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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

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

SHARON SMITH NEVINS, Executive Director of Metropolitan State Hospital, in her official capacity only; and DAVE GRAZIANI, Executive Director of Napa State Hospital, in his official capacity only,
Defendants.

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

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

PART I

ENHANCEMENT PLAN

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A. Definitions

1. Effective Date

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

2. Consistent With Generally Accepted Professional Standards of Care

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

B. Introduction

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

Each individual served by each State Hospital shall be encouraged to participate in identifying his or her needs and goals, and in selecting appropriate treatment options. Therapeutic and rehabilitation services shall be designed to address each individual's needs and to assist individuals in meeting their specific recovery and wellness goals, consistent with generally accepted professional standards of care. Each State Hospital shall ensure clinical and administrative oversight, education, and support of its staff in planning and providing care and treatment consistent with these standards.

C. Integrated Therapeutic and Rehabilitation Services Planning

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

1. Interdisciplinary Teams

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

Hospital shall ensure that the team shall:

a. Have as its primary objective the provision of individualized, integrated therapeutic and rehabilitation services that optimize the individual's recovery and ability to sustain himself/herself in the most integrated, appropriate setting based on the individual's strengths and functional and legal status and support the individual's ability to exercise his/her liberty interests, including the interests of self determination and independence;

b. Be led by a clinical professional who is involved in the care of the individual;

c. Function in an interdisciplinary fashion;

d. Assume primary responsibility for the individual's therapeutic and rehabilitation services, and ensure the provision of competent, necessary, and appropriate psychiatric and medical care;

e. Ensure that each member of the team participates appropriately, by competently and knowledgeably assessing the individual on an ongoing basis and by developing, monitoring, and, as necessary, revising the therapeutic and rehabilitation services;

f. Ensure that assessment results and, as clinically relevant, consultation results, are communicated to the team members, along with the implications

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

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

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

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

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

2. Integrated Therapeutic and Rehabilitation Service Planning.

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

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

a. Individuals have substantive input into the therapeutic and rehabilitation service planning process, including but not limited to input as to mall groups and therapies appropriate to their WRP.

b. Therapeutic and rehabilitation service planning provides timely attention to the needs of each individual, in particular:

i. initial therapeutic and rehabilitation service plans (Admission Wellness and Recovery Plan ("A-WRP")) are completed within 24 hours of admission;

ii. master therapeutic and rehabilitation service plans (WRP) are completed within 7 days of admission; and

iii. therapeutic and rehabilitation service plan reviews are performed every 14 days during the first 60 days of hospitalization and every 30 days thereafter. The third monthly review is a quarterly review and the 12th monthly review is the annual review.

c. Treatment, rehabilitation, and enrichment services are goal-directed, individualized, and informed by a thorough knowledge of the individual's

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

vii. maximize, consistent with the individual's treatment needs and legal status, opportunities for treatment, programming, schooling, and other activities in the most appropriate integrated, non-institutional settings, as clinically appropriate; and

viii. ensure that each therapeutic and rehabilitation service plan integrates and coordinates all services, supports, and treatments provided by or through the State Hospital for the individual in a manner specifically responsive to the plan's therapeutic and rehabilitation goals. This requirement includes, but is not limited to, ensuring that individuals are assigned to mall groups that link directly to the objectives of the individual’s treatment plan and needs;

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

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

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

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

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

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

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

i. Adequate active psychosocial rehabilitation is provided, consistent with generally accepted

professional standards of care, that:

i. is based on the individual's assessed needs and is directed toward increasing the individual's ability to engage in more independent life functions;

ii. has documented objectives, measurable outcomes, and standardized methodology;

iii. is aligned with the individual's objectives that are identified in the individual's WRP;

iv. utilizes the individual's strengths, preferences, and interests;

v. focuses on the individual's vulnerabilities to mental illness, substance abuse, and readmission due to relapse, where appropriate;

vi. is provided in a manner consistent with each individual's cognitive strengths and limitations;

vii. provides progress reports for review by the Interdisciplinary Team as part of the WRP review process;

viii. is provided 5 days a week, for a minimum of 4 hours a day (i.e., 2 hours in the morning and 2 hours in the afternoon each weekday), for each individual or 2 hours a day when the individual is in school, except days falling on state holidays;

ix. is provided to individuals in bed-bound status in a manner and for a period that is commensurate with their medical status;

x. routinely takes place as scheduled;

xi. includes, in the evenings and weekends, additional activities that enhance the individual's quality of life; and

xii. is consistently reinforced by staff on the therapeutic milieu, including living units.

