

UNITED STATES of America, Plaintiff,

v.

**NORTHERN HEALTH FACILITIES, INC. d/b/a Greenbelt Nursing & Rehabilitation Center,
Extendicare Health Services, Inc., Extendicare Holdings, Inc., Extendicare Health
Facilities, Inc., Extendicare Health Facilities Holdings, Inc., Defendants.**

No. Civ.A. AW 98-3113.

United States District Court, D. Maryland, Southern Division.

September 14, 1998.

Jefferson M. Gray, Howard L. Sollins, Ober, Kaler, Grimes and Shriver, P.C., Baltimore, MD, for Defendants.

Lynne A. Battaglia, U.S. Atty. for Dist. of Md., Kathleen McDermott, Asst. U.S. Atty., Perry Sekus, Asst. U.S. Atty., Baltimore, MD, for U.S.

PRELIMINARY INJUNCTION ORDER

WILLIAMS, District Judge.

The United States of America and the Defendants, named herein, have consented to the entry of the foregoing preliminary injunction, subject to the approval of this Honorable Court:

A. PARTIES

1. The Parties to this Preliminary Injunction are: Plaintiff, United States of America and Defendants Northern Health Facilities, Inc., d/b/a Greenbelt Nursing and Rehabilitation Center, Extendicare Health Services, Extendicare Holdings, Inc., Extendicare Health Facilities, Inc., Northern Health Facilities, Inc., Extendicare Health Facilities Holdings, Inc. All Defendants are hereinafter referred to collectively as Greenbelt Nursing & Rehabilitation Center ("Greenbelt").

B. JURISDICTION AND VENUE

2. The United States and Greenbelt stipulate and agree that this Honorable Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 31 U.S.C.A. § 3729; and Federal Rule of Civil Procedure 65; venue lies in this judicial district pursuant to 28 U.S.C.A. § 1391(b) and (c); and, the parties will be bound by the terms of this Preliminary Injunction under the terms set forth herein and as otherwise modified by the Court.

C. SUMMARY OF FACTUAL BACKGROUND

3. The United States is currently investigating allegations of federal law violations in connection with health care services rendered to nursing home residents at Greenbelt. The allegations involve the systemic denial of care, including but not limited to: *691 medical care, misuse of psychotropic and anti-depressant medication, systemic failure to provide minimal standards of care guaranteed by law, and the submission of false claims to obtain payment from the United States to which Greenbelt is not entitled. The investigation is ongoing. On or about September 14, 1998, the United States filed a Complaint for Injunctive Relief, seeking preliminary injunctive relief pending the investigation to ensure that during the investigation the residents received all necessary and appropriate care guaranteed by law.

4. The United States and Greenbelt agree to the terms of the Preliminary Injunction as set forth herein (sometimes hereinafter referred to as Order or Consent Order).

D. GENERAL PROVISIONS

5. In entering into this Preliminary Injunction voluntarily and by consent, Greenbelt does not admit to any violation of law and the Parties agree that this Order may not be used as evidence of liability in any other proceeding, including any trial on the merits of this pending action. Greenbelt further preserves and does not waive any legal defense to the allegations asserted in this action and disputes the factual allegations.

6. During the duration of this action and under the terms of this Preliminary Injunction, all federal and State regulatory oversight and enforcement obligations shall remain in full effect. All administrative remedies, including the authority of the Office of Inspector General to seek exclusion and the Health Care Financing Administration and the State of Maryland to seek termination or other administrative remedies, are preserved and are not supplanted by the terms of the Preliminary Injunction, except as modified by agreement of the Parties or this Court.

7. This Preliminary Injunction is legally binding and judicially enforceable by the Parties and it shall be applicable to and binding upon all of the parties, their officers, agents, employees, assigns, and successors. All reports, verifications and notices required to be submitted to the Parties by this Order shall be made directly to the United States Attorney's Office and the Office of Inspector General for the Department of Health & Human Services and counsel for Greenbelt.

