



Department of Purchasing & Contract Compliance

Cecil S. Moore, CPPO, CPPB, CPSM, C.P.M., A.P.P
Director

Fulton County, GA

March 18, 2010

Re: **10RFP71997YC-BL, Jail Inmate Physical Healthcare Services**

Dear Proposers:

Attached is one (1) copy of Addendum 4, hereby made a part of the above referenced 10RFP71997YC-BL, Jail Inmate Physical Healthcare Services

Except as provided herein, all terms and conditions in the 10RFP71997YC-BL, Jail Inmate Physical Healthcare Services referenced above remain unchanged and in full force and effect.

Sincerely,

William E. Long, Jr., CPPB
Chief Assistant Purchasing Agent

Winner 2000 - 2009 Achievement of Excellence in
Procurement Award • National Purchasing Institute



This Addendum forms a part of the contract documents and **modifies** the original RFP documents as noted below:

Attached are copies of the Civil Actions relating to the Fulton County Sheriff's Department in the case of Ruben Foster-Plaintiffs vs. Fulton County, Georgia - Defendants

ACKNOWLEDGEMENT OF ADDENDUM NO 4.

The undersigned proposer acknowledges receipt of this addendum by returning one (1) copy of this form with the proposal package to the Purchasing Department, Fulton County Public Safety Building, 130 Peachtree Street, Suite 1168, Atlanta, Georgia 30303 by the RFP due date and time **March 31, 2010, 11:00 A.M.**

This is to acknowledge receipt of Addendum No. , _____ day of _____, 2010.

_____ Legal Name of Bidder

_____ Signature of Authorized Representative

_____ Title

Winner 2000 - 2009 Achievement of Excellence in Procurement Award • National Purchasing Institute



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN OPEN COURT
Luther D. Thomas, Clerk
By: J. Reed
Deputy Clerk

RUBEN FOSTER et al.,

Plaintiffs,

v.

FULTON COUNTY, GEORGIA et al.,

Defendants.

CIVIL ACTION

No. 1:99-CV-0900 (MHS)

CLASS ACTION

FINAL SETTLEMENT AGREEMENT

I. Introduction

A. Plaintiffs in this class action are all HIV-positive persons who are now or will be in the future incarcerated at the Fulton County Jail in Atlanta, Georgia ("the Jail"). They filed this action on April 8, 1999, seeking declaratory and injunctive relief for violations of their Eighth and Fourteenth Amendment rights. In their complaint, plaintiffs allege that HIV-positive inmates at the Jail have received constitutionally inadequate medical care.

B. Defendants in this case are Fulton County, Georgia; the Fulton County Board of Commissioners and its members; Fulton County Sheriff Jacquelyn Barrett; Chief Jailer of the Fulton County Jail L.L. Briggs; Medical Services Director of the Fulton County Sheriff's Department George Herron; Correctional Healthcare Solutions, Inc. (CHS); CHS Health Services Administrator Kevin Ramos; CHS Medical Director Harold Minerve; and CHS physician Eno

Ikoku. All defendants are sued in their official capacity.¹ The plaintiff class and all defendants are parties to this *Final Settlement Agreement* (hereinafter also referred to as "*Agreement*" and "*Settlement Agreement*"). The term "defendants" refers to all these defendants and their successors, agents, and assigns.

C. This *Final Settlement Agreement* is submitted and entered into as a settlement of all claims for declaratory and injunctive relief set forth in plaintiffs' *First Amended Complaint*, filed on April 15, 1999. The United States District Court for the Northern District of Georgia, Atlanta Division, shall retain jurisdiction to enforce the terms of this *Settlement Agreement* and shall preside over any further proceedings, as necessary.

D. On April 8, 1999, plaintiffs filed their *Complaint, Motion for Preliminary Injunction, Motion for Class Certification*, and supporting materials. Plaintiffs filed their *First Amended Complaint* on April 15, 1999. The United States District Court, the Honorable Marvin H. Shoob presiding, scheduled a hearing on plaintiffs' *Motion for Preliminary Injunction* for April 16, 1999. Prior to the hearing that morning, the parties reached an agreement resolving plaintiffs' *Motion for Preliminary Injunction* and submitted it to the Court for approval.² On April 16, the Court entered the *Consent Order* resolving the plaintiffs' motion.

E. On April 22, 1999, the parties submitted for the Court's approval, and the Court

¹ Kevin Ramos, Harold Minerve, and Eno Ikoku have been replaced since the inception of this lawsuit.

² This lawsuit also originally named as defendants the Board Members of the Fulton-DeKalb Hospital Authority and Edward J. Renford, Chief Executive Officer of Grady Health System, in their official capacities. These defendants were voluntarily dismissed on April 16, 1999, based on their representation that the Grady Health System would continue to provide medical appointments to HIV-positive inmates at the Fulton County Jail.

approved and entered, a *Consent Order on Class Certification*. Pursuant to the April 16th *Consent Order*, on May 28, 1999, the Court appointed Dr. James Steinberg to oversee and report on defendants' compliance with the preliminary injunction. Discovery began on May 25, and concluded on August 27, 1999.

F. CHS shall be bound by the terms and conditions of this *Agreement* to the extent those terms and conditions do not exceed CHS's obligations under its contract with Fulton County. Obligations in excess of CHS's contractual responsibilities shall be the sole responsibility of Fulton County. Additionally, upon the termination, cancellation, or expiration of a contract to provide medical care at the Fulton County Jail between Fulton County and CHS, CHS's obligations, duties, and responsibilities under this *Settlement Agreement* shall terminate. Because they are sued only in their official capacities, upon termination of this contract, CHS and all CHS defendants will no longer be parties to this lawsuit. If at any time during this *Agreement* the contractor for medical care at the Jail changes, the County shall require the new contractor to comply with the terms and conditions of this *Agreement*.

G. During and after the discovery period, the parties engaged in settlement negotiations seeking to resolve all claims for declaratory and injunctive relief raised in plaintiffs' *First Amended Complaint*. The parties hereby agree to the following terms.

II. Definitions

A. "HIV Specialist" refers to the on-site physician hired by the defendants to be responsible for the medical care of HIV-positive inmates at the Jail. The HIV Specialist shall be a medical doctor who is board certified as either an internist or an infectious disease specialist, and who has more than three years experience in inpatient and outpatient management of HIV

infection as set forth in Section XIII, below.

B. "HIV Coordinator" refers to the on-site registered nurse, nurse practitioner, or physician's assistant hired by the defendants to be responsible for coordinating the care provided to HIV-positive inmates. This coordination includes overseeing the arrangement of appointments both within the Jail and with outside providers; ensuring that any follow-up care ordered by a medical provider (including laboratory testing, appointments, monitoring, etc.) occurs in a timely manner; monitoring the progress and treatment of all known HIV-positive inmates at the Jail; and organizing education on the transmission and treatment of HIV, sexually transmitted diseases, and tuberculosis for all inmates at the Jail.

C. "Correctional Healthcare Monitor" or "Monitor" refers to the physician appointed by the Court to monitor defendants' compliance with this *Settlement Agreement*, as set forth in Section VIII, below.

D. "Medical Director" refers to the on-site physician hired by the defendants to be responsible for the provision of medical care at the Jail. This responsibility includes overseeing the quality and effectiveness of medical care provided at the Jail; ensuring that medical staff are sufficiently hired, scheduled, and trained to provide constitutionally adequate medical care; coordinating the Quality Management program at the Jail; and any other duties related to medical care provision and medical decision-making at the Jail.