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

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

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

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

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

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

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

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

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

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

q. Group facilitators and therapists providing therapeutic and rehabilitation services in the field of substance abuse should be certified substance abuse counselors.

r. Transportation and staffing issues do not preclude individuals from attending appointments.

s. Adequate oversight to treatment, rehabilitation, and enrichment groups is provided to ensure that individuals are assigned to groups that are appropriate to their assessed needs, that groups are provided consistently and with appropriate frequency, and that issues particularly relevant for this population, including the use of psychotropic medications and substance abuse, are appropriately addressed, consistent with generally accepted professional standards of care.

t. Treatment, rehabilitation, and enrichment services are monitored appropriately against rational, operationally-defined target variables and revised as appropriate in light of significant developments, and the individual's progress, or lack thereof.

u. Individuals are educated regarding the purposes of their treatment, rehabilitation, and enrichment services. They will be provided a copy of their WRP when appropriate based on clinical judgment.

v. Staff educate individuals about their medications, the expected results, and the potential common

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

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

D. Integrated Assessments

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

1. Psychiatric Assessments and Diagnoses

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

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

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

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

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

c. Each State Hospital shall ensure that:

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

receives an Admission Medical Assessment that includes:

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

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

1) psychiatric history, including a review of presenting symptoms;
2) complete mental status examination;
3) admission diagnoses;
4) completed AIMS;
5) laboratory tests ordered; and
6) consultations ordered.

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

1) psychiatric history, including a review of present and past history;
2) psychosocial history;
3) mental status examination;
4) strengths;
5) psychiatric risk factors;

6) diagnostic formulation;

7) differential diagnosis;

8) current psychiatric diagnoses;

9) psychopharmacology treatment plan; and

10) management of identified risks.

d. Each State Hospital shall ensure that:

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

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

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

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

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

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

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

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

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

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

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

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

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

adjustment of regular treatment, as indicated, based on such use; and

vii. verification, in a clinically justifiable manner, that psychiatric and behavioral treatments are properly integrated. The psychiatrist shall review the positive behavior support plan prior to implementation to ensure consistency with psychiatric formulation, document evidence of regular exchange of data or information with psychologists regarding differentiation of learned behaviors and behaviors targeted for psychopharmacological treatments, and document evidence of integration of treatments.

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

2. Psychological Assessments

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

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

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

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

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

i. expressly state the clinical question(s) for the assessment;

ii. include findings specifically addressing the clinical question(s), but not limited to diagnoses and treatment recommendations;

iii. specify whether the individual would benefit from individual therapy or group therapy in addition to attendance at mall groups;

iv. be based on current, accurate, and complete data;

v. determine whether behavioral supports or interventions (e.g., behavior guidelines or mini-behavior plans) are warranted or whether a full positive behavior support plan is required;

vi. include the implications of the findings for interventions;

vii. identify any unresolved issues encompassed by the assessment and, where appropriate, specify further observations, records review, interviews, or re-evaluations that should be performed or considered to resolve such issues; and

viii. Use assessment tools and techniques appropriate for the individuals assessed and in accordance with the American Psychological Association Ethical Standards and Guidelines for testing.

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

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

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

1) address the nature of the individual's impairments to inform the psychiatric diagnosis; and

2) provide an accurate evaluation of the individual's psychological functioning

to inform the therapeutic and rehabilitation service planning process;

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

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

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

3. Nursing Assessments

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

i. a description of presenting conditions;

ii. current prescribed medications;

iii. vital signs;

iv. allergies;

v. pain;

vi. use of assistive devices;

vii. activities of daily living;

viii. immediate alerts (e.g., escape risk, physical assault, choking risk, suicidal risk, homicide risk, fall risk, sexual assault, self-injurious behavior, arson, or fire setting); and

ix. conditions needing immediate nursing interventions.

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

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

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

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

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

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

4. Rehabilitation Therapy Assessments

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

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

i. is accurate and comprehensive as to the individual's functional abilities;

ii. identifies the individual's current functional status and the skills and supports needed to facilitate transfer to the next level of care; and

iii. identifies the individual's life goals, strengths, and motivation for engaging in wellness activities.

