be provided, along with any training necessary to allow the resident to use or become accustomed to wearing such devices. On units housing resident who are being taught sign language, at least one direct care staff person on each shift shall be taught sign language.

b. Assess and evaluate each resident with a vision impairment to determine his or her need for eyeglasses. Where needed, eyeglasses shall be provided along with training designed to ensure the resident can and does wear them.

IV. BODILY RESTRAINTS

The Commonwealth shall ensure that bodily restraints are used only pursuant to accepted professional standards and that they are never used as punishment, in lieu of training programs,

or for the convenience of staff. In order to fulfill this requirement, the Commonwealth shall take, at a minimum, the following actions within the deadlines set forth below:

A. Immediately refrain from resuming use of papoose boards and restraint jackets, except when an individual determination has been made that such restraint is necessary for physical support during the execution of medical or surgical procedures. Where a papoose board or other mechanical restraint is necessary during a medical or surgical procedure, the resident shall have a behavior plan to reduce or eliminate the need for such restraint.

B. Within 30 days of the entry of this Order, identify each Ebensburg resident who has had a mechanical restraint, personal restraint, emergency chemical restraint, or long-term chemical restraint during the past year.

C. Within 60 days of the entry of this Order, conduct a formal, written, comprehensive functional analysis of each individual identified pursuant to ¶ IV.B, herein.

D. Within 90 days of the entry of this Order, for each person identified pursuant to ¶ IV.B, herein, develop a comprehensive training plan in accordance with ¶ III.F, above. In addition, develop an individualized behavior management plan, specifying:

1. the behavior to be eliminated, the function of the behavior to be eliminated, and the specific behavior, clearly and objectively defined, which triggers the use of the restraint;

2. behaviors to be taught to the individual to replace the behavior that initiates the use of the restraint and other programs to reduce or eliminate the use of such restraint;

3. the restriction, i.e., type of restraint authorized, including the restriction's maximum duration and other limitations, when employed;

4. the professional responsible for the program and the staff authorized to implement it;

5. the frequency and manner in which behavioral data are to be recorded by direct care staff; and

6. the date on which the program will be terminated.

E. Within 180 days of the entry of this Order, the use of mechanical, personal, or chemical restraint as part of a training program shall be prohibited except in those situations where there is written evidence in the individual's record that other, less restrictive techniques have been systematically tried and consistently implemented as part of a professionally designed training program and accurate, objective data have demonstrated such techniques to be ineffective. Any use of restraint shall be the least restrictive form of restraint.

F. Within 120 days of the entry of this Order, the individual's primary psychologist shall review each use of mechanical, personal, or chemical emergency restraint and ascertain the circumstances under which such restraint was used. The review shall take place within 24 hours. The results of this review shall be promptly reported to the BIC, which will review

the information and, within four days of the completion of the review, determine whether the individual needs a behavior program or whether an existing program should be modified. Restrictive measures will be continued in individuals' programs only if reliable data supports the necessity of their continued use. The BIC shall record these recommendations and transmit them to appropriate staff as well as Ebensburg Center management, who shall be responsible for ensuring that any new program or revised programs are developed and implemented promptly following receipt of the recommendations.

V. MEDICAL CARE

The Commonwealth shall ensure that Ebensburg individuals receive adequate preventive, chronic, routine, acute, and emergency medical care. In order to fulfill this requirement, the Commonwealth shall take, at a minimum, the following actions within the deadlines set forth below:

A. Immediately ensure that each individual is provided with a specialty consultation on a timely basis when necessary to evaluate or treat the individual's medical problems. In particular, Defendants shall ensure that each resident whose medical condition warrants a gastroenterology consultation receives an adequate consultation and appropriate diagnostic tests.

B. Immediately ensure that each resident's primary care physician takes appropriate action to respond to recommendations of outside medical specialists, including regular consultants,

and laboratory findings, documenting what action has been taken and the reason therefor.

C. Within 30 days of the entry of this Order, ensure that the individual's primary care physician meets with any consultant providing a specialty consultation at Ebensburg for the individual.

D. Within 30 days of the entry of this Order, provide adequate respiratory therapy services to individuals who need them and ensure that decisions regarding respiratory therapy services are made by the individual's physician, in consultation with the nurse, respiratory therapist, physical therapist and the involvement of the IDT.

