OA-501

COMMONWEALTH OF PENNSYLVANIA

February 11, 1980

SUBJECT: Comments on OMR Proposed Order

TO: George A. Kopchick, Jr.
Superintendent

FROM: J. Gregory Pirmann
Special Assistant to the Superintendent

General Provision #1

-I agree with the content of this point, but I believe that it requires expansion. I would like to see some accession by the plaintiffs to the notion (promulgated in the minority dissent of the Appeals Court) that, while community services are most favored, there is currently no legal obligation on the Commonwealth to provide such services. No law, up to and including the Developmental Disabilities Bill of Rights, outlaws congregate facilities. I know the intention of this proposal is to settle the Halderman controversy and my point may just prolong the haggling because the plaintiffs may refuse to concede, but I still believe it is important. The plaintiffs are attempting to establish law in this area that goes far beyond the legislative intent to favor community services over institutional services. If the state legislature or U.S. Congress chooses to outlaw institutions at some point in the future,so be it, but until that time, it should be established that current law allows both service options. The OMR proposal leaves this issue in limbo and could lead to a continuing series of litigations. until the point is established definitively.

General Provision #2

-If this is interpreted to require a full APR every three months, it will pose an administrative headache of monstrous proportions for us. Further definition of "quarterly review" is needed. If the intent of the

General Provision #2 (cont'd)

provision is to have "County defendants" provide a community "program plan", to be implemented upon exit from Pennhurst, then that should be clarified. As it reads now, this provision could place program planning for our clients in the hands of the counties, including while the clients remain here.

General Provision #4

-If this is a priority listing, what does it mean? If group (a) is the priority group, does that mean that placements would have to be provided for all Pennhurst Clients before ex-Pennhurst clients now at Embreeville or Woodhaven could be considered? That hardly seems appropriate especially as many of the clients transferred to Embreeville or Woodhaven can be served more readily by the existing community service system. I read this point as an attempt at defining the class, rather than assigning priorities to certain segments of the class. If priorities for placement are needed, the ones proposed in our plan written last year would be the most sensible.

General Provision #5

-My recurring aversion to timetables makes this provision unacceptable. If DPW binds itself, through a Court Order, to specific numbers of placements, will it be able to deliver on it's promises? Legislative support (read dollars) must still be forthcoming. What will be the potential consequences if the timetables are not met? To the point, what are the real chances of placing the remaining 54 school-age children by June 30, 1980?

The notion of providing respite care and short-term interventions at Pennhurst for a specific clientele is excellent. I have only one

General Provision #5 (cont'd)

misgiving. Limiting services for "mentally retarded clients (with severe) behavior problems" to a maximum of six months is unrealistic. The science of behavior shaping is not precise enough to lock us into such a time-frame. In theory, clients would have to leave even if their problems still were unresolved. Even worse, progress could just be starting when the client would be administratively shuffled out. The Woodhaven experience shows how such an intent can be impossible to meet. Many of Woodhaven's clients have not moved due to a paucity of community services, but many others have not moved because they have not made the progress predicted for them in the time frames chosen. And Woodhaven did not set themselves such a regid standard. We cannot replicate the error made by the OSM when they established the "no return" rule. Just as that provision penalized clients when the social planners made a mistake, being locked into a time-limited service system would also penalize clients. It may be the unwritten assumption of the authors that the six-month figure will be a flexible yardstick, but if the Court orders it, certain advocate groups may insist that it be followed to the letter, irregardless of what that means for a given client. We must not be backed into a corner if we are to be a real asset to retarded people. Service systems must have the ability to respond to individual needs and individuals cannot always be locked into a timetable, no matter how hard we try.

General Provision #7

-While I understand the rationale for agreeing to certain standards of treatment, the wording of this provision perpetuates the notion that, without court intervention, we would violate Departmental regulations and provide improper or inappropriate care. This provision should be

General Provision #7 (cont'd.)

worded positively; i.e. Pennhurst will meet all appropriate standards of care and adhere to all Departmental regulations, etc., etc. When you consider that the OPW regulations on restraint and abuse are in large part derived from Pennhurst's policies, it is ludicrous to continue to brand us with the language found in #7. An even better idea would be to state that Pennhurst would operate within the standards of treatment of the Title XIX ICF/MR program with an eventual goal of achieving full certification under the standards of the AC/MR-DD. Those two sets of standards would cover all the "protections" needed by our clients.

General Provision #8

-This clarifies, to a degree, provision #2. Fuller distinction between County responsibility and Pennhurst responsibility is still needed.

General Provision #9

-It may be premature, but this provision brings up the question: Which buildings will be used to serve the 250 clients living in the Pennhurst of 1986? The three target populations will have divergent needs. It is not appropriate to begin making decisions now or to have the Court involved in such planning, but the plaintiffs may find it reassuring to be told that services in the future will be provided in modern, well-equipped facilities.

Planning Requirements - Provisions 12 & 13.

-Again, I understand the intent and perceived need for these assurances, but I find them galling.

Provision #13; Sub-section E

-What of "Locked time-out"? The acceptance of this program option, both by the OSM and by the Departments' counsel, should not be overlooked and the program option should not be discarded lightly.

Specific Requirements - Provision #18

-Does this mean, that in 1986 and thereafter, any client needing respite care or behavioral intervention will be admitted only by order of the Federal District Court? (That is the only "Court" mentioned in the document. If the intent is to allow only admissions through the Commonwealth court system, pursuant to whatever MR Placement procedures are applicable at that time, that should be clarified.)

Specific Requirements - Provision #19

-It seems inconsistent to allow transfers to private ICF/MR facilities (some of which have hundreds of beds) at parental request, but not to allow transfers to other state-run facilities without consent of the Federal Court. Family requests per movement to other facilities, to increase family involvement (rather than avoid community placement) should be given equal hearing and weight.

Points Not Addressed

-A significant problem (see Monday's Pottstown Mercury for further evidence) is family opposition to movement. The Appellate Court has raised a hope in many parents/relatives that their relative is one of the clients who cannot move from Pennhurst. The polarization that is infecting this whole situation will not be relieved by this proposel (in fact, the timetables may exacerbate the problem). Some recognition of

Points Not Addressed (cont'd.)

this problem is needed. By conceding some degree of family veto power, we may re-open the doors to negotiation and communication. Now, it appears that some families are determined to cling to the perception that the law is on their sides. We have to get the lawyers out of the process and get the social workers back in. As pointed out in our 1979 Plan for Deinstitutionalization, we can change peoples' minds, if we get the chance.

-There is no discussion of resources. If the goal of AC/MR-DD accreditation is endorsed, then resources appropriate for meeting "active treatment" standards will have to follow. If the "protections" already ordered by Judge Broderick are merely replicated in the settlement, we will still fall far short of meeting our obligation to each client.

-I would like to see some acknowledgement of the notion that the Pennhurst of 1986 would be part of a total service system, comprised of both community and residential services, with different institutional settings (i.e. Embreeville, Woodhaven, Pinehill) devoted to groups of clients with different needs. No one facility would have to be "all things to all people". This reflects back to my feelings on Provision #1. The plaintiffs must accept congregate living arrangements as legally valid components of the service system. Otherwise, variations of the Halderman suit will re-occur. If the plaintiffs want a new law written, they will have to accomplish it through legislative, rather than judicial, action.

JGP/sjm