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

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

5. Nutrition Assessments

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Social History Assessments

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

a. Is, to the extent reasonably possible, accurate, current and comprehensive;

b. Expressly identifies factual inconsistencies among sources, resolves or attempts to resolve inconsistencies, and explains the rationale for the resolution offered;

c. Is included in the 7-day integrated assessment and fully documented by the 30th day of an individual's admission; and

d. Reliably informs the individual's interdisciplinary team about the individual's relevant social factors and educational status.

7. Court Assessments

a. Each State Hospital shall develop and implement policies and procedures to ensure an interdisciplinary approach to the development of court submissions for individuals adjudicated "not guilty by reason of insanity" ("NGI") pursuant to Penal Code Section 1026, based on accurate information and individualized risk assessments. The forensic reports should include the following, as clinically indicated:

i. clinical progress and achievement of stabilization of signs and symptoms of mental illness that were the cause, or contributing factor in the commission of the crime (i.e., instant offense);

ii. acts of both verbal and physical aggression and property destruction during the past year of hospitalization and, if relevant, past acts of aggression and dangerous criminal behavior;

iii. understanding of potential for danger and precursors of dangerous/criminal behavior, including instant offense;

iv. acceptance of mental illness and understanding of the need for treatment, both psychosocial and biological, and the need to adhere to treatment;

v. development of relapse prevention plan (i.e., Personal Wellness Recovery Plan or Wellness Recovery Action Plan) for mental illness symptoms, including the individual's recognition of precursors and warning signs and symptoms and precursors for dangerous acts;

vi. willingness to achieve understanding of substance abuse issues and to develop an effective relapse prevention plan (as defined above);

vii. previous community releases, if the individual has had previous CONREP revocations;

viii. social support, financial resources, family conflicts, cultural marginalization, and

history of sexual and emotional abuse, if applicable; and

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

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

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

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

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

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

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

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

E. Discharge Planning and Community Integration

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

1. Each State Hospital shall identify at the 7-day therapeutic and rehabilitation service planning conference, and address at all subsequent planning conferences, the particular considerations for each individual bearing on discharge, including:

   a. those factors that likely would foster successful discharge, including the individual's strengths, preferences, and personal life goals;

   b. the individual's level of psychosocial functioning;

   c. any barriers preventing the individual from transitioning to a more integrated environment, especially difficulties raised in previously unsuccessful placements; and

   d. the skills and supports necessary to live in the setting in which the individual will be placed.

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

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

   a. Measurable interventions regarding these discharge considerations;

   b. The staff responsible for implementing the interventions; and

   c. The time frames for completion of the interventions.

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

   a. Individuals who have met discharge criteria are discharged expeditiously, subject to the availability of suitable placements; and

   b. Individuals receive adequate assistance in transitioning to the new setting.

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

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

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

F. Specific Therapeutic and Rehabilitation Services

1. Psychiatric Services

a. Each State Hospital shall develop and implement policies and procedures to ensure system-wide monitoring of the safety, efficacy, and appropriateness of all psychotropic medication use, consistent with generally accepted professional standards of care. In particular, policies and procedures shall require monitoring of the use of psychotropic medications to ensure that they are:

i. specifically matched to current, clinically justified diagnoses or clinical symptoms;

ii. prescribed in therapeutic amounts, as dictated by the needs of the individual served;

iii. tailored to each individual's symptoms;

iv. monitored for effectiveness against clearly identified target variables and time frames;

v. monitored appropriately for side effects;

vi. modified based on clinical rationales;

vii. not inhibiting individuals from meaningfully participating in treatment, rehabilitation, or enrichment and educational services as a result of excessive sedation; and

viii. properly documented.

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

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

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

e. Each State Hospital shall ensure regular monitoring, using a validated rating instrument (such as AIMS or DISCUS), of tardive dyskinesia ("TD"); a baseline assessment shall be performed for each individual at admission with subsequent monitoring of the individual every 12 months while he/she is receiving antipsychotic medication, and every 3 months if the test is positive, TD is present, or the individual has a history of TD.

f. Each State Hospital shall ensure timely identification, reporting, data analyses, and follow up remedial action regarding all adverse drug reactions ("ADR").

g. Each State Hospital shall ensure drug utilization evaluation ("DUE") occurs in accord with established, up-to-date medication guidelines that shall specify indications, contraindications, and screening and monitoring requirements for all psychotropic medications; the guidelines shall be in accord with current professional literature. A verifiably competent psychopharmacology consultant shall approve the guidelines and ensure adherence to the guidelines.