E. Within 45 days of the entry of this Order, ensure that each individual with a chronic medical problem has appropriate assessments of the problem and a medical plan of care to address the problem that comports with current accepted standards of care for people with developmental disabilities.

F. Within 60 days of the entry of this Order, ensure that each individual's medical status and progress in response to the individual's medical plan of care is fully and adequately reviewed by the primary care physician at least every 30 days and during a comprehensive, cumulative annual review.

G. Within 30 days of the entry of this Order, develop and implement a peer review and quality assurance system to ensure that all physicians and nurses treating individuals at Ebensburg are operating within accepted standards of care for people with

developmental disabilities and regularly receive continuing education in the health care of people with developmental disabilities.

H. Within 90 days of entry of this Order, retain the services of medical specialists to train Ebensburg's primary care physicians in the diagnosis and treatment of medical problems typically associated with persons with developmental disabilities, including:

1. Neurologic disorders, including seizures and specifically the prescription of medication to control seizures;
2. Orthopedic and physiatric conditions;
3. Gastroenterologic disorders and proper feeding and nutrition; and
4. Behavioral and psychiatric disorders, including psychopharmacologic treatment of such disorders and side-effects of behavior modifying medication.

Defendants shall document that such training occurred, including maintaining a list of those in attendance as well as clinical areas covered.

I. Within 120 days of the entry of this Order, ensure that all physicians who treat individuals at Ebensburg have hospital privileges at the local hospital where Ebensburg individuals are sent for emergency and acute care and that such physicians are active participants in the individual's course of care while at the hospital, where appropriate. When an individual is returned

from the hospital, the primary care physician shall write orders specifying the individual's follow-up care.

VI. PSYCHIATRIC TREATMENT AND USE OF PSYCHOTROPIC MEDICATIONS

The Commonwealth shall provide adequate and appropriate routine and emergency psychiatric and mental health services in accordance with accepted professional standards to residents who need such services. Psychotropic medication shall only be used in accordance with accepted professional standards and shall not be used as punishment, in lieu of a training program, for behavior control, or for the convenience of staff. To this end, Defendants shall, at a minimum:

A. Within 6 months of entry of this Order, cease using chronic psychotropic medications to control behaviors where the use of such medications is solely for behavior control purposes and not for the treatment of a mental illness or psychiatric disorder that has been diagnosed by a board certified psychiatrist, with experience in treating individuals with a dual diagnosis of mental illness and mental retardation, based upon objective, accurate data.

B. Within 90 days of entry of this Order, conduct a comprehensive assessment of each individual who receives psychotropic medications. At a minimum, this assessment shall include a formal, written, comprehensive functional analysis and objective data collected pursuant to ¶ III.B, above.

C. Within 120 days of entry of this Order, have a board certified psychiatrist, with experience in treating individuals

with a dual diagnosis of mental illness and mental retardation, conduct a comprehensive evaluation of each Ebensburg resident receiving psychotropic medication. This evaluation shall include, at a minimum:

1. observation of the resident;
2. examination of relevant portions of the resident's medical and behavioral record;
3. review of the assessment information conducted pursuant to § VI.B, herein;
4. a meeting with Ebensburg staff who have been involved in the care and treatment of the individual, including the resident's primary care physician, nurse, psychologist, direct care staff, and other relevant members of the IDT;
5. formulation of a diagnosis, considering differential diagnoses where appropriate;
6. consultation with the assigned psychologist to determine whether the existing behavior management program is appropriate and whether different programs or interventions could be developed to address the resident's target behaviors and/or symptoms so as to reduce or eliminate the need for psychotropic medications;
7. review of the current medication regimen of each individual to determine whether the type and dosage of the medication is appropriate, and recommendation of any changes in the medication regimen;

8. in consultation with the resident's primary care physician, psychologist, nurse, and other appropriate members of the resident's IDT, a determination as to whether the harmful effects of the resident's mental illness clearly outweigh the possible harmful side effects of the psychotropic medication and whether all reasonable alternate treatment strategies are likely to be less effective or potentially more dangerous than the medication; and

9. development of an overall treatment plan for each resident with a diagnosis of mental illness.