E. "Director of Medical Services" refers to the on-site administrator hired by and reporting to the Fulton County Sheriff's Office responsible for overseeing the administration of medical care provided at the Jail. This administration includes coordinating communication between CHS (or any other on-site medical care contractor) and the Sheriff's Department, and

any other administrative duties related to the County's oversight of the medical care provided at the Jail.

III. Medical Care

A. Defendants shall implement policies and procedures to ensure that when HIV-positive persons enter the Fulton County Jail, they have timely access to medical staff and to any treatment regimen for HIV infection and the prevention of opportunistic infections consistent with the standard of care set forth by the United States Department of Health and Human Services. Defendants shall maintain conformance with the National Commission on Correctional Health Care's current *Standards for Health Services in Jails* ("NCCHC Standards"). In the event that an inmate enters the Jail on an HIV treatment plan, any change in that plan shall also be consistent with these standards. Defendants shall take reasonable measures to seek prompt confirmation of any HIV treatment plan reported by a new inmate. Adequate stocks of all FDA-approved antiretroviral medications shall be available for dispensing to inmates who come into the jail without any lapse or delay that is inconsistent with this standard of care.

i. All inmates shall receive an intake screening upon their arrival at the Jail. This screening shall include, but shall not be limited to, inquiry into any communicable diseases, including tuberculosis and sexually transmitted diseases, and urgent chronic conditions, review and continuation of any medications, and timely referral for inmates in urgent need of physician review. Information gathered during the intake screening shall be used to provide any necessary medical care. During the intake screening, the medical provider shall ask each person who identifies him/herself as HIV-positive if he or she is on medications.

ii. If during intake screening an HIV-positive person is able to identify credibly his

or her medications, the intake nurse shall obtain a verbal order from a physician and continue these medications immediately. There shall be no unreasonable disruption in the continuity of medication. The intake medical provider shall ask each known HIV-positive person to sign a release of information form so that confirmation of any treatment regimen and exchange of relevant information can take place as soon as possible. Blood shall be drawn for T-cell and viral load testing of all known HIV-positive inmates within 48 hours of arrival at the Jail or 72 hours if the person arrives on a Friday.

iii. Intake screening of HIV-positive inmates shall occur no later than four hours after an inmate's arrival at the Jail except in the event of a bonafide emergency or unexpected influx of new inmates, in which case defendants shall document the duration of and reasons for the delay. In order to identify and triage HIV-positive inmates, all inmates shall be asked the following question by medical personnel upon arrival at the Jail: Are you presently taking medication for or suffering from diabetes, heart disease, seizures, arthritis, asthma, ulcers, high blood pressure, HIV/AIDS, tuberculosis, or a psychiatric disorder?

iv. Any person whose HIV medications are initiated at intake or has symptoms of active HIV-related infections shall be given a comprehensive physical exam within 48 hours of arrival at the Jail, or 72 hours if the person arrives on a Friday. All other HIV-positive inmates shall have a comprehensive physical exam when the results of their T-cell and viral load tests are received by the Jail, but no later than ten days after their arrival at the Jail. All physical exams of HIV-positive inmates shall be performed by an HIV Specialist or an appropriate medical provider in consultation with an HIV Specialist. Defendants shall test all HIV-positive inmates for syphilis and shall test all HIV-positive women for chlamydia and gonorrhea at their first physical

exam. All HIV-positive men shall be screened for chlamydia and gonorrhea and tested for these diseases if symptoms are present.

B. When an inmate is identified as HIV-positive, either through a blood test, through credible self-identification, through confirmation with an outside health provider, through medical records from a previous incarceration at the Jail, or through any other means, the inmate shall be offered initial treatment consisting of a comprehensive health history; a physical examination; and laboratory blood testing, including but not limited to T-cell and viral load testing. The tests shall occur in time for results to be available to the HIV Specialist for an initial consultation within two weeks after the person is identified as HIV-positive. During this initial consultation, an assessment shall be conducted and a written treatment plan developed. This assessment and treatment plan shall comply with the applicable standard of care, including, to the extent dictated by the applicable standard of care, appropriate vaccinations, opportunistic infection prophylaxis if indicated, any necessary referrals to other specialists, any further laboratory or other testing, and appropriate medical diets.

i. Defendants shall inform incoming inmates that HIV testing is available at the Jail, and shall provide them with pamphlets, approved by the Fulton County Health Department, that describe the methods by which HIV can and cannot be transmitted. Defendants shall test an inmate for HIV upon his or her request or when testing is medically indicated, and the inmate has given his or her consent. Defendants shall possess adequate equipment, including at least one fax machine with a dedicated line for the medical department, for the sharing of medical information between the jail and outside health providers.

ii. A registered dietician employed by the County or its food contractor shall work

closely with medical and security personnel to ensure that HIV-positive inmates receive appropriate diets, as indicated on the inmates' treatment plans. The dietician shall be responsible for menu planning and monitoring of both general and medically prescribed diets.

C. Each HIV-positive inmate for whom antiretroviral (ARV) therapy is appropriate according to the applicable standard of care and who consents to such therapy shall be provided appropriate ARV therapy individually designed for that inmate by an HIV Specialist in accordance with guidelines published by the United States Department of Health and Human Services. Where testing indicates that a regimen is failing, the regimen shall be examined by the HIV Specialist and appropriate changes and substitutions shall be made. As these guidelines are updated, an HIV Specialist shall review each patient's treatment regimen and make any appropriate changes in order to maintain compliance with the standards set forth in the guidelines. Unless the HIV Specialist is unavailable, only the HIV Specialist or a physician in consultation with an HIV Specialist may change a patient's HIV treatment regimen. In the event that someone other than the HIV Specialist changes a patient's regimen, that change shall be reviewed by the HIV Specialist as soon as practicable.

D. Defendants shall implement policies and procedures to ensure that when the HIV Specialist prescribes a medication for the treatment of HIV infection or to prevent opportunistic infections, adequate stocks of the medication are available for dispensing to the patient without any lapse or delay. These medications shall be provided in appropriate doses and at appropriate times in accordance with the standard of care. Unless patients are allowed to self-administer medications, complete and accurate medication administration records shall be kept by the administering medical staff. These records shall specify what medications are provided; when

and by whom they are provided; and if prescribed medications are not provided, these records shall specify the reason that they are not.

i. The defendants shall develop and implement systems to provide medications in a timely manner and to track problems with the dispensing and administration of medications. Defendants shall dispense HIV medication at the prescribed time intervals or within one hour of the prescribed time. The schedule for administration of medication shall accommodate the medical needs of the inmates, in accordance with the standard of care. All refusals of medication by inmates must be in-person and must be documented as in-person. If prescribed medications are not provided because of refusal or for any other reason, the written explanation for their not being provided shall be initialed by the dispensing medical staff member. All persons refusing medication shall be provided counseling regarding the consequences of incomplete adherence, and this counseling shall be documented.

ii. Medication records for inmates who are on self-medications shall include documentation of education of the patient regarding the medications, documentation of any follow-up inquiries or education, and documentation of the dispensation and compliance checks of all self-medications.

iii. Defendants shall maintain sufficient stocks of all antiretroviral medications at all times. Medications shall be maintained on chronic care units and stock carts shall be checked and refilled every day. Defendants shall ensure that any errors in medication orders or in medication administration are corrected immediately through the Medical Director or by whatever means necessary.