h. Each State Hospital shall ensure documentation, reporting, data analyses, and follow up remedial action regarding actual and potential medication variances ("MVR") consistent with generally accepted professional standards of care.

i. Each State Hospital shall ensure tracking of individual and group practitioner trends, including data derived from monitoring of the use of PRNs, Stat medications, benzodiazepines, anticholinergics, and polypharmacy, and of ADRs, DUE, and MVR consistent with generally accepted professional standards of care.

j. Each State Hospital shall ensure feedback to the practitioner and educational/corrective actions in response to identified trends consistent with generally accepted professional standards of care.

k. Each State Hospital shall ensure integration of information derived from ADRs, DUE, MVR, and the Pharmacy & Therapeutics, Therapeutics Review, and Mortality and Morbidity Committees consistent with generally accepted professional standards of care.

l. Each State Hospital shall ensure that all physicians and clinicians are verifiably competent, consistent with generally accepted professional standards of care, in appropriate medication management, interdisciplinary team functioning, and the integration of behavioral and pharmacological treatments.

m. Each State Hospital shall review and ensure the appropriateness and safety of the medication treatment, consistent with generally accepted professional standards of care, for:

i. all individuals prescribed continuous anticholinergic treatment for more than two months;

ii. all elderly individuals and individuals with cognitive disorders who are prescribed continuous anticholinergic treatment regardless of duration of treatment;

iii. all individuals prescribed benzodiazepines as a scheduled modality for more than two months;

iv. all individuals prescribed benzodiazepines with diagnoses of substance abuse or cognitive impairments, regardless of duration of treatment;

v. all individuals with a diagnosis or evidencing symptoms of tardive dyskinesia; and

vi. all individuals diagnosed with dyslipidemia, and/or obesity, and/or diabetes mellitus who are prescribed new generation antipsychotic medications.

n. Each State Hospital shall ensure that the medication management of individuals with substance abuse disorders is provided consistent with generally accepted professional standards of care.

o. Metropolitan State Hospital shall provide a minimum of 16 hours per year of psychopharmacology instruction, through conferences, seminars,

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

2. Psychological Services

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

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

i. the development and use of positive behavior support plans, including methods of monitoring program interventions and the effectiveness of the interventions, providing staff training regarding program implementation, and, as appropriate, revising or terminating the program; and

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

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

c. Each State Hospital shall ensure that:

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

ii. hypotheses on the maladapative behavior are based on structural and functional assessments;

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

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

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

vi. triggers for instituting individualized behavioral interventions are specified and

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

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

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

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

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

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

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

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

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

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

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

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

3. Nursing Services

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

a. Each State Hospital shall develop and implement policies and protocols regarding the administration of medication, including pro re nata ("PRN") and "Stat" medication (i.e., emergency use of psychoactive medication), consistent with generally accepted professional standards of care, to ensure:

i. safe administration of PRN medications and Stat medications;

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

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

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

c. Each State Hospital shall ensure that all nursing interventions are fully integrated into the therapeutic and rehabilitation service plan and that nursing interventions are written in a manner aligned with the rest of the interventions in the therapeutic and rehabilitation service plan, in particular, in observable, behavioral, and/or measurable terms. No nursing care plans other than the nursing interventions integrated in the therapeutic and rehabilitation service plan are required. No nursing diagnoses other than as specified in the therapeutic and rehabilitation service plan, in terms of the current DSM criteria, are required.

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

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

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

i. nursing staff are knowledgeable regarding each individual's prescribed medications;

ii. education is provided to individuals during medication administration;

iii. nursing staff are following the appropriate medication administration protocol; and

iv. medication administration is documented in accordance with the appropriate medication administration protocol.

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

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

psychiatric technicians have successfully completed competency-based training regarding:

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

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

iii. positive behavior support principles.

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

4. Rehabilitation Therapy Services

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

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

i. the provision of direct services by rehabilitation therapy services staff; and

ii. the oversight by rehabilitation therapists of individualized physical therapy programs implemented by nursing staff.

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

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

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

5. Nutrition Services

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

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

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

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

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

successfully completed competency-based training commensurate with their responsibilities.