D. Once treatment has begun, conduct formal, written, ongoing monitoring and review of the efficacy of any drug or non-drug treatment used for any mental illness or psychiatric disorder. Such monitoring and review shall utilize objective data collected pursuant to ¶III.B so as to ensure that the individual is receiving benefit from the treatment.

E. Within 120 days of entry of this Order, provide psychiatric or psychological counselling to each resident whose mental health needs require such counselling. In particular, Defendants shall provide adequate counseling for maladaptive sexual behavior.

F. Within 90 days of entry of this Order, transfer any resident whose psychiatric needs require acute or long-term psychiatric treatment to an appropriate mental health facility.

G. Within 120 days, review the efficacy of psychotropic medication usage on a monthly basis for every resident who

receives them. A psychiatrist with experience in mental illness and mental retardation shall be present at the review, along with other professional and direct care staff involved in the resident's care and treatment.

H. Within 60 days, develop and implement an adequate system for detecting, reporting, and responding to any drug-induced side effects of psychotropic medication, including tardive dyskinesia and extra pyramidal symptoms.

I. Within 120 days of entry of this Order, require a psychiatrist to serve on the IDT of any resident whose individual plan of service includes the use of behavior modifying medication or for whom such has been recommended. In addition, a psychiatrist shall serve on the IDT of any individual who receives, or is recommended to receive, other mental health services.

VII. SEIZURE MANAGEMENT AND USE OF ANTICONVULSANTS

Defendants shall provide adequate and appropriate routine, chronic, and emergency seizure management to all individuals at Ebensburg with epilepsy in accordance with accepted professional standards of care. In order to fulfill this requirement, the Commonwealth shall implement, at a minimum, the following steps within the deadlines set forth below:

A. Within 10 days of entry of this Order, develop and implement a protocol in accordance with the policies contained in the position statement of the Epilepsy Foundation of America, entitled "Treatment of Convulsive Status Epilepticus" and

published in the Journal of the American Medical Association on August 18, 1993, that specifies the steps that Ebensburg will take whenever a resident is experiencing status epilepticus.

B. Within 90 days of this Order, identify residents who sustain injuries during seizure activity and, for each such resident, develop and implement adequate protection measures to prevent injuries during seizures and monitor the measures to ensure they are being implemented and are effective.

C. Within 90 days from the entry of this Order, provide each Ebensburg resident with epilepsy or with a history of seizure disorders with a comprehensive assessment by a board certified neurologist with experience in developmental disabilities. Such assessment shall include, at a minimum:

1. a diagnosis of the seizure type according to the International Classification of Epileptic Seizures;
2. an EEG or other appropriate brain imaging study, where appropriate;
3. a description of the etiology of the epilepsy;
4. an evaluation of whether the type of anticonvulsant medication(s) is appropriate for the type of seizure and represents the fewest number of medications appropriate for effective seizure management; and
5. the remedial plan when inappropriate multiple medications are identified.

D. Within 120 days of entry of this Order, ensure that Ebensburg residents are not kept on anticonvulsants that serve no

therapeutic purpose or are maintained on potentially toxic levels for prolonged periods with no documented rationale in the record demonstrating the efficacy of such treatment.

E. Within 120 days of entry of this Order, ensure that a board certified neurologist with experience treating mentally retarded individuals with epilepsy reviews each Ebensburg resident with epilepsy at least annually, and more frequently if the resident's condition warrants it.

VIII. NURSING CARE

Defendants shall ensure that residents receive adequate nursing care, and that Ebensburg nurses perform their responsibilities in keeping with accepted professional standards of care by adequately identifying health care problems, notifying physicians of health care problems, monitoring and intervening to ameliorate such problems, and keeping appropriate records of residents' health care status. To this end, and at a minimum, Defendants shall ensure that, by not later than 120 days following entry of this Order, nurses are trained to and do perform the following functions:

A. Conduct adequate, comprehensive assessments of the nursing care needs of Ebensburg residents.

B. Properly identify or evaluate residents experiencing acute events such as vomiting, increased respiratory rate or other acute episodes, to determine the etiology of the event or illness.

C. Develop and implement a system for recording important information about a resident's status, including weight, seizure activity, reactions to medications, and bowel patterns, in flow chart form to track and monitor changes in the resident's status.