E. COMPLIANCE WITH FEDERAL LAW

8. In the operation and management of Greenbelt and in providing services to Greenbelt's residents, Greenbelt shall comply fully with the particular provisions of the Nursing Home Reform Act and other relevant provisions as embodied in Title XVIII of the Social Security Act, 42 U.S.C. § 1395 *et seq.* and Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.* all regulations and guidelines promulgated pursuant to these statutes and the American with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, including, but not limited to 42 C.F.R. Part 483, Subparts B, C, D, and E, § 483.1 through § 483.206. The Parties agree that the language in 42 C.F.R. § 483.1 through § 483.206 is incorporated by reference into this Preliminary Injunction and that the provisions of this Preliminary Injunction are to be construed consistent therewith. Greenbelt shall also comply fully with the particular provisions of the Greenbelt's protocols and the plans of correction submitted to the State of Maryland in connection with survey actions and administrative actions pursued from January 1998 to present and shall submit within twenty (20) days from the date of this Order verification that the plans of correction are implemented. Greenbelt agrees that its obligation to comply fully with its protocols and plans of correction does not limit its obligation to comply fully with federal law or with the provisions of this Order.

9. Greenbelt's submission of plans of correction and/or certifications of compliance by the Health Care Financing Administration does not in and of itself constitute compliance with this Preliminary Injunction, nor does a cited deficiency by state or federal surveyors establish noncompliance with this Preliminary Injunction. Findings of the Monitor provided under this Order do not, in and of themselves, constitute deficiencies by federal or State surveyors.

692 10. If Greenbelt seeks to add a policy, procedure or protocol which addresses resident *692 care issues or to modify a policy, or procedure or protocol which has been attached to and incorporated into this Consent Order, Greenbelt shall first submit any proposed new or modified policy, procedure or protocol to the United States and the Monitor as defined in paragraph 44-48(u) for review. In the event that any administrative agency takes any action requiring a response or plan of correction, Greenbelt's response and any subsequent plan of correction shall proceed pursuant to administrative requirements without prejudice or delay.

11. The United States or the Monitor may provide Greenbelt with comments or recommendations regarding the proposed new or modified protocol within ten (10) days of receipt of the proposed modification.

12. If the United States or the Monitor do not submit any comments or recommendations, the Greenbelt shall submit the new or modified policy, procedure or protocol to the Court as an agreed-upon modification of the Preliminary Injunction.

13. In the event that the United States or the Monitor submits any comments or recommendations, Greenbelt shall consider the comments and recommendations. If Greenbelt declines to adopt the recommendations or comments of the United States or the Monitor, they shall so notify, in writing, the United States and the Monitor, and the parties and the Monitor shall confer within ten (10) days.

14. If the Parties reach an agreement to add or modify the Preliminary Injunction, the Parties shall submit the new or modified policy, procedure or protocol as an agreed upon exhibit or amendment to this Order, subject to the approval of the Court. If the Parties do not reach agreement, Greenbelt may seek addition or modification of the policy, procedure or protocol with the Court and the United States may present its objections.

15. A new or modified policy or protocol may be implemented immediately, if necessary, due to emergency conditions or to comply with a change in the law, and then submitted to the Court.

F. GREENBELT'S POLICIES AND PROCEDURES

16. Greenbelt agrees to comply, and to cause all of its subsidiaries officers, agents, employees, contractors and/or subcontractors to comply with its policies and procedures, referenced herein, including all plans of correction arising out of survey actions pursued by the State of Maryland Licensing and Certification Administration from January 1998 to the present. Greenbelt will provide the United States with notice and a reasonable period of time to review and approve additional policies and procedures pertaining to resident care as they are created, modified or discontinued.

G. NUTRITION AND WOUND CARE STANDARDS

17. Greenbelt agrees to provide wound care (decubitus ulcer) treatment that meets or exceeds the Agency for Health Care Policy and Research Guidelines, attached hereto and incorporated herein as Exhibit A. Additionally, Greenbelt agrees to provide nutrition to promote healing and avoidance of decubitus ulcers as set forth in Exhibit B, attached hereto and incorporated herein.