E. Each HIV-positive inmate shall be provided T-cell and viral load tests every three

months, or more frequently if directed by an HIV Specialist, and any other appropriate follow-up tests, including tests for potential treatment toxicity. Each inmate with a T-cell count under 500, suffering from any HIV-related illness, or who is prescribed ARV medication shall be seen by an HIV Specialist at least every three months, or more often if recommended by the HIV Specialist. Blood testing shall be timed so that results of tests taken within one month are available to the HIV Specialist on each regularly scheduled visit.

i. The defendants shall inform inmates of the results of any medical tests and assessments (including their T-cell counts and viral loads) within one week of receipt of these results by defendants. Treatment guidelines for testing toxicity and HIV disease progression shall be developed by the Medical Director and approved by the Monitor. The defendants shall ensure that the results of medical tests and assessments performed at the Jail or by an off-site provider are obtained in a timely manner and that recommended follow-up care is provided in a timely manner.

F. HIV-positive inmates shall be provided emergency access to a physician or licensed nurse practitioner consistent with the applicable standard of care because acute or serious medical conditions may arise in HIV-positive persons at any time. Incarcerated persons with HIV shall also have access to routine sick call by a physician, nurse practitioner, physician's assistant, or registered nurse. Emergency and routine access shall include both physical observation and examination as the physician or nurse practitioner deems medically appropriate. All medical staff who provide sick call to HIV-positive inmates shall participate in an effective training program approved by an HIV Specialist, in order to maintain competence in current methods for diagnosing and treating medical complications associated with HIV, including the

ability to recognize when referral to an HIV Specialist is necessary. This training shall include any necessary ongoing updating of skills and knowledge, and a method of effectively ensuring medical staff's compliance shall be implemented.

i. The defendants shall ensure that security officers provide any appropriate assistance, with the approval of the medical staff, in the event of an emergency and that all security officers are appropriately trained in emergency procedures. Additionally, defendants shall take all necessary steps to ensure that appropriate and accessible equipment is available to respond to medical emergencies.

ii. The defendants shall create systems to ensure that medical request forms are available to inmates at all times. Provision shall be made for inmates to keep a duplicate copy of their request forms at the time it is submitted. In the general population units, medical requests shall be reviewed every day according to appropriate written triage protocols developed by the Medical Director and approved by the Monitor. Defendants shall ensure that inmates housed in the chronic care units have daily access to sick call administered by a registered nurse. The nurse shall refer inmates immediately to a medical provider, who will see the inmate within a reasonable period of time, according to appropriate written protocols developed by the Medical Director and approved by the Monitor.

G. HIV-positive inmates shall be referred in a timely manner to outside specialists in all cases when the Jail's own staff lacks the resources to treat in a timely manner the medical or mental conditions of HIV-positive inmates. Accordingly, defendants shall coordinate timely access to the Grady Hospital's Infectious Disease Program or other appropriate specialists for HIV-positive inmates and implement all necessary procedures to provide specialty consultations

and specialized testing on an emergency (immediate), urgent (within three days), and routine (within four weeks) basis, as directed by medical staff including the HIV Specialist. While at outpatient appointments, inmates shall be provided with weather-appropriate clothing.

i. The defendants shall establish written protocols developed by the Medical Director and Director of Medical Services, and approved by the Monitor, regarding the County's policy on referrals to outside providers.

H. All medical treatment provided to HIV-positive inmates shall be accurately documented in each inmate's medical record. Each request for medical attention and each response by medical staff shall be written, reviewed at sick call, and included in the inmate's medical record. Each visit to an outside specialist shall be documented, and copies of all resulting medical records returned with the inmate for placement in the inmate's medical records when provided. Jail medical staff shall take reasonable steps to communicate with outside specialists whenever appropriate. Fully updated in-house medical records shall be available to the in-house HIV Specialist before each scheduled appointment with an HIV-positive inmate, including a chronological log that lists demographic data and a history of T-cell counts, medications and doses prescribed, medical complaints and responses, and any other relevant information. As described in Section III. B. above, the HIV Specialist shall develop a written treatment plan consistent with the standard of care, in consultation with each HIV-positive inmate.

i. The defendants shall develop a system for ensuring that medical records at the Jail are complete, legible, and contain the necessary signatures in accordance with professional standards. All healthcare entries shall be dated and timed. Laboratory and diagnostic reports

shall be signed and dated to acknowledge timely review. Medical records maintained at the Fulton County shall contain at least the information and documents required by J-58 of the NCCHC Standards.

ii. Defendants shall ensure that all records are complete and that all forms are entered into patient records. The system shall ensure that loose paper is placed into the records in a timely manner and that medication administration reports are promptly filed in the record at the end of each month. The health record shall be available to and used for documentation by all healthcare practitioners in each clinical encounter with inmates.

I. If an HIV-positive inmate is deemed by an HIV Specialist to be in the terminal stages of the disease, the inmate shall be provided with appropriate care and treatment. This shall include appropriate pain control, adequate nutrition, and other appropriate palliative care coordinated by the HIV Specialist in accordance with the Eighth and Fourteenth Amendments of the United States Constitution.

i. The defendants shall make good faith efforts to place inmates in the terminal stages of AIDS in appropriate facilities or in the community, should the HIV Specialist determine that the Jail cannot provide appropriate care for the end-stage HIV-positive inmate.

J. Prior to discharge from the Jail to the community, all HIV-positive inmates shall have an appropriate discharge plan. A post-discharge appointment with an appropriate HIV medical care provider in the community shall be scheduled for every HIV-positive inmate, and each inmate shall be informed upon discharge of the date, time, and location of that appointment. If the inmate is on any prescribed medications, defendants shall provide sufficient medications to prevent gaps in the availability of those medications.

i. The post-discharge appointment may be with the Fulton County Health Department ("FCHD"). The FCHD has agreed to see HIV-positive inmates released from the Fulton County Jail daily (Monday-Friday). Defendants shall provide these inmates with at least a four-day supply of medication upon their release from the Jail. In the event that the FCHD changes its schedule or policy, defendants shall immediately make alternative arrangements to continue providing post-discharge appointments, notification of the appointments, and medications to prevent gaps in the availability of HIV medications. Defendants shall not be obligated to provide more than a seven-day supply of medication.

ii. Defendants shall attempt to schedule post-discharge appointments at Grady Hospital's Infectious Disease Program ("IDP") for those inmates who qualify for the IDP, and shall notify inmates of their individual appointments.

iii. The defendants shall allow AIDS service organizations and treatment providers to provide inmates copies of pamphlets and other materials containing information about HIV, its treatment, and related social services. The defendants shall make these materials available to inmates by placing copies in the Jail's library.

K. If a patient is transferred to another incarcerated setting, the inmate's updated medical records, including progress notes, laboratory testing records, HIV consultation records, and a list of prescribed medications shall accompany the inmate. If the inmate is on any prescribed medications, defendants shall provide sufficient medications to last at least through the inmate's transfer to the next facility.

L. All HIV-related services and treatment shall be kept confidential in accordance with applicable state, local, and federal law.

M. Defendants shall screen all incoming inmates for symptoms of tuberculosis infection immediately upon admission. Defendants shall promptly isolate, diagnose, and treat any individual with a suspicion of contagious tuberculosis. Follow-up treatment and testing shall be conducted according to the recommendations and guidelines of the Centers for Disease Control ("CDC"). Any individual who has symptoms of tuberculosis and all HIV-positive persons shall have a chest x-ray within 48 hours of intake. Tuberculin skin test screening shall be performed on all inmates who do not have a documented history of a positive tuberculin skin test result. Preventive treatment for tuberculosis shall be offered to any inmate with a positive PPD whose anticipated length of stay is greater than two months. Defendants shall maintain appropriate facilities for respiratory isolation that are consistent with the recommendations of the CDC and the Occupational Safety and Health Administration ("OSHA").