D. Recognize and react to significant changes in residents' nutritional and medical status, such as weight and hydration.

E. Routinely perform ongoing monitoring of serious medical conditions, including such basic procedures as taking vital signs and abdominal girth measurements, where warranted.

F. Develop and implement adequate and appropriate comprehensive nursing care plans to address each resident's health care needs, in accordance with accepted professional practices.

G. Develop and implement a policy outlining the circumstances under which Ebensburg nurses must contact a physician to report a change in the resident's medical condition, an injury to the resident, or a physical complaint.

H. Develop and implement a protocol for recording nursing progress notes.

I. Develop and implement an adequate quality assurance system to monitor nursing care practices and take corrective action when problems are identified.

J. Ensure that residents are bathed adequately and that sanitation and infection control techniques are used to control the prevalence of flies and ants in living, program, and dining areas.

IX. NUTRITIONAL MANAGEMENT

The Commonwealth shall provide each individual at Ebensburg with adequate and appropriate nutritional management in accordance with accepted standards of care. In order to fulfill this requirement, Defendants shall implement, at a minimum, the following steps within the deadlines set forth below:

A. Coordinator of Nutritional Management

Within 20 days of the entry of this Order, designate, with the approval of the United States, a competent and qualified professional to serve as a Coordinator of all services at Ebensburg involving the feeding and nutritional management of Ebensburg residents. The Coordinator shall have the requisite skills and experience to oversee feeding and nutritional/physical management services at Ebensburg, to provide advice and guidance to Ebensburg staff, and to train them with respect to feeding and nutritional/physical management practices which comport with accepted professional standards. The Coordinator shall provide monthly reports to the Monitor with respect to Defendants' compliance activities in this area.

B. Steps to be taken for residents at risk due to aspiration, serious complications from gastroesophageal reflux, and malnutrition

1. For individuals whose nutritional, respiratory, or medical condition pose life-threatening risks, within 20 days of the entry of this Order, have qualified professionals comprehensively evaluate and identify medical, surgical, dietary, feeding, and positioning needs of each such individual. Such

evaluations shall be inter-disciplinary, shall include any necessary diagnostic tests, and shall, where appropriate, be conducted by an oral motor specialist, a primary care physician, a gastroenterologist, a nurse, and any other necessary specialists. Immediately after such evaluation, an appropriate interdisciplinary team shall develop and implement a comprehensive treatment plan.

2. Within 15 days of the entry of this Order, develop screening indicators according to accepted professional standards to identify individuals who are aspirating, are at risk of aspirating, have silent aspiration syndrome, and/or who have symptoms of gastroesophageal reflux.

3. Within 35 days of the entry of this Order, have qualified and adequately trained staff use the screening indicators to screen every Ebensburg resident.

4. Within 60 days of the entry of this Order, have qualified professionals comprehensively evaluate each individual identified pursuant to ¶ IX.B.1, herein, and identify the medical, dietary, feeding, and positioning needs of each such individual. Such evaluations shall be inter-disciplinary, shall include any necessary diagnostic tests, and shall, where appropriate, be conducted by an oral motor specialist, a primary care physician, a gastroenterologist, a nurse, and any other necessary specialists.

5. Within 75 days of the entry of this Order, take any appropriate medical or surgical steps to ameliorate the

individual's aspiration risk and develop and implement an individualized feeding and positioning plan for each individual identified as at risk of serious illness, injury, or death due to aspiration.

C. Other Individuals with Nutritional Management Difficulties

1. Within 90 days of the entry of this Order, identify each individual who has nutritional management problems, including difficulty swallowing, chewing, or retaining, assimilating, or eliminating food and/or liquids.

2. Within 120 days of the entry of this Order, have an interdisciplinary team of oral motor specialists, a dietician, a physician, and a pharmacist comprehensively assess each individual identified pursuant to ¶ IX.C.1, herein, to identify the physiological and/or pharmacological causes for the nutritional management problems.

3. Within 30 days after each nutritional assessment is completed, take any necessary medical or surgical steps and have a qualified professional develop and ensure the implementation of a written feeding and positioning program for each individual for whom such a need is identified.

D. Procedures and protocols

1. Within 30 days of entry of this Order, develop and implement a procedure for synthesizing and summarizing data about each Ebensburg resident's mealtime food and liquid intake.