18. Greenbelt agrees that Registered Dieticians will accurately calculate all residents ideal body weight, compare current body weight to the residents usual body weight in order to determine an appropriate healthy weight range for each resident on a regular and consistent basis and will clearly document such findings in the residents charts. Greenbelt further agree to identify and provide timely clinical responses to all "nutritionally at risk" and "nutritionally compromised" residents.

H. RESIDENT SAFETY

19. Greenbelt shall promptly notify the Monitor of any resident death resulting from injuries, malnutrition, dehydration, diabetes or complications thereof, any incident of staff abuse or neglect of a resident, transfer and admission to a hospital as a result of injury or accident and any other incident involving a resident that prompts a full internal investigation specifying for each death or incident, the full name and social security number of *693 the resident, the date of death or incident, and, to the extent that such information is available to Greenbelt, a brief description of the events surrounding the death or incident.

I. BASIC CARE

20. Greenbelt shall ensure that staff members provide residents with appropriate basic care services that meet the residents individual needs. Among other things, Greenbelt shall ensure that all residents receive prompt and

appropriate medical care, and complete nutritional and hygiene care. Greenbelt shall care for the residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

J. COMPREHENSIVE ASSESSMENT AND CARE PLAN

21. Greenbelt shall ensure that there is a timely, complete, and accurate minimum data set (MDS) and a current, complete and accurate interdisciplinary care plan in each resident's chart. Greenbelt shall conduct, at the time of each resident's admission and periodically thereafter (at least annually and promptly after a significant change in the residents physical or mental condition), a comprehensive, accurate, standardized assessment of each residents functional capacity with input by all relevant disciplines.

22. Greenbelt shall ensure that within seven (7) days after the completion of the comprehensive assessment, an interdisciplinary team develops a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, mental and psychosocial needs that are identified in the comprehensive assessment. The care plan shall describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being and must meet professional standards of quality. Greenbelt shall ensure that each resident's comprehensive care plan is implemented in a timely manner by appropriate and adequately trained staff. Greenbelt shall examine each resident no less than once every three (3) months and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

K. ACTIVITIES

23. Greenbelt shall provide residents with sufficient, meaningful activities both during the week and on the weekends to ensure that the residents attain or maintain the highest practicable physical and psychosocial well-being. Greenbelt shall provide for an ongoing structured program of activities designed to meet the individual interests and physical and psychosocial well-being of each resident, and Greenbelt shall provide medically-related social services to attain or maintain the highest practicable physical and psychosocial well-being of each resident. Greenbelt shall ensure that unit-based activities are provided for those residents unable to attend activities elsewhere. Greenbelt shall evaluate the activities programs for effectiveness and modify its programs as warranted.

L. CHEMICAL AND PHYSICAL RESTRAINTS

24. As required by law for all facilities, Greenbelt shall ensure that physical and chemical restraints are used only pursuant to accepted professional standards and that they are never used as punishment or for the convenience of staff. Greenbelt shall assess, document, advocate and ensure that any restraints used, whether chemical or physical, are the least restrictive restraints appropriate for the resident and the situation. An interdisciplinary team will review and evaluate the need for restraints in all cases. Greenbelt recognizes that it has an obligation to seek the least restrictive restraint for residents.

25. Greenbelt shall ensure that appropriate physician orders are obtained and followed before physical restraints are utilized and shall at all times seek the implementation of the least restrictive alternative for its residents.

26. Greenbelt shall only use psychotropic medication in accordance with accepted professional standards and where there is an appropriate psychiatric or neuropsychiatric diagnosis. Greenbelt must evaluate the ⁶⁹⁴availability of behavior management prior to the use of medication. As required by law for all facilities, Greenbelt must not use psychotropic medication as punishment, in lieu of a training program, for behavior control, without a psychiatric or neuropsychiatric diagnosis, or for the convenience of staff.

27. Absent emergency circumstances, Greenbelt shall ensure that prior to using psychotropic medication, other less restrictive techniques have been systematically tried and have been demonstrated to be ineffective. Prior to using psychotropic medication, Greenbelt will also ensure that:

(a) a psychiatrist reviews the current medication regimen of each individual to determine whether the type and dosage of the medication is appropriate and still necessary, and recommends any changes in the medication regimen;

(b) the psychiatrist consults with the resident's primary care physician, nurse, and other appropriate members of the resident's interdisciplinary team, to determine whether the harmful effects of the residents mental illness clearly outweigh the possible harmful side effects of the psychotropic medication and whether reasonable alternate treatment strategies are likely to be less effective or potentially more dangerous than the medication.