N. All HIV-positive women shall receive a pregnancy test upon admission to the Jail and shall receive pap smears at their first physical exam. Known HIV-positive women shall receive pap smears every six months thereafter.

IV. Staffing

A. Defendants shall employ a sufficient number of qualified permanent medical staff to meet the healthcare needs of HIV-positive inmates at all times.

B. Fulton County defendants shall employ a sufficient number of trained correctional staff to meet the healthcare needs of HIV-positive inmates at all times. Shortages in correctional staff shall not interfere with the provision of medical care in accordance with Section III, above. The Fulton County defendants shall ensure that shortages in correctional staff do not prevent or delay the distribution of medications or the transport of HIV-positive inmates for any medical

appointments or needed medical care, either within the facility or in the community.

C. All correctional staff members, including command staff, shall receive regular training regarding HIV and tuberculosis infection, including modes of transmission and universal precautions.

D. Defendants shall maintain an attendance log and daily staffing schedule for both correctional and medical personnel. The adequacy of staffing shall be reviewed monthly by the Sheriff, the Chief Jailer, the Director of Medical Services, the Medical Director, and the on-site health services administrator.

E. Defendants shall establish a regular monthly meeting that includes correctional line staff members and direct medical service providers to address integration of medical and correctional goals and services (i.e., conflicts among medical and correctional staff; incidents when inmate care was delayed or denied due to problems or miscommunication among staff members; staffing, staff training, or staff deployment needs; etc.). Defendants shall identify and implement solutions to address integration needs. Defendants shall keep minutes of all meetings, and shall provide the Monitor with copies of those minutes.

V. Sanitation and Housing

A. Because environmental factors impact significantly on the health of inmates, particularly HIV-positive inmates whose immune systems are weakened, the chronic care units, medical observation units, and any housing unit or other area where HIV-positive inmates are or may be placed shall comply with the standards set forth in the guidelines and recommendations of the American Correctional Association, OSHA, and the CDC. In accordance with such standards, these areas shall be cleaned on a daily basis, shall be disinfected between placements

of inmates, and shall be kept in good working order and physical condition. Fulton County defendants shall conduct weekly checks on each of these areas to ensure that sanitation and physical conditions comply with these standards, and shall respond promptly to any deficiencies identified during these checks. Sanitary supplies such as hand soap, clean hand towels, bleach, and disinfectant shall be available to inmates and staff as needed. Defendants shall maintain an exposure control plan for blood-borne pathogens.

B. All housing units to which HIV-positive inmates are assigned shall be adequate to meet the needs of the HIV-positive inmates placed there. This shall include, but is not limited to, assurance that no HIV-positive inmate in a chronic care unit or with a diagnosis of AIDS shall sleep on the floor, and that all HIV-positive inmates shall have adequate access to toilet facilities, clean bedding and clothing, hot and cold running water, and drinkable water at all times.

C. HIV-positive inmates shall not remain in the intake holding cell for greater than eight hours. The intake holding cell shall provide inmates adequate access to toilet facilities and drinkable water at all times, and shall be sufficiently large to accommodate the number of inmates held in the cell.

D. The County shall identify mechanisms for accommodating current and anticipated jail population.

VI. Grievances

A. Because of the importance of the grievance system in identifying both individual and systematic problems, defendants shall ensure that medical and dietary grievances by HIV-positive inmates are answered within 72 hours of their submission to medical personnel. No issue related to medical care shall be designated as "non-grievable." Grievance forms shall be

available to inmates at all times, and defendants shall provide inmates with a duplicate copy of their medical and dietary grievances at the time of their submission.

B. The medical staff person who serves as medical Grievance Coordinator shall keep a log of all medical and dietary grievances received from HIV-positive inmates. Each month, he or she shall compile a report including the numbers of such medical grievances received during the month, the substance of the grievances by category, the time taken to reply to grievances, and the resolution reached. This report shall be provided to the Monitor, the Medical Director, the Director of Medical Services, the Sheriff, and the on-site health services administrator.

VII. Quality Management

A. Defendants shall perform ongoing quality management that monitors the quality of healthcare services provided at the Jail. The quality management program shall monitor all aspects of healthcare including at least the following: access to healthcare, medication management, nursing services, physician services, access to specialty care, mental health services, pharmacy services, dental services, environmental services, infection control procedures, healthcare records, sick call services, intake screening and evaluations, chronic disease services, infirmary care, diagnostic services, discharge planning, and adverse patient occurrences including all deaths. The quality management program shall include reviews of all aspects of healthcare provision at the Jail, and shall identify any deficiencies in services to inmates as well as any staff training needs and/or deficiencies. Corrective plans to address all deficiencies and recommended improvements shall be prepared, and the quality management program shall include ongoing assessment of the effectiveness of corrective plans and actions.

B. A multi-disciplinary Quality Management Committee shall meet monthly, and

shall perform at least quarterly reviews of all aspects of healthcare. The Committee shall involve the participation of qualified healthcare professionals with appropriate specialties and representatives from all medical departments at the Jail.

C. For the first six months of this *Agreement*, the Monitor shall be provided with copies of all findings, conclusions, corrective plans, and any other reports of the Quality Management Committee and the outcome of corrective plans and shall review this information to determine whether the Quality Management program is working effectively. The Monitor shall also be provided with copies of all findings, conclusions, and any other reports resulting from the peer review process, as well as any corrective plans or actions that occur as a result of the peer review process. After the first six months of this *Agreement*, the defendants shall provide the Monitor with copies of quality management documents related to specific problems the Monitor has identified during his assessment. If at any time during this *Agreement* the contractor for medical care at the Jail changes, the Monitor shall be provided with copies of quality management documents for the first six months of the new contract.

D. The Sheriff shall be informed about problems with the healthcare delivery system as well as on-going efforts to resolve these problems.

VIII. Appointment of Correctional Healthcare Monitor

A. The parties agree that the Court shall appoint a Correctional Healthcare Monitor to monitor defendants' compliance with this *Settlement Agreement*, to report to the Court with regard to defendants' progress in bringing the medical care at the Jail to the constitutionally acceptable level outlined in this *Agreement*, and to consult and work with defendants as necessary to bring the medical care at the Jail into compliance with this *Agreement*. Robert B.

Greifinger, M.D., shall serve as the Monitor (curriculum vitae attached). Dr. Greifinger is an experienced correctional healthcare professional with extensive expertise in the areas of HIV and AIDS, infection control, medical peer review and quality management, and policy and protocol development. He has served both as the chief medical authority for both Rikers Island Health Services (New York City Jails) and the New York State Department of Correctional Services. He has also served as consultant to many prison and jail systems and to the parties and judges in correctional healthcare litigation.

B. The Monitor shall be paid by the Fulton County defendants at an hourly rate of \$250 per hour, plus \$125 per hour for travel time (not to exceed five hours each way), and reasonable expenses. For the preparation of his initial report and for each subsequent quarterly report, the Monitor may spend up to 45 working hours. For each report, the 45 hours shall include at least one onsite inspection, unannounced to the defendants. If the Monitor identifies the need for additional specialists or experts to assist the Monitor in discharging his duties under the *Agreement*, he shall notify the parties of the need and the reasons. If the parties are unable to reach an agreement concerning the Monitor's request for additional assistance, the request shall be submitted to the Court.

C. The Monitor shall have access to medical, dental, and mental health records of the class members, to defendants and any members of their staffs, to class members themselves, to attorneys for any party, and to any other information (including minutes, reports, and other documents), as he deems necessary to determine compliance with this *Settlement Agreement* and to accomplish his obligations pursuant to the *Agreement*. The Monitor's access to information shall not be unreasonably withheld.