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

6. Pharmacy Services

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

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

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

7. General Medical Services

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

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

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

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

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

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

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

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

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

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

8. Infection Control

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

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

i. actively collects data regarding infections and communicable diseases;

ii. assesses these data for trends;

iii. initiates inquiries regarding problematic trends;

iv. identifies necessary corrective action;

v. monitors to ensure that appropriate remedies are achieved; and

vi. integrates this information into the State Hospital's quality assurance review.

9. Dental Services

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

a. Each State Hospital shall retain or contract with an adequate number of qualified dentists to provide timely and appropriate dental care and treatment to all individuals it serves;

b. Each State Hospital shall develop and implement policies and procedures that require:

i. comprehensive and timely provision of dental services;

ii. documentation of dental services, including but not limited to, findings, descriptions of any treatment provided, and the plans of care;

iii. use of preventive and restorative care whenever possible; and

iv. tooth extractions be used as a treatment of last resort, which, when performed, shall be justified in a manner subject to clinical review.

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

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

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

10. Special Education

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

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

educational needs and monitoring their individual progress.

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

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

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

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

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

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

G. Documentation

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

H. Restraints, Seclusion, and PRN and Stat Medications

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

1. Each State Hospital shall revise, as appropriate, and implement policies and procedures regarding the use of seclusion, restraints, psychiatric PRN medications, and Stat medications consistent with generally accepted professional standards of care. In particular, the policies and procedures shall expressly prohibit the use of prone restraints, prone containment and prone transportation and shall list the types of restraints that are acceptable for use.
2. Each State Hospital shall ensure that restraints and seclusion:
   a. Are used in a documented manner and only when individuals pose an imminent danger to self or others and after a hierarchy of less restrictive measures has been considered in a clinically justifiable manner or exhausted;
   b. Are not used in the absence of, or as an alternative to, active treatment, as punishment, or for the convenience of staff;
   c. Are not used as part of a behavioral intervention; and
   d. Are terminated as soon as the individual is no longer an imminent danger to self or others.
3. Each State Hospital shall comply with 42 C.F.R. § 483.360(f), requiring assessments by a physician or licensed clinical professional of any individual placed in seclusion or restraints within 1 hour. Each State Hospital shall also ensure that any individual placed

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

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

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

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

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

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

   c. PRN medications are appropriately time-limited;

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

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

8. Each State Hospital shall:

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

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

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

I. Protection From Harm

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

1. Incident Management

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

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

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

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

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

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

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

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

mandatory reporter's failure to report abuse or neglect;

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

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

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

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

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

procedures shall:

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

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

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

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

1) investigations commence within 24 hours or sooner, if necessary, of the incident being reported;

2) investigations be completed within 30 business days of the incident being reported, except that investigations where material evidence is unavailable to the investigator, despite best efforts, may be completed within 5 business days of its availability;

3) each investigation result in a written report, including a summary of the investigation, findings and, as appropriate, recommendations for corrective action. The report's contents shall be sufficient to provide a clear basis for its conclusion. The report shall set forth explicitly and separately:

(i) each allegation of wrongdoing investigated;

(ii) the names of all witnesses;

(iii) the names of all alleged victims and perpetrators;

(iv) the names of all persons interviewed during the investigation;

(v) a summary of each interview;

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

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

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

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

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

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

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

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

i. type of incident;

ii. staff involved and staff present;

iii. individuals directly and indirectly involved;

iv. location of incident;

v. date and time of incident;

vi. cause(s) of incident; and

vii. outcome of investigation.

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

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

2. Performance Improvement

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

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

mechanisms shall include, but not be limited to:

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

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

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

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

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

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

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

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

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

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

3. Environmental Conditions

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

a. Potential suicide hazards are identified and prioritized for systematic corrective action, and that such action is implemented on a priority basis as promptly as feasible;

b. All areas of the hospital that are occupied by individuals being served have adequate temperature control and deviations shall be promptly corrected;

c. Each State Hospital reviews, revises, as appropriate, and implements procedures and practices so that individuals who are incontinent are assisted to change in a timely manner;

d. Each State Hospital thoroughly reviews and revises, as appropriate, its policy and practice regarding sexual contact among individuals served at the hospital. Each State Hospital shall establish clear guidelines regarding staff response to reports of sexual contact and monitor staff response to incidents. Each State Hospital documents comprehensively therapeutic interventions in the individual's charts in response to instances of sexual contact;