M. PSYCHIATRIC AND RELATED SERVICES

28. Greenbelt agrees to develop and implement a professionally appropriate system to: (a) regularly monitor the progress of the Greenbelt's residents with mental illness to ensure that staff members are continually taking whatever steps are necessary and appropriate to address the individuals mental health needs; (b) provide ongoing monitoring of the efficacy of treatment and make revisions in the treatment plan when warranted; (c) implement a protocol whereby a psychiatrist promptly sees any resident with a diagnosis of mental illness who has recently exhibited violent or threatening behaviors.

29. Greenbelt shall develop and implement an adequate and appropriate system, utilizing an interdisciplinary approach and based on generally accepted professional standards, for detecting, reporting, and responding to any drug induced side effects of psychotropic medication; take special care to adequately and appropriately monitor involuntary movement side effects; adequately train and in-service appropriate nursing and direct care staff in how to properly monitor and document medication side effects.

N. MEDICAL CARE

30. Greenbelt shall ensure that residents receive adequate preventive, chronic, routine, acute, follow-up, and emergency medical care in accordance with generally accepted standards of care. Greenbelt shall provide the necessary health care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care. To that end, Greenbelt shall ensure that a physician is available twenty four (24) hours a day and seven (7) days a week to address changes in resident's medical conditions which warrant medical intervention.

31. Greenbelt agrees to hire and retain a full time certified nurse practitioner (CNP) for the facility. The CNP shall be identified within fourteen (14) days from the date of this of this Order. The CNP shall be paid a competitive salary. The CNP shall be on-site at the facility on a full-time basis. The responsibilities of the CNP include, but are not limited to, the following:

a. Consistent interaction with Greenbelt's Medical Director in order to ensure that appropriate medical care is being rendered to residents;

b. Coordination of care with all attending physicians in order to ensure that appropriate medical care is being rendered to each resident;

c. Prescribing and administering of medications in accordance with a nurse practitioner's scope of practice in conjunction with the attending physician and/or Medical Director;

695 d. Review all current and relevant prior laboratory values for residents in a manner which ensures that the residents' full medical *695 conditions are promptly evaluated and addressed;

e. Ensure effective communication among all disciplines within the nursing home, including but not limited to, nursing, medical, dietary and pharmacy, in order to coordinate care and timely address any change in a resident's medical condition.

32. The Medical Director shall ensure that all attending physicians work collaboratively with the certified nurse practitioner. In the event that an attending physician disagrees with any course of treatment recommended by the certified nurse practitioner or if an attending physician does not respond in a timely fashion to a resident's need for medical care, the Medical Director shall immediately review the resident's clinical condition and take all necessary and appropriate steps to ensure that timely medical care is provided.

33. The Medical Director, Certified Nurse Practitioner, and Greenbelt's Quality Assurance Committee shall undertake a specialized clinical review of medical care in connection with:

- a) residents receiving specialized rehabilitation care;
- b) physical and occupational therapy services and the frequency of resident contractures;
- c) use of psychotropic and anti-depressant medication;
- d) unplanned weight changes;
- e) bowel maintenance and untreated incontinence issue; and
- f) pharmacy operations, including policies for use of psychotropic and anti-depressant drugs;
- g) the reporting of any response to laboratory results.

The results of this specialized clinical review shall be reported with recommendations to the Temporary Manager as defined in paragraph 44, Monitor and the Parties within thirty (30) days from the date of this Order. Greenbelt's rights under applicable state law governing the use by third-parties of information pertaining to the quality assurance process are not waived.