D. Within thirty days of the Court's approval of this *Settlement Agreement*, the Monitor shall conduct an initial assessment of the medical services provided to HIV-positive inmates at the Jail and shall develop recommendations addressing any deficiencies that prevent compliance with this order. The assessment and recommendations shall include a review of any changes and improvements made by defendants since the filing of this lawsuit, the reasons for those changes and improvements, and the success of those changes and improvements. The scope of the assessment and recommendations shall include any and all systems and aspects of care that the Monitor deems relevant to the provision of constitutionally adequate medical care to the plaintiff class. The assessment and recommendations shall address all aspects of this *Settlement Agreement*, including but not limited to review of the following systems:

- i. Intake screening and management
- ii. Access to routine and acute medical care, including hospitalization, surgical care, consultation, and referrals
- iii. Medication administration, management, and tracking, including pharmacy services
- iv. Emergency care and services
- v. Medical observation unit equipment and procedures
- vi. Follow-up of diagnostic testing and referral providers' treatment decisions
- vii. Complaint tracking and resolution
- viii. Health record maintenance, documentation, and transfer
- ix. Communicable disease control
- x. Credentialing

- xi. Staffing, including job descriptions and scopes of practice
- xii. Quality Management, including performance measurement, practice guidelines, and peer review
- xiii. Discharge planning
- xiv. Environmental health and sanitation
- xv. Coordination between medical, mental health, dental, and security staff
- xvi. Initial and ongoing training of medical and correctional staff

Following the initial assessment, the Monitor shall review any of these systems he deems necessary.

E. In conducting his assessment and preparing his recommendations, the Monitor shall have access to and work with medical and correctional personnel at Fulton County Jail and in the Fulton County Sheriff's office as he deems appropriate. Defendants shall have thirty days to remedy deficiencies identified and shall report to the Court, the Monitor, and plaintiffs' counsel on these improvements. The Monitor shall determine the types of information that defendants must include in their reports. If at any time following the defendants' initial report on their compliance plaintiffs believe that defendants are not in compliance with any term of this *Agreement*, plaintiffs shall bring their concerns to the attention of the defendants and make reasonable attempts to resolve these concerns informally. Plaintiffs shall seek the Court's assistance in obtaining compliance only if the parties are unable to resolve their differences informally.

F. Following the initial assessment, the Monitor shall report on defendants' compliance with this *Settlement Agreement*. These reports shall take place at least quarterly,

unless the Court directs that they shall take place more frequently. The Monitor shall provide copies of these reports to the District Court, plaintiffs' counsel, and counsel for the defendants. All parties shall have the opportunity to respond to the reports submitted by the Monitor.

G. In addition to the work of the Monitor, plaintiffs' counsel shall continue to have reasonable access to the plaintiffs; to plaintiffs' Jail and medical records (subject to relevant protective orders); and to defendants, their agents and employees in order to monitor defendants' compliance with this *Settlement Agreement*. Before speaking with any named defendant about matters related to this *Agreement*, plaintiffs' counsel shall advise defendants' counsel of their intent to do so and allow counsel a reasonable opportunity to respond and/or be present.

IX. Implementation

A. Defendants shall immediately explain the terms of this *Settlement Agreement* to all of their agents, servants, representatives, and employees in any way connected with the subject matter of this suit, in order to ensure their understanding of this *Settlement Agreement* and the necessity for strict compliance with its terms. Defendants shall require strict compliance with this *Settlement Agreement* by all such persons and their successors.

B. The Fulton County defendants shall immediately provide notice of the material terms of this *Settlement Agreement* to all current and future class members by providing all HIV-positive inmates who enter the Jail with an HIV/AIDS information pamphlet. This pamphlet will include the material terms of this *Settlement Agreement*, as well as notification of the *Settlement Agreement*, and contact information for the class counsel. Prior to its distribution, this pamphlet shall be approved by plaintiffs' counsel. Any inmate later identified as HIV-positive will also be provided this pamphlet. Four (4) copies of this *Settlement Agreement* shall be maintained and

available for use in the Jail's law library.

C. Defendants shall not retaliate against inmates for their participation in this lawsuit or membership in the class.

D. Fulton County shall be responsible for monitoring and enforcing compliance with all provisions of this *Settlement Agreement*. Fulton County shall also be responsible for quarterly compliance reviews of any correctional healthcare contract with the County. This shall include a review of the contractor's compliance with any required reporting.

X. Conclusion

A. If defendants fail to comply with the terms and conditions of this *Settlement Agreement*, plaintiffs' counsel may apply to the Court for a finding of contempt or other appropriate relief. Prior to approaching the Court for such relief, plaintiffs' counsel will bring any deficiencies to the attention of the defendants and the Monitor and will make reasonable attempts to resolve the issues informally.

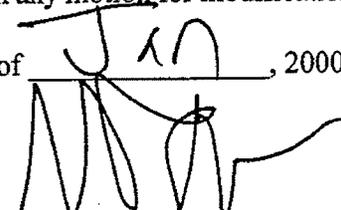
B. The parties agree and stipulate, and the Court hereby finds, that the prospective relief set forth in this *Settlement Agreement* is narrowly drawn, extends no further than necessary to correct the violations of plaintiffs' federal rights set forth in their *First Amended Complaint* and is the least intrusive means necessary to correct these violations. The parties agree and stipulate, and the Court hereby finds, that this *Settlement Agreement* will not have an adverse impact on public safety or the operation of a criminal justice system. Accordingly, the parties agree and stipulate, and the Court hereby finds, that this *Settlement Agreement* complies in all respects with the provisions of 18 U.S.C. § 3626(a). This *Settlement Agreement* is not intended to have any preclusive effect except between the parties in this action. Should the issue of the

preclusive effect of this *Settlement Agreement* be raised in any proceedings other than this action, the parties agree to certify that this *Settlement Agreement* was intended to have no such preclusive effect. This *Settlement Agreement* does not resolve, adjudicate, or bar the damages claims of any former, present, or future class members.

C. Subsequent to an agreement or order for attorney's fees and costs in this action to date, plaintiffs will only seek fees and costs that are directly and reasonably incurred in enforcing the relief ordered for the violation of plaintiffs' rights.

D. Any party may seek modification of any part of this *Final Settlement Agreement* for good cause shown. Defendants shall continue to implement in a timely manner all parts of this *Agreement* pending decision of the Court on any motion for modification.

SO ORDERED this 24 day of JAN, 2000.



Hon. Marvin H. Shoob
United States District Court
Northern District of Georgia

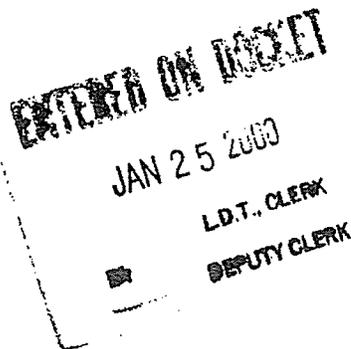
Submitted, approved, and consented to by:



Tamara H. Serwer, Georgia Bar No. 617053



Katharine A. Huffman, Georgia Bar No. 375320
Stephen B. Bright, Georgia Bar No. 082075
Robert E. Toone, Georgia Bar No. 714670
Southern Center for Human Rights
83 Poplar Street, N.W.
Atlanta, Georgia 30303-2122
Telephone: (404) 688-1202



Chip Rowan / by THS
Chip Rowan, Georgia Bar No. 616577
Rowan & Associates
235 Peachtree Street, Suite 1725
Atlanta, Georgia 30303
Telephone: (404) 586-2350

Attorneys for Plaintiffs

Jacquelyn A. Barrett
Jacquelyn Barrett, Fulton County Sheriff
Fulton County Sheriff's Department
185 Central Avenue, S.W.
Atlanta, Georgia 30303

Mike Kenn
Mike Kenn, Chairman
Fulton County Board of Commissioners
141 Pryor Street, S.W.
Atlanta, Georgia 30303-3444

Overtis Hicks Brantley
Overtis Hicks Brantley, Esq.
Office of the County Attorney
Suite 4083
141 Pryor Street, S.W.
Atlanta, Georgia 30303-3444
Telephone: (404) 730-7750

Attorney for Fulton County

William T. Mitchell / by THS
William T. Mitchell, Esq.
Drew, Eckl & Farnham
P.O. Box 7600
Atlanta, Georgia 30357-0600
Telephone: (404) 885-1400

Attorney for Correctional Healthcare Solutions, Inc.

