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DEC 16 1987

CERTIFIED MAIL

Honorable Richard F. Celeste  
Governor, State of Ohio  
State House  
Columbus, Ohio 43215

Re: CRIPA Investigation of Montgomery  
Developmental Center

Dear Governor Celeste:

On March 5, 1987 we wrote to inform you of the findings of our investigation of the Montgomery Developmental Center (MDC) pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA). Our investigation revealed seriously deficient medication practices and a failure to protect residents from unreasonable risks of harm to their health and safety. We arranged through the office of the Attorney General of Ohio to return to MDC last summer to assess progress toward remedying the deficiencies noted, including the extent to which the facility had implemented the plan of correction it offered to the Department in May. Our follow-up expert tour revealed that MDC has made substantial efforts to improve medication practices but has not addressed the issue of resident safety with equal vigor and success.

In the area of medication practices, our expert reported that the staff of MDC "have made a considerable and positive effort to reduce the dependence on psychotropic drugs." See Report of Montgomery Developmental Center Survey by Robert B. Kugel, M.D., a copy of which is attached for your information and use, at 6. The facility has engaged the services of a consulting psychiatrist and, with his assistance, has reduced the total number of residents on psychotropic drugs, as well as the number of residents who receive more than one such drug in combination. A system is in place to insure periodic review of residents who continue to receive psychotropic medication. Our expert found the records of residents on psychotropic drugs contained the reasons for the use of the drugs, and the plan for their continued use or reduction. Although the number of residents receiving psychotropic drugs is still high, efforts at MDC to reduce and ultimately eliminate unnecessary use of psychotropic medication continue, and staff are to be congratulated for their success to date.

When we reported the findings of our CRIPA investigation, we also noted the inordinate number of accidents and other incidents at MDC. As a result of these incidents, MDC residents frequently sustained injuries such as cuts, lacerations, bruises and fractures. Based on his most recent visit and review of facility documents, our expert concludes that the pattern of incidents has remain unchanged. The number of accidents and resulting injuries is still very high. Certain residents whose records our expert reviewed were frequently involved in incidents, yet there was no recognition of the pattern of injuries or attempt to prevent further harm. Supervision of residents is inadequate to protect them from injuring themselves and others. Staff lack effective training in how to supervise and otherwise interact with residents to insure their safety. Despite the measures contained in MDC's plan of correction to address this issue - all of which were to be completed by April 1987 and ongoing thereafter, MDC residents remain subject to unreasonable risks of harm to their personal safety. MDC must immediately begin to monitor unusual incidents, identify trends in their occurrence and, most importantly, follow-up this analysis with action necessary to prevent their reoccurrence.

An integral part of the corrective action necessary will be the provision of minimally adequate training to residents to reduce the risk of harm. As MDC reduces its previous excessive use of psychotropic medication to control behavior, at least a temporary increase in the frequency of behavior problems exhibited is to be expected. Our expert anticipated the need for implementation of training programs designed to reduce or eliminate unreasonable use of restraints and risks of harm for residents who are in need of such programs to function free of restraint, including chemical restraint, and without injuring themselves. Thus far, efforts to eliminate the over-reliance on medication have ignored the equally important need for minimally adequate training programs. There is little coordination between the medical and psychology staff. The recently hired consulting psychologist spends an inadequate amount of time at MDC and does not directly provide training to residents. The psychology staff is insufficient to develop training programs, secure the necessary approval for programs, monitor programs, modify training programs as needed, train direct care staff in the implementation of programs, and perform required psychological testing on residents. Residents are not receiving the training programs to which they are entitled to protect them from undue restraint and from injury to themselves due to their self-injurious and aggressive behavior. Youngberg v. Romeo, 457 U.S. 307 (1982). Development and implementation of necessary and appropriate training programs is critical to MDC's efforts to conform medication practices to accepted professional standards and to create conditions in which residents are free of unreasonable risks of harm to their personal safety.

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We previously allowed MDC a brief period of time to remedy the problems identified by our CRIPA investigation. We chose this course of action because of the unique circumstances presented, including the fact that remedial action was planned and well underway at MDC. In the three months that preceded our return visit, MDC improved its medication practices and there is reason to believe that progress in this area will continue. We are most concerned at this time about the persistent failure of MDC to protect residents from unreasonable risks of harm. It is apparent from our follow-up review of conditions that MDC has not implemented its remedial plan in this regard. Our expert predicts that the existing, serious problem of frequent injuries among MDC residents will remain unchanged or worsen as the drug reduction program continues.

It remains our preference to achieve the remedial measures necessary at MDC in an amicable and cooperative fashion. We are cognizant of the improvements made and of the provisions in the remedial plan responsive to the remaining deficiencies. MDC must increase its efforts to review unusual incidents, identify problem areas and residents who sustain frequent injuries, and follow-up this analysis with prompt corrective and preventive action. It is also necessary to provide additional training to staff, improve supervision of residents by staff and devote much greater attention to providing adequate training programs to residents. The remedial plan provides for these steps and we continue to believe that, if fully implemented, the measures planned may well be adequate to satisfy our concerns. Accordingly, we propose a return of the facility in an additional three months, at which time we will assess the adequacy of conditions.

We will contact attorneys in the office of Attorney General Celebrezze shortly to discuss our proposal further, including our need to return MDC and possibly to review documentation pertaining to remedial efforts in the interim. Again, we wish to thank you, Attorney General Celebrezze's staff, officials of the Ohio Department of Mental Retardation and Developmental Disabilities, and Superintendent Williams and his staff at MDC for your cooperation. We wish to resolve this matter in a manner that best serves the interests of the residents and comports with

our obligation under CRIPA and believe that with ongoing remedial efforts at MDC and your continued cooperation, the course of action we propose will enable us to do so.

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

cc: Anthony J. Celebrezze, Jr.  
Attorney General of Ohio

Robert Brown, Director  
Department of Mental Retardation  
and Developmental Disabilities

Fred L. Williams, Superintendent  
Montgomery Developmental Center

Christopher K. Barnes  
United States Attorney