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AUG 19 1991

REGISTERED MAIL  
RETURN RECEIPT REQUESTED

Honorable Sharon Pratt Dixon  
Mayor of the District of Columbia  
District Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C 20004

Re: District of Columbia Village Nursing Home  
CRIPA Investigation

Dear Mayor Dixon:

On August 20, 1990, we notified the Mayor's Office of our intention to investigate the District of Columbia Village Nursing Home (D.C. Village) pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. §1997 et seq. As contemplated by CRIPA, we are now writing to inform you of the findings of our investigation and to outline the minimum measures necessary to remedy the unconstitutional conditions at D.C. Village.

In connection with our investigation, attorneys from the Department of Justice toured D.C. Village on January 24-25, 1991, with two geriatric care specialists - a psychiatrist and a clinical nurse. In addition to touring the facility, each consultant observed residents, conducted interviews and reviewed care records and other documents. Throughout the investigation, District representatives were helpful and cooperative. We appreciate their efforts.

D.C. Village is licensed and designed as a long-term care nursing home for geriatric patients. However, the District has also chosen to place at the facility persons with acute and chronic mental illness, mental retardation, severe physical handicaps and children who are mentally ill, mentally retarded or both, or simply "boarder babies" -- all placed at D.C. Village as overflow from other parts of the District's institutional care system. Thus, D.C. Village is being asked to function as a chronic care hospital, as an acute care psychiatric treatment facility and as a facility for the developmentally disabled,

cc: Records Chrono Peabody Schoen Deutsch Alford Hold

although it is organized, staffed, funded and licensed as a nursing home.

Our investigation found that D.C. Village is generally providing adequate nursing and medical care for its geriatric patients. Likewise, adequate custodial care is being provided for the children, including "boarder babies," residing at the facility. However, D.C. Village is simply not equipped to provide the specialized treatment and training required for its mentally ill and mentally retarded populations. Were these residents to be appropriately placed in care facilities designed and staffed to meet their specialized needs, the chances that they would receive appropriate training and treatment would be dramatically increased. Nevertheless, to the extent that mentally ill and mentally retarded individuals are confined at D.C. Village, the District is required to provide adequate psychiatric care and such training as would ensure that they are not exposed to unreasonable risks to their personal safety and are free from undue bodily and chemical restraint. See Youngberg v. Romeo, 457 U.S. 307, 324 (1982).

Although there have been improvements made at D.C. Village in recent months, our investigation identified several conditions which continue to pose health and safety risks to D.C. Village residents, thereby denying them their constitutional rights to adequate medical care and a reasonably safe environment. As detailed below, the deficiencies that have caused unconstitutional conditions include: D.C. Village's failure to provide minimally adequate training programs sufficient to ensure that residents are free from undue restraint; inadequate psychiatric care; insufficient numbers and training of staff; and inadequate recordkeeping.

#### I. Inadequate Training Programs

D.C. Village fails to provide professionally developed individualized training programs that are sufficient to ensure that residents are not subjected to unwarranted and unreasonable restraints. Following a careful review, our consultant psychiatrist concluded that physical and chemical restraints are both overused and dangerously misused by D.C. Village staff on residents because of the unavailability of trained and supervised professional and direct care staff, as well as the lack of essential training programs.

D.C. Village staff consistently fail to identify and eliminate circumstances which provoke problematic behaviors in residents, particularly those who are mentally retarded. Both of our consultants found that staff intervention focuses almost exclusively on restraint to control maladaptive or aggressive behavior, without resort to other recognized therapy methods. Throughout their tour, our consultants observed physical

restraints (posey vests) routinely fastened backwards which places residents at risk of strangulation.

Likewise, our consultants found current D.C. Village behavioral programs to be inadequate. For example, the records reviewed document that residents demonstrating self-injurious, physically abusive or other destructive behaviors are not being provided appropriate training to reduce or eliminate such behaviors.

In addition, the limited behavior programs that are provided are not data based and thereby fail to meet professional standards. D.C. Village lacks a facility-wide behavioral observation system that is used by all staff. Absent appropriate data, D.C. Village staff cannot evaluate whether behavior programs are effective.

Staff also fail to collect and provide behavioral data to the consulting psychiatrist for evaluation of the need for continued medication. The psychiatrist is thus limited in his ability to determine whether medication should be adjusted or withdrawn resulting in the risk of undue chemical restraint. D.C. Village also fails to provide adequate behavioral programming for residents taking psychotropic medication. The programming that does exist, moreover, is not integrated with the use of psychotropic medication.

Thus, D.C. Village's failure to provide professionally designed and implemented individualized training programs has resulted in residents being subjected to unreasonable physical and chemical restraints.