34. Greenbelt shall take all reasonable steps, including prompt intervention by its Medical Directors, or revocation of physician privileges at Greenbelt, to ensure that residents receive the medical care required under paragraphs 30 and 33, and as otherwise necessary, including that:

- a. Physicians promptly obtain and review all laboratory and test results, document the responses in the residents' charts and take appropriate actions to address any abnormal results;
- b. Physicians complete monthly notes in the residents charts on a timely basis;
- c. Physicians do not rely inappropriately on telephone orders in treating residents;
- d. Physicians address promptly residents significant or undesirable weight loss and personally provide continual follow-up until the situation is adequately addressed;
- e. Health care of all diabetic residents comports with generally accepted medical practice;
- f. As indicated by accepted professional standards of care, in the event of a medical emergency involving a resident, including status epilepticus, facility staff will immediately call an ambulance, and will initiate appropriate emergency interventions while awaiting arrival of the ambulance prior to transport of the resident to the closest appropriate health care facility;
- g. Physicians conduct comprehensive health care evaluations of all residents;
- h. Physicians determine what specialized medical services are required for the residents and ensure that such services are timely provided whenever necessary to evaluate or treat the residents medical problems;
- i. An integrated medical plan of care for each resident exists;
- j. Each resident's medical status and progress in response to the residents medical plan of care is regularly and adequately reviewed and all changes appropriately documented;

k. Each resident's drug regimen is free from unnecessary drugs, i.e., any drug used in excessive dose, for excessive duration, without adequate monitoring, without *696 adequate indications for its use, in the presence of adverse consequences which indicate the dose should be reduced or discontinued, or any combinations of the reasons set forth herein;

l. Adequate and appropriate interdisciplinary communication among relevant professionals especially between and among physicians and nurses;

m. physicians communicate with the pharmacist pertaining to therapeutic responses by residents to prescribed medications.

O. NURSING CARE

35. Greenbelt shall ensure that residents receive adequate and appropriate nursing care, and that nurses perform their responsibilities in keeping with accepted professional standard of care by adequately identifying health care problems, notifying physicians of health care problems, monitoring and intervening to ameliorate such problems, and keeping appropriate records of residents health care status. Greenbelt shall provide all necessary nursing care and services to attain or maintain the residents highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessments and plans of care for each resident.

Greenbelt shall take, at a minimum, the following measures:

- a. Conduct adequate comprehensive nursing assessments, with quarterly updates the nursing care needs of the residents;
- b. Develop nursing protocols and develop and implement adequate and appropriate comprehensive interdisciplinary care plans to address each residents health care needs;
- c. Routinely perform ongoing monitoring of serious medical conditions, including such basic procedures as taking vital signs and measuring weights;
- d. Implement a system for recording important information about a residents status to monitor changes;
- e. Regularly monitor the progress of residents to ensure that staff members are continually taking whatever nursing steps are necessary for the health care of the individual;
- f. Communicate essential information to physicians;
- g. Follow physician orders or document fully why a physician order was not expressly followed;
- h. Administer medications in a timely manner consistent with accepted nursing practice and provide the necessary supervision and training to minimize medication errors and if a medication error occurs, promptly investigate the error, properly document it and take appropriate corrective action;
- i. Ensure that residents are provided with adequate skin care, nutrition, turning and positioning to decrease the likelihood of skin breakdown; perform skin care assessments and ongoing treatments and therapy to prevent skin breakdown; comply fully with the particular provisions of Exhibits A and B;
- j. Follow standard infection control procedures maintain aseptic technique and conditions at treatment sites; require staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice; establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection;

k. Ensure that resident's nutritional intake is adequate, that weights are routinely and accurately recorded, and that residents receive appropriate diets, adequate amounts of food, and sufficient quantities of fresh fluids to ensure proper hydration; ensure that residents are provided with proper mealtime assistance and supervision and with appropriate eating assistance devices and adaptive equipment where necessary; ensure that residents with significant or undesirable weight gains or losses are promptly seen by nursing and dietary staff and provided with continual follow-up until the situation is adequately addressed; ensure that each resident receives food prepared by methods that conserve *697 nutritive value, flavor, and appearance food that is palatable attractive, and at the proper temperature prepared in a form designed to meet individual needs; offer substitutes of similar nutritive value to residents who refuse food served. This provision shall not limit individual health care decisionmaking under applicable law;

l. Utilize an interdisciplinary approach to properly assess and appropriately treat residents with problems and residents who are unable to eat orally in accordance with accepted professional procedures;

m. Procure sufficient nursing staff to ensure adequate continuity of resident care so that the facility is not excessively reliant on temporary contract nurses; employ sufficient nursing staff to provide nursing and related services on a 24-hour basis to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

P. THERAPY SERVICES

36. Greenbelt shall provide each resident in need of such services with adequate and appropriate physical therapy and occupational therapy services.