APR 16 2002

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk
By: *J. Reed* Deputy Clerk

RUBEN FOSTER, et al., :
 :
 Plaintiffs, : CIVIL ACTION
 :
 v. : 1:99-cv-900-MHS
 :
 FULTON COUNTY, GEORGIA, :
 et al., :
 :
 Defendants.

ORDER

On November 5, 2001, the Court ordered the parties to respond to Dr. Greifinger's October 30, 2001, Report and to "set forth specific recommendations for addressing" each of ten areas that Dr. Greifinger identified as "far from compliance" with the Final Settlement Agreement.¹ The parties filed their responses on December 5, 2001. On January 15, 2002, the Court toured the jail with Dr. Greifinger, and after a follow-up visit on February 25-26, 2002, Dr. Greifinger submitted his latest Report on March 2, 2002.

¹ The deficient areas identified by Dr. Greifinger were (1) crowding, (2) security staffing, (3) physical plant intake and kitchen, (4) access to Grady Hospital System, (5) timely medication to new HIV infected patients, (6) follow-up on abnormal chest x-rays, (7) continuity of care on release, (8) diets, (9) cross-training, and (10) quality management.

The Court has reviewed the parties' responses, Dr. Greifinger's latest report and plaintiffs' response to that Report filed March 21, 2002, as well as defendants' most recent updates on jail population, filed March 1 and April 1, 2002. It is clear from these submissions that, despite significant progress, much remains to be done to achieve full compliance with the Final Settlement Agreement and to assure that all plaintiff class members receive constitutionally adequate medical care. It is also clear that these goals will not be realized without continued monitoring by Dr. Greifinger and active supervision by this Court.

The following additional steps are needed to enforce the terms of the Final Settlement Agreement and to correct violations of plaintiffs' federal rights to minimally adequate conditions of confinement and receipt of adequate medical care. The Court finds that this relief is narrowly drawn, extends no further than necessary to correct violations of federal rights arising from defendants' failure to comply with the Final Settlement Agreement, and is the least intrusive means to correct these violations. The areas where additional relief is needed, the relevant provisions of the Final Settlement Agreement, and the specific remedial actions required are set out below.

I. Overcrowding

The County shall identify mechanisms for accommodating current and anticipated jail population.

Final Settlement Agreement ¶ V.D.

Inmate population at the Rice Street facility continues to exceed physical capacity by a significant number. After reaching a low of 2,266 on September 30, 2000, the population rose to 2,544 as of February 15, 2002, and was 2,526 on March 15, 2002. Although the population declined to 2,362 on March 31, 2002, even this figure is more than 100 over the facility's capacity of 2,250, and recent fluctuations suggest that it is likely to rise again. Clearly, the programs implemented by defendants to reduce the jail population to at or below capacity have not succeeded. Something more must be done.

As Dr. Greifinger has repeatedly stated, overcrowding causes a myriad of problems that increase the likelihood of disease and interfere with the delivery of adequate medical care. The conditions described in Dr. Greifinger's latest Report are totally unacceptable. These conditions include lack of adequate heat, water, ventilation, and sanitation, all

caused, at least in part, by the strain of chronic overcrowding on the facility's physical plant.

Defendants argue that, despite the overcrowding, the conditions of confinement and the provision of medical care still satisfy constitutional requirements. The Court rejects this argument. The Constitution prohibits depriving inmates of "basic human needs" or "the minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Adequate heat, water, fresh air, and sanitation are basic human needs, which inmates may not be denied without violating minimal constitutional requirements.

Defendants report that they have undertaken the following additional steps designed to reduce the jail population: (1) regular review of misdemeanor inmates for possible release, (2) expansion of the number and type of cases handled through the Complaint Room, (3) increased efforts to place convicted inmates in the state system, (4) possible reinstatement of the home arrest program, and (5) appointment of a new full-time magistrate judge to handle primarily criminal cases. While these

are all steps in the right direction, there is no evidence, nor does the Court believe, that these steps alone will be sufficient to solve the problem.

Plaintiffs have proposed a number of measures that defendants have not yet undertaken, which are designed to correct systemic problems that result in unnecessary incarceration and thus contribute to jail overcrowding. Plaintiffs' principal proposal is that defendants be required to provide counsel within 72 hours of arrest to all persons accused of minor offenses who cannot make bail. For the following reasons, the Court concludes that this proposal should be implemented immediately.

Much of the overcrowding at the jail is the result of persons charged with relatively minor offenses who cannot make bail and must remain in jail for weeks or even months waiting for the State Court Solicitor General to file an accusation.² Only after an accusation is filed are these inmates' cases placed on a calendar, and only after these inmates are finally brought to court are they provided counsel. By this time, they have often

² According to defendants' latest report, as of March 15, 2002, there were 308 inmates in the Fulton County Jail who were charged with misdemeanors but had not yet been formally accused. Of that number, 88 had been in jail for more than 30 days, and of those, 12 had been in jail for more than 60 days.

spent far more time in jail than they would ever receive as a sentence for their offenses. Under these circumstances, counsel can serve little purpose other than to handle the entering of a plea so that the inmate can finally get out of jail.

If these inmates are appointed counsel promptly after their arrest, they will have the opportunity to file bond review motions, to negotiate pleas, or simply to demand prompt attention to their cases. As a result, many of these inmates will spend only a few days in jail rather than weeks or months before their cases are even heard. This will not only help to alleviate the overcrowding at the jail; it will also save the County money spent in housing these inmates unnecessarily.³

Not only does the current treatment of individuals charged with minor offenses contribute to the serious overcrowding problem at the jail,

³ In an April 5, 2002, letter to the Solicitor General, plaintiff's counsel provides several examples. One inmate, Barbara Anholt, spent 68 days in jail for public drunkenness, at a cost to the County of over \$3,000, while her case was being "reviewed and drafted." Another inmate, Bobby Nelson Richard, spent 83 days in jail for public drunkenness, at a cost to the County of \$3,735, because of "researching for other warrants." An examination of a random sample of 57 detainees being held only on State Court charges who were on the jail calendars for a single week in February revealed that they spent a total of 1,519 days in jail at a cost to Fulton County of \$68,355 (\$45 a day).

it also constitutes a clear denial of these individuals' constitutional right to counsel. See Argersinger v. Hamlin, 407 U.S. 25, 37 (1972) (no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless represented by counsel). The Solicitor General contends that "[c]ounsel has always been appointed in Fulton County in cases where a defendant is sentenced to jail time."⁴ This argument apparently refers to Fulton County's practice of appointing counsel at the time of arraignment. At this point, however, it is too late for an attorney to provide any real representation, since his client has likely already served more time than he or she would if found guilty. Under these circumstances, an appointed lawyer provides no professional assistance but merely serves the clerical function of processing people through court. Appointing counsel to handle a plea at this point is, as plaintiffs' counsel puts it, "a meaningless and hollow gesture." The Constitution requires more than this.