2. Within 30 days of the entry of this Order, develop and implement a protocol governing the circumstances under

information must be communicated to a physician regarding an individual's nutritional status, including but not limited to episodes of choking, emesis, constipation, diarrhea, and food refusal.

3. Within 30 days of the entry of this Order, develop and implement a nursing care protocol for treatment and enhanced monitoring of residents who are at risk of aspiration.

E. Staff Training

1. Within 60 days of the entry of this Order, train all Ebensburg nurses and other appropriate staff to regularly assess individuals for gastroesophageal reflux, chronic aspiration syndrome, silent aspiration syndrome, and signs and symptoms of gastrointestinal problems and establish procedures to ensure that such assessments take place on a regular basis.

2. Within 5 days of the development of a feeding plan for any Ebensburg resident, have qualified professional staff train every direct care staff person responsible for feeding the individual for whom the plan has been devised. The training shall be competency based and require a return demonstration. Thereafter, staff responsible for feeding the individual shall have regular, periodic, refresher competency based training. Such training shall be documented.

3. Within 5 days of completing an individualized feeding plan for any Ebensburg resident, develop photographic and written instructions for staff that illustrate the plan.

4. Within 60 days of the entry of this Order, develop and implement a quality assurance system to ensure that staff correctly feed residents according to their individualized feeding plan.

F. Individuals who eat in an unsafe manner

1. Within 20 days of the entry of this Order, identify each individual who eats in an unsafe manner because of rapid eating, body or head position, placing too much food in the mouth, taking additional bites of food before swallowing, and /or a history of choking, coughing, or vomiting during or immediately after a meal.

2. Within 50 days of the entry of this Order, have a team of qualified professionals, including oral-motor specialists and psychologists, assess each individual identified pursuant to ¶ IX.F.1, herein, and develop an individualized mealtime plan to address the individual's difficulty with eating and teach the resident appropriate eating skills.

3. Train each staff person who works with each individual identified pursuant to ¶ IX.F.1, herein, in how to implement the individualized mealtime plan through competency based training and return demonstrations and ensure that the mealtime plan is implemented appropriately and consistently by routine monitoring of each staff person while he or she is implementing the mealtime plan.

4. Develop and implement a system at each mealtime to monitor and supervise individuals who eat independently to ensure

that they follow safe eating practices and to identify and correct any unsafe meal practices.

X. PHYSICAL MANAGEMENT

The Commonwealth shall provide each individual at Ebensburg with adequate and appropriate physical management in accordance with accepted standards of care. The goal of residents' physical management programs at Ebensburg shall be to enhance the capacity of the individual to function, i.e., to help him or her to live safely and as independently as possible. In order to fulfill this requirement, the Commonwealth shall implement, at a minimum, the following steps within the deadlines set forth below:

A. Coordinator of Physical Management

Within 20 days of the entry of this Order, designate, with the approval of the United States, a competent and qualified professional to serve as a Coordinator of all services at Ebensburg involving the physical management of Ebensburg residents. The Coordinator shall have the requisite skills and experience to oversee physical management services at Ebensburg, to provide advice and guidance to Ebensburg staff, and to train them with respect to feeding and nutritional/physical management practices which comport with accepted professional standards. The Coordinator shall provide monthly reports to the Monitor with respect to Defendants' compliance activities in this area.

B. Assessment

1. With 30 days of the entry of this Order, develop a comprehensive assessment form for physical therapists to use in

evaluating and assessing Ebensburg residents with physical disabilities.

2. Within 90 days of the entry of this Order and at least annually thereafter, have qualified professionals, including, when appropriate, physiatrists, orthopedists, physical therapists, and occupational therapists, conduct a comprehensive, interdisciplinary assessment of each Ebensburg resident with a physical disability to determine the need for medical, surgical, physical therapy, or occupational services, therapeutic equipment, and/or therapeutic positioning. Priority shall be given to residents who are immobile and have significant limitations in independent functioning.

C. Physical Management Plans

Within 60 days for residents who are immobile and have significant limitations in independent functioning, and within 120 days for all other residents, develop a physical management plan.

