

HARRIET A. FIELDS, Ed.D., R.N.

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September 4, 1995

U.S. v. District of Columbia



NH-DC-001-013

The Honorable Thomas F. Hogan
U.S. District Court Judge
U.S. District Court for the District of Columbia
333 Constitution Avenue, NW, 4th Floor
Washington, DC 20001

Re: Stipulated Order entered on July 6, 1995, in the matter United States v. District of Columbia, et al., Civ. No. 95-948, D.C. Village Nursing Home

Dear Judge Hogan:

The enclosed is a Preliminary Status Report on the implementation of the Court Order. Upon approval of the budget by the Court, full court monitoring activities can be commenced. I respectfully refer the Court to my August 10, 1995 submission to the Court, urging the need for timeliness of approval of the budget. Upon approval of the estimated budget by the Court and approval of payment schedule identified in my August 10 submission, I will submit my first invoice for court monitoring related activities to date.

I look forward to working with the Court in the service of the long term care residents of the District of Columbia.

Sincerely,

A handwritten signature in cursive script that reads "Harriet A. Fields".

Harriet A. Fields, Ed.D., R.N.

encl.

PRELIMINARY STATUS REPORT
United States of America v. The District of Columbia, et. al
Civ. No. 95-948 TFH, Re: D.C. Village Nursing Home

Submitted by:

Harriet A. Fields, Ed.D., R.N.
Court Monitor

Date:
September 5, 1995

Each of the items in the Court Order interrelate to total quality care, quality of life, and residents rights, and although the following will relate to the areas listed in the Court Order, it is difficult to separate from a total picture of factors impinging on the residents of D.C. Village Nursing Home (DCV).

Decubitus Ulcers

Within the past several months treatment nurses have been implemented at DCV whose sole responsibility is to treat decubitus ulcers. There are two treatment nurses for the day shift and two for the evening shift. On each shift one nurse has responsibility for Units 5A, 5B, 4A, 4B and the second treatment nurse has responsibility for Units 2A, 2B, 3A, 3B. This provides coverage for the entire facility. On Thursday evening, August 31, the Court Monitor observed the treatment nurse on Unit 2B treat a healing decubitus ulcer with proper sterile technique.

The treatment nurses on the evening shift are contract agency nurses, however, they are permanently assigned to DCV during the week, Monday through Friday. At this point in time, it is unclear to the court monitor why these nurses are contract employees rather than DCV staff.

Before the implementation of the treatment nurses, skin care was the responsibility of the licensed nurses on each shift on each unit, which is appropriate for professional nursing practice. Interviews on August 31 with licensed nurses on the evening shift elicited comments that decubitus ulcers are decreasing, skin care has improved. Apparently, skin care was not a routine part of licensed nursing practice at DCV before the implementation of the treatment nurses.

Further Court Monitoring activities

Upon approval of the budget and availability of funds on a monthly basis: (1) resources will be brought in to assess on an ongoing basis all residents skin condition, chart reviews, round with treatment nurses, and interview staff and residents; (2) determine and assess decubitus ulcer treatment and skin care procedures on the weekend shifts when the treatment nurses are off; (3) assess role of inservice in education and training of all nursing personnel - certified nurse aides CNA's, licensed nursing staff, and medical staff, on routine skin care and decubitus ulcer care prevention on an ongoing basis. This activity is not to imply that the use of treatment nurses is not appropriate in this situation.

Payment of Vendors

One agency that supplies the majority of contract nurses for DCV stopped services from August 21 to August 31, 1995 for lack of payment beyond the 45 days stipulated in the Court Order.

On August 29, the Court Monitor requested of D.C. Government a list of vendors, payments, and outstanding payments. To date, this information has not been received.

Review of 30 Day Compliance Report

Upon approval by the Court of the Court Monitor budget and availability of funds on a monthly basis, a thorough assessment of accuracy of compliance report can be commenced.

Nurse Staffing

The Nurse Staffing chart in the 30 Day Compliance Report is not accurate. At no time are there seven CNA (certified nurse aides) on the day or evening shifts. On review of nurse staffing schedules in the nursing office, three CNA's are listed for day and evening shifts on most units. Each unit develops there own staffing schedule and submits it to the nursing office. As of August 31, only one unit has a staffing schedule submitted 90 days in advance.

On direct observation on each of the units on the evening shift of Thursday, August 31, there were three CNA's on all units except Unit 2B where there were four CNA's and Unit 5A where there were two CNA's.

Contract Nursing Staff

There are at least six to eight different contract agencies supplying staff to DCV. Many of the nurses are regularly assigned to DCV, however, not to the same units, which does not help afford continuity of care.

Further Court Monitoring Activities

Determine appropriate number of staff necessary to provide resident care. It may very well be that seven CNA's listed in staffing schedule in the 30 Day Compliance Report are not necessary to provide for quality care to residents as stipulated in the Court Order, and instead, what is needed is ongoing inservice education and training of existing levels of staff. It is also unclear at this point in time, whether DCV has been reimbursed by the federal government for the increased staffing levels listed on paper but which are an inflation of actual staffing levels.