⁴ The Solicitor General's argument is contained in her March 18, 2002, response to a letter from plaintiffs' counsel expressing concern over Fulton County's denial of counsel to persons charged with minor offenses.

Accordingly, the Court ORDERS defendants to immediately implement a program to provide counsel within 72 hours of arrest to all persons accused of minor offenses who cannot make bail.

Plaintiffs have also proposed additional measures to address the overcrowding problem. The Court concludes that each of these measures is a reasonable and necessary step in identifying and correcting the problems that lead to unnecessary incarceration and jail overcrowding. Accordingly, the Court ORDERS defendants to immediately implement each of the following measures:

- (1) Expand the authority of Pretrial Services to include supervision of persons arrested for misdemeanor offenses;⁵
- (2) Evaluate the factors currently used to exclude certain persons charged with felonies from pretrial release and eliminate any that are unreasonable;
- (3) Ensure that all persons charged with misdemeanors are offered a *reasonable* bond in accordance with Georgia law;

⁵ Defendants report that on August 2, 2001, Pretrial Services began expanded screening of misdemeanor cases. It is not clear, however, whether this includes actual supervision. According to plaintiffs, Pretrial Services is currently not allowed to supervise anyone whose case is in State Court. Defendants should clarify this issue.

(4) Develop and implement meaningful mental health diversion and mental health discharge planning;⁶

(5) Increase compensation paid to appointed counsel in misdemeanor cases from the current \$50 to a reasonable amount, or expand the Fulton County Public Defenders Office to handle cases in State Court;

(6) Institute an All-Purpose Hearing calendar in State Court modeled on the hearings currently conducted in Superior Court, with the hearings to be held within 72 hours of arrest;⁷

(7) Expand the authority of the Judicial Administrative Expeditors to facilitate release of inmates whose cases are in State Court as well as Superior Court;

⁶ This will require defendants (1) to determine how many inmates have a serious mental illness, the number of times they have been subject to short-term incarcerations, the types of offenses they are charged with, and their prior access to mental health services in the community; (2) to study viable models currently used in other counties and evaluate the current mental health out-patient and in-patient services available in Fulton County; and (3) to provide adequate funding to expand mental health resources in the County, if necessary. Defendants report that various Fulton County agencies have been meeting to develop a mental health diversion program and possibly establish a mental health diversion court. Defendants should move forward with these plans expeditiously.

⁷ Defendants have indicated that State Court will begin conducting All Purpose Hearings in April or May 2002. The further requirement that these hearings be held within 72 hours of arrest is consonant with the Court's order that counsel be appointed within 72 hours of arrest. As explained in plaintiffs' counsel's April 8, 2002, letter to State Court Chief Judge Thompson and Judge Newkirk, other major metropolitan courts such as New York and Washington, D.C., generally conduct such hearings within 24 hours of arrest.

(8) Impose reasonable restrictions on the length of time a person may remain in jail (a) without accusation or indictment, and (b) accused or indicted but untried;

(9) Implement an integrated computer system that links all of the appropriate agencies in the Fulton County criminal justice system.

II. Security Staffing

Fulton County defendants shall employ a sufficient number of trained correctional staff to meet the healthcare needs of HIV-positive inmates at all times. Shortages in correctional staff shall not interfere with the provision of medical care in accordance with Section III, above. The Fulton County defendants shall ensure that shortages in correctional staff do not prevent or delay the distribution of medications or the transport of HIV-positive inmates for any medical appointments or needed medical care, either within the facility or in the community.

Final Settlement Agreement ¶ IV.B.

More than two years after the Final Settlement Agreement was signed, Dr. Greifinger reports that there continues to be an insufficient number of security staff positions for the current population of inmates. Defendants state that they have consistently kept 96-97% of staff positions filled, which is above average for correctional institutions. However, given the overpopulation of inmates and the number of inmates who are HIV-

positive or have other health problems, even if *all* positions were filled, there would still not be sufficient staff to assure inmates timely access to medical care. Something more must be done.

Accordingly, the Court ORDERS defendants to immediately develop and implement a plan to increase security staffing at the jail to the level necessary to provide timely access to medical care for the current population of inmates. The plan shall authorize and provide funding for a sufficient number of additional staff positions, taking into account normal turnover and vacancy rates, so that at any given time there will be adequate security staff available to ensure timely access to medical care.

III. Access to Grady Health System.

HIV-positive inmates shall be referred in a timely manner to outside specialists in all cases when the Jail's own staff lacks the resources to treat in a timely manner the medical or mental conditions of HIV-positive inmates. Accordingly, defendants shall coordinate timely access to the Grady Hospital's Infectious Disease Program or other appropriate specialists for HIV-positive inmates and implement all necessary procedures to provide specialty consultations and specialized testing on an emergency (immediate), urgent (within three days), and routine (within four weeks) basis, as directed by medical staff including the HIV Specialist.

Final Settlement Agreement ¶ III.G.

In the past, inmates without a "Grady card" experienced long delays in receiving specialty care because an appointment could not be made until after a financial review, which took anywhere from three weeks to six months. Defendants claim that this problem has been resolved. In his latest report, however, Dr. Greifinger states that, although the financial review barrier may have been solved, bureaucratic problems remain for those without a card, and that the appointment making process can still take from three weeks to six months. This is not acceptable.

Accordingly, the Court ORDERS defendants to immediately develop and implement a plan to establish an efficient and reliable appointment system that will assure inmates timely access to specialty care.

IV. Timely Medication to New HIV-Positive Inmates

If during intake screening an HIV-positive person is able to identify credibly his or her medications, the intake nurse shall obtain a verbal order from a physician and continue these medications immediately. There shall be no unreasonable disruption in the continuity of medication.

Final Settlement Agreement ¶ III.A.ii.

Dr. Greifinger's latest report states: "During my January visit, the timeliness of initial medication for HIV-positive inmates remains lower

than acceptable. Only half of the inmates with a credible history of HIV medications when they arrive at the jail were getting their first doses within 24 hours." Report at 4. A 50% compliance rate with this important requirement is not acceptable.⁸

Accordingly, the Court ORDERS defendants to immediately develop and implement a plan that will ensure that new HIV-positive inmates with credible medication histories receive their medication in a timely manner.

V. Chest X-Rays

Defendants shall screen all incoming inmates for symptoms of tuberculosis infection immediately upon admission. Defendants shall promptly isolate, diagnose, and treat any individual with a suspicion of contagious tuberculosis. Follow-up treatment and testing shall be conducted according to the recommendations and guidelines of the Centers for Disease Control ("CDC"). Any individual who has symptoms of tuberculosis and all HIV-positive persons shall have a chest x-ray within 48 hours of intake.

Final Settlement Agreement ¶ III.M.

⁸ By the time of Dr. Greifinger's February visit, defendants had eliminated a requirement that inmates know their exact dosages before being prescribed medication, but it is not clear that this change in policy will solve the problem. Plaintiffs report that delays have occurred even when the new inmate has arrived with medication from another correctional institution, and that some inmates are waiting in the intake area for as long as 20 hours before an intake nurse even takes their medical history.

Plaintiffs contend that not only has there been a problem with follow-up and treatment of abnormal chest x-rays, but also a failure to provide chest x-rays to all inmates who are required to have them within 48 hours. In his latest report, Dr. Greifinger states that a new system for timely follow-up of abnormal chest x-rays has been instituted, and that the new tracking system is excellent. However, it remains unclear whether all inmates who are required to have chest x-rays within 48 hours of intake, including all HIV-positive inmates, are actually receiving them.