1. The physical management plan shall have the following components:

a. the range of therapeutic positions throughout the day, including therapeutic positioning and opportunities for movement. Immobile residents shall have a sufficient number of positions to ensure that they are not placed into any single position for longer than two consecutive hours, unless therapeutically justified;

b. individualized lifting, transferring, and handling techniques;

c. the goals to be achieved for the individual, including the prevention of continued deterioration, the reversal of existing deformity patterns, and the development of functional skills.

2. For individuals who are immobile and currently confined to carts, their physical management plan shall specify the particular steps that Ebensburg will take to attempt to reverse the deformity patterns.

D. Lifts and transfers

1. Within 15 days of the entry of this Order, identify each individual who is unable to independently lift and/or transfer him or herself from a bed, wheelchair, chair, sofa, mat, toilet, or bath and/or each individual who needs assistance in transferring from one position to another.

2. Within 45 days of the entry of this Order, have a qualified professional assess each individual identified pursuant to ¶ X.D.1, herein, and develop an individualized lift and transfer for each such individual.

3. Within 15 days of the entry of this Order, train each staff person who works with each individual identified pursuant to ¶ X.D.1, herein, in how to carry out the individualized lift and/or transfer through competency based training and return demonstrations and ensure that the lift and/or transfer are performed appropriately and consistently by

routine monitoring of each staff person while he or she is performing the lift and/or assisting with the transfer.

4. Within 90 days of the entry of this Order, ensure that each lift, transfer, and/or positioning plan is consistently implemented.

E. Wheelchairs

Defendants shall ensure that every Ebensburg resident who uses a wheelchair has an appropriate wheelchair that provides maximum alignment and therapeutic support. To this end, the Commonwealth shall take the following actions by the dates indicated below:

1. Within 60 days of the entry of this Order, develop a comprehensive assessment tool to evaluate the wheelchair positioning needs for each Ebensburg resident who needs a wheelchair.

2. Within 120 days of the entry of this Order, purchase a positioning simulator to measure appropriate positions for residents who use a wheelchair.

3. Within 6 months of the entry of this Order, evaluate each resident who uses a wheelchair, using the comprehensive assessment tool and the positioning simulator and identify necessary modifications in the wheelchair.

4. Within one year of the entry of this Order, provide every Ebensburg resident who uses a wheelchair and needs modifications to the wheelchair based upon the assessment, with an appropriately modified or new wheelchair.

F. Staff Training

The Commonwealth shall ensure that only adequately trained staff lift, transfer, and handle residents. To this end, the Commonwealth shall take the following actions by the dates indicated below:

1. Within 5 days of development of a physical management plan, ensure that no staff member is responsible for positioning, lifting, or transferring a resident before being trained and demonstrating competency in the individual's position, lift, or transfer.

2. Within 5 days of development of a physical management plan, take pictures and write instructions for staff reference that illustrate the steps to be taken to implement each resident's individualized positioning, lifting, and/or transferring plan.

3. Within 45 days of the entry of this Order, institute a system for providing regular, periodic competency based refresher training to staff.

4. Within 60 days of the entry of this Order, develop and implement a quality assurance system to ensure that staff correctly position, lift, transfer, and handle residents throughout the day, in accordance with their individualized physical management plan.

XI. STAFFING

A. By no later than 180 days of the entry of this Order, the Commonwealth shall ensure that a sufficient number of staff

are employed or under contract to attain and consistently maintain at least the following numbers of staff and/or ratios of staff to Ebensburg residents as those set forth in subparagraphs 1-6 below:

1. Direct Care Workers

Day and evening shifts 1:4

Night shift 1:8

These ratios shall be maintained at all times, including during staff breaks, on holidays, and on weekends. The number of direct care staff present and on duty on any shift shall be increased, when necessary, to ensure adequate supervision, health, safety, training, treatment, and/or care of any individual. Where 1:1 staffing is provided to ensure adequate supervision, health, safety, training, treatment, and/or care of any individual, such 1:1 staff shall not be counted in any ratio. Staff whose primary responsibilities are administrative and who do not provide direct service to individuals on a regular, routine basis shall not be counted in computing the direct care staff ratios. The direct care staff ratio shall be attained and maintained without excessive reliance on overtime and pulling of staff from their regularly assigned living area.

2. Physicians: 1: 100

3. Board Certified Neurologist with experience working with people with epilepsy and mental retardation: At least eight (8) hours each week and available on an as needed basis for emergency consultation and consultation while hospitalized.