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

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

J. First Amendment and Due Process

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

ENHANCEMENT PLAN - APPENDIX A

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

Body Weight	4.1	Body Mass Index (BMI) of 18.5 or less (underweight)
	4.2	Body Mass Index (BMI) between 25 and 29.9 (overweight)
	4.3	Body Mass Index (BMI) between 30 and 34.9 (Obesity-Grade I)
	4.4	Body Mass Index (BMI) between 35 and 39.9 (Obesity-Grade II)
	4.5	Body Mass Index (BMI) 40 or above (Obesity-Grade III)
	4.6	Weight Change ± 5% in 1 month
	4.7	Weight Change ± 7.5% in 3 months
	4.8	Weight Change ± 10% in 6 months
	4.9	Waist Circumference over 35” for females or over 40” for males
Combined Pharmacotherapy	5.1	More than 2 intra-class psychotropic medications for psychiatric reasons
	5.2	More than 3 inter-class psychotropic medications for psychiatric reasons

Escape/AWOL	6.1	Any escape attempt/unauthorized absence within facility
	6.2	Any escape attempt/unauthorized absence outside of facility
Falls	7.1	Any fall resulting in major injury
	7.2	Three or more falls in 30 consecutive days
Illicit Substances	8.1	Any incident of an individual testing positive for illicit substance (street drug) use
Medication Variance (Error)	9.1	Any medication error that results in major injury or exacerbation of a disease or disorder (i.e., prescribing, transcribing, ordering/procurement, dispensing/storage, administration, and documentation)

Mortality	10.1 Expected deaths 10.2 Unexpected deaths
Non-Adherence to Wellness and Recovery Plan (WRP)	11.1 Non-adherence to WRP for more than 20% of the interventions in 7 consecutive days (Note: For children and adolescents: include non-attendance at school for more than 20% of the time in 7 consecutive days)
One-to-One Observations	12.1 1:1 for psychiatric/behavioral reasons over 24 hours in 7 consecutive days 12.2 Any 2:1 for psychiatric/behavioral reasons
PRN Medications	13.1 2 PRNs in 24 hours (for psychiatric/behavioral reasons) 13.2 3 PRNs in 7 consecutive days 13.3 15 PRNs in 30 consecutive days

Restraint	14.1 Restraint for more than 4 hours for adults (Note: more than 4 hours for adolescents and 2 hours for children) 14.2 More than 3 episodes of restraint in 7 consecutive days 14.3 More than 5 episodes of restraint in 30 consecutive days
Seclusion	15.1 Seclusion for more than 4 hours for adults (Note: more than 4 hours for adolescents and 2 hours for children) 15.2 More than 3 episodes of seclusion in 7 consecutive days 15.3 More than 5 episodes of seclusion in 30 consecutive days
Stat Medications	16.1 2 Stat medications in 24 hours 16.2 3 Stat medications in 7 consecutive days 16.3 15 Stat med in 30 consecutive days

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

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

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

PART II

ENFORCEMENT

A. Selection of Monitor

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

B. Budget of the Monitor

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

C. Reimbursement and Payment Provisions

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

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

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

D. Responsibilities and Powers of the Monitor

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

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

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

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

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

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

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

6. The Monitor shall provide the Parties with a written report as soon as possible, but at least within 60 days of each tour and shall detail with as much specificity as possible how the State is or is not in compliance with particular provisions of the Consent Judgment. Drafts of the Monitor's reports shall be provided to the Parties for comment at least ten (10) business days prior to issuance of the reports. Upon the achievement of eighteen (18) months of substantial compliance with any substantive paragraph(s) of this Agreement, no further reporting shall be required on that paragraph.

7. The Defendants shall notify the Monitor immediately upon the death of any current State Hospital patient, including any person who died following transfer due to medical condition from a State Hospital to another medical facility. The Defendants shall forward to the Monitor copies of any completed incident reports related to deaths, autopsies and/or death summaries of residents, as well as all final reports of investigations that involve State Hospital patients. The Defendants shall also notify the Monitor immediately if they receive a citation or threat to de-certify a State Hospital from the Centers for Medicaid and Medicare Services.

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

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

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

PART III

MODIFICATION OF TERMS

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

PART IV

COMPLIANCE AND TERMINATION

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

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

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

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

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

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

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

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

DATED: This 2 day of May , 2006.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

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Assistant Attorney General

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