Q. MEDICAL RECORDS

37. Greenbelt shall ensure that they maintain medical records for each resident that comports with accepted professional standards and includes current information with respect the individuals care, medical treatment, and activities. Greenbelt shall maintain clinical records on each resident in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized. Greenbelt recognizes that if clinical responses are not clearly documented, there is a rebuttable presumption in this proceeding that they did not, in fact, occur.

38. Greenbelt shall ensure that professional staff, including physicians, psychiatrists, therapists, nurses, as well as direct care staff, make timely and appropriate notes in the residents records detailing the residents progress condition, and detailing the steps needed to fully meet the resident's needs. Greenbelt shall ensure that all professional staff utilize such records in making care, medical treatment and training decisions.

R. QUALITY ASSURANCE

39. Greenbelt shall maintain a quality assessment and assurance committee that develops and implements appropriate plans of action to correct identified quality deficiencies, including all plans of correction related to the State of Maryland's surveys and deficiencies from January 1998 to the present.

S. STAFFING

40. Greenbelt shall ensure that a sufficient number of professional and non-professional staff, especially nurses, are employed to fully met the needs of the residents during the evening, and on the weekend.

T. STAFF TRAINING

41. Greenbelt shall provide a training program to ensure that all professional and direct care staff who provide services to residents are adequately trained to implement the requirements of this Consent Order and are thereafter provided with in-service training on a regular basis. Greenbelt shall provide a training program for all employed and contract personnel, regarding, at a minimum: nutrition; wound care and infection control; abuse and neglect; appropriate drug therapies for the elderly; diabetes; behavior modification; renal disease; mental health needs of residents; and a coordinated interdisciplinary approach to providing care to residents. Greenbelt shall ensure that all nurse aides are appropriately trained and demonstrate competence in the performance of their duties. Greenbelt also agrees to report all training sessions to the Monitor.

42. Greenbelt shall ensure that its employed and contract medical staff regularly attends continuing medical education programs that address geriatrics, including but not limited to, medical therapies utilized in wound care and diabetic care for long-term care residents.

698 *698 **U. TEMPORARY MANAGEMENT**

43. Greenbelt shall hire and install a Temporary Manager at Greenbelt selected by the United States in consultation with Greenbelt within ten (10) days from the date of the Order. The Temporary Manager shall be paid a competitive salary. The Parties agree that the Temporary Manager shall have all of the regulatory authority set forth in 42 C.F.R. § 488.415(a) including but not limited to independent authority to hire, terminate or reassign, staff, obligate facility funds, alter facility procedures, and manage the facility to correct all deficiencies identified in Greenbelt. Greenbelt shall employ the Temporary Manager until Greenbelt is in substantial compliance with all federal and State law requirements, and for a period of at least nine (9) months thereafter. The Temporary Manager may be removed from his/her position for cause by Greenbelt with the assent of the United States. The Temporary Manager shall coordinate his/her activities with the Monitor to ensure that appropriate decisions are made pertaining to staffing and quality of care issues for those residents residing at Greenbelt.

The Temporary Manager shall undertake a specialized review of personnel issues for all Greenbelt employees and provide recommendations to the Parties and the Monitor within thirty (30) days from the date of this Order on issues relating to morale, use of contract employees, wages, qualifications, training, and compliance with federal employment laws.

The Temporary Manager shall undertake a specialized review of all Greenbelt's policies, protocols and performance in connection with all plans of correction implemented in connection with State of Maryland's surveys and administrative actions since January 1998 and shall provide a report and recommendation to the Parties and the Monitor within thirty (30) days of the date of its hiring.