Accordingly, the Court ORDERS defendants to immediately take all steps necessary to ensure that all inmates who are required to be given x-rays actually receive them.

VI. Continuity of Care on Release

Prior to discharge from the Jail to the community, all HIV-positive inmates shall have an appropriate discharge plan. A post-discharge appointment with an appropriate HIV medical care provider in the community shall be scheduled for every HIV-positive inmate, and each inmate shall be informed upon discharge of the date, time, and location of that appointment. If the inmate is on any prescribed medications, defendants shall provide sufficient medications to prevent gaps in the availability of those medications.

Final Settlement Agreement ¶ III.J.

In his latest report, Dr. Greifinger states that there has been "no substantial progress in the area of continuity of care on release." Report at 6. Although more HIV-positive inmates are being referred to AID Atlanta, half of the inmates are released before AID Atlanta makes contact with them. In addition, there are continuing logistical problems with providing discharged inmates with a supply of their medications. In his prior report, Dr. Greifinger also noted that there is a major problem for inmates with dual diagnoses -- both HIV infection and major mental illness such as schizophrenia or bipolar disorder. A significant number of the inmates in this category had had multiple incarcerations over the previous four months. As plaintiffs point out, "[t]his high rate of re-incarceration of seriously mentally ill persons indicates that mental health discharge planning is either not happening or not working." Response at 9.

Accordingly, the Court ORDERS defendants to immediately develop and implement a plan to expand the current discharge planning resources at the jail and to evaluate obstacles to discharge planning and take steps to remove these obstacles.

VII. Medical Diets

A registered dietician employed by the County or its food contractor shall work closely with medical and security personnel to ensure that HIV-positive inmates receive appropriate diets, as indicated on the inmates' treatment plans. The dietician shall be responsible for menu planning and monitoring of both general and medically prescribed diets.

Final Settlement Agreement ¶ III.B.ii.

In his October 30 Report, Dr. Greifinger found this area "worse than ever." Report at 6. In his latest Report, Dr. Greifinger states that there is a new dietician, and that grievances regarding medical diets have been reduced. Nevertheless, it is clear that full compliance with this requirement has not yet been achieved.

Accordingly, the Court ORDERS defendants to evaluate the performance of the food vendor as well as the system for delivering food to inmates and to take whatever steps are necessary to ensure delivery of appropriate medical diets to all inmates for whom such diets have been prescribed.

VIII. Quality Management

Defendants shall perform ongoing quality management that monitors the quality of healthcare services provided at the Jail. The

quality management program shall monitor all aspects of healthcare including at least the following: access to healthcare, medication management, nursing services, physician services, access to specialty care, mental health services, pharmacy services, dental services, environmental services, infection control procedures, healthcare records, sick call services, intake screening and evaluations, chronic disease services, infirmary care, diagnostic services, discharge planning, and adverse patient occurrences including all deaths. The quality management program shall include reviews of all aspects of healthcare provision at the Jail, and shall identify any deficiencies in services to inmates as well as any staff training needs and/or deficiencies. Corrective plans to address all deficiencies and recommended improvements shall be prepared, and the quality management program shall include ongoing assessment of the effectiveness of corrective plans and actions.

Final Settlement Agreement ¶ VII.A.

In his October Report, Dr. Greifinger stated that “[t]he quality management program is evolving, but nowhere near complete.” Report at 5. In his latest report, Dr. Greifinger found that there had been a “hiatus” in the quality management program, and that the medical vendor “had not been paying sufficient attention to this critical area.” Report at 5. As plaintiffs point out, it is essential that a fully operational quality management program be in place so that improvements made in the past can be and will be sustained. Likewise, in his latest Report, Dr. Greifinger states: “I cannot emphasize more strongly that good management cannot succeed without good measurement.” Report at 5.

Accordingly, the Court ORDERS defendants to immediately take all necessary steps to address deficiencies in their quality management program.

IX. Environmental Health and Sanitation

All housing units to which HIV-positive inmates are assigned shall be adequate to meet the needs of the HIV-positive inmates placed there. This shall include, but is not limited to, assurance that no HIV-positive inmate in a chronic care unit or with a diagnosis of AIDS shall sleep on the floor, and that all HIV-positive inmates shall have adequate access to toilet facilities, clean bedding and clothing, hot and cold running water, and drinkable water at all times.

Final Settlement Agreement ¶ V.B.

Despite recent renovations, the condition of the plumbing and HVAC systems at the jail continues to deteriorate. According to Dr. Greifinger's latest report: "The benefit from the renovation is gone. Sinks are inoperable again, showers are not functioning well and water fountains often do not work. The plumbing system is either poorly designed or maintained. It should be changed." Report at 5-6. Dr. Greifinger notes that during the coldest week of the winter, a boiler broke down, causing temperatures in many housing areas to drop into the low 60s. A backup boiler, which should have prevented this problem, has not worked in years. Report at 2. As another example, during his latest tour of the jail,

Dr. Greifinger observed that there was no cold water in the showers in one of the living areas, so that inmates were unable to take showers. Id. In conclusion, Dr. Greifinger states: "Although renovated, the plumbing and air handling systems are virtually collapsed. The County needs to correct these deficiencies in short order." Id. at 6.

Accordingly, the Court ORDERS defendants to immediately develop and implement a plan to repair or replace existing plumbing and HVAC systems so that they are able to function under the current population load without constantly breaking down. If the jail cannot be renovated to cure these problems, defendants should so advise the Court so that construction of a new jail can be considered.⁹

X. Conclusion

It is now more than two years since the parties entered into the Final Settlement Agreement. Yet defendants still remain "far from compliance" in many key areas. The Court is totally out of patience with the persistent assurances and promises that compliance will be achieved.

⁹ The Court notes that in the past it has ordered the construction of new jails in Cobb, Fayette, and Douglas Counties after the county commissioners acknowledged that a new facility was needed.

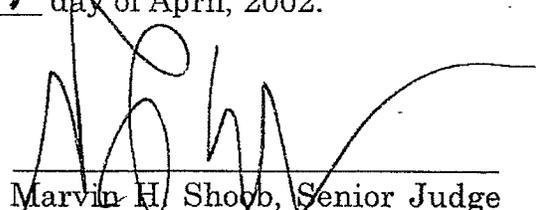
Defendants must do what is necessary to comply with their obligations, and they must do it now.

The Court ORDERS defendants to file a report with the Court within thirty (30) days of the date of entry of this order setting out the specific steps they have taken to comply with each of the requirements set out in this order. Plaintiffs shall have 10 days thereafter to file any response. The Court will conduct a hearing on Tuesday, May 28, 2002, beginning at 10:30 a.m. to consider the progress that has been made and to determine what further action may be necessary. Defendants should have appropriate representatives present at the hearing, other than counsel, to address any areas in which full compliance with this order has not been achieved. Finally, the Court DIRECTS defendants' counsel to deliver a copy of this order to each individual defendant, as well as to the chief judges of the State Court and the Magistrate Court of Fulton County.

In summary, the Court ORDERS defendants to immediately implement the remedial actions set out above and to report to the Court within thirty (30) days of the date of entry of this order. A hearing to consider defendants' progress in complying with this order and to

determine if further action is needed is scheduled for Tuesday, May 28, 2002, at 10:30 a.m. in Courtroom 1707.

IT IS SO ORDERED, this 16th day of April, 2002.



Marvin H. Shoob, Senior Judge
United States District Court
Northern District of Georgia

261-4154