4. Board Certified Psychiatrist with experience working with people with a dual diagnosis of mental illness and mental retardation: At least eight (8) hours each week and available on an as needed basis for emergency consultation and consultation while hospitalized.

5. Psychologists with experience working with people with mental retardation: 1:30 (at least 1/4 of which have a Ph.D. in psychology; the remainder shall have at least a master's degree, and shall work under the clinical supervision of the Ph.D. psychologists).

6. A sufficient number of Occupational and Physical Therapists, as well as occupational and physical therapy assistants to implement the provisions of this Order.

B. At the Commonwealth's discretion, the ratios may be obtained by hiring additional needed staff or by reducing the population of Ebensburg. If the Commonwealth decides to meet the ratios by reducing the population, this must be reflected in the Plan developed pursuant to XIII.A, herein. Residents must be transferred to appropriate community placements. The determination as to which individuals shall be transferred and the places to which they are transferred will be made by professional staff qualified to make such decisions. Prior to placing any resident in the community, Defendants shall ensure that the alternative placement meets all of the needs of the resident, including residential and day programs, medical, and any specialized services.

XII. RECORDKEEPING

The Commonwealth shall: (a) establish and maintain a record for each individual that shall include current information with respect to his/her care, medical treatment, and training, and shall be organized in a fashion that will enable those reviewing it to exercise professional judgment in providing care, medical treatment, and training to the individual: and (b) require staff to utilize such records in making care, medical treatment and training decisions. In order to fulfill these requirements, the Commonwealth shall, at a minimum, take the following steps within the deadlines set forth below:

A. Within 90 days of entry of this Order, evaluate the current recordkeeping practices in use at Ebensburg and make such modifications as are necessary to ensure that all components of the system, including, but not limited to, accidents and injuries, general care, medical care, and the development and implementation of training programs, including the collection of appropriate data, are consistent with generally accepted standards.

B. Within 90 days of the entry of this Order, ensure that entries made by primary care physicians, nurses, and medical specialists in individual records are timely and accurate, and that they describe the individual's physical condition and course of treatment by:

1. developing policies and procedures governing entries in medical records;

2. training primary care physicians, registered nurses and medical consultants in the policies and procedures;

3. developing and, thereafter, implementing quality assurance procedures that include a systematic and periodic review of a sample of medical records to ascertain whether entries made therein contain appropriate substantive information, and;

4. taking, as necessary, corrective action to ensure that staff and medical consultants are accountable for accurate and meaningful recordkeeping.

C. Within 90 days of the entry of this Order, develop and, thereafter, continually implement quality assurance procedures that include a systematic review of a sample of individuals' behavioral data required to be recorded by direct care staff to ascertain whether there is sufficient data recorded and to verify that such data are reliable.

D. Within 60 days of the entry of this Order, enter into agreements with local acute care hospitals and skilled nursing facilities serving Ebensburg residents that establish written procedures to ensure that adequate and accurate written information is communicated between such acute care hospitals and skilled nursing facilities and Ebensburg.

XIII. COMMUNITY PLACEMENTS

In order to implement Ebensburg residents' community placement plans, the Commonwealth shall take the following actions within the deadlines set forth below:

A. Within 6 months of entry of this Order, develop and file with the Court an overall long term plan ("Plan") for transition of Ebensburg residents into appropriate community placements that meet their needs. Subject to the provisions in ¶B and ¶C, herein, the Plan shall be ordered by the Court and fully enforceable. In order to develop this Plan, the Commonwealth shall take the following actions:

1. Review the community placement plan of each Ebensburg resident to determine whether it: (a) adequately assesses and identifies the services needed for the individual to be served in a community-based program outside Ebensburg, including, but not limited to, a description of the residential and day programs required, medical and other specialized services, and services to address other individualized needs; and (b) establishes a realistic time frame.

2. Where necessary, revise the community placement plan or develop a new plan.

3. Based upon the community placement evaluation of each Ebensburg resident, develop a plan for creating community services that do not exist, establish a schedule for the phased in transition of residents into the community, and seek adequate funding for the plan. Priority shall be given to those residents whose continued institutionalization at Ebensburg poses the greatest risk of harm.