Additional Concerns

At this point in time, the Court Monitor has been able to determine that there are a number

of conditions that are not listed in the Court Order, but directly relate to it and the ability of the staff to comply with the Court Order. These conditions are the following:

- (1) The announced closure of D.C. Village Nursing Home made in August 1995, by the District of Columbia City Council and the Mayor;
- (2) D.C. Office of Personnel policies that delay hiring of personnel on a timely basis and retaining personnel;
- (3) Current Union policies relating to weekend coverage;
- (4) Medical care coverage
 - (a) payment for
 - (b) knowledge level of current minimum standards of practice as identified in the Nursing Home Reform Law of 1987 and current regulations;
- (5) Most recent Health Care Financing Administration (HCFA) Survey Report of July 1995.

(1) Announced closure of DCV

This decision was announced in July-August of 1995, by D.C. Government officials with apparently little or no input from DCV residents, families, staff. According to the press, closure of DCV will help eliminate approximately 440 of the 2000 D.C. Government positions recommended to be cut by the D.C. Financial Control Board. However, according to a resource plan for personnel, staff who elect to remain D.C. employees and not take early retirement if they qualify are to be placed elsewhere in D.C. government, thus not eliminating positions.

The direct impact this closure announcement is having on the Court Order is that staff are resigning in understandable concern for their job security which adds to further use of contract staff and lack of continuity of care.

The primary impact of closing of DCV will be felt by the residents, some of who have lived at DCV for several years. There is a considerable body of literature on "transfer trauma". This is a situation whereby a significant proportion of institutionalized residents when relocated die within six months. Apparently this was even evident at DCV when Units 1A and 1B were closed and long time residents transferred to other units. Institutionalized elderly often 'give up their spirits' when familiar surroundings, people, and routines are altered and/or taken from them, beyond their control. The administrator estimates that at least ten percent of the current residents of DCV will be among the transfer trauma death statistics. This directly relates to the Court Order in the areas of decubitus ulcers and nutrition. Depression leads to inadequate nutrition which is conducive to the development of decubitus ulcers.

The Residents' Council is opposed to closure of DCV and has apparently recently sent a letter to the D.C. City Council.

(2) D.C. Government Personnel Policies

D.C. Government personnel policies are apparently impeding hiring in a timely manner needed replacement staff. For example, the Director of Quality Assurance term limit expired August 1, 1995. As of August 31, the position has not been reinstated. This Director of Quality Assurance has not been paid since August 1 and as of August 31 cannot continue service unless

reimbursed.

The multi-week delay in hiring personnel contributes to the heavy use of contract personnel. In telephone conversations with the Assistant Director of Personnel for the District of Columbia, Mr. Louis Norman, on August 30, the Court Monitor was told that there is an expedited hiring process in effect for DCV, the Director of Quality Assurance situation is an exception and "methods are being processed to remedy it." The Court Monitor is awaiting data from Mr. Norman on the number of qualified personnel who will be expedited to DCV, when this will occur, and the status of the Director of Quality Assurance employment.

(3) Current Union Policies Relating to Weekend Coverage

Local 2092 of AFSCME represents the nurse aides and Licensed Practical Nurses (LPN) at DCV. Contract agencies do not supply the nurse aides. Current union policies provide for every weekend off. This is not sufficient to cover the facility seven days a week, however further assessment must be done. Most facilities provide for every third weekend off. The Court Monitor met with the president of the local DCV employees union who was to present this situation to DCV member staff on August 31. The Court Monitor is awaiting outcome on a union compromise this working condition of their contract.

(4) Medical care coverage

(a) payment for:

Medical staff coverage at DCV apparently is being paid directly by the D.C. Government, whereas, it can apparently be appropriately billed under Medicare Part B, which apparently involves a simple means of applying for it. Thus, approximately one half million dollars a year in medical doctor salaries is unnecessarily being borne by the District of Columbia Government. At this point in time, it is unclear to the Court Monitor why this situation exists.

(b) knowledge level of current minimum standards of practice as identified in the Nursing Home Reform Law of 1987 and current regulations:

On cursory assessment, more of which will be done, it appears that medical staff, as well as nursing staff, are not knowledgeable of the minimum standards of practice for nursing facility residents as reflected in the Nursing Home Reform Law and current federal regulations. This is reflected in M.D. "requests" (orders) for decubitus ulcer treatment, physical and chemical restraints, parenteral nutrition. All these areas are directly related to the Court Order.

(5) Most recent Health Care Financing Administration (HCFA) Survey Report of July 1995

Four Level A violations were found. According to federal regulations, Level A deficiencies warrant the following:

- (a) a re-survey within 90 days of the last, by October 12, 1995;
- (b) DCV is to submit a Plan of Corrections;

If HCFA determines upon re-survey that DCV is still out of compliance with federal regulations and the plan of corrections is not acceptable, proceedings could be instituted which would result in:

- (a) termination of federal portion of reimbursement as of October 1 which would be approximately \$1.4 million dollars a month;
- (b) staff would not be reimbursed as of October 1;
- (c) DCV would be closed by October 31, 1995 leaving the residents without care and placement.

This scenario, if implemented directly relates to compliance with the Court Order.

Additional Initial Overall Assessment

The Court Monitor has met with the evening staff and night staff, the day nursing supervisory staff, administration, majority of the medical staff, and all the department heads. I have found them all to be dedicated and committed and concerned for the welfare of DCV residents. Much further assessments are needed. Education and training are needed immediately on the minimum standards of practice for nursing home residents as reflected in federal regulations and the areas in the Stipulated Court Order.