V. MONITOR

44. A Monitor, selected by the United States and paid by Greenbelt, shall be appointed within ten (10) days from the date of this Order, and shall have full authority to oversee Greenbelt's compliance with the provisions of this Order and independently assess Greenbelt's compliance with this Order. The Monitor shall not be bound in his or her conclusions, in whole or in part, on the basis of any certification by the Health Care Financing Administration. In addition, the Monitor shall advise management and staff as to possible procedures that, in the Monitor's view, may be implemented to facilitate compliance with this Order.

45. Greenbelt agrees to allow the Monitor access to Greenbelt Nursing Home at any time and without prior notice, to assess compliance with this Order. The Monitor shall visit Greenbelt without appointment within his/her discretion but at least three times (3) monthly until this Order is terminated and shall have immediate access to all nursing home residents and their records. The Monitor shall also have access to relevant documents and records in the possession of Greenbelt and to Greenbelt's quality assurance reviews for purposes of ensuring

coordination of responses to identified problems. Upon request, the Monitor will be promptly provided with access to and/or copies of incident reports investigations, resident records, and any other records necessary to enable the Monitor to fulfill his or her duties under this Order. The Monitor shall attempt to coordinate his or her activities with relevant personnel in order to minimize disruption in the day to day operations of the facility. At all times, the Monitor shall respect the privacy and dignity of all residents.

46. The Monitor shall create a report documenting any adverse findings relating to compliance with this Order and shall present the report within ten (10) calendar days of the site visit to the Greenbelt, to the Parties. The Monitor shall submit to the Parties a quarterly status report regarding the Greenbelt's compliance with the terms of this Order. The Monitor may confer and correspond with the Parties on an *ex parte* basis.

47. The Parties agree that the Monitor serves at the behest of the United States and may be removed from the Monitor position and replaced solely at the discretion of the United States.

699 *699 48. The Monitor may retain independent consultants, as needed, to meet his or her obligation under this Order. Greenbelt shall bear all reasonable costs of the Monitor.

W. ACCESS TO GREENBELT'S FACILITIES

49. In connection with implementation of the obligations under this Order, the Monitor, the United States and its agents shall have the right to request, inspect and copy facility records, resident charts and other documents, including all financial data pertaining to Greenbelt Nursing Center, conduct interviews with residents and staff outside the presence of supervisory staff or counsel, and observe activities normally conducted at the various facilities to assess compliance with this Order. The Monitor, the United States and its agents agree to respect the privacy and dignity of all residents.

X. DURATION OF PRELIMINARY INJUNCTION

50. The Court shall retain jurisdiction of this action for all purposes under this Order until Greenbelt has fully and faithfully implemented all provisions of the Order and until this action is otherwise dismissed or reduced to judgment.

Y. ENFORCEMENT OF CONSENT ORDER

51. In the event that Greenbelt and/or their agents, employees contractors and subcontractors fail to comply materially in good faith with the terms of this Order, that is, to meet any obligation under this Order that has a significant impact on the quality of care rendered to any resident or residents, or should any of Greenbelt's representations be materially false the United States may at its sole discretion, exercise all rights and responsibilities under federal law and further may seek a Contempt of Court based on the failure of Greenbelt and/or their agents, employees and subcontractors to materially comply with this Consent Order. The parties agree that, after a finding of civil contempt, a penalty of ten thousand dollars (\$10,000) per day shall be assessed, beginning upon the finding of contempt and lasting until all defaults are cured. After curing all defaults, the Greenbelt may petition the Court to lift its contempt order and to withdraw the imposition of any penalties.

Z. COSTS

52. All parties shall bear their own costs, including attorney fees, except that Greenbelt shall bear all reasonable costs associated with implementation of this Preliminary Injunction, including all costs associated with the Temporary Manager and the Monitor.

ZZ. RETALIATION

53. Greenbelt and its agents, employees and/or subcontractors agree not to take any retaliatory action against any individual or individuals who cooperated with this investigation and/or who cooperates with the United States or the Monitor throughout the pendency of this action.

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