## II. Inadequate Psychiatric Care

Our consultants concluded that D.C. Village's use and monitoring of psychoactive medications depart from accepted medical practice and fail to protect residents from serious risks of harm. Our consultants found that D.C. Village has inadequate procedures for monitoring the effectiveness of medications prescribed. As a result, residents are not treated for side effects or may continue to receive medications that are not effective and do not resolve their medical conditions. For example, high dosages of psychoactive medications are widely used, despite the absence of relevant clinical indications. Necessary evaluations of medications are not made nor is there evidence of attempts at "drug-holidays" or at gradual reduction after extended usage at the same dosage. Of equal concern is the frequent use of psychoactive drugs on a PRN ("as needed") basis. The use of psychotropic medications without appropriate monitoring by qualified professionals can result in serious harm to residents.

Our interviews with the nursing staff disclosed that D.C. Village's psychiatric consultant rarely comes to the facility to review resident records or speak to staff. Residents are often sent to the psychiatrist's office without their records. The exchange of behavioral data between the consulting psychiatrist and D.C. Village is minimal. Without such information, the psychiatrist's ability to determine whether medication should be adjusted or withdrawn completely is undermined. Residents taking such medication are placed at increased risk of being subjected to undue chemical restraint or harm from drug side-effects.

### III. Insufficient Numbers and Training of Staff

Our investigation found that D.C. Village is generally providing adequate nursing and medical care for its geriatric and adolescent patients. However, D.C. Village is simply not equipped to provide the specialized treatment and training required for its mentally ill and mentally retarded populations.

Given the pressing needs of its residents, the most glaring personnel deficiency is the shortage of staff with specialized training. As noted, while D.C. Village is licensed as a nursing home, a significant number of residents there have serious psychiatric illnesses and/or are developmentally disabled, severely impaired and difficult to manage. Our consultants concluded that the current D.C. Village staff are inadequate to deal with the complex psychiatric and medical needs of these populations.

Both of our consultants concluded that D.C. Village has an insufficient number of psychiatric and psychology staff to provide adequate care and training and to render necessary professional judgments. Consequently, residents are not receiving the care and training necessary to protect them from unreasonable risks to their personal safety and to ensure freedom from undue bodily restraint.

### IV. Inadequate Recordkeeping

Inadequate recordkeeping practices have compromised D.C. Village's ability to provide adequate care to its residents. Our consultants found that D.C. Village lacks a record-keeping system sufficient to provide accurate, relevant and timely information upon which professional decisions may be based regarding the necessary care for residents. Our consultant concluded that, although resident records are well maintained by nursing staff, meaningful progress notes by other appropriate professionals are either absent or inadequate. Records lack sufficient information to justify orders for medications or changes in medication, thereby adding to the difficulty of providing continuity of care. The absence of such data undermines the ability to assess the interaction of drugs and

behavioral intervention, a process necessary to evaluating treatment efficacy.

V. Minimal Remedial Measures

The aforementioned conditions deprive D.C. Village residents of their constitutional rights. To rectify these deficiencies and to ensure that constitutionally adequate conditions are established and maintained at D.C. Village, we propose to enter into a legally binding and judicially enforceable agreement with the District of Columbia that provides, at a minimum, for the following remedies:

1. D.C. Village must modify and/or implement medication practices to ensure that they comport with accepted professional medical standards;
2. D.C. Village must provide professionally designed training programs for those residents for whom such training can reduce or eliminate unreasonable risks to their personal safety and/or the use of undue bodily restraint. Residents with self-injurious, physically abusive or other destructive behaviors must be identified immediately and provided training to reduce or eliminate such behaviors;
3. D.C. Village must hire and employ a sufficient number of qualified professional staff to provide adequate psychiatric care, as well as to design and implement the kind of training programs described in paragraph 2 above;
4. D.C. Village must train staff in behavior therapy and methodology sufficient to provide D.C. Village residents with minimally adequate training, as described in paragraph 2 above;
5. D.C. Village must improve recordkeeping and administrative practices to enable qualified professionals to make judgments regarding resident treatment and training.

As we have noted, many of the above remedies would be rendered moot if the decision were made to appropriately place individuals in accordance with their specialized needs in other facilities able to meet such needs. Failing that, the above remedies are necessary in order to afford D.C. Village residents their constitutional rights.

Information about Federal financial assistance which may be available to assist with the remedial process can be obtained through the United States Department of Health and Human Services' Regional Office (Director, Intergovernmental and Congressional Affairs), and through appropriate officials of the United States Department of Education.

Our attorneys will be contacting legal counsel for the District's Department of Human Resources shortly to arrange a meeting to discuss this matter in greater detail. In the meantime, should you or your staff have any questions regarding this matter, please feel free to call Arthur E. Peabody, Jr., Chief, Special Litigation Section, at (202) 514-6255. To date, we have been able to conduct this investigation in the spirit of cooperation intended by the Civil Rights of Institutionalized Persons Act, and look forward to continuing to work in the same manner with District officials toward an amicable resolution of this matter.

Sincerely,

John R. Dunne  
Assistant Attorney General  
Civil Rights Division

cc: Honorable John Payton  
Corporation Counsel  
for the District of Columbia

Jay Stephens, Esquire  
United States Attorney  
for the District of Columbia

Mr. Terry Thomas  
Administrator  
D.C. Village