B. The United States shall have 60 days to review the Plan, provide Defendants with its comments, and meet with them to

resolve any disagreements about the Plan. Any agreed upon changes in the Plan shall be filed with the Court and shall be enforceable.

C. If the parties are unable to resolve their disagreements, the Court shall hold a hearing to determine the adequacy of the plan and issue its ruling.

D. To the extent that community facilities become available in the interim that meet the needs of Ebensburg residents, Defendants are enjoined from failing to place such residents in those facilities. A resident shall only be placed in a program which meets all of his or her individual needs.

E. Defendants are also enjoined from failing to make available to Ebensburg residents the same opportunities for community placement as are available to residents of other Commonwealth facilities.

F. Defendants shall monitor each resident they place in a community-based program. Such monitoring shall be conducted on a quarterly basis and ensure that the specific community-based program or facility into which Defendants have placed a resident is fully meeting his or her needs as identified in the resident's Individual Habilitation Plan. Such monitoring shall be reflected in a written report to be filed with the United States and the Court within 15 days after the conclusion of a quarterly reporting period.

XIV. APPOINTMENT, DUTIES AND PRIVILEGES OF MONITOR

A Monitor to be designated by the United States, following consultation with the Defendants and approval by the Court, shall monitor each and every provision of this Order pursuant to the following provisions:

A. Within 30 days after the entry of this Order and following consultation with the Defendants, the United States shall submit to the Court its designated monitor for approval.

B. Following approval, the Monitor shall on a quarterly basis monitor Defendants' compliance with each provision of this Order. The Monitor shall have the authority to retain a reasonable number of consultants to assist in the monitoring process. All consultants utilized shall be approved by the United States.

C. Within 30 days following the completion of a quarterly reporting period, the Monitor and any other consultants retained to assist the Monitor shall file a written report with the parties and the Court describing, inter alia, each of the following:

1. The steps and other activities taken, or not taken, by Defendants to comply with the requirements of each separate paragraph of this Order;
2. Specific observations that indicate whether Defendants are implementing the specific staff-to-resident ratios specified herein, that such staff are present and on duty in the specific units to which they

are assigned, and whether staffing is otherwise adequate to meet the requirements of this Order;

3. A determination of compliance, partial compliance, or non-compliance with each paragraph of this Order and the basis for each determination; and

4. Barriers encountered by Defendants in seeking to implement remedies necessary for compliance with this Order.

D. The Monitor shall have unlimited access to all residents, staff, records (including individual resident records) files, facilities, buildings, and premises that are the subject of this action. Defendants shall not refuse any reasonable request for documents or other information and shall permit confidential interviews of staff. At the Monitor's request, a single representative of Ebensburg shall coordinate tours of Ebensburg, the gathering of documents, and the provision of any other information the Monitor may request. The Monitor need not give advance notice of any tours of Ebensburg but shall give reasonable notice of intent to review any documents which must be gathered in order to facilitate review. These provisions shall also apply to any consultant retained to assist the Monitor.

E. The costs of the Monitor and required monitoring activities shall be borne by Defendants.

F. The Monitor shall remain in office and perform the requirements of this paragraph until further order of this Court.

XV. JURISDICTION AND ENFORCEMENT

A. The Court shall retain jurisdiction of this action for all purposes under this Order until the Commonwealth shall have fully and faithfully implemented all provisions of the Order and until this action is dismissed.

B. The Monitor, his/her chosen consultants, and the United States and its consultants shall have access to Ebensburg without notice to the Commonwealth of Pennsylvania. Access shall include the right to inspect and tour Ebensburg's buildings, review facility records, resident charts and other documents, conduct interviews with staff outside the presence of supervisory staff, and observe activities normally conducted at Ebensburg. The Monitor and the United States may request information in writing from the Defendants relating to conditions at Ebensburg or compliance with this Order and the Defendants shall respond, in writing, within 20 days. The Monitor shall be copied on all correspondence between the Defendants and United States.

C. Retaliation against any staff person for providing information to the Monitor or United States shall be a violation of this Order, subject to contempt of court.

IT IS SO ORDERED, this _____ day of _____, 1994,
at Johnstown, Pennsylvania.

D. Brooks Smith
UNITED STATES DISTRICT JUDGE